

**(2019) 02 SC CK 0363**

**Supreme Court Of India**

**Case No:** Criminal Appeal No. 320 Of 2019

Nehnu Ram @ Narendra

APPELLANT

Vs

State Of Rajasthan & Anr

RESPONDENT

---

**Date of Decision:** Feb. 20, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 363, 366, 376, 376(1), 376(2)

**Hon'ble Judges:** Ashok Bhushan, J; K.M. Joseph, J

**Bench:** Division Bench

**Advocate:** Siddhartha Dave, Jemtiben, Rishi Matoliya, H.D. Thanvi, Sumati Sharma, Rahul Verma, Pooja Tiwari, Milind Kumar

**Final Decision:** Disposed Of

---

### **Judgement**

Leave granted.

We have heard learned counsel for the parties.

This appeal has been filed against the judgment dated 24.01.2017 passed by the High Court in Criminal Appeal No. 189 of 1992 whereby the High

Court dismissed the appeal. The appellant had been tried in FIR No. 85/1989 registered at Police Station, Shivdaspura, District Jaipur under Sections

363, 366 & 376 of the Indian Penal Code, 1860 (for short "the IPC").

The prosecution case in brief was:-

FIR No. 85/1989 was lodged on 27.02.1989 by Sh. Surendra Agarwal that his sister "Meera, who is about 15 years, is missing. It was further

informed that one Shri Nehnu Ram was working in the house of the prosecutrix (the victim) and abducted the prosecutrix. The prosecutrix was

recovered after 2½ months.

Both the appellant and the girl went from Jaipur to Phulera to Delhi to Nasik and they also stayed at Shirdi. The girl in her deposition stated about

different places visited by them. It was stated by the prosecutrix that she was abducted and the appellant committed rape at various places. The Trial

Court came to the finding that the victim was less than 16 years of age at the time of incident and it is also an established fact that the victim stayed

with the appellant from 25.02.1989 to 04.05.1989. The Trial Court convicted the accused for seven years R.I. under Section 376 of the IPC and fine

of Rs.100/- and in default of paying fine one month S.I. However, he was discharged from Section 366.

Aggrieved by the order of the Trial Court, the appellant filed an appeal before the High Court. The High Court vide order dated 24.01.2017 dismissed

the appeal and affirmed the view taken by the Trial Court that the victim was less than 16 years of age at the time of the incident.

Learned counsel for the appellant challenging the conviction submits that the prosecutrix with her own will had travelled with the appellant for 2½

months and it is not a case of any forcible rape by the appellant. He further submits that the incident took place on 24.02.1989 and both the appellant

and the prosecutrix are now married (not with each other) and have kids. It is further submitted by learned counsel that the appellant has three

daughters whereas the prosecutrix is also married and has husband and kids. He further submits that there are no criminal antecedents of the

appellant with regard to which the Court had already passed an order for obtaining instructions. He further submits that proviso to Section 376(1) of

the IPC, as it existed on the date of the incident, permitted imposing a sentence of less than seven years on adequate and sufficient reasons.

Learned counsel appearing for the State refuting the submissions made by learned counsel for the appellant contends that the Courts below have

rightly convicted the appellant under Section 376 of the IPC. Since the prosecutrix was a minor at the time of incident, there is no question of any

consent and hence the appellant has rightly been convicted and sentenced. He further submits that seven years sentence is the minimum sentence and

there are no special reasons on which the sentence can be reduced.

This Court on 04.12.2017 impleaded the prosecutrix as an additional respondent and notice was directed to be issued to the newly added respondent

NO.2. Respondent No.2 refused to accept the notice and has chosen not to appear in this Court.

This Court on 12.11.2018 passed the following order:

“The learned counsel appearing for the State is directed to get specific instruction as to the antecedents of the petitioner.”

Learned counsel for the State on obtaining instructions submits that there are no criminal antecedents of the appellant.

We have considered the submissions made by learned counsel for the parties and perused the record.

Both the Courts below have observed that the prosecutrix was less than 16 years of age at the time of the incident. Being minor, the submission of the appellant that the prosecutrix on her own consent stayed with the appellant and co-habited cannot be accepted.

Both the Courts below have rightly convicted the appellant for an offence under Section 376. We, thus, fully concur with the view of the Courts below

and affirm the conviction under Section 376. Now what remains is the submission of learned counsel for the appellant regarding the question of

sentence. Section 376 of the IPC, as existed at the relevant time on the date of the incident, is as follows:

“376. Punishment for rape”

(1) 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 seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless

the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for

a term which may extend to two years or with fine or with both:

Provided 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 seven years.

(2) Whoever,”

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody

of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in

force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand

home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and

shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either

description for a term of less than ten years.—

The present is not a case which falls under Section 376(2). The relevance, in the present case, is of the proviso to Section 376 (1) which provides:

“The court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a

term of less than seven years.—

Learned counsel for the appellant submits that the special reasons in the present case are:- the incident took place on 24.02.1989 and at the time of

incident, the appellant was 22 years of age; there are no criminal antecedents of the appellant; the appellant is now married and has three daughters;

the prosecutrix is also married and has husband and kids and is well-settled in life and the appellant has already undergone the sentence of more than one year and seven months.

Learned counsel for the appellant has placed reliance on the judgment of this Court in *Ravindra v. State of Madhya Pradesh* [(2015) 4 SCC 491]. In

above case, the appellant was convicted for an offence under Section 376 and sentenced for 10 years RI with a fine of Rs.2,000/-. Proviso to Section

376 was relied upon and it was contended that the incident took place twenty years ago and by passage of time, the victim and the accused are

married, a lesser sentence be imposed. This Court noticed the above submission in para 11 which is to the following effect:-

“Now, we shall examine whether this case falls under the proviso to Section 376 IPC, to award a lesser sentence for “adequate and special

reason”. In the present case, the incident took place 20 years ago and now with passage of time both victim and accused are married (not to each

other) and they have entered into a compromise. Thus, an adequate and special reason for awarding a lesser sentence exists in terms of the proviso to

Section 376.”

This Court after considering the submissions considered the said proviso and reduced the sentence already undergone in paras 16, 17 and 18 to the

following effect:-

“16. The fourth ground of defence taken by the appellant is that under the proviso to Section 376(2) IPC, the legislature has empowered the court

to award lesser sentence where “adequate and special reasons” exist. The incident in the present case had taken place 20 years ago. The victim

(prosecutrix) and the accused have entered into a compromise stating therein that the prosecutrix does not want to proceed with the case against the

accused and wants to close the case. Both of them are married (not to each other) and have settled in life. The learned counsel for the appellant

contends that this is an “adequate and special reason” for awarding lesser sentence.

17. This Court has in Baldev Singh v. State of Punjab invoked the proviso to Section 376(2) IPC on the consideration that the case was an old one.

The facts of the above case also state that there was compromise entered into between the parties.

18. In the light of the discussion in the foregoing paragraphs, we are of the opinion that the case of the appellant is a fit case for invoking the proviso to

Section 376(2) IPC for awarding lesser sentence, as the incident is 20 years old and the fact that the parties are married and have entered into a

compromise, are the adequate and special reasons. Therefore, although, we uphold the conviction of the appellant but reduce the sentence to the

period already undergone by the appellant. The appeal is disposed of accordingly.â€

Learned counsel for the State submits that there is one distinguishing feature in the present case and the above judgment that in the above case there

was a compromise entered into between the parties, which is not there in the present case.

Learned counsel for the appellant has also placed reliance on the judgment of this Court in Ram Kumar v. State of Haryana [(2006) 4 SCC 347]

which was again a case of conviction under Section 376(1) where sentence of seven years was imposed. This Court had also reduced the sentence.

In para 3, following has been laid down:

â€œThe appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the

statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the

judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW5) and also drew

our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence

was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got

married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts

and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Section

366 and 376 of the penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly.â€

Another judgment which has been relied is Raj Kumar v. State of Bihar [(2006) 9 SCC 589] which was also a case of conviction under Section 376

and sentence of seven years under Section 376(1). By invoking Section 376(1) this Court reduced the sentence in para 5, following has been held:

â€œKeeping in view the fact that there was a delay of three days in lodging the FIR and the fact that the doctor (PW6), who examined the victim, in

her testimony has deposed that she did not find any confirmatory evidence of rape on the victim, in the peculiar facts and circumstances of the present

case, we deem it appropriate to reduce the sentence awarded to the appellant to the period already undergone. Ordered accordingly.â€

The present is a case where the provision of Section 376(1) proviso as it existed at the time of incident was available and not a case where minimum

sentence prescribed under proviso to Section 376(1) of seven years cannot be reduced on adequate and special reasons found and therefore the

sentence of seven years can be reduced as is statutorily provided.

Now, we come back to special reasons which have been placed before us. The incident took place about 30 years ago. At the time of incident, the

appellant was 22 years of age and the prosecutrix was between 15-16 years. It has been stated by learned counsel on behalf of the appellant that the

appellant is married and has three daughters whereas the prosecutrix is also married and has husband and kids. As noted above, this Court has already

passed an order directing the State to obtain instructions on criminal antecedents of the appellant. It has been stated by learned counsel for the State

before us that there are no criminal antecedents of the appellant.

This Court had impleaded the prosecutrix and issued notice. The prosecutrix refused to accept the notice and chose not to appear before this Court.

Looking into the facts and circumstances of the case that incident took place 30 years ago, that both the appellant and the prosecutrix having married

(not with each other) and settled in life and the appellant having already undergone the sentence of one year and seven months, we are of the view

that ends of justice would be served in reducing the sentence to the sentence already undergone.

We, thus, confirm the conviction of the appellant under Section 376 and by invoking proviso to Section 376(1) reduce the sentence to the sentence already undergone.

The criminal appeal is disposed of accordingly.