

1 Criminal Appeal No.954/2017
[Kalyan Pal Vs. State of M.P.]

HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

Criminal Appeal No.954/2017

.....Appellant: Kalyan Pal

Versus

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

Shri Sushil Goswami, Counsel for the appellant.

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

Date of hearing : 17/07/2018

Date of Judgment : 23/07/2018

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

J U D G M E N T

(23/07/2018)

Per Justice G.S. Ahluwalia,

This Criminal Appeal has been filed under Section 374 of Cr.P.C. against the judgment dated 4/4/2017 passed by the Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act], Shivpuri in Special Sessions Trial No.7/2016, by which the appellant has been convicted for offence under Sections 366 and 376 (2) (n) of IPC and has been sentenced to undergo rigorous imprisonment of ten years and a

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fine of Rs.5,000/- with default imprisonment on both counts. Both the sentences have been directed to run concurrently.

2. The necessary facts for disposal of present appeal in short are that the prosecutrix was the permanent resident of village Anandpur, Police Station Dehat, District Datia and her matrimonial house is situated in village Thanra, Police Station Dinara, District Shivpuri. On 11/10/2015 the prosecutrix left her matrimonial house on the pretext of going to her parental home and boarded the bus at Thanra Bus stop. The appellant, who is also the resident of village Thanra noticed that the prosecutrix has boarded the bus, therefore, he also boarded the bus. When the bus reached Dinara bus stand, the appellant requested the prosecutrix to deboard the bus on the pretext of talking to her. When the prosecutrix alighted the bus, then the appellant requested her to accompany him. When it was objected by the prosecutrix, then the appellant extended the threat that he would kill her seven years old boy, as a result of which, the prosecutrix accompanied the appellant, from where they went to Jhansi Bus stand and thereafter from Jhansi Bus stand they went to Babina. At Babina the appellant took a house on rent and stayed there alongwith the prosecutrix for a period of about one and half months and during this period he raped the prosecutrix on several occasions. In the meanwhile, when the prosecutrix did not reach her parental home, then she was searched by her husband. The appellant is also the resident

of the same locality where the matrimonial house of the prosecutrix is situated and he too was absent. Accordingly, the husband of the prosecutrix lodged a Gum Insan report at Police Station Dinara and he on his own also was searching for the prosecutrix and the child. Thereafter, he received an information that the prosecutrix and the child are in village Babina from where the prosecutrix alongwith her child were recovered. As the appellant got the information that the husband of the prosecutrix is coming, therefore, he absconded from the spot. The FIR was lodged by the prosecutrix at Police Station Dinara, which was registered as Crime No.463/2015 and accordingly, the police registered an offence under Sections 376, 366, 506 of IPC and under Sections 3 (1) 12 and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short "the Act"). After concluding the investigation, the police filed the charge-sheet for the above mentioned offences.

3. The trial court by order dated 29/1/2016 framed charge under Sections 366, 376 (2) (n) of IPC and under Section 3 (2) (v) of the Act.

4. The appellant abjured the guilt and pleaded not guilty.

5. The prosecution in order to prove its case examined Deepak Kumar (PW-1), Prosecutrix (PW-2), Mukesh Jatav (PW-3), Kaliyabai (PW-4), Prabhawati (PW-5), Anjana Khare (PW-6), Bhagwandas (PW-7), Brijesh Pachori (PW-8), Dr. Indu Jain (PW-

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9) and S.C. Pateriya (PW-10).

6. The appellant did not examine any witness in his defence.

7. The trial court by judgment and sentence dated 4/4/2017 passed in Special Sessions Trial No.7/2016 convicted the appellant for offence under Sections 366 and 376 (2) (n) of IPC and sentenced him to undergo the rigorous imprisonment of ten years and a fine of Rs.5,000/- with default imprisonment on both counts. Both the sentences have been directed to run concurrently, and acquitted the appellant for offence under Sections 3(1)(12) and 3(2)(v) of the Act.

8. Challenging the judgment and sentence passed by the court below, it is submitted by the counsel for the appellant that if the entire evidence which has come on record is considered in its entirety, then it would be clear that the prosecutrix herself was the consenting party. She on her own left her matrimonial house along with the appellant and came to Jhansi bus stand along with the appellant from where they went to Babina where the appellant took a house on rent and the prosecutrix along with her seven years old son stayed with the appellant for a period of more than one month and during that period the prosecutrix did not resist or object the act of physical relations. Although the prosecutrix was never kept in confinement and all the time she was free to move and talk to anybody, but still she did not try to contact her in-laws or her parents or even did not inform any neighbors that she has

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been abducted and is being kept in confinement and is being raped by the appellant frequently. It is submitted that thus, from the evidence which has come on record, it is clear that the basic requirement of Section 375 Firstly of IPC have not been established by the prosecution beyond reasonable doubt and, hence, the appellant is liable to be acquitted.

9. *Per contra*, it is submitted by the counsel for the State that the prosecution has established beyond reasonable doubt that the prosecutrix was abducted by the appellant and she was kept against her will in village Babina and she was raped by the appellant. It is further submitted that it is well established principle of law that where the prosecutrix has stated that she was raped by person without her consent, then there is no reason to disbelieve the said statement.

10. Heard learned counsel for the parties.

11. The prosecutrix (PW-2) has stated that about 8-9 months back, at about 8-9 AM, she was going to her parental home by bus. Her seven years old son was also with her and present appellant was also sitting in the same bus. When the bus reached Jhansi bus stand, at that time the appellant asked the prosecutrix to go along with him to Babina. When she refused to do so, then the appellant took the son of the prosecutrix and again said that the prosecutrix must accompany him. Thereafter, the prosecutrix went to Babina along with the appellant in a bus where she stayed

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with the appellant in a room. Her son was also with her. The appellant had committed rape on her in the room on certain occasions. When she requested the appellant not to do so, then the appellant used to say that when both of them are residing together, then this is not unnatural. About one month thereafter her in-laws came to know about her whereabouts, therefore, her husband along with other in-laws and Sarpanch came to Babina for taking her back and at that time the appellant was not in the house. She came back to her matrimonial house from Babina from where she went to Police Station Dinara along with her husband, in-laws and other persons. The FIR was lodged by her at Police Station Dinara, which is Ex.P/2. She was sent for medical examination, however, she did not tell any place of incident to the police. In cross-examination, she admitted that the house of a relative of appellant is also situated in village Angora and her parental home is also in village Angora. She further stated that the house of *Bua* of the appellant is situated at a distance of 1-2 km. from the house of her father. The appellant was not known to her when she was residing in Angora. Thereafter, this witness on her own has stated that she was introduced by the *Bua* (father's sister) of the appellant. She further admitted that she is knowing the appellant after her marriage and the house of the appellant and her matrimonial house are adjoining to each other and their agricultural fields and well are also adjoining to each

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other. She also admitted that the appellant and the prosecutrix used to meet each other even in isolation. She further stated that she was going to her parental home as her mother was not well and she boarded the bus from Dinara for going to Angora. She further admitted that the bus going towards Datia takes a different route and does not go to Jhasni. The prosecutrix on her own clarified that from Dinara the appellant took her to Jhansi in a different bus. She further stated that at Dinara bus stand there were lot of passengers and similarly there were number of passengers in the bus, in which she went to Jhansi. She further admitted that while she was going alongwith the appellant in the bus she neither raised any alarm nor informed the conductor of the bus or passengers that the appellant is forcibly taking her away. When she alighted from the bus at Jhansi bus stand for going to Babina even at that time she did not inform anybody that the appellant is forcibly taking her to Babina nor she informed in this regard to the passengers or conductor of the bus by which they were going to Babina. She further stated that she did not make any attempt in her defence. It is further submitted that lot of houses are situated adjoining to the room where she and the appellant had stayed. She further stated that after leaving the prosecutrix and her child in the room the appellant used to go to market for taking articles and during that period she used to stay back in the room along with her son. She further admitted that in

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absence of the appellant she could have run away from the room, but did not try to run away from the room. She further admitted that she did not narrate to any neighbors about the incident. She further admitted that during the period when she and the appellant were staying in Babina, the appellant used to go to market every day for taking articles and during this period she was all alone in the room and even during this period also, she did not narrate the incident to anybody. She further admitted that she along with her son and the appellant had gone to Odissa for tourism purposes. Thereafter, on her own she stated that one more person was accompanying the appellant. She further admitted that in Odissa also she did not inform anybody. She further stated that whenever the appellant had physical relation with her, she had merely refused, but did not do anything and she had stayed with the appellant for a period of one month and twenty days. She further stated that her husband is in the habit of consuming alcohol and in inebriated condition he used to beat her. Further, she denied that her relation with her husband were strained. She further denied that she on her own had requested the appellant to take her to some other place as her husband in inebriated condition used to beat her. Thereafter, she further stated that one Pran Singh Banjara is staying at the well of the appellant, who had said that she should go for tourism and accepting the suggestions given by Banjara she went along with the appellant willingly. She

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further stated that she has engaged a lawyer, who has come from Dinara along with her. She further denied that she has given the evidence as per the advice given by her counsel.

12. Mukesh Jatav (PW-3) is the husband of the prosecutrix, who has stated that she had left her matrimonial house along with her son on the pretext that she is going to her parental home. On the next day, when he inquired from her in-laws, then he was told that the prosecutrix has not reached her parental home. He tried to find out the whereabouts of the prosecutrix and when he could not succeed, then he lodged a Gum Insan report. About one month of lodging the Gum Insan report, he came to know that the prosecutrix is living along with the appellant at Babina. Thereafter, he along with 10-15 persons went to Babina from where they went to the house of *Mausi* of the appellant where the prosecutrix and her son were found, then they came back to his house. In cross-examination, attention of this witness was invited to the omission in his case diary statement that the prosecutrix and her son were found in the house of *Mausi* of the appellant, however, this witness could not explain the reason of such omission.

13. Kaliyabai (PW-4) is the mother-in-law of the prosecutrix. She has merely stated that she does not know anything about the incident and she was declared hostile.

14. Prabhawati (PW-5) is the Constable, who had taken the prosecutrix for medical examination.

15. Anjana Khare (PW-6) is the Sub Inspector, who was posted in village Karera, District Shivpuri, who has stated that she was informed by the SHO, Police Station Dinara that a lady has come for lodging the report and since there is no lady officer in the police station, therefore, she went to Police Station Dinara where she recorded the statement of the witnesses. The FIR, Ex.P/2, was written on the report given by the prosecutrix.

16. Bhagwandas (P.W.7) has stated that vide Ex. P.5, the prosecutrix was recovered in the police station Dinara.

17. Brajesh Pachouri (P.W.8) is the constable who had brought a sealed packet from the District Hospital Shivpuri and had handed over the same to the Head Constable Ravindra Prakash vide seizure memo Ex. P.7.

18. Dr. Indu Jain (P.W.9) had conducted the medical examination of the prosecutrix and vide medical report, Ex. P.8, no external/internal injury was found on the body of the prosecutrix.

19. S.C. Pateria (P.W. 10) was the investigating officer who had prepared the spot map, Ex. P.09 and had recorded the statements of the witnesses. One sealed packet along with specimen of seal was brought by Constable from District Hospital Shivpuri, which was seized vide seizure memo Ex. P.10. The appellant was arrested vide arrest memo Ex. P.11 and the seized articles were sent to F.S.L. Gwalior by memo Ex. P.12.

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20. The contention of the Counsel for the appellant is that the prosecutrix herself was the consenting party and nothing was done without her consent.

Section 375 *First* of I.P.C., reads as under :

375. Rape.—A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions—

***First.*—Against her will.....**

Thus, in order make the act of an accused punishable under Section 376 of I.P.C., the prosecution must prove that the woman was subjected to sexual relations **without her Will**.

21. Therefore, absence of Will is the basic requirement, for making the act of sexual relation, a rape. However, where undisputedly, the two persons, i.e., the appellant and the prosecutrix were involved in sexual activities, then the moot question for determination would be that whether the act of sexual intimacy was without the will of the prosecutrix or it was with her consent. Whether the prosecutrix was a consenting party and

whether her claim, that She was subjected to sexual violation, is a question which has to be determined after considering the surrounding circumstances. Although it is a well established principle of law that the sole testimony of the prosecutrix is sufficient to hold the accused guilty of committing rape, but where the evidence of the prosecutrix is not found trustworthy, then She can be disbelieved.

22. Whether the prosecutrix had involved herself in the sexual relations willingly or not, is a debatable question of fact. The word “willingness” would mean that when a woman in her full senses, and with clear understanding of the consequences of intimate relationship, agrees to involve herself in sexual relations, without any misconception of fact and without any coercion or pressure, then it can be said that the act of sexual intimacy was not against the will of the woman.

23. The Supreme Court in the case of **Kuldeep K. Mahato Vs. State of Bihar** reported in **(1998) 6 SCC 420** has held as under :

11. Then coming to the conviction of the appellant under Section 376 IPC, although both the courts below have held after accepting the evidence of the prosecutrix as being truthful that the appellant had forcibly committed the rape, we are of the opinion that the said finding is unsustainable. The prosecutrix had sufficient opportunity not only to run away from the house at Ramgarh but she could have also taken the help of the neighbours from the said village. The medical evidence of Dr Maya Shankar Thakur, PW 5 also indicates that there were no injuries on the person of the prosecutrix

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including her private parts. Her entire conduct clearly shows that she was a consenting party to the sexual intercourse and if this be so, the conviction of the appellant under Section 376 IPC cannot be sustained. There is one more additional factor which we must mention that it is not the case of the prosecutrix that she was put in physical restraint in the house at Ramgarh, with the result that her movements were restricted. This circumstance also goes to negative the case of forcible intercourse with the prosecutrix by the appellant.

The Supreme Court in the case of **Mohan Lal Vs. State of Rajasthan** reported in **(2002) 10 SCC 14** has held as under :

14. We have noticed these omissions and contradictions in her cross-examination only with a view to test the credibility of this witness because the conviction of the appellant is based primarily on her evidence. We find that in the course of investigation, she had not stated that she was forcibly pushed inside the room of the appellant; or that the appellant had slapped her and out of fear she did not raise a hue and cry; or that after the appellant went away, she was not permitted to leave by the wives of the two brothers of the appellant but on the contrary she had hidden herself inside the room after having been seen by PW 5. Moreover, her statement in the course of investigation that on earlier occasions she had been paid Rs 50 by the appellant and that she had tea with them on the day of occurrence as well, creates a serious doubt about the truthfulness of the version of the prosecutrix and we find it unsafe to rely upon her testimony to convict the appellant. Not only this, the case of the prosecution even otherwise does not appear to be credible and it appears that the father of the prosecutrix, PW 2 on discovering that the prosecutrix was involved with the appellant, after due deliberations, lodged a report implicating the appellant.

15. PW 5 undoubtedly is a cousin of the prosecutrix. He lived in the house adjacent to the house of the appellant and it is the

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prosecution case that anyone in the courtyard of the appellant can be seen from the house of PW 5. The case of the prosecution is that when the prosecutrix first attempted to run away and was in the courtyard, she was seen by PW 5. The evidence is not clear as to whether PW 5 had identified the prosecutrix. There is, however, no doubt that the prosecutrix had seen PW 5. If PW 5 had identified the prosecutrix there is no reason why he did not immediately come to her rescue seeing that the appellant had forcibly pushed her inside his room. If he had not identified the girl, as being the prosecutrix, there appears to be no reason for his asking his brother PW 3 to call PW 2, father of the prosecutrix. Learned amicus curiae submitted that the prosecutrix having seen PW 5, hid inside the room of the appellant to avoid identification, and this is what she stated in her statement in the course of investigation. This only fits in with the case of the defence that though she was a consenting party, she was afraid that her cousin, PW 5 may come to know of the clandestine affair and expose her. PW 5, it was submitted, called her father because he may have thought that the father of the prosecutrix should take whatever steps he may consider necessary as his daughter was involved. From the evidence of PW 2, the informant, it appears that PW 5 did not disclose to him the fact that the girl he had seen in the house of the appellant was his daughter, yet PW 2, the informant, called two other persons and only thereafter entered the house of the appellant. These facts do tend to support the case of the defence that the prosecutrix having been seen by PW 5 in the house of the appellant despite best efforts to conceal herself, the latter called her father and her father along with PW 5 and two others thereafter went to the house of the appellant.

16. So far as the last part of the prosecution case is concerned, namely, the recovery of the prosecutrix from the room of the appellant, the evidence supports the case of the defence that the prosecutrix was hiding behind the ladies when her father and others came to her rescue. The normal conduct of the prosecutrix in such

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circumstances would have been to rush to the persons who came to her rescue and not to hide behind the two ladies said to be the wives of the brothers of the appellant.

17. All these facts lead us to seriously doubt the truthfulness of the case of the prosecution and we are satisfied that the prosecution has failed to prove its case beyond reasonable doubt.

The Supreme Court in the case of **Amar Bahadur Singh Vs. State of U.P.** Reported in **(2011) 14 SCC 671** has held as under :

5. We find merit in this plea. We find that under the circumstance the possibility that rape could have been committed on her in the presence of so many members in a small house is difficult to believe. On the contrary the findings of the High Court that the prosecutrix was a consenting party appear to be correct and it was perhaps when the accused and the prosecutrix had been caught red-handed that the story of rape had been cooked up, to salvage some of the family honour. This is often the tendency in such matters. The High Court has therefore gone completely wrong in dismissing the appeal even after its categorical observations.

The Supreme Court in the case of **Kaini Rajan Vs. State of Kerala** reported in **(2013) 9 SCC (Cri) 858** has held as under :

12. Section 375 IPC defines the expression "rape", which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is

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interested in fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. (See *State of H.P. v. Mango Ram.*)

14. This Court examined the scope of Section 375 IPC in a case where the facts have some resemblance with the one in hand. Reference may be made to the judgment of this Court in *Deelip Singh v. State of Bihar*. In that case, this Court examined the meaning and content of the expression “without her consent” in Section 375 IPC as well as whether the consent given by a woman believing the man’s promise to marry her, is a consent which excludes the offence of rape. This Court endorsed the principle that a misrepresentation as regards the intention of the person seeking consent i.e. the accused, could give rise to the misconception of fact. While applying this principle to a case arising under Section 375 IPC, this Court held that the consent given pursuant to a false representation that the accused intends to marry, could be regarded as consent given under misconception of fact. But a promise to marry without anything more will not give rise to “misconception of fact” within the meaning of Section 90 IPC. This Court further held that: (SCC p. 104, para 28)

“28. ... If on facts it is established that at the

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very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of [the second clause of Section 375 IPC].”

In the facts of that case, this Court held, that the predominant reason which weighed with her in agreeing for sexual intimacy with the accused was the hope generated in her of the prospect of marriage with the accused. The Court held that she came to the decision to have a sexual affair only after being convinced that the accused would marry her and it is quite clear from her evidence, which is in tune with her earlier version given in the first information report. The Court noticed that she was fully aware of the moral quality of the act and the inherent risk involved and that she considered the pros and cons of the act.

15. In *Ramdas v. State of Maharashtra* this Court held that: (SCC p. 179, para 23)

“23. ... the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity.”

16. *Vijayan v. State of Kerala* was a case where the complaint was made by the prosecutrix after the alleged commission of rape on her by the accused. At the time of making the case, the prosecutrix was pregnant for about seven months. This Court did not place reliance on the sole testimony of the prosecutrix. The Court noticed that flaw that no DNA test was conducted to find out whether the child was born out of the said incident and the accused was responsible for the said child.

17. *K.P. Thimmappa Gowda v. State of Karnataka* was a case where the accused had assured the prosecutrix that he would marry her and had sexual affair, which was repeated on several occasions as well. But he did not marry and she became pregnant. That was a case where there was delay of eight months in filing

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the complaint. The accused was given the benefit of doubt holding that it would not be possible to conclude that the alleged sexual act was committed without the consent of the prosecutrix.

18. We have already referred to the evidence of PW 2 to PW 4 and that their consistent version is that PW 2 had previous acquaintance with the accused being her elder brother's friend for a period of more than two years before the date of incident. The place of the alleged incident and the time is very crucial, so far as this case is concerned. It was early morning at 8.30 a.m. and the place of the alleged incident was on the side of a public road. If she had made any semblance of resistance or made any hue and cry it would have attracted large number of people from the locality. Further the first information report, as already indicated, was lodged after a period of 10 months of the alleged incident. All these factors cast some shadow of doubt on the version of PW 2.

The Supreme Court in the case of **Alamelu and another v.**

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SC 715 has held as under :

45. The High Court concluded that even if one was to exclude the evidence given by PW3, the conviction for abduction and rape by Sekar could be recorded on the sole evidence of PW2. Undoubtedly, the testimony of victim of sexual assault stands at par with testimony of an injured witness, and is entitled to great weight. Therefore, corroboration for the testimony of the victim would not be insisted upon provided the evidence does not suffer from any basic infirmities and the probability factors do not render it unworthy of credence. This Court in **Rameshwar v. State of Rajasthan** declared that corroboration is not the sine qua non for a conviction in a rape case. In the aforesaid case, Vivian Bose, J. speaking for the Court observed as follows :-

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"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, ... The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

The aforesaid proposition of law has been reiterated by this Court in numerous judgments subsequently. These observations leave no manner of doubt that a conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

46. In our opinion, the evidence of PW2 does not satisfy the aforesaid test. The High Court erroneously concluded that the girl had not willingly gone with Sekar. The conclusion could only be recorded by ignoring the entire evidence with regard to the conduct of the girl from the time of the alleged abduction till the time of the alleged recovery. We have noticed earlier that she did not make any complaint on so many occasions when she had the opportunity to do so. We may, however, notice that even after the alleged marriage, the girl continued to be a willing partner in the entire episode. Even if the prosecution version is accepted in its totality, it would be established that the girl was staying with Sekar (A1) from 31st July, 1993 till 10th August, 1993. Even PW5, Thiru

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Thirunavukarasu stated that Sekar (A1) had brought the girl with him to his house and told him that he had married her. They had come to see Trichy and requested a house to stay. This witness categorically stated that he thought that they were newly married couple. He had made them stay in door No. 86 of the Police Colony, which was under his responsibility. On 10th August, 1993, the police inspector, who arrived there at 10.00 p.m. told this witness that Sekar (A1) had married the girl by threatening her and "spoiled her". The girl, according to the prosecution, was recovered from the aforesaid premises. Therefore, for six days, this girl was staying with Sekar (A1). She did not raise any protest. She did not even complain to this witness or any other residents in the locality. Her behaviour of not complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural. Earlier also, she had many opportunities to complain or to run away, but she made no such effort. It is noteworthy that she made no protest on seeing some known persons near the car, after her alleged abduction. She did not make any complaint at the residence of Selvi, sister of Sekar (A1) at Pudupatti. Again, there was no complaint on seeing her relatives allegedly assembled at the temple. Her relatives apparently took no steps at the time when mangalsutra was forcibly tied around her neck by Sekar (A1). No one sent for police help even though a car was available. She made no complaint when she was taken to the house of PW5, Thiru Thirunavukarasu and stayed at his place. Again, there was no protest when Sekar (A1) took her to the police station on 5th day of the alleged abduction and told at the Tiruchi Police Station that they had already been married. The above behaviour would not be natural for a girl who had been compelled to marry and subjected to illicit sexual intercourse.

24. If the facts and circumstances of the case are considered in the light of the law laid down by the Supreme Court, in the above mentioned cases, it would be clear that the testimony of the prosecutrix is not trustworthy. The prosecutrix has stated that as her mother was not well, therefore, She left her matrimonial house for going to her parents home, however, the prosecution has not examined the mother of the prosecutrix to prove that She was not well, therefore, the prosecutrix had started from her matrimonial house for coming to her parental house. Thus, the prosecution failed to prove the very reason for the prosecutrix to leave her matrimonial house. It is also admitted by the prosecutrix, that when She boarded the bus, the appellant was already sitting in the bus. Thus the possibility of leaving the matrimonial house after due deliberations with the appellant, cannot be ruled out. Further, it is the prosecution case, that for going to Babina, the prosecutrix changed various buses at bus stops but neither She made any complaint to the co-passengers or to the conductor. Further, the appellant, took a room on rent at Babina, where the prosecutrix stayed with the appellant for a period of one and half months, and although she was not kept in confinement and was free to move around, but neither she informed her in-laws, nor informed any neighbor, although the room in which the prosecutrix was staying was situated in a densely populated area. The prosecutrix has also admitted that She used to meet the appellant

even in isolation. The prosecutrix has also admitted that her husband used to beat her in inebriated condition. Therefore, the possibility of leaving her matrimonial house, because of the conduct of her own husband, cannot be ruled out. However, it appears that later on, in order to save the pride of the family, a false report of abduction and rape has been lodged.

25. Considering the facts and circumstances of the case, this Court is of the considered opinion, that the testimony of the prosecutrix is not trustworthy and She appears to be the consenting party. Under these circumstances, this Court is of the considered opinion, that the prosecution has miserably failed to prove the guilt of the applicant on any count. Accordingly the appellant is held not guilty of committing offence under Section 366 and 376(2)(n) of I.P.C.

26. Resultantly, the judgment and sentence 4/4/2017 passed by the Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act], Shivpuri in Special Sessions Trial No.7/2016, is hereby set aside.

27. The appellant is acquitted of all the charges.

28. The appellant is in jail. He be released from jail immediately, if not required in any other case.

29. The appeal succeeds and is hereby **Allowed**.

(G.S. Ahluwalia)
Judge

Arun*

23 Criminal Appeal No.954/2017
[Kalyan Pal Vs. State of M.P.]

**HIGH COURT OF MADHYA PRADESH, JABALPUR,
BENCH AT GWALIOR**

Criminal Appeal No.954/2017

.....Appellant: Kalyan Pal

Versus

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

JUDGMENT post for 23/07/2018

(G.S. Ahluwalia)
Judge
19/07/2018