

**HIGH COURT OF MADHYA PRADESH: JABALPUR****(DIVISION BENCH)****Criminal Appeal No. 173 of 2008**

Dinesh s/o Ram Kishore Vyas ..... Appellant

*Versus*

The State of Madhya Pradesh ..... Respondent

**Coram:****DB: Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Vijay Kumar Shukla, J.**

For the Appellant : Shri Anup Singh, Advocate

For the Respondent : Shri Akshay Namdeo, Government Advocate

**Whether Approved for Reporting: Yes**

**Law Laid Down:** Generally, the police is blamed for delay and indifferent manner but if the police officials have acted in the manner, which is expected of them, it cannot be said that the appellant has been falsely implicated.

Significant Paras: **16, 18 and 19****J U D G M E N T****{16/12/2017}****Per: Hemant Gupta, Chief Justice:**

The present appeal is directed against a judgment of conviction passed by learned Special Judge (Atrocities), Panna (M.P.) in Special Case No. 37/2006 on 05.01.2008 whereby appellant Dinesh s/o Ram Kishore Vyas has been convicted under Section 376(2)(g) of the Indian Penal Code along

with co-accused Prahlad s/o Ramswaroop Rajput and vide separate order, both have been sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.1,000/-; in default of payment of fine, to further undergo rigorous imprisonment for one month.

2. The prosecution case was set in motion on the basis of statement of the prosecutrix (hereinafter referred to as the "G") made to S.R. Khan, Assistant Sub Inspector (ASI) posted as In-charge Police Chowki, Maheba, Police Station Amanganj, District Panna on 26.09.2006 at 08.05 p.m. in respect of a sexual assault on her. The statement is that she is a student of Class-8<sup>th</sup>. She went to the field to ease herself at about 07.30 p.m. After coming back, she was washing her hands. At that time, appellant Dinesh Vyas and co-accused Prahlad Singh Rajput caught hold of her. Dinesh Vyas pressed her mouth. Naresh Basor was also accompanying the accused persons. They physically lifted her and took her behind the house of Rupp Dhimar. Dinesh made her lay down. Prahlad and Naresh were asked to keep watch so that nobody comes. Both of them stood at a distance. Dinesh removed her underwear and committed forcible intercourse. She got acute pain in her genital and was writhing in pain. The blood started oozing out of her genital. At that stage, Dinesh Vyas, Prahlad Singh Rajput and Naresh Basor ran away. She came back home and informed about the incident to her maternal-grandmother Bunda Bai and maternal-uncle Baiyan. Thereafter, she along with her maternal-uncle and maternal-aunt (Guddi) came to report to the police station. On the basis of such report, initially an FIR (Ex.P-9) was recorded on 26.09.2006 at 08.05 p.m. at Police Post

(Chowki Maheba, P.S. Amanganj) with Crime No.026/2006 for an offence under Section 376(2)(g) of the IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. After recording the FIR (Ex.P-9), Lakhanlal (PW-5), Head Constable No.509 had taken the said FIR to Police Station Amanganj, District Panna for registration of crime at the Police Station and on the basis of the said report, an FIR (Ex.P-8) was registered in the intervening night of 27.09.2006 at 12.30 a.m. at Police Station Amanganj, District Panna as Crime No.162/2006 against appellant Dinesh Vyas, co-accused Prahlad Singh Rajput and Naresh Basor for the offence as mentioned above. Copy of the FIR (Ex.P-9) registered at “zero” number has been annexed with the FIR (Ex.P-8).

4. S.R. Khan, who recorded report (Ex.P-9) appeared as PW-13. He deposed that statement of the prosecutrix was recorded at 08.05 p.m. when she came with her maternal-uncle and maternal-aunt. The prosecutrix and her maternal-uncle Bhaiyan gave written consent for her examination and then he sent the prosecutrix for medico-legal examination vide memo Ex.P-2. In cross-examination, he stated that prosecutrix has not stated in the statement (Ex.P-9) that she shouted and that her Salwar was removed before assaulting her but she has stated that her underwear was removed and that she left her Salwar and underwear at the place of occurrence.

5. Dr. Vijeta Verma (PW-2) examined the prosecutrix at about 9.30 p.m. on the same day. She deposed that prosecutrix “G” was wearing

Maroon coloured Kurta and white *Dupatta* (drape), but, her Kurta was stained with blood; her black underwear was also stained with blood and she was not wearing Salwar. Her both hands and feet had fresh blood. The blood was also found on her right leg and thigh. She also had an abrasion on her left cheek and also on her neck. There was a contusion 2 x 2 cm on her right thigh. The age of the prosecutrix was found to be 12-14 years subject to radiological examination. She further deposed that there was fresh blood oozing out from her vagina and that hymen was freshly torn and that the touch of the hand to her genital leads to oozing of the blood. In internal examination of the vagina, the blood was found but no injury was found. One finger was entering with the difficulty. The three slides of the liquid oozing were prepared whereas pubic hair was also kept for forensic examination. The underwear and Kurta was also taken in possession for forensic examination. She reported that the prosecutrix "G" was raped and her medico legal report is Ex.P-2. She deposed that age of the prosecutrix was determined on the basis of X-ray examination by her as 12-15 years. In cross-examination, she deposed that maximum age was 15 years and that there is no possibility of increase in age by 2-3 years. She deposed that the injuries were not possible by an accident on the person of the prosecutrix.

6. On the basis of FIR (Ex.P-8/P-9), M.D. Namdeo (PW-12), Deputy Superintendent of Police, Police Station AJAK, Panna started investigation. He recorded the statement of the prosecutrix, her maternal-uncle Bhaiyan and maternal-aunt Smt. Guddi, maternal-grandmother (*Nani*) Smt. Bundabai and Rammilan- brother of the prosecutrix - G. He is the one

who has taken bloodstained earth from the place of occurrence and sample earth as well as bloodstained pink underwear of the prosecutrix vide recovery memo Ex.P-13. He also produced the mark-sheet of school of the prosecutrix as Ex.P-12 wherein her date of birth is mentioned as 20.06.1993. He arrested the three accused, namely, Dinesh Vyas, Prahlad Singh Rajput and Naresh Basor and sent them for medical examination. He stated that the seized articles were sent for forensic science examination vide memo Ex.P-18. He identified the signature of the Superintendent of Police on memo Ex.P-18. In cross-examination, he stated that he went to the place of occurrence on 27.09.2006 but not with the prosecutrix but with her relations and that there was no eyewitness. At the place of occurrence the Salwar was not recovered.

7. Gorelal (PW-4), who was posted as Head Constable at AJAK Police Station, Panna on 28.09.2006 has taken in possession the underwear of Dinesh Vyas and semen slide, which were received in sealed packets from District Hospital, Panna, vide recovery memo Ex.P-6. The semen slide of Prahlad Singh Rajput and his underwear sent by District Hospital, Panna in sealed packets were also taken in possession vide Ex.P-7. No cross-examination was conducted on the witness.

8. As per the report of Forensic Science Laboratory (Ex.P-19), packet-A is pubic hair; packet-B is of Kurta, marked as B<sub>1</sub> in the Lab, *Dupatta* is B<sub>2</sub>, underwear B<sub>3</sub> and Salwar is B<sub>4</sub> of the prosecutrix. The slide of the vaginal fluid is contained in packet marked as C. Another underwear of the prosecutrix is packet-G whereas slide marked as J and underwear-K

pertain to accused Dinesh Vyas while slide-L and underwear-M pertain to accused Prahlad Rajput. The report is that underwear B<sub>3</sub>, Salwar B<sub>4</sub>, slide-C prepared from vaginal fluids of the prosecutrix and another underwear packet-G have stains of semen and human sperm whereas the underwear K of accused Dinesh has no stains of semen. The slides J and L were found to have contained semen and human sperms. The human blood was found on the articles in packet-B i.e. Kurta B<sub>1</sub>, *Dupatta* B<sub>2</sub>, underwear B<sub>3</sub>, Salwar B<sub>4</sub>, as well as on slide-C.

9. On the basis of the evidence collected during the investigation, the accused were made to stand trial. After examining the evidence led by the prosecution, appellant Dinesh Vyas and co-accused Prahlad Singh Rajput were convicted for the offence as mentioned above whereas co-accused Naresh Basor was granted benefit of doubt and acquitted.

10. Learned counsel for the appellant argued that the speed with which FIR has been lodged and the prosecutrix has been subjected to medical examination shows something unnatural, therefore, it is a made-up charge against the appellant and thus, conviction of the appellant is not sustainable. Learned counsel further argued that as per the ossification test, the prosecutrix was 12-15 years of age. Since the ossification test is not certain, she could very well be over 16 years of age, therefore, the offence under Section 376(2)(g) of the IPC is not made out.

11. We have heard learned counsel for the parties and find no merit in the present appeal.

12. During trial, the prosecutrix appeared as PW-10 whereas her maternal-uncle Bhaiyan alias Prahlad was examined as PW-7 and her maternal-aunt Guddi was examined as PW-8. PW-9 is Bundabai, maternal-grandmother of the prosecutrix. Apart from examining Dr. Vijeta Verma as PW-2, the prosecution examined ASI, S.R. Khan as PW-13 and Investigating Officer, Dy.S.P. M.D. Namdeo as PW-12. Chand Mohammad (PW-11), witness of recovery of sample earth and underwear has turned hostile. PW-3, Jagdish though initially turned hostile but in cross-examination by the public prosecutor, admitted that he has signed recovery memo of bloodstained earth, sample earth and underwear.

13. PW-10, the prosecutrix deposed that she was student of Class-8<sup>th</sup> at the time of incident and now she is student of Class-9<sup>th</sup>. She belongs to Kori caste which is a scheduled caste. She gave graphic details of the manner in which appellant Dinesh Vyas and co-accused Prahlad sexually assaulted her and committed intercourse. She deposed that Dinesh and Prahlad physically lifted her. Naresh was also accompanying them. It is Dinesh Vyas, who sexually assaulted her when Prahlad and Naresh were guarding. She deposed that she left her underwear and Salwar and came back in Kurti alone. She has deposed that she lost her parents when she was young and that she is living with her maternal-uncle since long. The FIR is Ex.P-9, which bears her signature. The mark-sheet taken by the police is Ex.P-12. In the cross-examination, she stated that she has not mentioned in Ex.P-9 that Dinesh pressed her mouth and she cannot explain any reason.

She was cross-examined in detail but her testimony could not be shattered in any manner.

14. PW-7, Bhaiyan, maternal-uncle of the prosecutrix, has gone with the prosecutrix to the police station for recording of FIR. He is the one who has given consent along with the prosecutrix for her medical examination.

15. PW-8 Guddi, is the maternal-aunt of the prosecutrix. She has also accompanied the prosecutrix for recording of the FIR whereas PW-9, Bundabai, maternal-grandmother of the prosecutrix, has deposed on the basis of the information supplied by the prosecutrix.

16. The statement of the prosecutrix is corroborated by medical evidence deposed by Dr. Vijeta Verma (PW-2). The prosecutrix was examined within two hours of the alleged sexual assault. The prosecutrix was still bleeding. Her bloodstained Kurta, her second underwear and bloodstained earth lifted from the place of occurrence, the bloodstained underwear from the place of occurrence, all were sent for forensic science examination and have been found to be stained with human blood.

17. Dr. Verma (PW-2) has deposed that the age of the prosecutrix was found to be 12-14 years at the time of examination and on the basis of the ossification test, based upon X-ray examination, she was aged 12-15 years but in cross-examination, the doctor has deposed that she was not more than 15 years in any case. Apart from the said fact, the mark-sheet of the prosecutrix has been produced by the prosecution as Ex.P-12, which



records her date of birth as 20.06.1993, therefore, the prosecutrix was little more than 13 years on the date of incident on 26.09.2006. Thus, the argument of the learned counsel for the appellant that the prosecutrix was more than 16 years of age is not sustainable.

18. The prosecution has been able to prove the allegation of sexual assault by the appellant on a young child of 13 years. The statement of the prosecutrix is sufficient to maintain conviction of the appellant. Appellant Dinesh Vyas and co-accused Prahlad Singh Rajput played proactive role in picking of the prosecutrix and taken her to a secluded place. It is appellant Dinesh, who sexually assaulted her but Prahlad was with him throughout. The blood was oozing from her private part. Apart from the blood, the prosecutrix has suffered injuries on her neck, cheek and thighs, which is possible only as the accused used force on the victim. Thus, the conviction of the appellant for the offence under Section 376(2)(g) of the IPC cannot be said to be suffering from any illegality.

19. The argument that the FIR was lodged within half-an-hour and medical examination was done within two hours creates doubt on the prosecution story is a preposterous argument. Generally, the police is blamed for delay and indifferent manner but if the police officials have acted in the manner, which is expected of them, it cannot be said that the appellant has been falsely implicated.

20. Considering the entire facts and circumstances, we do not find any illegality in the judgment passed by the learned Trial Court convicting

the appellant for the offence as mentioned above. The appeal fails and is hereby **dismissed**.

**(HEMANT GUPTA)**  
Chief Justice

**(VIJAY KUMAR SHUKLA)**  
Judge

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