

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

**CRIMINAL APPEAL No. 1477 of 1999**

**Between:-**

**JAGDISH S/o MANGILAL  
AGE-25 YEARS, AGRICULTURIST  
R/O VILLAGE SHERPURA, P.S. SHARANGPUR,  
DISTRICT RAJGARH (MADHYA PRADESH)**

**.....APPELLANT**

***(SHRI RAJESH YADAV APPEARED FOR APPELLANT)***

**AND**

**THE STATE OF M.P.  
THROUGH P.S. SARANGPUR  
RAJGARH (M.P.)**

**.....RESPONDENTS**

***(SHRI S.S.THAKUR DY. G.A. APPEARING ON BEHALF OF ADVOCATE  
GENERAL/STATE)***

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**HEARD ON.22.08.2022**

**JUDGEMENT PASSED ON 03.11.2022**

Appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment dated 05.11.1999 passed by Special Sessions Judge, District Shajapur in Special. S.T. No.23/1999, whereby the appellant has been convicted for the offence punishable under Section 376 of IPC and sentenced to undergo 07 years R.I. and acquitted the appellant from the charges under Section 3(1)(x) of SC/ST (P.A.) Act.

**02.** The prosecution story, briefly stated, is that on 12.04.1999 at about 11AM, when the prosecutrix was going to deliver food on the field to her daughter and reached near the field of one Anokhi, the appellant ordered to stop her and when she was not stopped then he picked her from back side and after dashing her in a culvert (nullah), committed rape upon her against her will. When she tried to call someone, the appellant shut her mouth with a cloth. After committing the offence, the appellant ran away from the spot then she reached to her village after delivering the food and narrated the incident to Radheshyam, Jagdish and Prahalad and lodged the FIR with her husband to the police station Sarangpur.

**03.** Thereafter, the police sent the prosecutrix for medical examination, prepared the spot map, taken the statements of the witnesses, arrested the accused person and after due investigation filed the charge-sheet against the appellant. The learned Court below after considering the statements of the witnesses framed the charges against

the appellant under Section 376 of IPC and under Section 3(1)(x) of SC/ST (P.A.) Act.

**04.** Appellant was charged for offence under Section 376 of IPC and under Section 3(1)(x) of SC/ST (P.A.) Act. He abjured his guilt and took a plea that he has been falsely implicated in the present crime and prays for trial.

**05.** In support of the case of prosecution, the prosecution has examined as many as 08 witnesses namely prosecutrix (PW-1), Kammod (PW-2), Pavitra Bai (PW-3), Jagdish Prasad (PW-4), Narendra Singh Chouhan (PW-5), Dr. Chaya Joshi (PW-6), V.K. Jain (PW-7), & K.P. Singh Kushwah (PW-8) were examined. No witness, has been examined by the appellant in support of his defense.

**06.** Learned trial Court, on appreciation of the evidence adduced by the parties, pronounced the impugned judgment on 05.11.1999 and finally concluded the case and convicted the appellant, as stated above.

**07.** Learned counsel for the appellant submits that the the appellant is innocent and the learned trial Court has convicted the appellant wrongly without considering the evidence available on record. There are material omissions and contradictions in the statements of the prosecution witnesses but the learned trial Court has not considered this fact in right aspect and convicted the appellant. It

is further submitted that the prosecutrix is a major lady, hence, *prima facie* there is no chance of committal of any such type of offence. The learned Court below has not considered the fact that in the FIR the prosecutrix stated that she has been dashed in the nullah (culvert), but in the medical report, no injury was found on the person of the prosecutrix. It is further submitted that in the medical report, Dr. Chaya Johsi (PW-6) has not given any definite opinion and found the hymen ruptured previously and no injury was found on the private part of the prosecutrix. It is also submitted that even after the non-corroboration of the medical report, the allegations made by the prosecutrix are of unnatural. The allegations of rape are baseless and the prosecutrix has lodged the FIR due to earlier dispute between both the parties. Hence, prays for acquittal of the appellant.

**08.** Learned Public Prosecutor has opposed the prayer. Inviting my attention towards the conclusive paragraphs of the impugned judgement, learned public prosecutor has submitted that the learned Court below has convicted the appellant rightly after considering each and every evidence produced on record by the prosecution. It is further submitted that all the allegations leveled against the appellant have been found proved by the learned trial Court, hence, the appellant is not entitled for any relief and prays for dismissal of the appeal.

**09.** I have considered rival contentions of the parties and have

perused the record.

10. It is fairly well settled that in the absence of external injury on the person of the prosecutrix, it can not be concluded that the incident had taken place with the consent of the prosecutrix. It depends upon the facts and circumstances of each case. In the case of **B.C. Deva @ Dyava vs. State of karnataka, (2007) 12 SCC 122**, Hon'ble the Apex Court has held that absence of injury on the person of the victim of rape does not lead to an inference that the accused did not commit forcible sexual intercourse. It has further been held that even in the absence of external injury, the oral testimony of the prosecutrix that she was subjected to rape cannot be ignored.

11. Further, Hon'ble the apex court in the case of **Rafiq vs. State of Uttar Pradesh [AIR 1981 SC 559]** has observed as under:

“5. The facts and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people's life-styles may fluctuate, and so, rules of prudence relevant in one fact- situation may be inept in another. We cannot accept the argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench in one reported decision must mechanically be extended to other cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstance. Indeed, from place to place, from age to age, from varying life-style and

behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of presidential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggrieved.”

12. In the case of State of **H.P. vs. Gyanchand (2001) SCC 71**, It has been held by the Hon'ble Apex Court that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by the 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. The Court further held as under:

“If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation's.....”

**13.** the case in hand, oral and documentary evidence have been produced by the prosecution. The prosecutrix PW-1 was examined by the prosecution, in her statements, she narrated the incident. PW-1 the prosecutrix, stated that after the incident, she went to the place/field where her daughter was working with other 3-4 laborers. In her cross-examination, she stated that she told her Daughter about the incident happened with her, but in Ex.D/1 the statements recorded under Section 161 of Cr.P.C. and FIR-E/P/1, she had not stated about this fact. PW-3 daughter of the prosecutrix stated that the prosecutrix has narrated the incident to her and not to any body, but as per the prosecution story, the prosecutrix had narrated the incident to one Ramchandra Khati regarding the incident of rape, who is the person on which filed daughter of the prosecutrix was working as laborer.

**14.** From the face of record, it is crystal clear that there is nothing against the appellant in the MLC report and Dr. Chaya Johshi (PW-6) has not opined for commission of rape with the prosecutrix. Neither on the body of the prosecutrix nor her private part was having any injury. As per the report, no injury was also found in the mouth of the prosecutrix. It is very unnatural that if a person commit such type of offence and the victim is having no injury, hence, the story of the prosecution is unnatural. On the other hand, the learned trial Court has also not considered the aspect of previous enmity with the appellant which is very important to be considered in such type of cases in

which possibility of corroborative evidence is lesser than the actual offence.

**15.** In the case in hand, no sign of violence was found present over the person of prosecutrix, no injuries were found over the person of prosecutrix and no sign or symptoms were found suggesting physical intercourse in recent time with the prosecutrix. Much credence is to be given to this testimony because narration of the story as per the FIR, statements recorded by the police and Court statements of witnesses indicate that at the time of incident, the appellant forcibly dragged her in culvert (nullah) and removed her lungda (petticoat) and forcibly put the same in her mouth. Such incident, if would had been resisted by the prosecutrix then certainly, some injuries (external or internal) might have been occurred during this commission and some scratch marks or injuries over her body or private part would have been noticed by the Doctor, but no such injury/marks were found place in the MLC report.

**16.** Further, the submissions of the counsel for the respondent/State is that FSL report indicates that clothes and vaginal swab of prosecutrix contain male sperms therefore, presumption of rape assumes significance in the light of Section 101 of Indian Evidence Act but in the attending circumstances must also exist to prove the case and / or to substantiate the presumption to the logical end.



17. It is pertinent to note that the incident was taken place on 12.04.1999 at about 11AM, but the prosecutrix was examined by the Medical Officer on 13.04.1999 at about 6 PM and her clothes and vaginal swab were taken for medical examination on the same day. On the other hand, the appellant was arrested on 21.04.1999 and he was examined by the Medical Officer on the same day and his underwear and semen were also seized for forensic test on the same day. FSL report also confirmed the presence of semen of male sperms on the vaginal swab and cloths of the prosecutrix, but in absence of matching the said sperm with the sperm of the appellant, it can not be treated as the evidence proved beyond the reasonable doubt that the appellant committed rape. This report, if seen in juxtaposition to the oral evidence led by the prosecution witnesses then it is clear that the report cannot be the sole ground for conviction. In this regard, reliance can be place over the mandate of the Hon'ble apex Court in the case of **Kansa Behera vs. State of Orissa, AIR 1987 SC 1507, State of Gujarat vs. Kishanbhai S/o Velavbhai Vanabhai, 2014 (5) SCC 108, Krishan Kumar Malik vs. State of Haryana 2011 (7) SCC 160 as well as Mulayam Singh vs. State of M.P. 2017 (1) PLJR 260.**

18. Factum regarding non-matching of sperms of appellant viz a viz sperms found over vaginal swab or clothes of the prosecutrix is to be seen in juxtaposition to evidence of Dr. Chaya Joshi (PW-6) wherein she said that no sign of rape was found during examination of

prosecutrix and no definite opinion was given by the doctor regarding commission of rape. Even looking to the course of event as narrated, some sign of resistance over her body or over the accused or even at the place of incident would have remained present to tell the truth. But, no such evidence has been quoted or refereed to bring the accused into the ambit of implication.

**19.** After the incident, the conduct of prosecutrix is very unnatural, she as usual, in such condition, she had to rush to her husband to inform him regarding the incident, but first went to give the tiffin to her daughter and then she narrated the incident to the owner of the filed on which her daughter was working i.e. Ramchandra Khati.

**20.** On the other aspect of the case also, no sign of injury were found on the person of the prosecutrix if she had laid down by the appellant forcibly in the culvert. Similarly, no injury was found in her mouth also if the lungda was put in her mouth by the appellant and if that be so, certainly, there may some injuries either external or internal on the person of the prosecutrix. It is also admitted by the prosecutrix as well as her husband that husband of the prosecutrix was earlier serving under the appellant, however, it has been denied that Rs.2000/- were due on her husband and the work was broke up in the mid-term and the appellant was demanding his amount, resultantly, as per the defense of the appellant, false case has been filed.

**21.** The FSL report Ex.P/9, on the basis of which the learned trial Court has convicted the appellant is not sufficient without having any corroborative evidence in this regard. Hence, the learned trial Court has committed grave error of law in convicting the appellant in absence of corroborative evidence.

**22.** Hence, this Court, after considering the evidence available on record and after going through the impugned judgement found that the findings of the learned Trial Court regarding the conviction and sentence to the appellant are beyond the reasonable doubt. Hence, the impugned judgement is liable to be and is hereby set aside.

**23.** The appellant is acquitted from the charges under Section 376 of IPC. His bail bond shall stand discharged.

**24.** He be set at liberty forthwith if not required in jail in any case.

**25.** The judgment regarding disposal of the seized property stands confirmed.

Certified copy, as per rules.

**(Rajendra Kumar Verma)**  
**Judge**

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