

HIGH COURT OF MADHYA PRADESH : JABALPUR

Criminal Appeal No.1087/2012

Kripal Singh

-Versus-

State of M.P.

Single Bench: Hon'ble Shri Justice Vijay Kumar Shukla

Shri R.S. Shukla, amicus curiae for the appellant.
Shri Sharad Sharma, Govt. Advocate for the State.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	Evidence of the prosecutrix is similar to evidence of the injured-complainant or witness. The testimony of the prosecutrix if found to be reliable, per se, may be sufficient to convict a culprit and no corroboration of her evidence is necessary. In prosecution of rape, law does not require corroboration. Absence of injury – external or internal, on the body of the prosecutrix would not render the testimony of the prosecutrix unreliable.
<i>Significant paragraph Nos.</i>	9.

JUDGMENT
(Jabalpur, dt.20.01.2018)

None appears for the appellant. Shri R.S. Shukla, Advocate who is present in Court, has been appointed as an amicus curiae, considering the fact that the appeal is pending since 2012 and the accused-appellant is in jail since 2011.

2. In the instant appeal a challenge has been made to the order of conviction and sentence passed by the learned XIII Additional Sessions Judge, Bhopal, District Bhopal in S.T. No.397/2011 [State of M.P. vs. Kripal Singh] on 26-4-2012 whereby the accused-appellant has been convicted and sentenced as under:

Conviction	Sentence
450 of the Indian Penal Code.	R.I. for 10 years and fine of Rs.500/-, in default, further R.I. for three months.
376 of the Indian Penal Code.	R.I. for 10 years and fine of Rs.1000/-, in default, further R.I. for six months.
506-II of the Indian Penal Code.	R.I. for 7 years and fine of Rs.500/-, in default, further R.I. for three months.

(substantive sentence to run concurrently)

3. The prosecution case is that on 13-5-2011 the prosecutrix was sleeping in her temporary shed (Jhuggi) along with her children and her husband was out of station. At about 01:30 AM in the night the appellant accompanying with his friend entered into the Jhuggi and took away 9 month old child of the prosecutrix on the point of a knife and thereafter under administration of threat rape was committed with the prosecutrix. As alleged, when the child started crying, the neighbour – Bane Singh and his wife – Parwati came out and the accused persons fled away from the spot.

4. In the morning the husband of the prosecutrix came and thereafter a report was lodged. The prosecutrix was sent for medical examination and the accused persons were arrested. On discovery statement of the accused, a knife was seized. Vaginal slide and 'petticoat' of the prosecutrix were sent for chemical analysis to the FSL.

5. The accused-appellant abjured the guilt and pleaded false implication. Thereafter he was prosecuted as have been stated hereinabove.

6. The prosecution has examined six prosecution witnesses. PW-2 is the prosecutrix. PW-3 is Bane Singh, neighbour of the prosecutrix. PW-4 is Hardev Singh, Assistant Sub-Inspector of Police who had recorded the FIR. PW-5 is Mastram, a witness of memorandum of the accused and seizure. PW-6 is J.P. Tiladiya, investigating officer. Dr. Abha Sharma (PW-1), who had conducted medical examination of the prosecutrix. The testimony of the prosecutrix (PW-2) is corroborated with the the statement of her neighbour – Bane Singh (PW-3), who has deposed that the prosecutrix had come to his house and stated that she was raped by the accused-appellant. Though he had not seen the appellant at the

spot, however, he has supported the statement of the prosecutrix that soon after the incident she had informed him in the night.

7. Dr. Abha Sharma (PW-1) who had medically examined the prosecutrix has stated that the prosecutrix was habitual in sexual intercourse, but there was no injury on her private part. Her hymen was found old and ruptured. She could not give any definite opinion about the alleged rape.

8. Learned counsel appearing on behalf of the appellant submitted that since no injury has been found either on the person or private part of the prosecutrix, therefore, it is not a case of rape. Even if the prosecution case is accepted, it was with the consent of the prosecutrix. However, in the facts and circumstances of the case the argument advanced on behalf of the accused-appellant cannot be accepted.

9. In the case of **State of U.P. vs. Chhoteylal, AIR 2011 SC 697** it is held that mere non-presence of injury on the person or private part of the prosecutrix, it is not sufficient to infer that the prosecutrix was a consenting party. It was further held that the woman is a victim of sexual assault is not an accomplice to crime. Her evidence cannot be tested with suspicion as that of an

accomplice. In the present case, the prosecutrix has clearly deposed that she was sleeping along with her children in the hutment and the accused-appellant had come therein and had taken her nine month child and she was threatened by the accused that her child would be killed with the knife being carried by him, thereafter she was raped by the appellant under administration of threats. In such circumstances, if there is no sign of resistance or mark of injury on her person, it cannot be inferred that the prosecutrix was a consenting party.

10. Defence was taken that the accused-appellant has been falsely implicated because of previous dispute between them. From the statement of the prosecutrix there is nothing to show that there was any reason for false implication of the accused-appellant. The statement of the prosecutrix is well-explained and coupled with the facts that the neighbour – Bane Singh (PW-3) was immediately informed by the prosecutrix and a prompt FIR thereto was lodged in the morning itself when the husband of the prosecutrix returned.

11. Thus, the prosecution has successfully proved its fact beyond doubt. In the obtaining factual scenario, I do not find any case for interference with the impugned judgment passed by the

learned trial Judge is made out and the findings recorded by him are impeccable.

12. Accordingly, the appeal is **dismissed**.

(Vijay Kumar Shukla)
Judge

ac.