

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRR No. 263/2008****Shiv Kumar Kushwah****Vs.****State of Madhya Pradesh****[Single Bench : Hon'ble Smt. Anjali Palo, Judge]**

Shri Amanulla Usmani, learned counsel for the applicant.

Shri Ramesh Kushwah, Panel Lawyer for the respondent / State.

**ORDER
(03/05/2017)**

1. This criminal revision has been filed by the accused under Section 397 read with Section 401 of the Code of Criminal Procedure being aggrieved by the judgement dated 30.01.2008 passed by the Fourth Addl. Session Judge, Katni confirming the judgement and conviction dated 12.12.2005 passed by the JMFC in criminal case no. 639/2003 for offence under Section 354 of IPC and imposed sentence for one year RI with fine of Rs. 1,000/-.

2. In short, the prosecution case is that, the prosecutrix is a married woman residing at village Mawai. On 01.06.2003 at about 6:00 pm when the prosecutrix was doing domestic work at her premises, the applicant/accused came there and caught hold of her hand with intention to outrage her modesty and pulled her. When the prosecutrix started shouting, the applicant/accused left her. The

applicant/accused is her brother-in-law. At the time of the incident, the husband of the prosecutrix was not at home. When he came back, the prosecutrix lodged a report at Police Station, Sleemanabad, District Katni. Crime under Section 354 of Indian Penal Code has been registered against the applicant.

3. Learned Trial Court convicted the applicant/accused for offence under Section 354 of IPC on the basis of testimony of the prosecutrix which is corroborated by PW-2 / Dhaniram and PW-3 / Purushottam. Learned Trial Court convicted and sentenced the applicant/accused for 1 year RI with fine of Rs. 500/-.

4. Learned lower Appellate Court also confirmed the findings of the learned Trial Court. Learned Courts below did not agree with the defence contention of the applicant, that the evidence produced by the prosecution was contradictory. Learned Appellate Court also found no material contradictions in the evidence of the prosecutrix and other witnesses. The prosecutrix had no enmity with the applicant/accused. The Courts below found no property dispute for which the applicant/accused could have been falsely implicated by the prosecutrix or her family members. Thus, the conviction and sentence of the applicant/accused was maintained by the learned Appellate Court.

5. This revision has been filed on the grounds that the prosecution has failed to prove the ingredients of the offence

beyond all reasonable doubt against the applicant/accused. The statement of prosecution witnesses are full of contradictions and omissions, hence, no implicit reliance could be placed on such testimony. There is delay in filing of FIR. Findings of the lower Courts are illegal and contrary to law therefore, the applicant / accused prays that the appellant be acquitted from the charges under Section 354 of IPC.

6. Heard. Perused the record.

7. It is not disputed that the complainant / prosecutrix and the applicant/accused both are neighbors and related to the same family. Father of the prosecutrix's husband is the brother of father of the applicant/accused. Learned counsel for the applicant contended that there was a dispute over the property between the parties, hence, the applicant / accused has been falsely implicated. In this regard, no suggestion has been given by learned counsel for the applicant/accused to the prosecutrix (PW-1) and her husband (PW-2) in their cross examination, which was very essential for challenging their testimony. Therefore, the testimony of DW-1 Balmukund Kushwah is not found reliable, who stated about the enmity of the parties.

8. PW-3 Purushottam was the eye witness. During the incident when the prosecutrix shouted, he came to the spot and saw applicant/accused. He also denied any enmity between the families

of the applicant and the prosecutrix with regard to property and that the applicant/accused was falsely implicated by them, through their daughter-in-law (prosecutrix). The applicant / accused is a relative of the prosecutrix. Naturally, it cannot be possible that a woman made up false story as an after thought particularly in respect of her modesty. Learned counsel for the applicant submitted that PW-3 Purushottam is a relative and an interested witness. So evidence of related witnesses is cannot be believed.

9. It is true that no independent witness has been examined by the prosecution. Law does not prohibit reliance upon the evidence of closely related witnesses – However, it requires that evidence of such witnesses must be appreciated with care and caution. Once evidence is found reliable / trustworthy, it cannot be discarded merely on the ground that witness was closely related to victim – If evidence of such witness is found cogent, credible and trustworthy it can be relied upon. There is nothing on record to show that, at time of cross-examination of IO, learned counsel for the appellant had put to him a question as to why witnesses, other than related witnesses were not examined – It is highly improbable that related witnesses would screen and spare real assailants and falsely enrope appellants, only because of old enmity.

10. Generally in such types of offences, sole testimony of prosecutrix can be relied on, because accused would have

committed the offence in lonely places, when he found the prosecutrix alone at her house. Therefore, it cannot be expected that in every case independent witness will be available. In case of **Virendra Singh Vs. State of UP [AIR 2017 SC 869]**, the Apex Court has held that independent witness is not necessary in every case – non examination is not fatal. As per Section 134 of Evidence Act, no number of witness is prescribed to prove the offence. It is settled principle of law that not quantity but quality of evidence is evaluated. Therefore, sole witness can prove the commission of offence. In the instant case, the testimony of the prosecutrix itself seems reliable. In the case of **State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny [AIR 2017 SC 845]**, the Hon'ble Supreme Court has held that :

“It is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. Her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does.”

12. In the case of **Premiya @ Prem Prakash Vs. State of Rajasthan [(2009) 1 SCC (Cri.) 20]**, the Apex Court has held that:

“The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same

weight.”

13. Learned counsel for the appellant has contended that the First Information Report (Ex. P-1) has been lodged after two days without any explanation, hence, it creates reasonable doubt in favour of the appellant. But with this regard no suggestion has been given to the prosecutrix and her husband (PW-2) / Dhaniram. In FIR (Ex. P/1), it is narrated that at the time of incident husband of the prosecutrix was out of station, hence FIR was lodged after two days. In case of **Karnel Singh Vs. State of MP [AIR 1995 SC 2472]**, Hon'ble Supreme Court has held that :

“In India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.”

Likewise in the case of **State of Punjab Vs. Gurmeet Singh & Ors. [AIR 1996 SC 1392]** and **State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny [AIR 2017 SC 845]** Hon'ble Supreme Court has held that :

“The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.”

14. Therefore, the delay in filing of FIR is not fatal to prosecution. In the present case, the reason for delay in filing the FIR has been satisfactorily explained. Therefore, the contention of the learned counsel for the appellant is not acceptable.

15. The evidence of prosecutrix was cogent and consistent that the accused caught hold of victim by hand and pulled her, when she resisted. The use of force will become criminal when it is done against the consent of prosecutrix.

16. Therefore findings of the learned Courts below are not perverse or erroneous. The sentence imposed by the learned Trial Court is found according to offence and not excessive. Thus, in view of the discussions in the foregoing paragraphs, this Court finds no ground for interference in the judgement of conviction passed by the learned Trial Court. Hence, the impugned order passed by the learned Courts below is hereby affirmed. The applicant / accused is directed to surrender before the Trial Court for undergoing the remaining jail sentence immediately.

17. Accordingly, this criminal revision stands dismissed.

18. A copy of this order be sent to the trial Court for information and compliance.

(Smt. Anjali Palo)
Judge