

HIGH COURT OF MADHYA PRADESH : JABALPUR

Criminal Appeal No.1476/2014

Lal Singh

-Versus-

The State of Madhya Pradesh

Shri S.K. Dixit, Advocate for the appellant.

Shri V.S. Mishra, Dy. Govt. Advocate for the respondent/State.

Single Bench :

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	In case of rape of an adult married woman where the report is lodged on the next day of the incident, the prosecution has to explain where did the prosecutrix stay in the night. In absence of such an explanation, medical and chemical examination reports lose their significance.
<i>Significant paragraph Nos.</i>	12

JUDGMENT

(Jabalpur, dtd.15.12.2018)

The present appeal is filed under Section 374(2) of the Code of Criminal Procedure being aggrieved by the order of conviction and sentence, dated 12-5-2014, passed by the learned Second Additional Sessions Judge, Khandwa, District Khandwa in S.T. No.36/2014 [State of M.P. vs. LalsinghKrishnakant], whereby the accused-appellant has been convicted under Section 376 of the Indian Penal Code [for short 'the IPC'] and sentenced to undergo

rigorous imprisonment for 10 years and payment of fine of Rs.5000/-, in default, to suffer further rigorous imprisonment for three months.

2. Filtering unnecessary details, the prosecution case, briefly stated, is that an incident had taken place on 14-11-2013 at about 11:00 AM. It is alleged by the prosecution that when the prosecutrix went to the field known as "Doodhdairy" along with her children to collect Soyabean scattered in the field, the appellant came over there, caught hold of her from backside, threw her on the ground and thereafter sexually assaulted her. He also intimidated to her life. Report to that effect, vide Ex.P/5 was lodged at the Police Station concerned and offence punishable under sections 376 and 506 of the IPC were registered against the accused-appellant and criminal law was set at motion.

3. The prosecutrix was sent for medical examination and the MLC report is Ex.P/3. Spot map was prepared which is Ex.P/6. The accused was arrested, vide arrest memo Ex.P/8 and he was also sent for medical examination. The medical report is Ex.p/4. His undergarments, pubic hair and slides of private parts were seized and the same were sent to the Forensic Lab for analysis. The FSL report is Ex.P/12.

4. The investigating agency after conducting necessary investigation filed charge-sheet before the court of competent jurisdiction which in turn, committed the matter to the Court of Sessions for trial.

5. The accused-appellant abjured his guilt and pleaded to be tried stating that he is innocent and he has been falsely implicated.

6. The prosecutrix was examined as PW-3. She has stated that on the date of incident her husband was not in the village. She had gone to the agricultural field to collect Soyabean. At that time son of Sakharam, namely, Lal Singh came over there along with one Ranjeet Singh. The accused caught hold of her from behind, threw her on the ground and thereafter sexually violated her against her will. He also threatened her to kill. Another person – Ranjeet Singh fled from the spot. On her return to the village she narrated the entire incident to her mother-in-law and when her husband came back thereafter report was lodged in the Police Station, vide Ex.P/5.

7. The prosecutrix was examined by Dr. Laxmi Dodwe, PW-2. She was taken to the hospital by Constable Sharmila with an

application, Ex.P/3. She was medically examined on 15-11-2013 but no external injury was found on her person. The hymen was old and ruptured and there was no injury on her vaginal region. She was carrying on pregnancy of six months. On her undergarment - petticoat there was white spot. Samples of pubic hair and vaginal swab were also prepared and the same were sealed in different packets and handed over to the lady constable. Her medical report is Ex.P/4. In her cross-examination she has stated that white spots which were found on the undergarment were of vaginal secretion.

8. The mother-in-law of the prosecutrix Manoramabai, PW-4 also stated that complainant is her daughter-in-law and on the date of the incident her son Mukesh was out of the Village and the prosecutrix had gone to collect Soyabean from the field – Doodhdairy. After returning from the field she narrated the entire incident. When Mukesh came back to home, thereafter report was lodged in the Police Station.

9. The alleged incident had taken place on 14-11-2013 at about 11:00 AM and the report was lodged on 15-11-2013 at about 18:30 hrs. in the evening after about 30 years. Age of the prosecutrix is not disputed that she is a major and married woman. She was carrying pregnancy of six months. The investigation was

carried out by PW-06, Krishna Murari, who stated that after registering the FIR on 15-11-2013 he arrested the accused on 18-11-2013 and the seized articles were sent to the Forensic Lab through the Superintendent of Police, Khandwa. The FSL report is Ex.P/12. He also stated that the undergarments of the accused, his pubic hair and semen slides were prepared vide Ex.P/14 and the same were sent for chemical analysis along with the Head Constable Prahlad. In the FSL report, human semen was found on the underwear of the accused.

10. It is not in dispute that the accused-appellant is the Nandoi (sister's husband of the prosecutrix). The prosecution has not examined the so called person (Ranjeet Singh) who had accompanied the accused at the spot. In para 6 of her statement the prosecutrix stated that the accused is her Nandoi. He got married prior to her marriage and he has two children. Her devar (husband's younger brother) is a handicapped person and he is called 'Langra'. She denied that there was any quarrel in the family with wife of the accused – appellant.

11. Considering the aforesaid background that the accused-appellant is the brother-in-law of the prosecutrix and both the family are residing in the same village and there was suggestion of dispute

in the family, the evidence has to be evaluated. The alleged incident is said to have taken place on 14-11-2013 at about 11:00 AM and the FIR was lodged on 15-11-2013 around 06:30 PM. Admittedly, the prosecutrix and the accused both are married persons. The prosecutrix was examined on 15-11-2013 at about 08:00 PM, vide report Ex.P/4. There is no explanation that where did she stay in the night as she was a married woman. In the same manner, the accused was arrested on 18-11-2013 after four days of the incident and his undergarments etc. were seized after his arrest. He is also a married person, therefore, presence of human semen on his undergarments and vaginal slabs of the prosecutrix loses its significance in absence of any explanation by the prosecution that where the prosecutrix had stayed in the night of the date of incident as she is a married woman and report to the police was made next day after about 30 hours and medical examination that too.

12. Taking into consideration the facts that the FIR was lodged after more than 30 hours of the incident and thereafter she was medically examined. Further, the statement of the prosecutrix that she was forcibly thrown on rough surface does not get any corroboration from the medical evidence and the statement of the doctor, Laxmi Dodwe (PW-02). She did not find any external injury on the person of the prosecutrix. Besides, the prosecution has

not examined the so called person – Ranjeet Singh, who is said to have accompanied the accused at the time of the incident. Thus, taking into consideration the considerable delay in lodging of the FIR without any plausible explanation and non-examination of Ranjeet Singh, the statement of the prosecutrix does not inspire confidence of this Court. As already held that in absence of explanation of stay of the prosecutrix in the night presence of semen on her vaginal swab and on the undergarments, loses its significance.

13. In the obtaining factual backdrop and on assimilation of the entire facts and evidence available on record, I am of the considered view that the conviction of the appellant is not sustainable.

14. Accordingly, **the appeal is allowed** and the impugned order of conviction and sentence is set aside. The appellant is directed to set at liberty forthwith, if not warranted in other case.

(Vijay Kumar Shukla)
Judge

ac.