CASE NO.:
Appeal (crl.) 1312 of 2005

PETITIONER:
State of M.P.

RESPONDENT:
Dayanand Dohar

DATE OF JUDGMENT: 06/10/2005

BENCH:
CJI R.C. Lahoti,G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (Crl.) No. 805/2005)

G. P. MATHUR, J.

Leave granted.

2. This appeal has been preferred by the State of M.P. against the judgment and order dated 22.7.2003 of Justice N.S. Azad of M.P. High Court in Crl. Appeal No. 103 of 2001.

3. The trial Court convicted the accused under Section 376 I.P.C. and Section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act and sentenced him to 7 years R.I. under the first count and 1 year R.I. under the second count. The High Court partly allowed the appeal and while upholding the conviction of the accused on various counts reduced the sentence to the period already undergone which is nearly 3 months.

4. Learned counsel for the appellant has submitted that the sentence imposed by the High Court is wholly inadequate looking to the nature of the offence and is contrary to the minimum prescribed by law.

5. Sub-section (1) of Section 376 I.P.C. provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine. In the category of cases covered under sub-section (2) of Section 376, the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. The proviso appended to sub-section (1) lays down that the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than 7 years. There is a similar proviso to sub-section (2) which empowers the Court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment. The High Court in the impugned order has awarded a sentence which is not only grossly inadequate but is also contrary to express provision of law. The High Court has not assigned any satisfactory reason much less adequate and special reasons for reducing the sentence to a term which is far below the prescribed minimum. Therefore, the sentence awarded by the High Court is clearly illegal.

6. That apart, the High Court has written a very short and cryptic judgment. To say the least, the appeal has been disposed of in a most unsatisfactory manner exhibiting complete non-application of mind. There is absolutely no consideration of the evidence adduced by the parties.

7. Chapter XXIX of Code of Criminal Procedure deals with

APPEALS. Section 384 Cr.P.C. empowers the appellate Court to dismiss an appeal summarily if it considers that there is no sufficient ground for interference. Section 385 Cr.P.C. gives the procedure for hearing appeals not dismissed summarily and Section 386 Cr.P.C. gives the powers of the appellate Court. In Amar Singh v. Balwinder Singh 2003 (2) SCC 518, the duty of the appellate Court while hearing a criminal appeal in the light of the aforesaid provisions was explained and para 7 of the report reads as under :

"7. The learned Sessions Judge after placing reliance on the testimony of the eye-witnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. Surprisingly, the High Court did not at all consider the testimony of the eye witnesses and completely ignored the same. Section 384 Cr.P.C. empowers the Appellate Court to dismiss the appeal summarily if it considers that there is no sufficient ground for interference. Section 385 Cr.P.C. lays down the procedure for hearing appeal not dismissed summarily and sub-section (2) thereof casts an obligation to send for the records of the case and to hear the parties. Section 386 Cr.P.C. lays down that after perusing such record and hearing the appellant or his pleader and the Public Prosecutor, the Appellate Court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction. It is, therefore, mandatory for the Appellate Court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eye-witness account, the testimony of the eye-witnesses is of paramount importance and if the Appellate Court reverses the finding recorded by the Trial Court and acquits the accused without considering or examining the testimony of the eye-witnesses, it will be a clear infraction of Section 386 Cr.P.C. In Biswanath Ghosh v. State of West Bengal & Ors. AIR 1987 SC 1155 it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and without perusing evidence adduced by prosecution, there was a flagrant mis-carriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the accused. In State of UP v. Sahai & Ors. AIR 1981 SC 1442 it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eye-witnesses and has rejected their evidence on the general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial mis-carriage of justice so as to invoke extra-ordinary jurisdiction of Supreme Court under Article 136 of the Constitution."

8. Since the judgment of the High Court is not in accordance with law, we have no option but to set aside the same and to remit the matter back to the High Court for a fresh consideration of the appeal. The appeal preferred by the State of M.P. is accordingly allowed, the judgment and order of the High Court is set aside and the appeal is remanded back to the High Court for a fresh hearing after issuing notice to the accused respondent. It is made clear that we have not gone into the merits of the case and the High Court shall reappraise and examine the evidence on record and decide the appeal in accordance with law.