

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 20<sup>th</sup> OF JULY, 2022

CRIMINAL APPEAL No.360 of 2012

Between:-

KISHNA BANJARA @ SANGRAM,  
S/O SHRI KARAN SINGH, AGED  
ABOUT 40 YEARS, OCCUPATION  
LABOUR, R/O VILLAGE  
CHAKDEVPURA, POLICE STATION  
MYANA, DISTRICT GUNA  
(MADHYA PRADESH).

.....APPELLANT

*(BY MS. CHITRA SAXENA - ADVOCATE)*

AND

STATE OF MADHYA PRADESH,  
THROUGH POLICE STATION  
MYANA, DISTRICT GUNA (MADHYA  
PRADESH)

.....RESPONDENT

*(BY SMT. ANJALI GYANANI – PUBLIC PROSECUTOR)*

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Reserved on : 13<sup>th</sup> of July, 2022  
Delivered on : 20<sup>th</sup> of July, 2022

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*This appeal coming on for final hearing this day, Hon'ble Shri Justice G.S. Ahluwalia, passed the following:*

**JUDGEMENT**

1. This Criminal Appeal has been filed under Section 374 of Cr.P.C. against the judgment and sentence dated 17-2-2012 passed by Sessions Judge, Guna in S.T. No.350 of 2011 by which the Appellant has been convicted under Section 376(2)(f) of IPC and has been sentenced to undergo the Life Imprisonment and a fine of Rs.500/-, in default one month R.I.
2. The facts necessary for disposal of present appeal in short are that on 6-10-2011, the uncle of the Prosecutrix lodged a report, that parents of the prosecutrix had gone for labour works, therefore, they had left the prosecutrix in his house. He and his wife had gone to cut crop by leaving their children aged about 6 years, 5 years as well as prosecutrix aged about 6 years. In the afternoon, Dhanpal informed that the Appellant has taken the prosecutrix towards School. Thereafter, he saw that the Appellant was running away after leaving the prosecutrix. The prosecutrix was bleeding from her private part and had injury on her cheek. She was not speaking. The Appellant has committed *Bura Kaam*. Accordingly, the police registered the offence. Spot map was prepared. The prosecutrix was sent for medical examination. The Appellant was arrested. The underwear, slide of the Appellant as well as the vaginal swab and slide of the prosecutrix were sent for Forensic Examination. As per the FSL report, human semen and sperms were found on the vaginal swab and slide of the prosecutrix. Police after completing the

investigation, filed charge sheet for offence under Section 376(2)(f), 324 of IPC.

3. The Trial Court by order dated 13-12-2011, framed charge under Section 376(2)(f) of IPC.

4. The Appellant abjured his guilt and pleaded not guilty.

5. The prosecution examined Prosecutrix (P.W.1), Uncle of Prosecutrix "A" (P.W.2), Fulla (P.W.3), Khema (P.W.4), Gudda (P.W.5), Dr. Smt. Usha Chaurasia (P.W. 6), Ramkumar (P.W.7), Dr. D.S. Rana (P.W.8), Ashok Joshi (P.W.9), Ramesh Dande (P.W.10), Mangilal (P.W.11) and Lakhani Singh (P.W. 12).

6. The Appellant did not examine any witness in his defence.

7. The Trial Court by the impugned Judgment and Sentence has convicted and sentenced the Appellant for the above mentioned offence.

8. Being aggrieved by the Judgment and Sentence passed by the Court below, it is submitted by the Counsel for the Appellant that the prosecution witnesses Fulla (P.W.3), Khema (P.W.4) and Gudda (P.W.5) are not reliable witnesses. The prosecution has failed to prove that it was the Appellant who had committed rape on the prosecutrix.

9. Per contra, the Counsel for the State has supported the prosecution case and submitted that the Trial Court has rightly convicted the Appellant for the above mentioned offence.

10. Heard the learned Counsel for the Parties.

11. According to the prosecution case, the prosecutrix is aged about 5 years. Dr. Smt. Usha Shrivastava (P.W.6) had medically examined the prosecutrix and found following injuries on her body :

Hymen ruptured with vaginal injury lacerated wound in left labia majora 1 cm x ½ cm x muscles. Right side lacerated

wound ½ cm x 1.4 cm x skin deep and mid line lacerated wound upto anus. Duration of injury about 24 hours. Clotted blood present reddish in colour. Injury caused by hard and blunt object. Vaginal slide prepared and handed over to P.C. Vaginal swab prepared and handed over to P.C.

Opinion : Finding suggestive of sexual assault.

Advise : Admission for observation and management. Referred to Gynecologist for further management.

External injury over body : 1. Multiple small abrasions in two elliptical roses- reddish in colour about 3 cm long each small abrasions size is about .3 to .5 cm long and .3 to .5 cm wide situated over right cheek, caused by human teeth bite.

Contusion over left cheek size about 5 x 3 cm redish in colour.

Contusion with abrasion over mid part of thoracic back, size about 10 x 3 cm redish in colour.

Opinion : Injury no. 2 and 3 caused by hard and blunt object and injury no. 1 is caused by human teeth bite. Duration within 24 hours. Nature of injury no. 1 and 2 simple and nature of injury no. 3 will be given after x-ray, dorsal spine.

The M.L.C. is Ex. P.2.

12. This witness was cross-examined and in cross-examination, She stated that in case if a girl falls on a pointed object, then She may sustain injury on her private part, but also clarified that She would not sustain other injuries.

13. Thus, it is clear that the prosecutrix was subjected to rape as the laceration was upto anus and hymen was found ruptured with vaginal injury with teeth bite marks on cheek.

14. Similarly, the Appellant was medically examined by Dr. D.S. Rana (P.W.8) and it was opined that there is nothing to suggest that the male is not capable of performing sexual act. The M.L.C. is Ex. P.5. His slide was also prepared.

15. Now the moot question for consideration is that whether the Appellant had committed rape on the prosecutrix or not?

16. Prosecutrix (P.W.1), aged about 5 years was examined and the Trial Court found that She is not answering any question. She is illiterate. Her father has also informed that She has never gone to School. The prosecutrix is very young and is not stating anything, therefore, her evidence was not recorded.

17. Uncle "A" (P.W.2) has stated that his brother and his wife had gone to *Chhabra* for labour work. They had left the prosecutrix with them. She is aged about 5 years and donot go to school. This witness and his wife had also gone for labour work. His son Dhanpal aged about 4 years, his younger son and the prosecutrix were in the house. In the afternoon, Dhanpal came to the field and informed that some incident has taken place. He rushed to the house and found that the prosecutrix was lying unconscious and She was bleeding from her private part. She had bite marks on her teeth. Khema, Gudda, Phulla and Mangilal were also there. Her wife had also seen. He stated that he had not seen the Appellant, but he was seen by Phulla, Khema and Gudda. They informed that they had seen the Appellant running away. Thereafter, he lodged the report, Ex. P.1. In cross-examination, he stated that he did not inform the police that he had seen the Appellant running, but could not explain as to why such fact was mentioned in FIR, Ex. P.1. Appellant Kishna is also of his family.

18. Phulla (P.W.3) has stated that he was grazing his goats. He had seen the Appellant running away. Gudda (P.W.5) was with a small girl, but he did not see the girl and went away with his goats. Lateron, he came to know that minor girl was bleeding from her private part. Gudda (P.W.5) was saying that Appellant has done something with the girl,

therefore, She is bleeding from her private part. When he came back, he saw blood on the legs of the small girl. In cross-examination, he stated that he had seen the Appellant running away from the distance of 50 ft.s. The name of Appellant was told by Khema (P.W.4) and Gudda (P.W.5). He denied that he had not seen the Appellant running away from the spot.

19. Khema (P.W.4) has stated that his buffalo was in the pond. The goats of Gudda (P.W.5) and Phulla (P.W.3) were grazing. The Appellant ran away from the spot. He went to the spot and found that one small girl was lying stained with blood. She was the daughter of "B". Her legs were stained with blood. He picked up the girl and brought her to her house. Mangilal had also met him. He doesnot know that what was done by Appellant with the small girl, however, She was bleeding. This witness was cross-examined. In cross-examination, he stated that he had seen the Appellant running away from the place where the small girl was lying, therefore, the name of Appellant was mentioned in the police report.

20. Gudda (P.W. 5) has stated that he was grazing his goats. Khema (P.W.4) was having his buffalo. Phulla (P.W.3) was also grazing his goats. He saw that one person ran away from the spot. One small girl was lying there and was bleeding from her private part. Her legs were stained with blood. The girl was aged about 5 years and was the daughter of "B". This witness also identified the Appellant in the dock and stated that Appellant is the same person who had ran away from the spot. The small girl had bite marks on her cheek. This witness was cross-examined. In cross-examination, he stated that the name of the Appellant was told by Khema (P.W.4).

21. Ramkumar (P.W.8) had brought one sealed packet from hospital containing Vaginal swab, Vaginal slide and specimen of seal which were seized by Head Constable by seizure memo Ex. P.3. On 23-10-2011, he had brought underwear, slide and specimen of seal from Hospital which were seized by Head Constable by seizure memo Ex. P.4.

22. Ashok Joshi (P.W.9) had prepared the spot map, Ex. P.6 on the information given by Mangilal.

23. Ramesh Dande (P.W.10) is the investigating officer. On 6-10-2011, Uncle of Prosecutrix "A" had lodged FIR of rape against the Appellant. On 7-10-2011, he had recorded the statement of the prosecutrix with the assistance of her mother. The statements of "A", Khema, Phulla and Gudda were also recorded. The Appellant was arrested on 22-10-2011 vide arrest memo Ex. P. 7. He was sent for medical examination. By memo, Ex.P.8, the seized articles were sent to R.F.S.L., Gwalior. The F.S.L. report is Ex. P.9 and P.10. This witness was cross-examined. In cross-examination, he denied that none of the witness had stated about bleeding from private part.

24. Mangilal (P.W.11) has partially turned hostile. He has stated that he was told by "A" that Appellant has committed rape on the prosecutrix. He had seen the prosecutrix whose legs were stained with blood. He along with prosecutrix and "A" came to Police Station for lodging FIR. He was declared hostile by the prosecution and in cross-examination by Public Prosecutor, he stated that he was told by Khema and Phulla that the Appellant was hiding himself in carrot grass (*Parthenium hysterophorus*). In cross-examination by defence, he stated that he had not seen the Appellant but he was told by Phulla etc.

25. Lakhan Singh (P.W.12) is the scribe of FIR, Ex. P.1.

26. Thus, from the evidence of the prosecution, it is clear that the prosecution case is based on the evidence that the Appellant was seen running away from the spot and immediately thereafter, witnesses saw that the prosecutrix was lying unconscious with bleeding from her private part.

27. The Supreme Court in the case of **Nanak v. State of U.P.**, reported in **1984 Supp SCC 628** has held as under :

1.This appeal is directed against the judgment of the High Court by which the acquittal of the appellant Nanak was set aside and he was convicted under Section 302 IPC and sentenced to imprisonment for life. The main witnesses who proved the occurrence were PW 1 Kundan, PW 2 Fakira and PW 4 Kanha. Sohanlal, PW 5, an immediate neighbour of the accused saw the accused running away with a knife. PW 1 is also an independent witness and the enmity suggested is an old one. The learned Sessions Judge has disbelieved these witnesses as being interested and having enmity with the accused. After going through the judgment of the High Court, we are satisfied that the judgment of the Sessions Judge was absolutely perverse and there is no evidence on the basis of which the appellant could have been acquitted. The High Court has made a correct approach to the case. It was suggested by the counsel for the appellant that no motive had been proved. In the first place it has been stated by PW 1 Kundan that relations between husband and wife were not cordial. In a case of murder of the wife by the husband there are many considerations which have to be looked into and it is very difficult to know the exact motive in the circumstances of a given case. For these reasons, therefore, we are satisfied that the prosecution has been able to prove the case beyond reasonable doubt. This is not a case in which it can be said that the view taken by the Sessions Judge is reasonably possible. The appeal is accordingly dismissed.

28. Thus, the evidence that the accused was seen running away from

the spot is one of the important piece of circumstantial evidence. Further more, in the present case, the prosecutrix (P.W.1) was not examined as She was unable to understand the Court proceedings and undisputedly, the prosecutrix is a small girl aged about 5 years. Her medical evidence fully establishes the fact that She was subject to sexual assault. The presence of Human semen and sperm in the vaginal swab and slide of the prosecutrix also establishes the allegation of rape.

29. Khema (P.W.4) has specifically stated that he had seen the Appellant running away from the spot. Gudda (P.W.5) has identified the Appellant in dock and has stated that it was the Appellant who was running away from the spot. Although the attention of this Court was drawn towards the admission made by Gudda (P.W.5) in his cross-examination that he was not knowing the name of the Appellant and the same was disclosed to him by Khema (P.W.4), but dock identification of Appellant by this witness as well as in the light of evidence of Khema (P.W.4), it can be safely held that not only this witness corroborates the evidence of Khema (P.W. 4) but by identifying the Appellant in dock, this witness has also established the identity of the Appellant independently.

30. Phulla (P.W.3) had stated in his examination in chief that the Appellant is not known to him and it was Gudda who was saying that the Appellant has done something with the small girl, but this witness has also identified the Appellant in dock and has specifically stated that he had seen the Appellant, who is present in Court, running away from the spot. Thus, this witness also corroborates the evidence of Khema (P.W.4).

31. Thus, it is held that the prosecution has succeeded in establishing

the circumstance that the Appellant was seen running away from the spot and that place, the small girl prosecutrix (P.W.1) was found lying with bleeding from her private part.

32. It is further submitted by the Counsel for the Appellant that no injury was found on the penis of the Appellant.

33. Heard the learned Counsel for the Appellant.

34. The incident took place on 6-10-2011 and the Appellant was arrested on 22-10-2011 i.e., after 16 days of incident. Thus, there was sufficient time for an injury to heal. Even otherwise, absence of injury on penis is not sufficient to disbelieve the prosecution case. The Supreme Court in the case of **State of H.P. v. Raghbir Singh**, reported in (1993) 2 SCC 622 has held as under :

7. Dr Ghatate, learned senior counsel for the respondent submitted, by reference to *Rahim Beg v. State of U.P.*<sup>1</sup> that the absence of injuries on the penis of the respondent should be treated as sufficient to negative the prosecution case. We are afraid we cannot agree. Inferences have to be drawn in every case from the given set of facts and circumstances. There is no inflexible axiom of law which lays down that the absence of injuries on the male organ of the accused would always be fatal to the prosecution case and would discredit the evidence of the prosecutrix, otherwise found to be reliable. The presence of injuries on the male organ may lend support to the prosecution case, but their absence is not always fatal. *Rahim Beg case* was based on its peculiar facts and the observations made therein were in a totally different context and cannot advance the case of the respondent. The observations in *Rahim Beg case* cannot be mechanically pressed into aid in every case regardless of the specific circumstances of the crime and absence of the fact situation as existing in that case. Every case has to be approached with realistic diversity based on peculiar facts and circumstances of that case. Doctor Sharma who had examined the respondent had found him to be capable of

sexual intercourse and according to his opinion the absence of injury on his male organ was not suggestive of the fact that he had not indulged in sexual intercourse with the prosecutrix, then of tender years of age. His evidence was not at all challenged on this aspect by the defence.

35. Further more, the incident took place at an isolated place with no houses at nearby places. The incident also took place behind the carrot grass. The defence has failed to dislodge the evidence of running away from the spot, by bringing any fact that there were movements of general public at the place of spot. FIR was lodged without any delay. The names of the prosecution witnesses were also mentioned in the FIR. Thus, when the incident took place at an isolated place with no movements of any other person, and the Appellant was seen running away by three persons who were grazing their cattles, and the small girl was also found on the spot in an unconscious condition with bleeding from her private part coupled with the fact that the medical evidence of the prosecutrix also establishes that She was subject to rape, this court is of the considered opinion that the prosecution has succeeded in establishing the guilt of the Appellant beyond reasonable doubt.

36. Accordingly, the conviction of the Appellant for offence under Section 376(2)(f) of IPC is hereby **affirmed**.

37. So far as the question of sentence is concerned, the allegations against the Appellant are that he had raped a minor girl aged about 5 years. This act of the Appellant is an unpardonable act. In order to provide a safe society to the minor girls, it is necessary that such types of act must be dealt with firmly. Under these circumstances, the Life Imprisonment awarded by the Trial Court doesnot call for any interference. Accordingly, the sentence of Life Imprisonment awarded

by the Trial Court is hereby affirmed.

38. Consequently, the judgment and sentence dated 17-2-2012 passed by Sessions Judge, Guna in S.T. No. 350 of 2011 is hereby **Affirmed**.

39. The Appellant is in jail. He shall undergo the remaining jail sentence.

40. Let a copy of this judgment be provided to the Appellant free of cost.

41. The record of Trial Court be sent back along with copy of this Judgment for necessary information and compliance.

42. The Appeal fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

**(RAJEEV KUMAR SHRIVASTAVA)**  
**JUDGE**



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