

**(2018) 11 Supreme Court Cases 163**

(BEFORE ADARSH KUMAR GOEL AND UDAY U. LALIT, JJ.)

*a* STATE OF MAHARASHTRA . . . Appellant;

*Versus*

BANDU ALIAS DAULAT . . . Respondent.

Criminal Appeal No. 1820 of 2017<sup>†</sup>, decided on October 24, 2017

*b* **A. Penal Code, 1860 — S. 376 — Rape — Victim being deaf and dumb and mentally challenged to some extent, was 14 years of age — Identity of accused not in dispute — Victim and accused seen together on date of incident — Rape confirmed by medical evidence — Respondent-accused was landlord of the house in which victim was living — She was lured away by respondent by offering some sweetmeat — She did not return home and it was at 9.30 p.m. in the night that two boys brought her home — Victim explained to her mother (PW 1) by gesture as to what happened — On such version, FIR was registered the next day — Medical examination of victim confirmed commission of rape — Reversal of conviction by High Court on ground of non-examination of victim herself — Not correct — Conviction restored**

*d* — Held, evidence of victim's mother clearly shows that it was respondent who took victim away — Victim and accused were seen together by PW 2, on the date of commission of offence — Victim immediately after occurrence narrated the same to her mother as to what happened as reflected in FIR and PW 1's version — Rape was confirmed by medical evidence — Identity of accused is not in dispute — In such circumstances, High Court was not justified in setting aside conviction of respondent by trial court, on ground that since *e* victim was not examined, factum of rape and involvement of accused was not proved — Therefore, conviction of respondent under S. 376 IPC, stands restored — Respondent-accused sentenced to RI for 7 years (Paras 7 and 8)

*Bandu v. State of Maharashtra*, 2013 SCC OnLine Bom 1966, *reversed*

*f* **B. Criminal Procedure Code, 1973 — S. 327 — Recording of evidence of vulnerable witnesses in criminal matters — Necessary directions issued to High Courts**

— In instant case, suggestion was given that there should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in court, so as to encourage a vulnerable victim to *g* make a statement — That, such centres ought to be set up with all necessary safeguards — Attention was also drawn to guidelines issued by Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and setting up of four special centres at Delhi for the purpose

*h* <sup>†</sup> Arising out of SLP (Crl.) No. 2172 of 2014. Arising from the Judgment and Order in *Bandu v. State of Maharashtra*, 2013 SCC OnLine Bom 1966 (Bombay High Court, Criminal Appeal No. 325 of 2012, dt. 18-7-2013)

— Held, directions of Delhi High Court and setting up of special centres for vulnerable witnesses, as noted above, are consistent with decision of Supreme Court and supplement the same — All High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary — Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in India — All High Courts may take appropriate steps in such direction in due course in phases — At least two such centres in the jurisdiction of each High Court may be set up within three months from present — Thereafter, more such centres may be set up as per decision of High Courts — Copy of instant order to be sent to all High Courts for necessary action — Criminal Trial — Witnesses — Witness protection and support (Paras 10 to 12)

*Sakshi v. Union of India*, (2004) 5 SCC 518 : 2004 SCC (Cri) 1645, *relied on*

*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 : 1996 SCC (Cri) 316, *cited*

Appeal allowed

Y-D/59424/SR

**Chronological list of cases cited**

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| 1. 2013 SCC OnLine Bom 1966, <i>Bandu v. State of Maharashtra</i> (reversed)     | 164e   |
| 2. (2004) 5 SCC 518 : 2004 SCC (Cri) 1645, <i>Sakshi v. Union of India</i>       | 165e-f |
| 3. (1996) 2 SCC 384 : 1996 SCC (Cri) 316, <i>State of Punjab v. Gurmit Singh</i> | 166a-b |

**ORDER**

1. Leave granted. We have heard the learned counsel for the parties and perused the record.

2. The respondent was tried and convicted under Section 376 IPC by the trial court for the alleged offence of rape committed on 29-6-2008 but has been acquitted<sup>1</sup> by the High Court.

3. The victim is deaf and dumb and mentally challenged to some extent. Main evidence on record is of PW 1, Asha Ramratan Bangar alias Asha Panchu Dhurve, the mother of the victim. She lodged FIR on the next day i.e. 30-6-2008 to the effect that the accused was the landlord of the house in which they were living. The victim was lured away by the accused by offering some sweetmeat and was taken to the market. She did not return home and it was at 9.30 p.m. in the night that two boys brought her home. The victim explained to her mother by gesture as to what happened. On this version, FIR was registered and investigation was carried out. Medical examination of the victim confirmed the commission of rape. The age of the victim at the time of the commission of the offence was about 14 years.

4. The High Court held that since the victim herself was not examined, the factum of rape and involvement of the accused could not be held to have been proved. This is the basis of the order of the High Court.

5. Mr Nishant R. Katneshwarkar, learned counsel for the State, submitted that even though the victim may be the best witness to establish the charge of rape, having regard to the fact that the victim in the present case was deaf and

<sup>1</sup> *Bandu v. State of Maharashtra*, 2013 SCC OnLine Bom 1966

dumb and mentally retarded, even in the absence of her being examined as a witness, there was sufficient evidence warranting conviction of the accused.

a **6.** Though the respondent was served, he has not put in appearance in this Court. We requested Ms Shirin Khajuria, Advocate, to assist the Court as Amicus. Accordingly, Ms Khajuria assisted the Court after thorough preparation. We record our appreciation for Ms Khajuria for the painstaking assistance.

b **7.** The evidence of the mother of the victim clearly shows that it was the respondent-accused who took away the victim. The victim and the accused were seen together by PW 2, Gajanan Marutrao Sonule on the date of commission of offence. The victim immediately after the occurrence narrated the same to her mother as to what happened as reflected in the FIR and the version of PW 1. Rape has been confirmed by medical evidence. Identity of the accused is not in dispute. In these circumstances, the trial court having  
c convicted the respondent, the High Court was not justified in setting aside the conviction.

**8.** Accordingly, we restore the conviction of the respondent under Section 376 IPC and sentence him to undergo rigorous imprisonment for seven years. He may be taken into custody to serve out the remaining sentence.

d **9.** The appeal is accordingly allowed.

**10.** Before parting with this order we may deal with the suggestion of the learned Amicus that there should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such centres ought to be set up with all necessary safeguards. Our attention has been  
e drawn to guidelines<sup>†</sup> issued by the Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and also the fact that four special centres have been set up at Delhi for the purpose.

**11.** We find merit in the above suggestion. In *Sakshi v. Union of India*<sup>2</sup> this Court, after due consideration of the above issue, issued the following directions: (SCC p. 545, para 34)

f “(1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

g (i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing

h <sup>†</sup> See Annexure A for Guidelines. These Guidelines are also available at <[http://delhihighcourtnic.in/writereaddata/upload/Notification/NotificationFile\\_LCWCD2X4.PDF](http://delhihighcourtnic.in/writereaddata/upload/Notification/NotificationFile_LCWCD2X4.PDF)>  
2 (2004) 5 SCC 518 : 2004 SCC (Cri) 1645

to the Presiding Officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required. a

These directions are in addition to those given in *State of Punjab v. Gurmit Singh*<sup>3</sup>.”

12. The directions of the Delhi High Court and setting up of special centres for vulnerable witnesses as noted above are consistent with the decision of this Court and supplement the same. We are of the view that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts. A copy of this order be sent to all the High Courts for necessary action. b c

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