

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRA No. 1528/1994****State of Madhya Pradesh****Vs.****Siddhamuni S/o Bisale Patel****Present : Hon'ble Shri Justice S.K.Seth, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge**

Shri S.K.Rai, Advocate for the appellant/State.
Shri S.C.Chaturvedi, Advocate for the respondent.

Whether approved for reporting : **Yes ✓**

Law laid down :- If the testimony of prosecutrix is found trustworthy, the accused can be convicted even in the absence of evidence of lady doctor.

Significant Paragraphs : - 12 to 18

JUDGMENT
(13/10/2017)**Per : Smt. Anjuli Palo, J :-**

1. This appeal has been preferred by the appellant/State challenging the judgment dated 25.01.1993, passed by Sessions Judge in S.T. No. 71/1992, whereby the respondent has been acquitted from the charge under Section 376 of the Indian Penal Code.

2. The brief facts of the prosecution is that the prosecutrix is the resident of village Mal and at the time of incident, she was aged

about 12-15 years. On 27.11.1991, at about 12:00 noon, the prosecutrix went to the field belonging to the respondent to collect grass for the animals. The respondent who was present there, called the prosecutrix to help him to collect grass. When the prosecutrix was helping the respondent, he caught hold of her and pushed her to the ground and forcibly raped her. When the prosecutrix screamed for help, the respondent put a gag in her mouth. Later, on the same day the prosecutrix along with her father logged a report. Police station Garh registered an FIR under Section 363 and 376 of the Indian Penal code against the respondent. Charge-sheet was filed before the concerned Court. The case was committed to the trial Court.

3. Thereafter, trial was conducted by the Trial Court. The respondent was charged then acquitted from the charge under Section 376 of the Indian Penal Code on the ground that the prosecution has failed to produce the lady doctor who had examined the prosecutrix. As per the learned trial Court her evidence was necessary for corroboration of the testimony of the prosecutrix. As the prosecutrix was under 16 years of age and was unmarried.

4. The appellant / State has challenged the aforesaid finding and submitted that the learned trial Court wrongly acquitted the respondent. The prosecutrix was a minor. Her age was proved by Dr. A.K.Mishra (PW-6). There are sufficient evidence on record in

support of the testimony of the prosecutrix (PW-1). It is alleged that the learned Trial Court refused to accept the application filed by the prosecution for examining the lady doctor, who had examined the prosecutrix. Therefore, the appellant/State prayed to convict and sentence the respondent for committing offence under Section 376 of the IPC with the minor girl.

5. After having heard the rival contentions and on perusal of the record, the question for determination is, “whether the respondent has wrongly been acquitted by learned trial Court from the charge under Section 376 of the Indian Penal Code.”

6. It is not in dispute that at the time of incident i.e. on 27.11.1991, as per the ossification test of the prosecutrix conducted by Dr. A.K.Misha (PW-6), she was below 15 years. Before the trial Court the prosecutrix stated that she was 12 years old. With regard to her age, no question was put forth by the learned counsel for the respondent to her parents. Therefore, it was established that the prosecutrix was minor and under the age of 15 years. Thus, no question of her consent arises.

7. The testimony of the prosecutrix is in corroboration with the FIR and there was no contradiction between her statement and the FIR (Ex. P/1). The FIR was lodged on the same day of the incident at about 10:30 pm after the father of the prosecutrix returned home. There was no personal enmity between the family of the prosecutrix

and the respondents. We find that there is no undue delay in filing of the FIR which was named against the respondent. The respondent was arrested on the next day and his undergarments were seized by the police. The prosecutrix (PW-1) stated that during the incident, she was shouting and screaming. To suppress her voice the respondent put a gag in her mouth and threatened to kill her with *tangi* then he forcibly had intercourse with her. Due to this, there was bleeding from her vagina. The testimony of prosecutrix itself is unshaken and found trustworthy.

8. The prosecutrix narrated the entire incident to her mother Savitri (PW-2), immediately as her father was not at home. Savitri (PW-2) fully corroborated her testimony and also stated that she saw the bleeding from the private parts of the prosecutrix. She also provided the blood stained clothes of the prosecutrix to the police after lodging the report. Lalman Patel (PW-3), father of the prosecutrix saw the bleeding from private parts and on the clothes of the prosecutrix. These facts are not challenged by the learned counsel for the respondent in the cross-examination. Gulab Singh, ASI (PW-7) stated that on the next dated i.e. 28.11.1991, he seized blood stained soil from the spot i.e. field of the respondent and his undergarment. In this regard, no explanation has been offered by the respondent. Hence, the testimony of prosecutrix is corroborated by her parents and Investigating officer also.

9. In the present case, it is important to note that the prosecution failed to produce the Dr. Asha Subramaniam, the lady doctor who had examined the prosecutrix on the next day of the incident. After so many opportunities, notice was not served on her. On this ground alone, the learned Trial Court ignored all the above evidence and acquitted the respondent from the charge leveled against him. Learned counsel for the State placed reliance on the case of **Wahid Khan vs. State of Madhya Pradesh [(2010) 2 SCC 9]** wherein it was held that-

“Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible.

However, in the case in hand, even without the examination of doctor, the evidence of prosecutrix stands fully corroborated by the evidence of P.W.3-B.B. Subba Rao, Sub-inspector of the police station who had virtually caught the appellant red-handed. Thus, even if doctor had not been examined it would not throw or completely discard the prosecution story. The evidence of prosecution witnesses is fully trustworthy and there is no reason to doubt genuineness thereof.”

10. Learned counsel for the respondent contended that even then the lady doctor had not given any definite opinion with regard to recent intercourse. On the other hand, if we accept the above contention of the learned counsel, in MLC report it was narrated by her that “hymen teard at 6 o' clock position, wound is lacerated.”

Unfortunately, the prosecution failed to prove such report in accordance with law.

11. It may be that the medical officer had not given any definite opinion in the MLC report of the prosecutrix, but should not give an opinion that no rape had been committed. In case of **Wahid Khan (supra)**, the Hon'ble Supreme Court has also observed that :

“Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is to the effect whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.”

12. The prosecutrix was 14-15 year old girl. Soon after the incident, the prosecutrix had bleeding in her private parts and her parents also proved this fact. Although, there is no evidence with regard to her MLC report. This fact is not challenged in cross-examination of Maniraj (PW-7) but he seized the underwear (Article C) of the respondent and blood stained soil (Article D) from the place of incident. Also the undergarment of the prosecutrix and two slides of her vaginal swab (Articles A, B and B2, respectively) were seized by the police. This fact is not challenged in the cross-examination of Sangamlal (PW-5). Seized articles were sent for chemical examination. As per the FSL report (Exh. P/9) presence of blood and semen on the above articles was established. We do not

agree with the contention of learned counsel for the respondent that the blood was found due to menstruation of the prosecutrix as considered by the learned Trial Court in paragraph 8 of the impugned judgment because this fact has not come in the evidence of prosecutrix and Savitri (PW-2) and Lalman (PW-3) (parents of the prosecutrix) and not even suggested to them by learned counsel for the respondent.

13. Therefore, we come to the conclusion that the learned Trial Court wrongly evaluated the prosecution evidence in favour of the respondent. The findings of the learned Trial Court are based only on presumptions and surmises. Therefore, under the appellate jurisdiction, the interference by this Court is found necessary in the impugned order.

14. The ocular evidence of the prosecutrix and her parents is wholly supported by the chemical examination of the seized articles which relates the respondent with the crime. The FSL report clearly proved the presence of blood and semen on the seized articles for which the testimony of the prosecutrix alone is proved trustworthy. We do not agree with the findings of the learned Trial Court that the father of the prosecutrix had enmity with mudha community and due to this they had falsely implicated the respondent in this case. In our opinion, no one will take such extreme step to use their own children as bait to falsely implicate some person.

15. In case of **“Anjan Das Gupta Vs. State of West Bengal and others 2017 Cr.L.J. 529 SC”**, the Supreme Court has held that and it is well settled law that:-

“If order of acquittal has been made on improper and erroneous appreciation of evidence, can be set aside by the appellate Court.”

16. In cases of **“Bhagwan Jagannath Markad Vs. State of Maharashtra, 2017 Cri.L.J. 578 (SC)** and **“Mrinal Das Vs. State of Tripura, AIR 2011 SC 3753”**, it is held by the Apex Court that:-

“It is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. If the order is clearly unreasonable, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored, the appellate Court is competent to reverse the decision of the trial Court depending on the materials placed.”

17. In case of **C. Ronald and Anr. Vs. State of U.T. Of Andaman & Nicobar, 2012 Cri.L.J. 672**, it is held that:-

“There is no restriction on the powers of the appellate Court to convert an order of acquittal into a conviction.”

18. Therefore, on the above discussions and in the light of above principles and also considering the facts and circumstances of the case, we are of the considered opinion that in the present case, the testimony of the prosecutrix is wholly reliable. We find that the

prosecutrix, aged about 14-15 years was forcibly raped by the respondent. The respondent is liable to be convicted under Section 376 of the Indian Penal Code.

19. Accordingly the appeal is allowed. The impugned judgment dated 25.01.1993 is hereby set aside. We find the respondent guilty and convict him for the offence under Section 376 of the Indian Penal Code. **He is sentenced to undergo 10 years RI with fine of Rs. 25,000/- which is to be paid to the prosecutrix.** In default of payment of fine, the respondent shall further undergo 3 years RI.

20. The respondent Siddhamuni is on bail. His bail bond is canceled and he is directed to surrender immediately before the concerned trial Court to undergo the sentence, failing which the trial Court shall take appropriate action under intimation to the registry.

21. Copy of this order be sent to the Court below for information and compliance alongwith its record.

22. With the aforesaid, the appeal stands disposed of.

(S.K.SETH)
JUDGE

(SMT. ANJULI PALO)
JUDGE