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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE -- OF JULY, 2023**

CRIMINAL APPEAL No. 1466 of 1999

BETWEEN:-

GABBU (MADHYA PRADESH)

.....APPELLANT

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

**THE STATE OF M.P. THROUGH POLICE STATION
KASRAWAD, DISTRICT WEST NIMAR (MADHYA
PRADESH)**

.....RESPONDENT/STATE

(BY SHRI VISHAL SANOTHIYA - ADVOCATE)

Reserved on : 06.07.2023

Pronounced on : 18.07.2023

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*This appeal having been heard and reserved for judgement, coming on
for pronouncement this day, the Court pronounced the following:*

JUDGEMENT

Appellant/accused has filed this appeal u/S 374 of the Cr.P.C being aggrieved and dissatisfied by the judgment dated 30.09.1999 passed by Sessions Judge, West Nimar, Mandlweshwar in S.T. No.191/1999, whereby the learned trial Court has convicted the appellant u/S 376 of IPC and sentenced to Rigorous Imprisonment for 07 years with fine of Rs.2,000/- with default stipulation of 01 year Rigorous Imprisonment.

2. Prosecution story, in brief, is that, on 25.03.1999, at around 4:00 PM the prosecutrix (PW-1) was working in her agricultural land. She had gone to well to drink water, when the appellant came and caught hold her. She cried for

help, then the appellant stuffed his handkerchief in the mouth of prosecutrix (PW-1) and took her to chamber and committed rape upon her. After the incident, the prosecutrix was returning home weeping, in between she met her brother-in-law (PW-2) to whom she narrated the incident. After coming home, she narrated the incident to her husband (PW-3). Her mother-in-law and father-in-law had gone somewhere. When they returned home, the prosecutrix told them about the incident and on 29.03.1999, she lodged an FIR (Ex.P-1) against the appellant at P/S Kasrawad.

3. After lodging FIR, Inspector Chandrakant Bhamre (PW-5) sent the prosecutrix (PW-1) for medical examination. Dr. Sushma Rathi (PW-8) examined the prosecutrix and prepared MLC report (Ex.P-14). She preserved petikot, vaginal slide and pubic hair of the prosecutrix. After sealing the aforesaid articles, she handed it over to the concerned Sainik for further examination. On 29.03.1999, Inspector Chandrakant Bhamre (PW-5) seized the aforesaid article from Sainik Rajendra vide seizure memo (Ex.P-4). During investigation, Inspector Chandrakant Bhamre (PW-5) on the same day inspected the place of incident and prepared spot map (Ex.P-5), at the instance of prosecutrix (PW-1). ASI V.S. Kushwaha (PW-7), on 01.04.1999 arrested the appellant vide arrest memo (Ex.P-11). He sent appellant for medical examination. Dr. Kamal Singh Jadhav (PW-4) examined the appellant and found him to be capable to have sexual intercourse and issued MLC report (Ex.P-2). He preserved underwear and pubic hair of the appellant and after sealing them, handed over to concerned constable. ASI V.S. Kushwaha (PW-7) on 02.04.1999, seized the aforesaid sealed articles from constable Pankaj Singh Thakur vide seizure memo (Ex.P-13). Inspector Chandrakant Bhamre (PW-5)

sent the seized articles alongwith letter (Ex.P-6) to regional forensic science laboratory, Indore for chemical examination. Though FSL report has not been filed in the case. Statement of witnesses were recorded u/S 161 of Cr.P.C. After completion of investigation, charge-sheet has been filed.

4. Learned trial Court has framed charge u/S 376 of IPC against the appellant. He abjured his guilt and sought trial.

5. In support of the case, the prosecution, has examined as many as 8 witnesses - the prosecutrix (PW-1), her brother-in-law (PW-2), her husband (PW-3), Dr. Kamal Singh Jadhav (PW-4), Inspector Chandrakant Bhamre (PW-5), Dr. K.S. Thakur (PW-6), ASI V.S. Kushwaha (PW-7) and Dr. Sushma Rathi (PW-8). After completion of prosecution witnesses, the appellant was examined u/S 313 of Cr.P.C. The appellant has taken defence that he has not committed the offence, and has falsely been implicated in the case due to animosity. Though, he has not produced any witness in his defence.

6. The learned trial Court on appreciation of the evidence adduced by the parties, pronounced the impugned judgment and finally concluded the case and convicted and sentenced the appellant, as stated above.

7. Learned counsel for the appellant submits that the appellant has not committed the offence. The learned trial Court has convicted the appellant wrongly, without considering the evidence available on record. There are material contradictions and omissions of the statement of the prosecution witnesses. FIR was lodged with delay of 04 days in absence of cogent and plausible explanation. There was inimical relationship between the parties. But the learned trial Court has not considered the aforesaid factum in right aspect and convicted the appellant. The statement of prosecutrix is not supported by medical evidence. No sign of violence was found on the body of prosecutrix.

The statement of prosecutrix is unnatural. The alleged incident of rape is baseless. The prosecutrix has lodged the report due to earlier dispute. Hence, prayer is made for acquittal of the appellant. Reliance is placed in the case of ***Santosh Prasad alias Santosh Kumar VS State Of Bihar [(2020) 3 SCC 443]***.

8. On other hand, learned counsel for the respondent/State has supported the impugned judgment and prayed for the rejection of the appeal. He placed reliance in the case of ***Ganesan VS State Represented By Its Inspector Of Police [(2020) 10 SCC 573]***.

9. I have considered the rival contention of the parties, and have perused the records.

10. It is well settled that in the absence of injury on the body of prosecutrix, it cannot be concluded that the incident of rape had not taken place. It depends upon the facts and circumstances of each case. In the case of ***B.C. Deva Alias Dyava V State Of Karnataka [(2007) 12 SCC 122]***, the apex Court held that absence of injury on the body of the victim of rape does not lead to an inference that the accused did not commit sexual intercourse forcibly. It has further been held that in the absence of external injury, the oral testimony of prosecutrix that she was subject to rape cannot be ignored.

11. In the case of ***Ganesan (Supra)***, it was a case under S.7 r/w S.8 of Protection of Children From Sexual Offences Act, 2012, in this case, the apex court held in Paragraph 10 as under:-

“10. In the present case, the appellant-accused has been convicted by the learned trial Court for the offence under Section 7, punishable under Section 8 of the POCSO Act. We have gone through the entire judgment passed by the learned trial Court as well as the relevant

evidence on record, more particularly the deposition of PW-1 father of the victim, PW-2 mother of the victim and PW-3 victim herself. It is true that PW-2 mother of the victim has turned hostile. However, PW-3 victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW-3 victim. PW-3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.”

12. In the case of **Santosh Prasad alias Santosh Kumar (Supra)** it has been held by the apex Court in Para 6 as under:-

“6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall the accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 o'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4.00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW-1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW-5, prosecutrix, it is

unfortunate that the said witness has failed to pass any of the tests of “sterling witness”. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix, PW 5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and the accused is to be given the benefit of doubt.”

13. In the instant case, the oral and documentary evidence has been produced by the prosecution. The prosecutrix (PW-1) stated that at the time of the incident, the appellant had committed rape upon her. After the incident, she was going to her home, weeping, and in the way she met her brother-in-law (PW-2) to whom she narrated the incident. After reaching home, she also narrated the incident to her husband (PW-3).

14. The prosecutrix (PW-1) stated that she narrated to brother-in-law (PW-2) that “Gabbu ne meri izzat loot li” while her brother-in-law (PW-2) asked the prosecutrix (PW-1) that why is she weeping to which she replied “Gabbu ne mujhe pakad lia”, he further stated that, apart from that the prosecutrix has not said anything else. Therefore, it appears that there are material contradictions in the statement of prosecutrix (PW-1) and of her brother-in-law (PW-2). Though, husband of the prosecutrix (PW-3) has supported the statement of prosecutrix (PW-1) that she had stated him about the incident.

15. As per statement of Dr. Sushma Rathi (PW-8), who examined the

prosecutrix (PW-1), on 29-03-1999, it appears that at the time of the examination, no external or internal injury was found on the body of prosecutrix (PW-1). No FSL report was produced in the case, therefore, it is clear that statement of prosecutrix (PW-1) is not supported by medical evidence.

16. So far as the question of 04 days of delay in lodging the FIR, in this respect, prosecutrix (PW-1) stated that her in-laws returned home on the next day of the incident. While, Inspector Chandrakant Bhamre (PW-5) stated that the prosecutrix (PW-1) lodged FIR on 29.03.1999 and cause of delay was explained by her that her in-laws were not in village and they had returned on 29.03.1999. Thereafter, she came to lodge the report. Therefore, it appears that the prosecutrix (PW-1) has given false explanation to delay in lodging the FIR.

17. The prosecutrix (PW-1) deposed that after narrating the incident, to her husband (PW-3), on the same day after the incident, she had gone to O/P Aamkheda, to report the matter but Head Constable had not written the FIR. Therefore, on the next day of incident, her in-laws returned home thereafter, on the same day she lodged the report at P/S Kasrawad. Husband of prosecutrix also stated that on the date of incident, he went to O/P Aamkheda to lodge the report alongwith prosecutrix (PW-1) and prosecutrix (PW-1) had lodged the report. In Paragraph 2 of examination-in-chief, the witness further stated that he went to O/P Aamkheda to report the incident of rape but report of verbal abuse was written down. Therefore, it appears from statement of husband of prosecutrix (PW-3) that on the date of incident, a report was lodged by the prosecutrix at O/P Aamkheda for verbal abuse. But the aforesaid report was not filed in the case. It appears from the statement of Inspector Chandrakant Bhamre (PW-5) that the incident was dated 25.03.1999 and prosecutrix (PW-1) has lodged report with delay of 04 days on 29.03.1999. While prosecutrix (PW-

1) stated that on the next day of incident she lodged the report at P/S Kasrawad. Therefore, statement of prosecutrix (PW-1), her husband (PW-3) and Inspector Chandrakant Bhamre (PW-5) is contradictory. In respect of delay in lodging the report, it has not been explained by the prosecutrix (PW-1) and she has falsely stated that she lodged the matter on the next day of occurrence of incident.

18. The prosecutrix (PW-1) in Paragraph 10 of cross-examination stated that at the time of incident, she cried but the appellant pressed her mouth. Thereafter, the appellant tossed her to ground and then opened his pant. In Paragraph 12 of cross-examination, she further stated that she struggled and meanwhile the bangles present on both the hands got broken. In Paragraph 13 of cross-examination, she also stated that when she went to the place of incident, alongwith police, she showed the broken pieces of bangles to the police. Though, Inspector Chandrakant Bhamre (PW-5) stated that he prepared spot map (Ex.P-5) at the instance of prosecutrix (PW-1) but in Paragraph 11 of cross-examination, stated that the broken pieces of bangles were not found at the place of incident. Therefore, it is clear that the aforesaid statement of prosecutrix (PW-1) is also contradictory.

19. As per statement of prosecutrix (PW-1), it appears that at the time of the incident, she resisted the act of the appellant. The appellant tossed her on ground and pressed her mouth and during the resistance, bangles of the prosecutrix were broken but no sign of violence or injury were found on the body of the prosecutrix (PW-1). Therefore, it creates doubt on the correctness of the statement of prosecutrix.

20. It appears from statement of prosecutrix (PW-1), her husband (PW-

3) and FIR (Ex.D-1), that on 24.03.1999 (one day prior to the incident), at around 08:30 PM, there was quarrel between husband of the prosecutrix (PW-1) and appellant which was reported by prosecutrix (PW-1) at the instance of her husband. Due to the aforesaid quarrel, on 25.03.1999 (date of incident), at around 08:30 PM, husband of the prosecutrix (PW-3) and her father-in-law went to the house of appellant, father-in-law of prosecutrix carrying an axe in his hand. Both of them asked from the father of appellant that where is appellant and why did he fight with prosecutrix (PW-1), thereafter, the father-in-law of prosecutrix gave a blow by backside of the axe on the left behind leg of the calf of appellant, due to which the calf's leg got fractured. In this respect on 26.03.1999, father of the appellant had lodged a report u/S 294, 336, 429 r/w S.34 of IPC at O/P Aamkheda against the husband and father-in-law of the prosecutrix. Therefore, it appears that there was inimical relationship between the parties and prior to the lodging of the instant report by the prosecutrix (PW-1), the father of appellant had already lodged an FIR against her husband and father-in-law. Hence, possibility of false implication of the appellant in the instant case cannot be ruled out.

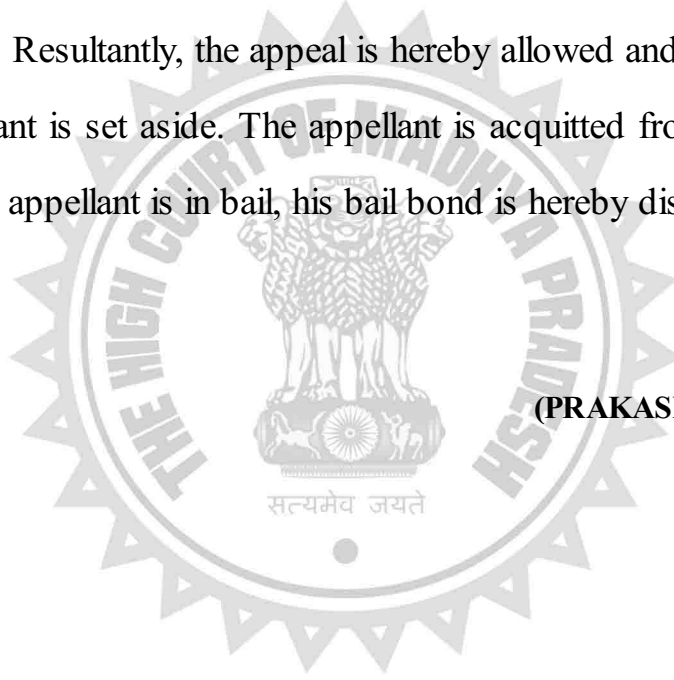
21. On the basis of aforesaid discussion, it appears that in respect to the incident, there are material contradiction in the statements of prosecutrix (PW-1), her brother-in-law (PW-2) and husband (PW-3). Prosecutrix (PW-1), her brother-in-law (PW-2) and husband (PW-3) are related witnesses. No independent witnesses available in the case. Statement of prosecutrix (PW-1) is not supported by medical evidence. No cogent and plausible explanation has been given by the prosecutrix for delay of 04 days in lodging of FIR. She has falsely stated that she reported the matter the next day of the incident itself. It is also evident that there was inimical relationship between the parties. Therefore,

statement of prosecutrix (PW-1), her brother-in-law (PW-2) and husband (PW-3) does not appear reliable and trustworthy. The case relied upon by the counsel for the respondent/State is different from the facts and circumstances of this case. Therefore, it is not applicable in this case.

22. In view of foregoing analysis, it is apparent that prosecution has failed to prove its case beyond all reasonable doubt but the trial Court has not examined and assessed the evidence properly and has wrongly convicted and sentenced the appellant. Therefore, the conviction and sentence of appellant u/S 376 of IPC is not sustainable.

23. Resultantly, the appeal is hereby allowed and conviction and sentence of appellant is set aside. The appellant is acquitted from the charge u/S 376 of IPC. The appellant is in bail, his bail bond is hereby discharged.

Shruti



(PRAKASH CHANDRA GUPTA)
JUDGE