

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH**SINGLE BENCH****Criminal Appeal No.1391-2016**

Gabbar @ Gopal s/o Devpuri Gusai

Vs.

State of Madhya Pradesh

Coram :

Hon'ble Shri Justice Subodh Abhyankar

Shri S.K. Meena, learned learned counsel for the appellant.

Shri Valmik Shakargayen, learned Govt.Advocate for the respondent/State.

Whether approved for reporting : Yes

J U D G M E N T
(Delivered on 24.11.2021)

The appellant has preferred the present appeal under Section 374 of the Cr.P.C., against the judgment dated 13.6.2016 passed by the Sessions Judge, Rajgarh in Sessions Trial No.171/2014, whereby the appellant Gabbar @ Gopal has been convicted for the commission of offence punishable under Sections 342, 376(2) of the IPC and under Sections 3 / 4 of the Prevention of Children from Sexual Offence Act and sentenced to undergo one year, ten years and seven years rigorous imprisonment with fine of Rs.1000/-, Rs.25,000/- and Rs. 25,000/- respectively respectively with default stipulation.

2. Brief facts of the prosecution case are that, on 21.4.2014 at around 1.00 p.m. when the prosecutrix had gone to fetch water from the hand pump she saw that the appellant herein Gabbar @ Gopal had left certain rupees and his mobile near the hand pump. At the time she also heard the appellant shouting and asking her to bring his mobile and the rupees in his house. On this request the prosecutrix asked her uncle's daughter Sugna to bring the mobile and the rupees to the appellant but the appellant accused told her to come herself with his mobile and the rupees and when she went his house he pulled her in and also closed the door inside and he also pushed Sugna out and thereafter committed rape on her. But when the prosecutrix' mother Naurangbai came to his house at that time the appellant opened the door and the prosecutrix ran away from his house. She also narrated the incident to her parents as her parents were required to meet Prem Singh Patel to give him the money back to Boda and when they came back in the evening the First Information Report was lodged on the other day i.e. 24.4.2014. After completion of the investigation, the charge sheet was filed the case was committed to trial and after recording the evidence, the Trial Court has convicted and sentenced the appellant for the offence as hereinabove stated. Being aggrieved, the appellant has filed the present appeal.

3. Counsel for the appellant has submitted that there was an enmity going on between the parties which led to filing of the false complaint against the appellant and even the First Information Report has been lodged after undue delay of three days for which no explanation has been filed. Counsel has further submitted that the father of the prosecutrix had purchased a Television from the appellant for a consideration of Rs.5,000/- and as her father could not pay the said amount to the appellant in order to avoid making the payment, a false case has been filed against the appellant. This fact was also admitted by the prosecutrix in para 7 of her cross-examination. It is further submitted that the medical evidence regarding the rape is also not conclusive as the hymen was old torn and there was no body injury either internal or external found on the person of the prosecutrix.

4. So far as the age of the prosecutrix is concerned, it is submitted that no document has been filed to prove the age of the prosecutrix and according to Dr. Shaily Garg (P.W.4), the age of the prosecutrix was found to be less than 14 years. Despite the fact that she herself is not an expert to give such certificate regarding the age of a person. It is further submitted that due to previous enmity, false complaint has been imposed upon the appellant and thus, the appellant is entitled to be acquitted from

the offence.

5. Counsel for the respondent/State, on the other hand, has opposed the prayer.

6. On due consideration of the rival submissions and on perusal of the record, this Court finds that, so far as the date of the incident is concerned, it took place on 21.4.2014 at around 1.00 p.m. in the afternoon. The First Information Report regarding which was lodged on 24.4.2014 at around 3.30 p.m; meaning thereby there was a delay of three days in lodging the First Information Report. In the F.I.R., it has been mentioned that the parents of the prosecutrix had gone out on the day when the incident took place and hence, they could not lodge the F.I.R. immediately, as they had gone to clear their accounts. The appellant was arrested on 24.4.2014 and he and the prosecutrix were also medically examined and the F.S.L. report was also requisitioned which has been filed on record as Ex.P/10, in which it is found that on the samples of prosecutrix's underwear and vaginal slide as also on the slide of the appellant, semen and human spermatozoa were also found. It is also found that as per the deposition of Dr. Shaily Garg (P.W. 4) the age of the prosecutrix is to be below 14 years. There are no other documents on record to suggest to the contrary that the age of the prosecutrix

is more than 18 years. In such circumstances, it is held that the prosecutrix was minor at the time of the incident.

7. So far as the consent of the prosecutrix is concerned, it is true that the F.I.R. has been lodged after a period of three days, however, the appellant has not been able to discredit the testimony of the prosecutrix. So far as the semen and human spermatozoa which were found on the person of the prosecutrix and her underwear are concerned, the same also stand unrebutted. Regarding the sampling of semen and its credibility is concerned, reference may be had to the *Mody's Medical Jurisprudence, 25th Edition, 2016 (publisher Lexis Nexis)* the relevant paras of which at page No.783 read as under:-

“20. Collection of samples for Central/State forensic science laboratory:-

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*** If a woman reports within 96 hours (4 days) of the assault, all evidence including swabs must be collected, based on the nature of assault that has occurred. The likelihood of finding evidence after 72 hours (3 days) in greatly reduced; however, it is better to collect evidence up to 96 hours in case the survivor may be unsure of the number of hours lapsed since the assault.**

***The spermatozoa can be identified only for 72 hours after assault. So if a survivor has suffered the assault more than three days ago, please refrain from taking swabs for spermatozoa. In such cases swabs should only be sent for tests for identifying semen.**

***Evidence on the outside of the body and on materials such as clothing can be collected even after 96 hours.”**

(emphasis supplied)

8. In the present case, the incident took place on on 21.4.2014 at around 1.00 p.m. in the afternoon, FIR was lodged on 24.4.2014 at

around 3.30 p.m and the prosecutrix was examined on 24th itself at 7 p.m., thus, the samples were taken well before the 96 hours although after around 78 hours after the incident but the same can be said to be within the permissible limits specially the samples of her underwear which were still usable even after 96 hours of the incident as observed in Mody's Medical Jurisprudence (supra). In such circumstances, when the F.S.L. report has gone unrebutted, this Court has no hesitation to rely upon the same. It is also found that the defence has not questioned the F.S.L. report on any ground including that it has no validity as the samples were obtained after three days of the incident.

9. So far as the validity of the FSL is concerned, the Supreme Court in the case of **Sunil vs. State of Madhya Pradesh** reported in (2017) 4 SCC 393 has held as under :-

“ 8. The evidence of the prosecution further discloses that the FSL report (Ext. P-30) had confirmed the presence of spermatozoa on the clothes of the appellant-accused and also on the semen slide of the deceased. It is in the aforesaid circumstances proved by the prosecution that both the courts, namely, the trial court and the High Court had thought it proper to hold the accused guilty of the offences alleged.

9. Having dealt with the contention of the learned counsel for the appellant with regard to the requirements of the provisions of Section 53-A of the Code and having regard to the various circumstances against the accused proved by the evidence and materials on record, we find no reason to differ with the findings of the learned trial court as upheld by the High Court insofar as the conviction of the appellant under Sections 363, 367, 376(2)(f) and 302 IPC.”

(emphasis supplied)

10. In view of the same, since the F.S.L. report is against the

appellant and the age of the prosecutrix is also found to be below 14 years even the F.I.R. has been lodged after three days of the incident, this Court is of the opinion that, the prosecution has been able to prove its case beyond reasonable doubt.

11. This Court is also of the opinion that, if the prosecutrix, who is less than 14 years of age at the time of the incident, is raped by any person there is no reason for her or to her family member to falsely implicate some other person and allow the main accused to go scot free and thus, no fault can be found in the findings of the trial court when it is observed that merely for a sum of Rs.4,000/--Rs.5,000/- the parents of a girl would not expose her to a rape proceeding.

12. Resultantly, the appellant has not been able to make out any case for interference in the impugned judgement, the same is hereby affirmed and the appeal being devoid of merits, stands **dismissed.**

**(SUBODH ABHYANKAR)
JUDGE**

THE HIGH COURT OF MADHYA PRADESH,INDORE BENCH**Single Bench : Hon'ble Shri Justice Subodh Abhyankar****Criminal Appeal No. 1391/ 2016**

(Gabbar s/o Gopal s/o Devpuri Gusai Vs. State of Madhya Pradesh)

1	Name of the Counsel appearing for the parties	Shri S.K. Meena, learned counsel fo the appellatant Shri Valmik Shakagayen, learned Government Advocate for the respondnt / State of Madhya Pradesh.
2	Date of judgment	24 th of November, 2021
3	Whether approved for reporting	Yes
4	Law laid down	<p>1. The evidentiary value of semen and human spermatozoa recovered within 96 hours of the incident can be relied upon.</p> <p>8. In the present case, the incident took place on on 21.4.2014 at around 1.00 p.m. in the afternoon, FIR was lodged on 24.4.2014 at around 3.30 p.m and the prosecutrix was examined on 24th itself at 7 p.m., thus, the samples were taken well before the 96 hours although after around 78 hours after the incident but the same can be said to be within the permissible limits specially the samples of her underwear which were still usable even after 96 hours of the incident as observed in Mody's Medical Jurisprudence (supra). In such circumstances, when the F.S.L. report has gone unrebutted, this Court has no hesitation to rely upon the same. It is also found that the defence has not questioned the F.S.L. report on any ground including that it has no validity as the samples were obtained after three days of the incident.</p> <p><u>2.Validity of FSL report.</u></p> <p>9. So far as the validity of the FSL is concerned, the Supreme Cout in the case of <u>Sunil vs. State of Madya Pradesh</u> reported in (2017) 4 SCC 393 has held as under :-</p> <p><u>“ 8. The evidence of the prosecution further discloses that the FSL report (Ext. P-30) had confirmed the presence of spermatozoa on the clothes of the appellatant-accused and also on the semen slide of the</u></p>

		<p><u>deceased.</u> It is in the aforesaid circumstances proved by the prosecution that both the courts, namely, the trial court and the High Court had thought it proper to hold the accused guilty of the offences alleged.</p> <p><u>9. Having dealt with the contention of the learned counsel for the appellant with regard to the requirements of the provisions of Section 53-A of the Code and having regard to the various circumstances against the accused proved by the evidence and materials on record, we find no reason to differ with the findings of the learned trial court as upheld by the High Court insofar as the conviction of the appellant under Sections 363, 367, 376(2)(f) and 302 IPC.”</u></p> <p style="text-align: right;">(emphasis supplied)</p> <p>10. Since the F.S.L. report is against the appellant and the age of the prosecutrix is also found to be below 14 years even the F.I.R. has been lodged after three days of the incident, this Court is of the opinion that, the prosecution has been able to prove its case beyond reasonable doubt.</p>
5	Significant paragraph	07 to 11
6.	Citations relied on	<p>1. Sunil vs. State of Madhya Pradesh reported in (2017) 4 SCC 393</p> <p>2. Mody's Medical Jurisprudence, 25th Edition, 2016 (publisher Lexis Nexis) relevant para 20 at page No.783</p>

(Subodh Abhyankar)
JUDGE

THE HIGH COURT OF MADHYA PRADESH,INDORE BENCH

Criminal Appeal No.1391-2016

Gabbar @ Gopal s/o Devpuri Gusai

Vs.

State of Madhya Pradesh

Indore, Dated: 10.11.2021

Shri S.K. Meena, learned counsel for the appellant

Shri Valmik Shakargayen, learned Govct. Advocate for the
respondent/State.

Arguments heard.

Reserved of judgment.

**(SUBODH ABHYANKAR)
JUDGE**

Indore, Dated: 24.11.2021

Judgment delivered, signed and dated.

**(SUBODH ABHYANKAR)
JUDGE**