

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**Cri.Appeal No.1665/2000**

*State of Madhya Pradesh*

-Versus-

*Rajesh Singh*

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**CORAM** :

**Hon'ble Shri Justice Hemant Gupta, Chief Justice.**

**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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Smt.Namrata Agrawal, Government Advocate for the appellant.  
Shri Abhishek Tiwari, Advocate as amicus curiae for the  
respondent.

Whether approved for reporting – Yes/No

<b><i>Whether approved for reporting?</i></b>	Yes
<b><i>Law laid down</i></b>	<i>Penetration is sufficient to constitute sexual intercourse for offence of rape. Complete penetration is not essential.</i>
<b><i>Significant paragraph Nos.</i></b>	13 & 14.

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**JUDGMENT**

**(Jabalpur dt.: 11.10.2018)**

**Per : V.K. Shukla, J.-**

In the instant appeal, a challenge has been made to the order dated 26-11-1999, passed by First Additional Sessions Judge Katni in S.T.No.347/1997, whereby the accused/respondent has been acquitted for offence punishable under Section 376(2)(f) of IPC.

**2.** The prosecution case in short is that the prosecutrix is aged about 9 years old and is student of Class-III. When she had gone to fetch water from the tap, the accused had taken

her in lap to the house of Arun Sahu. There was no one in the said house. He had shut the door. He had given Rs.10/- and thereafter thrust his private part to her hands and also kissed her. It is further alleged that he had removed her undergarments and asked her to offer more money. He rubbed his hands on her vaginal part. When the prosecutrix tried to run away from the room, he shut the door and told her to insert his private part into the private part of the prosecutrix. When the prosecutrix shouted her father Gulab Singh had come. The accused had gagged her mouth and threatened her to kill. Thereafter the door was got opened by her father and she had come to the house alongwith her father. The entire incident was narrated to her mother and also maternal uncle. Thereafter her father Gulab Singh and maternal uncle Ajay Singh lodged report in the police station. The report was lodged by the prosecutrix herself vide Ex.P-9. On her report Crime No.203/1997 was registered at Police Station Katni. With the consent of the guardians, the prosecutrix was sent for medical examination. A specific query was also made by the police that whether there was actual penetration in the private part of the prosecutrix or not. The Doctor opined that there was redness near the private part of the prosecutrix but there was no penetration . The query report is Ex.P-3A.

**3.** The investigation was carried out. Site plan was prepared. The birth certificate of the prosecutrix is Ex.P-13. Her undergarments were seized vide Ex.P-5. Her vaginal slide is Ex.P-9. Thereafter the accused was arrested and was sent for medical examination. His undergarments were also seized and slide was prepared vide Ex.P-8. Finally the report was lodged by the police for commission of offence under Sections 354, 342 and 506-B of IPC but thereafter a written application was submitted by the father of the prosecutrix and on the said application offence under section 376 of IPC was registered.

**4.** After the investigation, challan was filed for offence under section 376 of IPC. The accused was charged under section 376(2)(f) of IPC.

**5.** The accused abjured his guilt and submitted that he has been falsely implicated because the father of the prosecutrix had taken loan of Rs.2000/- but he was not repaying the same. It is further alleged that the accused has love affairs with the aunt of the prosecutrix but the father of the prosecutrix Gulab Singh did not agree for the said marriage. The accused used to send paper and ring etc. through the

prosecutrix. Since she was caught by Gulab Singh, therefore, he has been falsely implicated.

**6.** Learned counsel for the appellant submitted that the age of the prosecutrix is admittedly about 9 to 10 years. The prosecution has produced birth certificate Ex.P-13 and therefore, the defence did not dispute the same. The learned trial court has acquitted the accused person mainly on the ground that the testimony of the prosecutrix was not corroborated with the medical evidence. Regarding the penetration, it is contended that the Doctor has found redness and swelling near the private part of the prosecutrix and therefore, the order of acquittal is not sustainable because penetration is not necessary to constitute offence under section 376 of IPC. The presence of redness and swelling on the private part is sufficient corroboration to the testimony of the prosecutrix who is hardly 9 to 10 years old. There are no strong reason to disbelieve the testimony of a child and false implication of the accused in the present case.

**7.** Per contra learned counsel for the accused submitted that initially the prosecutrix did not make any allegation regarding the rape and it was only the allegation of molestation. There was a specific query made by the Investigating Officer regarding the rape being committed with

the prosecutrix but the Doctor negatived it in its reply. The query report is Ex.P-3. It is also contended that the FSL report also does not corroborate the statement of the prosecutrix because no semen was found on the vaginal slide and underwear of the prosecutrix.

**8.** In order to appreciate the rival contentions, we consider it apposite to first refer the testimony of prosecutrix, who has been examined as PW-9. Being a child witness before recording her statement without oath the court has recorded its satisfaction that whether she was able to understand the questions of queries. The court found that though the prosecutrix does not understand the meaning of oath but she was able to make statement. In para-1 of the statement, she stated that when she had gone to fetch water from tap, around 1 O clock in the afternoon, the accused came over there and had taken her to the house of Arun in his lap and she was made to lay on the cot and thereafter he violated her by inserting his private part in her private part and was rubbing her private part. When she tried to raise an alarm, her mouth was gagged. The accused offered Rs.10/- and said not to disclose the incident to her parents. She was further threatened that in case if she discloses the incident, her

parents would be murdered. After some time, her father Gulab Singh reached in the house of Arun. The door was closed from the inside. However, on his knocking, the door was opened by the accused and when her father came inside the room, he lost his temper and had thrown her on the cot and the accused was repeatedly saying that Arun is not at home. In para-4 she has alleged that her undergarments were removed by the accused and she was wearing only frock. She has again put on underwear after when she was thrown on the cot. Thereafter, the accused had run away from the spot. Alongwith her father, she went to the police station and lodged report Ex.P-9. In the cross-examination, she was confronted with her report that she had not stated that the accused had thrust his private part in her private part but she does not know why the same was not written by the police in its report.

**9.** Her father Gulab Singh was examined as PW-4. He stated that her daughter had gone to fetch water but when she did not come back about an hour then he went to his house from his shop and enquired about his daughter from wife. She stated that she had gone to fetch water but she had not come back. He went to the tap but did not see the prosecutrix but container was lying there. He again came back to the house and again inquired. On getting some information from his son,

he went to the house of Arun Sahu and saw that the prosecutrix and the accused were on the same cot and brought back his daughter. He could see some stains on the underwear and thereafter she narrated the incident. The report was lodged. In para-4 he stated that regarding the violation of the prosecutrix, the same was informed to the police but he does not know why the same was not recorded by the police in his statement.

**10.** It is true that there is some improvement in the statement of the prosecutrix and her father but merely on that ground the statement of the prosecutrix of aged 9 to 10 years cannot be disbelieved. The Apex Court in the case of **State of H.P. Vs. Asha Ram, (2005) 13 SCC 766** held that the conviction can be founded on the testimony of prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well settled principle of law that corroboration as a

condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

**11.** The prosecutrix was examined by Doctor PW-3 Dr.Sunita Verma. She found that the prosecutrix was aged about 10 years. She did not find any injury on her person. On internal checkup, she found that her hymen was intact but there was redness and swelling near the private part. She was also complaining pain. She stated that no definite opinion can be given regarding the rape. Specific query was made by the police station to her that whether there was actual penetration in the private part of the prosecutrix or not. She negated the penetration but stated that there was redness near the private part of the prosecutrix.

**12.** The other contention of the learned counsel for the respondent/accused that since penetration was not found by the Doctor, therefore, offence is not made out under Section 376 of IPC cannot be accepted. The date of incident is 26-03-

1997 and at time the existing provision of Section 375 was as under :

[375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First - Against her will.

(Secondly) - Without her consent.

Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. .

Fifthly - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under sixteen years of age.

Explanation- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

*Explanation 1.*- For the purposes of this section. “vagina” shall also include labia majora.

*Explanation 2.*- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

*Exception 1.-* A medical procedure or intervention shall not constitute rape.

*Explanation 2-* Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

**13. In the case of Koppula Venkat Rao Vs. State of A.P.(2004)3 SCC 602,** it is held that definition of “rape” as contained in Section 375 of IPC refers to “sexual intercourse” and the Explanation appended to the section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the case of **State of U.P. Vs. Babul Nath (1994)6 SCC 29,** it is held that as per explanation contained in Section 375 of IPC, complete penetration is not essential even partial or slightest penetration with or without emission of semen and rupture of hymen or even an attempt of penetration into the private part of the victim would be sufficient for the purpose of sections 375 and 376 of IPC. In the case of **Aman Kumar and another Vs. State of Haryana (2004)4 SCC 379,** it is held that penetration is *sine qua* for the said offence. The complete penetration with emission of semen and rupture of hymen is not necessary

**14. Modi's Jurisprudence and Toxicology(22th Edition)-**

“Thus to constitute an offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Lavia majora or the vulva or pudenda, with or without emission of semen, or even an attempt at penetration is quite sufficient for the purpose of the law.”

**15.** Taking into consideration the medical report and testimony of PW-3 Dr.Sunita Verma that there was redness and swelling near the private part of the prosecutrix and as complete penetration is not necessary to constitute an offence under section 375 of IPC, we find that the trial court has grossly erred in acquitting the accused person merely on the ground that there was no positive medical evidence regarding penetration.

**16.** In view of the aforesaid discussions, facts and the law laid down by the Apex Court, the order of acquittal is set aside. The accused is convicted for offence punishable under section 376 of IPC and sentenced to Rigorous imprisonment for 7 years and fine of Rs.5000/. In default of payment of fine, he shall undergo further R.I. for 6 months.

**17.** Let a copy of the order be sent to the trial court to act in accordance with law against the respondent/accused.

**18.** Before parting, we must put on record our unreserved appreciation for the valuable assistance rendered by the learned *amicus curiae*. The High Court Legal Services Authority shall remit fee of Rs.4000/- (Rs. four thousand) to the *amicus curiae* who assisted this court.

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**