

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

S. B. : Hon'ble Shri Justice Rajendra Kumar Srivastava
Cr.A.No.158/2015

Santosh @ Chumman
Vs
The State of M.P.

Shri Shashank Upadhyay, learned counsel for the appellant.

Shri Yogendra Das Yadav, learned G.A. for the respondent-State.

J U D G M E N T
(27.04.2021)

This appeal under Section 374(2) of the Criminal Procedure Code has been filed by the appellant/accused being aggrieved by the judgment and finding dated 03.01.2015 passed by the learned II Additional Sessions Judge, Chhatarpur, District-Chhatarpur in Session Trial No.264/2013, whereby the appellant/accused has been convicted under Sections 366 (A) and 376(1) of the IPC and awarded sentences for 10 years' R.I. in each offence with fine of Rs.2,000/- and 3,000/- respectively. Default stipulations have also been imposed by the trial Court. It has been directed by the trial Court that both the sentences shall run concurrently.

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2. According to the case, on 23.05.2013, the complainant (father of the prosecutrix) lodged a missing complaint (Ex.P/17) of his daughter i.e. prosecutrix mentioning therein that on 22.05.2013 at about 12:00 noon, the prosecutrix went outside the house to bring water but she did not return back. During investigation, it was revealed that the appellant kidnapped the prosecutrix cajolingly and took her in his motorbike. The appellant got arrested. Medical examination of prosecutrix (Ex.P/8) was also conducted wherein she was found to be subjected to rape by the appellant. Therefore, the police has registered the FIR (Ex.P/11) for offences under Sections 363, 366-A, 376(1) of IPC as well as Section 4 of the POCSO Act.

3. After completing the investigation, the police filed the charge-sheet. The appellant/accused abjured his guilt and claimed for trial, therefore, the trial Court proceeded further and recorded the statements of 14 prosecution witnesses as well as 1 defence witness and also recorded the statement of appellant/accused under Section 313 of the Cr.P.C.

4. After evaluating all the evidences adduced by the parties, the trial Court found the appellant/accused guilty

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for the offences punishable under Sections 366-A and 376(1) of IPC, however, the trial Court has acquitted the appellant/accused for the offence under Section 363 of the IPC and Section 4 of the POCSO Act.

5. Learned counsel for the appellant submits that the judgment passed by the learned trial Court is bad in law and deserves to be set aside. He submits that learned trial Court did not appreciate the evidence in proper way and there are material contradictions and omissions available in the evidence of the prosecution witnesses. In fact, the prosecutrix was in relationship with the appellant and she accompanied him voluntarily. The statement of the prosecutrix itself shows that she has not supported the prosecution story. The prosecutrix wandered with the appellant at many places but she did not raise any alarm which shows her consent. The trial Court acquitted the appellant/accused for the offence under Section 4 of the POCSO Act. The family members of the prosecutrix were demanding Rs.2,00,000/- from the appellant and due to non-providing of the same, this false case has been registered against him. The prosecutrix got married and is residing in her matrimonial house. There is no direct evidence against

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the present appellant and therefore, benefit of doubt ought to have been given to the appellant. With the aforesaid, he prays for allowing this appeal.

6. On the other hand, learned G.A. for the respondent-State opposes the submissions of appellant's counsel submitting that the offences committed by the appellant/accused are heinous in nature and therefore, the trial Court has rightly convicted him. He submits that it is well established from the statement of Dr. Sanjana Robinson (PW-9) that forcefully intercourse was done with the prosecutrix. The FSL report also indicates presence of semen in the articles seized from the prosecutrix as well as appellant/accused. The prosecutrix herself given her statement against the appellant/accused. Therefore, the judgment passed by the trial Court does not warrant any interference.

7. Heard and perused the record.

8. On perusal of the record, it appears that the appellant was facing trial for the offences under Sections 363, 366-A and 376(1) of IPC as well as Section 4 of the POCSO Act, however, the trial Court acquitted the appellant under Section 363 of IPC and Section 4 of the POCSO Act.

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As per the trial Court, the prosecution has failed to prove that the prosecutrix was a minor girl at the time of incident.

9. Since, the trial Court has given finding regarding the prosecutrix not being minor at the time of incident and said finding has not been challenged either by the State or prosecutrix, therefore, this Court does not find it proper to touch the finding of trial Court regarding age of the prosecutrix at the time of incident and will confine itself to the question of conviction under Sections 366-A and 376(1) of IPC of the appellant/accused.

10. On perusal of the impugned judgment, it appears that the trial Court has found proved the fact that on the day of incident, the prosecutrix was taken away by the appellant/accused cajolingly and thereafter, he committed sexual intercourse with her forcefully. Now, the only question remains to be decided by this Court is whether the finding of trial Court regarding conviction of appellant/accused under Sections 366-A and 376(1) of IPC is correct or not ?

11. As per the missing complaint lodged by the father of prosecutrix (PW-2), on 22.05.2013, the prosecutrix went outside of the house for getting water but she did not

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return back. On 29.05.2013, statements of Rajendra Sahu (PW-5) and Dinesh Kumar Yadav (PW-6)) were recorded wherein they informed the police that they saw the appellant/accused taking the prosecutrix in his motorcycle. However, both the witnesses have turned hostile before the trial Court. Thereafter, on 30.05.2013, the prosecutrix was recovered from the bus stand Luvkush Nagar. Further, on 30.05.2013, the statement of prosecutrix under Section 161 of Cr.P.C. was recorded by the police wherein she stated against the appellant/accused alleging that he committed sexual intercourse with her forcefully.

12. On 05.09.2013, statement of prosecutrix was recorded by the trial Court wherein she stated that on 22.05.2013, the appellant/accused forcefully took her in his motorcycle to Village Laudi, thereafter, by bus, they reached Chhatarpur and after that Haryana where the appellant/accused committed forcefully sexual intercourse with her. She further stated that when she got mobile phone of the accused, she informed her uncle, thereafter, on 29.05.2013, appellant/accused brought her to village Laudi via Chhatarpur, where brother of appellant/accused met and brought them to police station. During the cross-

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examination, the learned counsel for the defence had asked a question to the prosecutrix as to why she did not raise any alarm while traveling with the appellant/accused and the prosecutrix has explained saying that she was subjected to intimidation by the appellant/accused. She further stated that the appellant/accused locked her in a room when he went outside, due to that reason, she could not inform anybody about her abduction.

13. Therefore, the Prosecutrix is found stable on the point of forcefully sexual intercourse by the appellant/accused.

14. Dr. Sanjana Robinson (PW-9) performed the medical examination of prosecutrix wherein she found that hymen of prosecutrix was teared and blood was oozing from her private part. She opined that forcefully sexual intercourse was done with the prosecutrix. The articles seized from the possession of the prosecutrix and appellant/accused were also sent for Forensic Examination. On perusal of the FSL report i.e. Ex.P/16, semen was found in the slide and undergarments of the prosecutrix as well as appellant/accused, therefore, the FSL report also indicates

about performing sexual intercourse with the prosecutrix by the appellant/accused.

15. The learned counsel for the appellant has filed this appeal mainly on the ground that the prosecutrix, being major, was a consenting party and she willfully accompanied the appellant and therefore, no offence under Sections 366 as well as 376 of IPC are made out against him.

16. As discussed above, in the statement of prosecutrix either recorded before the trial Court or by the investigating officer, she is found stable on the point that she was subjected to forceful intercourse by the appellant, however, the conduct of prosecutrix while traveling with the appellant, *prima facie*, indicates her consenting behaviour towards the appellant but in her cross-examination she stated that she was intimidated and confined by the appellant/accused.

17. Under the Indian Evidence Act, 1872, there is presumption of Section 114-A wherein it is prescribed that where sexual intercourse by the accused was proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her

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evidence before the Court that she did not consent, the Court shall presume that she did not consent.

18. In the case of *State of H.P. Vs Raghbir Singh* reported in (1993) 2 SCC 622, the Hon'ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity.

19. In the case of *Krishna Kumar Malik vs. State of Haryana* reported in (2011) 7 SCC 130, it is observed and held by the Supreme Court that no doubt, it is true that to hold an accused guilty for commission of the offence of rape, the solitary evidence of the prosecutrix is sufficient provided that the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

20. In the case of *Ganesan v. State*, (2020) 10 SCC 573, relying upon both the above referred judgments, the Supreme Court has observed as under :

*“10. In the present case, the appellant-accused has been convicted by the learned trial court for the offence under Section 7, punishable under Section 8 of the PocsO Act. We have gone through the entire judgment passed by the learned trial court as well as the relevant evidence on record, more particularly the deposition of PW 1 father of the victim, PW 2 mother of the victim and PW 3 victim herself. It is true that PW 2 mother of the victim has turned hostile. However, PW 3 victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW 3 victim. PW 3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. **As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.***

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191, it is observed in paras 9 to 14 as under:

“9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care

and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. *In State of U.P v. Pappu [State of U.P. v. Pappu, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix*

and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under:

'12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] , this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any

*benefit thereof. The Court observed as under:
(SCC pp. 394-96 & 403, paras 8 & 21)*

'8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... 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 given circumstances. ...

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or

insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'

(emphasis in original)

12. *In State of Orissa v. Thakara Besra [State of Orissa v. Thakara Besra, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080] , this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.*

13. *In State of H.P. v. Raghbir Singh [State of H.P. v. Raghbir Singh, (1993) 2 SCC 622 : 1993 SCC (Cri) 674] this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. [Wahid Khan v. State of M.P., (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing*

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reliance on an earlier judgment in Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan, 1951 SCC 1213 : AIR 1952 SC 54] .

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

10.2. *In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*

10.3. *Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] . In para 22, it is observed and held as under: (SCC p. 29)*

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the

cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

II. On evaluating the deposition of PW 3 victim on the touchstone of the law laid down by this Court in the aforesaid decisions, we are of the opinion that the sole testimony of the PW 3 victim is absolutely trustworthy and unblemished and her evidence is of sterling quality.”

21. Here in the case at hand, the statement of prosecutrix is duly corroborated by the medical report of prosecutrix as well as statements of Dr. Sanjana Robinson (PW-9). However, the appellant has produced his elder

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brother as a defence witness who made some aspersion on the character of the prosecutrix and also made allegation of demanding rupees 2 lakh by the prosecutrix for turning hostile, but only said saying would not be enough to presume that statement of the prosecutrix is not reliable and that it has been done by the prosecutrix unless the same is proved by some cogent evidence.

22. The appellant did not suggest during the cross-examination of prosecutrix that she was a consenting party. Rather, the prosecutrix stated in her statement that she went with the appellant under intimidation of him. She herself telephoned her uncle informing about her abduction and said fact has not been challenged by the appellant/accused while cross-examining the prosecutrix. Dr. Sanjana Robinson (PW-9) has also deposed that prosecutrix stated that the appellant/accused committed forcefully sexual intercourse with her.

23. After careful examination of all the material/evidence available on record, it is found that the appellant/accused abducted the prosecutrix, took her to Haryana where he committed sexual intercourse with her forcefully. Therefore, finding recorded by the trial Court is

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found correct and thus, the impugned order dated 03.01.2015, passed in Session Trial No.264/2013 is hereby affirmed.

24. As far as sentence to the appellant is concerned, it shows that the appellant is in jail since 30.05.2013 and thus, he has suffered about 8 years of his jail sentence out of maximum 10 years of conviction. Considering the facts and circumstances of the case, the awarded sentence of 10 years to the appellant is hereby modified to the period already undergone by him i.e. about 8 years. The fine amount and default stipulation imposed by the trial Court, be as it is.

25. The appellant be set at liberty forthwith if he is not required in any other case.

26. The appeal is **disposed off**.

(Rajendra Kumar Srivastava)
Judge

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