HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

Criminal Appeal No.1112/2014

.....Appellant: Jagdish

Versus

.....Respondent: State of M.P.

&

Criminal Appeal No.1136/2014

.....Appellant: Om Prakash

Versus

.....Respondent: State of M.P.

Shri Prateep Visoriya, Counsel for the appellant in Cr.A. No.1112/2014.

Shri Brajesh Sharma, Counsel for the appelalnt in Cr.A. No.1136/2014.

Shri R.K. Awasthi, Public Prosecutor for the respondent/State.

Date of hearing : 04/10/2018

Date of Judgment : 12/10/2018

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

J U D G M E N T
(12/10/2018)

By this common judgment Criminal Appeal No.1112/2014 filed by appellant-Jagdish and Criminal Appeal No.1136/2014 filed by appellant-Om Prakash shall be decided.

In the present case the co-accused Sunil and Harish are still absconding.

The instant appeals have been filed against the judgment and sentence dated 19/9/2014 passed by the Additional Sessions Judge, Seonda, District Datia in Sessions Trial No. 106/2011, by which the appellant-Jagdish has been convicted under Sections 366 and 376 of IPC and has been sentenced to undergo the rigorous imprisonment of seven years and a fine of Rs.500/- and rigorous imprisonment of 10 years and a fine of Rs.500/- respectively with default imprisonment. The appellant-Om Prakash has been convicted under Section 366 of IPC and has been sentenced to undergo the rigorous imprisonment of seven years and a fine of Rs.500/- with default imprisonment.

The co-accused Chetan and Prashant have been acquitted of the charge under Sections 323, 341, 376 and 376 (2) (g) of IPC, whereas the appellant-Om Prakash has been acquitted for offence under Sections 363, 366-A, 323, 341, 376 (1) and 376 (2) (g) of IPC. Similarly, appellant-Jagdish has been acquitted of the charge under Sections 363, 366-A, 323, 376 (2) (g) and 341 of IPC. The acquittal of the co-accused Chetan and Prashant of all the charges and the acquittal of appellants Om Prakash and Jagdish for above mentioned offences, has not been challenged either by the State or by the complainant, therefore, any reference

to certain facts in respect of the above-mentioned offences would be merely for the purpose of considering the allegations made against the appellants in the present appeals.

The necessary facts for disposal of the present appeals in short are that on 10/10/2009 the complainant Umashankar lodged a report that he is residing alongwith his family as a tenant in the house of one Kamlesh Bhatt. His elder daughter/prosecutrix is a student of class 10th and daily she goes to Pitambara coaching. At about 12 PM the prosecutrix had left the house without informing anybody. She was searched in the market, coaching and school, but she could not be traced and accordingly, the complaint was made which was registered by the police as Gum Insan No.8/2009. Thereafter, FIR at Crime No.134/2008 was registered at Police Station Seonda, District Datia. During the pendency of the investigation, the prosecutrix was recovered who stated in her statement that on 10/10/2009 at about 12 PM she had gone to the market for purchasing the books for her brothers. In the market four persons, namely, the absconding accused Sunil and Harish, appellant-Jagdish and appellant-Om Prakash came there and put her in a four wheeler vehicle. The absconding accused Sunil threatened that in case she raises hue and cry, then she would be killed. Thereafter, she was taken to the house of some relative in Datia itself where her hands, legs and mouth were tied. She was

beaten by all the four persons in the house of the relative in Datia. The acquitted accused Chetan and other ladies, who were present in the house, had also beaten her and she was confined in a room. The acquitted accused Prashant was also there. Thereafter, the acquitted accused Chetan, Prashant, absconding accused Sunil and the appellants Om Prakash and Jagidsh committed rape on her and she was kept in confinement in Datia for two days. Thereafter, she was taken to the house of some relative in Delhi where Anoop Bhatt and Rani Bhatt, sister and brother-in-law of absconding accused Sunil, and Ravi Bhatt, younger brother of Anoop Bhatt, were residing. All the three persons did not assist her and on the contrary, she was beaten. In the night she was raped by Anoop and Ravi. Thereafter, she was taken to some unknown place at Delhi itself. Again she was raped by absconding accused Sunil, Prashant and Anoop and she was forced to sign certain blank papers and her photographs were also taken. She was kept in confinement for a period of five and half months. On 18/3/2010 the absconding accused Sunil and appellant-Jagdish were taking her to some place by a train and when the train reached Gwalior Station, then the absconding accused Sunil and appellant-Jagdish after noticing the police, ran away and the prosecutrix went to the house of her maternal grandparents from where she informed her parents on phone. She

was brought back to her village by her parents from the house of her maternal grandparents. The police could not arrest Sunil and Harish and, therefore, the charge-sheet for offence under Sections 363, 366, 376 (2) (g), 343, 506 Part-II, 34 of IPC was filed against appellants Om Prakash and Jagdish and the acquitted co-accused Chetan and Prashant. The charge-sheet against the absconding accused Sunil and Harish was filed under Section 299 of Cr.P.C. and they were declared absconding. The police kept the investigation pending under Section 173 (8) of Cr.P.C. against Rani, Anoop and Ravi.

The trial court by order dated 18/1/2012 framed the charges under Sections 363, 366-A, 366, 323, 341, 376 (1), 376 (2) (g) of IPC against the appellants, whereas charges under Sections 323, 341, 376 (1) and 376 (2) (g) of IPC were framed against the acquitted co-accused Chetan and Prashant.

The appellants and the acquitted co-accused persons abjured their guilt and pleaded not guilty.

The prosecution in order to prove its case examined the prosecutrix (PW-1), Umashankar Sharma (PW-2), Smt. Suman Sharma (PW-3), Awadh Bihari (PW-4), Smt. Saguna Bai (PW-5), Dr. Anand Unya (PW-6), Dr. Kumari Sulbhadhari (PW-7), Sukhnath (PW-8), P.B. Sharma (PW-9), G.S. Tomar (PW-10), R.S. Rathore (PW-11), Kaptan Singh (PW-12), Asharam Gaud (PW-13)

and Brijbhushan Singh Tomar (PW-14).

The appellant Jagdish Sharma (DW-1) examined himself as a witness and the appellants also examined G.R. Shakya (DW-2), Narayan Singh Yadav (DW-3), R.K. Purohit (DW-4), Sudhir Chaturvedi (DW-5) and Bhogiram Rajak (DW-6), in their defence.

The trial court by judgment dated 19/9/2014 passed in S.T. No.106/2011 acquitted the co-accused Chetan and Prashant of all the charges, whereas acquitted the appellant Om Prakash of the charge under Sections 363, 366-A, 323, 341, 376 (1) and 376 (2) (g) of IPC and convicted him for offence under Section 366 of IPC and sentenced him to undergo the rigorous imprisonment of seven years and a fine of Rs.500/- with default imprisonment. Similarly, the appellant-Jagdish was acquitted of the charge under Sections 363, 366-A, 323, 376 (2) (g) and 341 of IPC, but convicted him of the charge under Sections 366 and 376 (1) of IPC and sentenced him to undergo the rigorous imprisonment of seven years and a fine of Rs.500/- and rigorous imprisonment of ten years and a fine of Rs.500/- respectively with default imprisonment.

Challenging the conviction and sentence passed by the court below, it is submitted by the counsel for the appellants that the prosecutrix was in love with the absconding accused Sunil, who is the son of appellant-Jagdish. On 10/10/2009 the

prosecutrix eloped with the absconding accused Sunil and on the same day an agreement for marriage was executed and the Gum Insan report was also lodged by the father of the prosecutrix on the same day. On 15/10/2009 on the basis of the Gum Insan report and the enquiry conducted by the police, the FIR was registered. Thereafter, a joint petition under Section 482 of Cr.P.C. was filed for quashing the proceedings, which was registered as M.Cr.C. No.275/2010. The prosecutrix was directed to remain present before the Court. Thereafter, an application for registration of marriage was filed before the Marriage Officer at NCR Delhi on 9/3/2010 and the marriage was registered. On 18/3/2010 when the prosecutrix came to Gwalior for appearing before the Court, she was forcibly taken away by her parents and accordingly, on 19/3/2010 a petition under Article 226 of the Constitution of India in the nature of *habeas* corpus was filed by the absconding accused Sunil. The prosecutrix was taken in custody by the police on 24/3/2010 and her statement was recorded, in which she had made an allegation that she was raped by the appellants. She was produced before the High Court on 25/3/2010, however, no allegation of rape was made. The police after concluding the investigation, filed the charge-sheet and an application under Section 91 of Cr.P.C. was filed for requisitioning certain documents, however, the said application was rejected by the trial

court. During Trial, after examination of the accused persons under Section 313 of Cr.P.C. and after examination of some of the defence witnesses, the appellants filed an application under Section 311 of Cr.P.C. for re-summoning the prosecutrix, as certain documents, like notarized agreement of marriage, original copy of the certificate of registration of marriage, Vakalatnama produced in the High Court, were not available with the appellants and since those documents could not be shown to the prosecutrix at the time of her cross-examination, therefore, she may be recalled. The said application was rejected by the trial court by order dated 17/6/2014. It is submitted by the counsel for the appellants that the trial court should have allowed the application under Section 311 of Cr.P.C. and should have recalled the prosecutrix (PW-1) for further cross-examination. It is further submitted that even the trial court had come to a conclusion that the prosecutrix was not minor and she was above 18 years of age. It is further submitted that, according to the prosecution case, the prosecutrix was abducted from the market area and in absence of any independent witness to the incident of abduction, it cannot be said that the prosecutrix was abducted from the market area, because had she raised any hue and cry, then the independent witnesses would have certainly come to her rescue. The prosecutrix had moved alongwith the absconding accused Sunil

from one place to another for a period of about five and half months and thus, it is clear that she was a consenting party.

Per contra, it is submitted by the counsel for the State that so far as the petition filed by the absconding co-accused Sunil under Article 226 of the Constitution of India in the nature of *habeas* corpus is concerned, the accused has not proved any document in this regard. The application under Section 91 of Cr.P.C. was filed prior to framing of charges and, therefore, in the light of the judgment passed by the Supreme Court in the case of **State of Orissa Vs. Debendra nath Padhi** reported in **(2005) 1 SCC 568,** the trial court had rightly rejected the application. Furthermore, the appellants had put several questions to the prosecutrix in her cross-examination with regard to execution of agreement of marriage as well as registration of marriage at NCR New Delhi, which were denied by the prosecutrix. Even the prosecutrix had denied filing of application under Section 482 of Cr.P.C. before the Court and since all these documents were within the knowledge of the appellants, therefore, if they did not deliberately put these documents to the prosecutrix at the time of her cross-examination, then the trial court was right in holding that the application filed by the appellants under Section 311 of Cr.P.C. for recalling the witnesses was filed with a sole intention to delay the proceedings. Furthermore, it is submitted that so far as the

submission with regard to consent of the prosecutrix is concerned, admittedly the prosecutrix was not a consenting party for appellant-Jagdish. The prosecutrix has specifically stated that she was abducted when she had gone to the market to purchase books for her brothers and nowadays it is well known that the independent witnesses are not coming forward, as they do not want to involve themselves in the disputes of other persons and under these circumstances, merely because the independent witnesses were not examined by the prosecution would not *ipso facto* mean that the allegation of abduction made by the prosecutrix cannot be relied upon. It is further submitted that the prosecutrix in her examination-in-chief has specifically stated that she was raped by the appellant-Jagdish, but in the entire cross-examination no question was put to the prosecutrix with regard to the allegation made against the appellant-Jagdish that he committed rape on her, except a general suggestion, which was given to the prosecutrix that her allegation of committing rape by the appellant-Jagdish is false.

Heard learned counsel for the parties.

Before considering the facts of this case, it would be appropriate to consider the rejection of the application filed by the appellants under Section 311 of Cr.P.C.

Section 311 of Cr.P.C. reads as under:-

> "**311.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

From the plain reading of this Section, it is clear that the Court can summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case, however, the delay in filing the application under Section 311 of Cr.P.C. would certainly of importance under the facts and circumstances of the case. . Admittedly, the application under Section 311 of Cr.P.C. was filed after the examination of accused persons under Section 313 of Cr.P.C. All the defence witnesses were examined either on 16/8/2013 or on 16/6/2014 or on 16/7/2014. The application under Section 311 of Cr.P.C. was filed on 16/6/2014, that means the application was filed when even the defence evidence was almost over. It was the contention of the appellants in the application under Section 311 of Cr.P.C. that since the prosecutrix had executed an agreement of marriage, Ex.D/4, marriage was also got registered at NCR New Delhi, Ex.D/5, and a petition under Section 482 of Cr.P.C. was filed before the High Court and accordingly, she was sought to be recalled for further cross-examination by showing the above-

mentioned documents.

The Supreme Court in the case of **Ratanlal v. Prahlad Jat,** reported in **(2017) 9 SCC 340** has **held as under :**

> The delay in filing the application is one of the important factors which has to be explained in the application.

Thus, it is clear that where an application is filed with an intention to prolong the trial, then the trial court would be well within its rights to reject the application. The documents in respect of which the appellants wanted to cross-examine the prosecutrix were already in the knowledge of the appellants. If the appellants did not try to obtain the copy of those documents on earlier occasion, then they cannot be allowed to take advantage of filing of application under Section 311 of Cr.P.C. at a belated stage for calling of witnesses. Furthermore, the prosecutrix had already denied the execution of such documents. Furthermore, the appellants wanted to confront the prosecutrix with the agreement of marriage. Undisputedly, under the Hindu Law marriage is not a contract and under these circumstances, if the appellants say that the prosecutrix had executed an agreement of marriage, then their case may fall under Section 375 *Fourthly* of IPC. Since the absconding accused Sunil against whom major allegations have been made is yet to be tried, therefore, this Court is avoiding to make any observation with regard to the authenticity and legal

sanctity of the agreement of marriage.

So far as the registration of marriage under the Special Marriage Act at NCR New Delhi is concerned, Section 5 of the Special Marriage Act provides that only that Marriage Officer would have jurisdiction to entertain an application if within his jurisdiction one of the parties had resided for a period of at least one month. Furthermore, as per the provisions of Section 6 if the another party is not the resident of the vicinity falling within his jurisdiction, then notice has to be issued to the Marriage Officer of the locality in whose jurisdiction the said party is permanently residing. Nothing has been brought on record by the appellants to show that the mandatory provisions of Special Marriage Act were ever followed before issuing the marriage certificate. Further, the prosecutrix has already denied execution of said marriage certificate. The prosecutrix has also denied filing of joint petition under Section 482 of Cr.P.C. before this Court. Therefore, in the considered opinion of this Court, the trial court did not commit any mistake in rejecting the application filed by the appellants under Section 311 of Cr.P.C.

It is next contended by the counsel for the appellants that the prosecutrix had appeared before the High Court in the proceedings under Article 226 of the Constitution of India, which were initiated by the absconding co-accused Sunil in the form of a

habeas corpus petition and in that proceeding the prosecutrix had not leveled any allegation of rape.

So far as the proceedings of *habeas corpus* petition are concerned, the same have not been placed on record and proved by the appellants. In absence of any formal proof, the submission made by the counsel for the appellants cannot be taken note of. Accordingly, it is rejected.

It is next contended by the counsel for the appellants that the allegation of rape by the appellant-Jagdish is false. The prosecutrix herself was a consenting party and she eloped with the absconding accused Sunil, who is the son of the appellant, and she stayed in Delhi for a period of five and half months and thus, she was the consenting party and since the trial court itself had held that the prosecutrix was major on the date of the incident, therefore, her consent would assume importance.

So far as the consent of the prosecutrix is concerned, it is not the case of the prosecution that she was a consenting party for having physical relation with the appellant-Jagdish. Even it is not the case of the appellant-Jagdish that she was the consenting party for having physical relation with appellant-Jagdish. Since the absconding accused Sunil is yet to be tried, therefore, this Court is refraining itself from making any further observation on this aspect because any observation may adversely adversely affect the case

of the absconding accused Sunil, however, one thing is clear that neither it is the case of the prosecution nor it is the case of the appellant-Jagdish that the prosecutrix was the consenting party for appellant-Jagdish. Furthermore, this Court has gone through the entire cross-examination of the prosecutrix. The prosecutrix has not been cross-examined with regard to the allegation of rape by the appellant-Jagdish. Except giving a general suggestion that the allegation made against the appellant-Jagdish is false, no other cross-examination has been done. Thus, it is clear that in fact the allegation of commission of rape by the appellant-Jagdish has remained unchallenged. The prosecutrix in her evidence has specifically stated that she was raped by the appellant-Jagdish.

Under these circumstances, this Court is of the considered opinion that the prosecution has succeeded in establishing that the appellant-Jagdish had raped the prosecutrix. Accordingly, he is held guilty for offence under Section 376 (1) of IPC.

So far as the case of appellant-Om Prakash and Jagdish with regard to the offence under Section 366 of IPC is concerned, it is submitted by the counsel for the appellants that according to the prosecutrix, she was abducted from a market area and the prosecution has failed to examine any independent witness. It is further submitted that if the prosecutrix had not gone alongwith the absconding accused Sunil on her own, then she could have raised

hue and cry at the time of abduction and since it was a public place, therefore, anybody would have come for her rescue. It is further submitted that under these circumstances, the allegation of abduction made by the prosecutrix against appellants Om Prakash and Jagdish is false.

Considered the submissions made by the counsel for the appellants.

So far as the question of non-examination of independent witnesses is concerned, nowadays it is being observed that the independent witnesses are not coming forward to depose in the dispute of other persons. Nowadays the independent witnesses are more or less interested in staying away from the legal proceedings.

The Supreme Court in the case of **Takhatji Hiraji Vs. Thakore Kubersing Chamansingh** reported in **(2001) 6 SCC 145** has held as under :

> **"19.** So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining

a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.....”

The Supreme Court in the case of **Vijendra Singh Vs. State of U.P.** Reported in **(2017) 11 SCC 129** has held as under :

“37. In Dahari Vs. State of U.P. [2012)10 SCC

256], while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Similar view has been expressed in Manjit Singh [(2013) 12 SCC 746], and Joginder Singh Vs. State of Haryana [(2014) 11 SCC 335]."

The Supreme Court in the case of **State of H.P. Vs. Gian Chand** reported in **(2001) 5 SCC 71** has held as under :

"14.....Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the court and were yet withheld by the prosecution. The court has first to assess the trustworthiness of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on then the testimony has to be

> accepted and acted on though there may be other witnesses available who could also have been examined but were not examined. However, if the available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence, which though available has been withheld from the court, then the question of drawing an adverse inference against the prosecution for non-examination of such witnesses may arise. It is now well settled that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc. if the same is found to be natural, trustworthy and worth being relied on."

In the case of **Yogesh Singh Vs. Mahabeer Singh and others** reported in **(2017) 11 SCC 195,** the Supreme Court has held as under :

> "43. Similarly, in Raghubir Singh Vs. State of U.P. [(1972) 3 SCC 79], it was held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant mulitplication of witnesses. In this connection, general reluntance of an average villager to appear as a witness and get himself involved in cases of rival village factions when

tempers on both sides are running high has to be borne in mind.

44. Further, in Appabhai Vs. State of Gujarat [1988 Supp SCC 241], this Court has observed :

> 11..... Experience reminds us that civilised people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere, whether in village life, towns or cities.....”

Thus, merely because the independent witnesses were not examined by the prosecution, that by itself would not mean that the evidence of prosecutrix (PW-1) has to be discarded or disbelieved. The prosecutrix was cross-examined by the appellants on this issue. In paragraph 18 of her cross-examination she has specifically stated that as soon as she reached near the vehicle, the accused persons pointed a gun towards her and dragged her inside the vehicle and, therefore, she could not raise an alarm. Although there is an omission in her case diary statement, Ex.D/1, to the effect that the absconding co-accused Sunil had shown country made pistol, but in the considered

opinion of this Court, it would not have any effect on the allegation of her abduction, because she has specifically stated that as soon as she reached near the vehicle, she was abducted. As already held that nowadays the independent witnesses are not coming forward to intervene in the matter and under these circumstances, if the independent witnesses did not intervene or the incident might have taken place in such a quick succession that nobody would have noticed the incident, then it cannot be said that because of non-examination of independent witnesses the allegation of abduction by appellants Om Prakash and Jagdish is false.

It is further submitted by the counsel for the appellant Om Prakash that on 10/10/2009 the appellant Om Prakash was looking after the management of the conference organized by the Additional Sessions Judge. In support of his contentions, the appellant Om Prakash has examined G.R. Shakya (DW-2), who was working on the post of Tahsildar at the relevant time. He has stated that a conference was organized by the Additional Sessions Judge, which started from 8 AM and continued till 11:30 PM and the appellant Om Prakash was looking after the management of the said conference. Even if the evidence of G.R. Shakya (DW-2) is accepted, then it is clear that the appellant Om Prakash was in Seonda on 10/10/2009 and the prosecutrix was

also abducted from the market of Seonda. Thus, presence of appellant Om Prakash at Seonda on 10/10/2009 has been proved by appellant Om Prakash himself. Furthermore, if the evidence of G.R. Shakya (DW-2) is considered, then it is clear that the meeting continued till 11:30 PM. However, according to the prosecution case, the incident of abduction took place at about 12 PM. Thus, the presence of appellant Om Prakash at the time of incident of abduction is possible even if the defence evidence G.R. Shakya (DW-2) is accepted.

Further more, it is well established principle of law that if the evidence of the prosecutrix is found reliable, then the Courts should not look for any corroboration and the sole testimony of the prosecutrix is sufficient to record conviction.

The Supreme Court in the case of **Aslam Vs. State of U.P.** Reported in **(2014) 13 SCC 350** has held as under :

> **9.** This Court has held that if, upon consideration of the prosecution case in its entirety, the testimony of the prosecutrix inspires confidence in the mind of the court, the necessity of corroboration of her evidence may be excluded. This Court in *Rajinder* v. *State of H.P.* has observed as under: (SCC pp. 77-79, paras 18-19)
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> "*18*. This Court in *State of Punjab* v. *Gurmit Singh* made the following weighty observations in respect of evidence of a victim of sexual assault: (SCC pp. 395-96, para 8)
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> '*8*. … The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating

statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

> Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of the rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.'
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> *19*. In the context of Indian culture, a woman—victim of sexual aggression—would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent."

The Supreme Court in the case of **State of Haryana Vs. Basti Ram** reported in **(2013) 4 SCC 200** has held as under :

> **25.** The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this Court in several decisions. A detailed discussion on this subject is to be found in *Vijay* v. *State of M.P.* After discussing the entire case law, this Court concluded in para 14 of the Report as follows: (SCC p. 198)
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> "*14.* Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."
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> This decision was recently adverted to and followed in *State of Rajasthan* v. *Babu Meena*.

The Supreme Court in the case of **Narendra Kumar Vs. State (NCT of Delhi)** reported in **(2012) 7 SCC 171** has held as under :

> **20.** It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.
>
> **21.** A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, *if the*

court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial (*sic* circumstantial), which may lend assurance to her testimony. (Vide *Vimal Suresh Kamble* v. *Chaluverapinake Apal S.P.* and *Vishnu* v. *State of Maharashtra*.)

22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide *Suresh N. Bhusare* v. *State of Maharashtra*)

23. In *Jai Krishna Mandal* v. *State of Jharkhand* this Court while dealing with the issue held: (SCC p. 535, para 4)

"*4*. … the only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality the story projected by the prosecutrix was so improbable that it could not be believed."

24. In *Raju* v. *State of M.P.* this Court held: (SCC p. 141, para 10)

"*10*. … that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary."

The Court however, further observed: (*Raju case*, SCC p. 141, para 11)

"*11*. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication … there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

25. In *Tameezuddin* v. *State (NCT of Delhi)*, this Court held as under: (SCC p. 568, para 9)

"*9*. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."

26. Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of "easy virtues" or a woman of "loose moral character" can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated. (Vide *State of Maharashtra* v. *Madhukar Narayan Mardikar*, *State of Punjab* v. *Gurmit Singh* and *State of U.P.* v. *Pappu*)

27. In view of the provisions of Sections 53 and 54 of the Evidence Act, 1872, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all.

28. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of the witnesses which are not of a substantial character.

29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the

> accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. *However* great the suspicion against the accused and *however* strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide *Tukaram* v. *State of Maharashtra* and *Uday* v. *State of Karnataka*.)

Considering the facts and circumstances of the case, this Court is of the view that the trial court did not commit any mistake in convicting the appellants Om Prakash and Jagdish for offence under Section 366 of IPC, as the prosecutrix was abducted by these accused persons. Accordingly, they are held guilty of committing offence under Section 366 of IPC.

So far as the question of sentence is concerned, this Court is of the view that the jail sentence of rigorous imprisonment of 7 years as awarded by the Trial Court for offence under Section 366 of I.P.C. to the appellants Jagdish and Omprakash appears to be proper because not only the prosecutrix was abducted but She was raped by the appellant Jagdish and absconding co-accused Sunil, who is the son of the appellant Jagdish. So far as the sentence of rigorous imprisonment of 10 years, awarded to the

appellant Jagdish for offence under Section 376(1) of I.P.C. is concerned, the minimum sentence provided for offence under Section 376(1) of Cr.P.C. is seven years. Thus, the sentence of rigorous imprisonment of 10 years awarded to the appellant Jagdish for offence under Section 376(1) of I.P.C., is reduced to 7 years.

Resultantly, the judgment and sentence dated 19/9/2014 passed by the Additional Sessions Judge, Seonda, District Datia in Sessions Trial No. 106/2011.

The appellant Omprakash is on bail. His bail bonds and surety bonds are hereby cancelled. He is directed to immediately surrender before the Trial Court, for undergoing the remaining jail sentence.

The appellant Jagdish is in jail.

The appeals fail and are hereby **Dismissed.**

(G.S. Ahluwalia)
Judge

Arun*

HIGH COURT OF MADHYA PRADESH, JABALPUR,
BENCH AT GWALIOR

Criminal Appeal No.1112/2014

.....Appellant: Jagdish

Versus

.....Respondent: State of M.P.

&

Criminal Appeal No.1136/2014

.....Appellant: Om Prakash

Versus

.....Respondent: State of M.P.

JUDGMENT post for 12/10/2018

(G.S. Ahluwalia)
Judge
11/10/2018