HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon'ble Shri Subodh Abhyankar J.

Criminal Appeal No.1100 of 2017
Narayansingh S/o Sajjansingh Sisodiya

Versus
State of Madhya Pradesh
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Heard through video conferencing.

Shri Akhilesh Kumar Saxena, learned counsel for the appellant.

Ms. Geetanjali Chourasiya, learned Panel Lawyer for the respondent/State.

Heard finally with the consent of the parties.

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J U D G M E N T

(**Delivered on 31/05/2021**)

1] This appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgement dated 17/05/2017 passed by the Second Additional Sessions Judge, Ratlam in Special Sessions Trial No.134/2016 whereby while finding the appellant guilty, the learned Judge of the Trial Court has convicted the appellant as under:-

Conviction		**Sentence**		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of fine
376(1)	IPC	7 Years RI	2000/-	3 Month RI

2] In brief, the facts giving rise to the present appeal are that on 04/06/2016, an FIR was lodged by the prosecutrix on the ground that she is a

resident of Nai Aabadi, Haat Pipliya, Ratlam and at around 12 O'clock of 04/06/2016 she heard that her neighbour Narayansingh S/o Sajjan Singh (the appellant herein) was calling her name continuously and when she went to his house to ask as to why he was calling her name, Narayansingh took her inside his house and closed the doors and committed rape on her. On hearing her cries, her father came and knocked on the doors, but Narayansingh did not open the doors hence her father crossed the wall and entered the house but by then Narayansingh fled away from the spot. The prosecutrix then narrated her ordeal to her mother and father. Thus a case was registered against the appellant Narayansingh under Section 376 of the IPC and the investigation ensued. After the charge sheet was filed and the evidence was led by the parties, learned Judge of the Trial Court, after appreciating the evidence has convicted the appellant vide the impugned judgement which is under challenge before this court.

3] Learned counsel for the appellant has submitted that the learned Judge of the Trial Court has erred in not appreciating the evidence in its proper perspective. It is further submitted that the learned Judge has lost sight of the fact that the prosecutrix was a consenting party and also that she was not a minor at the time when the incident took place.

4] Learned counsel for the State on the other hand has opposed the prayer and it is submitted that no illegality has been committed by the learned Judge of the Trial Court in appreciating the evidence and convicting the appellant as aforesaid. Thus, it is submitted that the appeal be dismissed.

5] Heard counsel for the parties and perused the record.

6] From the record, it is found that the FIR in the present case at crime No.79/2016 was lodged by the prosecutrix herself on 04/06/2016 wherein the time of incident is said to be 12 O'clock in the noon whereas the FIR has been lodged on the same date at 3 O'clock in the noon. So far as the age of the prosecutrix is concerned, in the FIR it is mentioned as 16 years and during the course of the trial, the evidence has been brought on record that she was born on 06/11/1999. Thus, on the date of incident, she was 16 years, 6 months and 29 days old. In support of her date of birth, Exhibit P/5 has also been produced by PW/6 Ashraf who happens to be Sarpanch of Gram Panchayat Sherpurkhurd who has issued the date of birth certificate dated 14/07/2016 of the prosecutrix. PW/7 S. R. Ahirwar, the Investigating Officer has also stated that he has also tried to obtained the birth certificate of the prosecutrix, however, it was found that the record of the initial school of the prosecutrix Santosh Shiksha Niketan has already been destroyed on account of termite and hence her scholar register was obtained from subsequent school Vinoba School which has been proved as Exhibit P/8. Thus, admittedly there is no original date of birth certificate available on record and the age of the prosecutrix has been determined by the learned Judge of the Trial Court on the basis of the documents available on record including Ex.P/5, the certificate issued subsequently by the Sarpanch of the Gram Panchayat and also Ex.P/8, the scholar register of the second school joined by the prosecutrix.

7] Regarding the admissibility of the documents proved in support of the age of the prosecutix and their probative value, the Supreme Court in the case of ***Satpal Singh v. State of Haryana, (2010) 8 SCC 714*** has held as under**:-**

> **19.** So far as the issue as to whether the prosecutrix was a major or minor, it has also been elaborately considered by the courts below. In fact, the school register has been produced and proved by the Headmaster, Mohinder Singh (PW 3). According to him, Rajinder Kaur (PW 15), the prosecutrix, was admitted in Government School, Sharifgarh, District Kurukshetra on 2-5-1990 on the basis of school leaving certificate issued by Government Primary School, Dhantori. In the school register, her date of birth has been recorded as 13-2-1975. The question does arise as to whether the date of birth recorded in the school register is admissible in evidence and can be relied upon without any corroboration. This question becomes relevant for the reason that in cross-examination, Shri Mohinder Singh, Headmaster (PW 3), has stated that the date of birth is registered in the school register as per the information furnished by the person/guardian accompanying the students, who comes to the school for admission and the school authorities do not verify the date of birth by any other means.
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> **20.** A document is admissible under Section 35 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") being a public document if prepared by a government official in the exercise of his official duty. However, the question does arise as to what is the authenticity of the said entry for the reason that admissibility of a document is one thing and probity of it is different.
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> **21.** In *State of Bihar* v. *Radha Krishna Singh*[6] this Court dealt with a similar contention and held as under:
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> "*40*. … Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil. … (SCC p. 138, para 40)
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> *53*. … where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value would indeed be very high so as to be entitled to great weight. (SCC p. 143, para 53)
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> *145*. (*4*) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little. (SCC p. 171, para 145)"

22. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in *Ram Prasad Sharma* v. *State of Bihar*; *Ram Murti* v. *State of Haryana Dayaram* v. *Dawalatshah*; *Harpal Singh* v. *State of H.P.*; *Ravinder Singh Gorkhi* v. *State of U.P.*; *Babloo Pasi* v. *State of Jharkhand*; *Desh Raj* v. *Bodh Raj*-and *Ram Suresh Singh* v. *Prabhat Singh*. In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases. Such entries may be in any public document i.e. school register, voters list or family register prepared under the rules and regulations, etc. in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain* v. *State of U.P.* and *Santenu Mitra* v. *State of W.B.*

23. There may be conflicting entries in the official document and in such a situation, the entry made at a later stage has to be accepted and relied upon. (Vide *Durga Singh* v. *Tholu*.)

24. While dealing with a similar issue in *Birad Mal Singhvi* v. *Anand Purohit*, this Court held as under: (SCC p. 619, para 15)

"*15*. … To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. ***An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act, but entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.***"

25. A Constitution Bench of this Court, while dealing with a similar issue in *Brij Mohan Singh* v. *Priya Brat Narain Sinha*, observed as under: (AIR p. 286, para 18)

"*18*. … The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. That probability is reduced to a minimum when the public servant

himself is illiterate and has to depend on somebody else to make the entry. We have therefore come to the conclusion that the High Court is right in holding that the entry made in an official record maintained by the illiterate chowkidar, by somebody else at his request does not come within Section 35 of the Evidence Act."

26. In Vishnu v. State of Maharashtra[20] while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

27. Thus, the entry in respect of age of the child seeking admission, made in the school register by semi-literate chowkidar at the instance of a person who came along with the child having no personal knowledge of the correct date of birth, cannot be relied upon.

28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.

29. In case, the issue is examined in the light of the aforesaid settled legal proposition, there is nothing on record to corroborate the date of birth of the prosecutrix recorded in the school register. It is not possible to ascertain as to who was the person who had given her date of birth as 13-2-1975 at the time of initial admission in the primary school. More so, it cannot be ascertained as who was the person who had recorded her date of birth in the primary school register. More so, the entry in respect of the date of birth of the prosecutrix in the primary school register has not been produced and proved before the trial court. Thus, in view of the above, it cannot be held with certainty that the prosecutrix was a major. Be that as it may, the issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case.

(emphasis supplied)

8] A perusal of the aforesaid decision clearly reveals that merely production of the scholar register in itself does not tantamount to the proof of the age of the prosecutrix unless the same is substantiated by some other unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc. Learned Judge of the Trial Court has also relied upon the fact that the documents produced by the prosecution in respect of age of the prosecutrix Exhibit P/15(C) which is the scholar register of the subsequent school of the prosecutrix dated 12/06/2012, and it is held that it is much prior to the date of offence in the year 2016, hence, there is no reason to disbelieve the aforesaid document. In the considered opinion of this Court, in the light of the aforesaid decision in the case of Satpal Singh (supra), the finding recorded by the learned Judge of the Trial Court only on the basis of scholar register cannot be countenanced and it is held that the prosecution has not been able to prove that the prosecutrix was below the age of 18 years at the time of the incident. Thus, it is held that the prosecutrix was above the age of 18 years at the time when the offence took place.

9] Now the question before this Court is whether the prosecutrix was also a consenting party or whether the appellant has been falsely implicated. So far as the consent of the prosecutrix is concerned, the Supreme Court, in the case of Satpal Singh (supra) has defined it as under:-

> **30.** It can be held that a woman has given consent only if she has freely agreed to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to, it always is a voluntary and

> conscious acceptance of what is proposed to be done by another and concurred in by the former. An act of helplessness in the face of inevitable compulsions is not consent in law. More so, it is not necessary that there should be actual use of force. A threat of use of force is sufficient.
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> (emphasis supplied)

10] In this regard, the deposition of the prosecutrix PW/1 is relevant. She has stated that on 04/06/2016 she had gone to the house of the appellant Narayansingh as he was calling her by shouting her name and when she reached his house, Narayansingh closed the doors and committed rape on her and when she shouted, her father came to her rescue and entered the house of Narayansingh after climbing the wall as the appellant did not open the door for him. Soon after the father of the prosecutrix arrived, the appellant ran away from the spot. Although she has been cross examined on the point that she was a consenting party as she was friends with the present appellant, however, she has emphatically denied the same and has stated that the appellant was friend of his father. She has also denied that she ever spoke to the appellant on mobile and also that she used to send messages to the appellant. She has also denied that she has got certain photographs snapped along with appellant and had gone to see Jain Mandir with him. It was also suggested that a day prior to the incident, the appellant Narayansingh had a quarrel with her father who had threatened him of dire consequences. PW/2 Kailash, the father of the prosecutrix has also supported the case of the prosecution and has substantiated the statements made by his daughter and has stated that he entered into the house of the appellant after tearing the polythene wall of the appellant's house which is a minor contradiction of the

statement of the prosecutrix who has stated that her father entered the house after crossing the wall. Pw/2 has also stated that the prosecutrix had narrated the whole incident to him and to his wife and thereafter they had taken her to police station and the MLC was also conducted thereafter.

11] The MLC of the prosecutrix was conducted by PW/3 Dr. Meena Verma who has stated that no definite opinion can be given regarding rape. She has not been suggested by the defence that no rape took place as there was no injury either internal or external suffered by the prosecutrix. This Court also finds that although the defence taken by the appellant is that the prosecutrix was a consenting party and she used to call him and also used to send messages to him but despite such suggestions, the appellant has not proved in his defence any such document regarding the telephonic conversation or telephonic record, or the messages which according to the appellant, have been sent by the prosecutrix to him. Thus, it leads this court to only one conclusion that theory of consent as put forth by the appellant in his defence is fallacious. The appellant has also not lead any evidence to show that he is falsely implicated apart from suggesting the same to the prosecution witnesses.

12] So far as relying upon the sole testimony of the prosecutrix in a rape case, the Supreme Court in the case of ***Ganesan v. State, (2020) 10 SCC 573, after referring to earlier decision rendered by the supreme court in the case of*** *Vijay in para 10.1*, has held in para 10.2 and 10.3 as under ***:-***

> **"10.2.** In *Krishan Kumar Malik* v. *State of Haryana*, 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)*. 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 co-relation 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."

(emphasis supplied)

13] Considering the facts of the case on hand, on the anvil of the aforesaid decisions of the Supreme Court, this court finds that in her various statements,the prosecutrix has been consistent that the appellant had raped her and as such her testimony is reliable and unblemished. This is apparent from

the FIR which has been lodged by her only within 3 hours of the incident, as well as her statement recorded under Section 161 of Cr.P.C., her statement under Section 164 of Cr.P.C. as also her deposition wherein her testimony has also remained unshaken. Although this court has already held that the prosecution has failed to prove that the prosecutrix was aged less than 18 years but it also appears that she must be of tender age as the trial court has also recorded her age in her deposition to be 16 years only, whereas, the appellant is aged around 25 years, thus, the prosecutrix could easily have been overpowered by the appellant.

14] In such circumstances, even when the MLC of the prosecutrix is negative, this Court finds it difficult to disbelieve the statement of the prosecutrix that she was raped by the appellant. In view of the same, it is held that the prosecutrix was not a consenting party and that the prosecution has proved its case beyond reasonable doubt.

15] Resultantly, the appeal stands **dismissed** and the judgement dated 17/05/2017 of conviction passed by the Second Additional Sessions Judge, Ratlam in Special Sessions Trial No.134/2016 is hereby affirmed.

16] Pending IA No.1744/2021 shall also stand disposed of accordingly and the appellant shall suffer the sentence as awarded by the learned Judge of the Trial Court.

(Subodh Abhyankar)
Judge

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