

**The State of M.P. Vs. Mukesh Kumar**

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**Court :** Madhya Pradesh

**Decided On :** Jun-19-2013

**Appellant :** The State of M.P.

**Respondent :** Mukesh Kumar

**Judgement :**

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH:  
HONBLE SHRI JUSTICE SUBHASH KAKADE CRIMINAL APPEAL NO.138 OF  
199.APPELLANT/STATE: State of Madhya Pradesh Versus RESPONDENT:  
Mukesh Kumar S/o Narayan Singh, aged 25 years, Occupation - student/service,  
R/o Koli Mohalla, Ganj, Sehore

----- For the  
Appellant/State : Ms. Savita Choudhary, Panel Lawyer For the Respondent : Ms.  
Kiran Mehta, Advocate  
----- Date of

hearing :

10. 05.2013 Date of judgment :

19. 06.2013 (

**JUDGMENT**

) Being aggrieved by the judgment dated 16/06/1997 passed by the Chief Judicial Magistrate, Sehore in Criminal Trial No.844/1996, whereby, respondent - accused Mukesh was acquitted from the charges of Section 354, 323 and 506 of Indian Penal Code, this appeal under Section 378 (iii)(i) of the Criminal Procedure Code, 1973 has been filed by the appellant/State.

2. Prosecution case which lead to the trial as essential as follows: On dated 05/6/1995 at about 5 PM prosecutrix (PW-1) was guarding ISoa;k to dry on Otla of the house of accused Mukesh with Preeti (PW-4) and Bulbul. Preeti left the place to drink water, at that time, accused Mukesh came over there and intended Bulbul to go away. Thereafter, accused used criminal force on prosecutrix intending to outrage her modesty by forcefully fingering in her private part. At about 06:00 p.m. when Prosecutrix (PW-1) came to house, was weeping, by the night she did not have the dinner. On next morning at about 09:00 a.m. on enquiring by mother Amri bai (PW-2), she narrated all the facts and complained pain in private part. She also narrated this fact that accused threatened him, if she will tell this incident to anybody, he will harm her. Amri bai (PW-2) after informing the matter to husband Ram Narayan, lodged the First Information Report (Ex.P/1) at Police Station Kotwali, Sehore. The Investigating Officer Shri Sukhram Choudhary, (PW-5) ASI went to the spot, prepared the spot map, recorded statements of the witnesses and managed to send prosecutrix for medical checkup. At District Hospital, Sehore Dr. Neera Shrivastava (PW-3) examined her. After required investigation, charge-sheet was filed against accused.

3. Learned trial Court framed charges as mentioned in para 01 against accused, who abjured his guilt, therefore, he was put to trial.

4. In order to establish guilt of accused, the prosecution examined five witnesses, the prosecutrix (PW-1), her mother Amribai (PW-2), Preeti (PW-4), Dr. Neera Shrivastava (PW-3) and Investigating Officer Shri Sukhram Choudhary (PW-5) and also exhibited documents.

5. The statement of respondent was recorded under Section 313 of the Criminal Procedure Code, 1973, in which, he denied all the charges leveled against him and pleaded his innocence and falsely implication due to old enmity.

6. Contentions of the learned counsel for the State is that learned trial Court committed an error while relying upon the facts that there was old enmity between families of complainant and respondent. It is further contended that the learned trial Court also committed an error that FIR was delayed, instead of that there was sufficient reasons to explain the delay as the prosecutrix was aged about 8 - 9 years old and she was under forceful stage.

7. On the other hand, learned counsel for the respondent supported the impugned judgment.

8. Heard learned counsel for the parties and perused the material available on record.

9. The case in hand, except the prosecutrix (PW-1), others witnesses are hearsay witnesses. As per the statement of Preeti (PW-4), the prosecutrix did not tell him about the incident directly, her source of information was a third person i.e. her sister Seema.

10. It is pertinent to mention here that oath were not administered to the prosecutrix (PW-1) and Preeti (PW-4) looking to their age 4 and 10 years respectively.

11. The prosecutrix (PW-1) stated all the facts as mentioned above, therefore, need not to repeat again. During cross- examination she admitted enmity between her father and respondent family, though, in answer to the question asked by learned trial Court, she corrected herself saying that this enmity is after this incident. But, Preeti (PW-4) also admitted enmity between two families. This admission of prosecutrix (PW-1) is also very much damaging for the prosecution that whatever her mother father has narrated her, she is stating in the Court.

12. Prosecutrix (PW-1) categorically stated that due to incident blood was oozing out, so she went to her aunt (kaki), who applied oil on her private part. Amribai (PW-2) admitted that when weeping prosecutrix came to the home and explained the incident, then she also applied powder on her private part. Both the admissions proved that whole incident was in the knowledge of Amribai (PW-2)

and kaki, other relative of prosecutrix, on the same day in the evening itself after the incident.

13. Amribai (PW-2) during cross-examination admitted that prosecutrix narrated her all the facts regarding the incident by the evening of the same day. She further admitted that at about 07:00 p.m. on same day, she narrated all the facts to her father also.

14. As per the statement of Preeti (PW-4) this fact is also established that after the incident, the prosecutrix visited her house and narrated whole incident to her sister Seema. She further stated that Seema narrated this fact to the prosecutrix's sister Archana and her mother i.e. aunt (kaki) of prosecutrix.

15. In view of the aforesaid discussion, it is proved that not only to Seema, sister of Preeti (PW-4) and her mother, kaki, the prosecutrix narrated all the facts on the date of incident at evening but also to her mother Amribai (PW-2) and father.

16. It means, that when Amribai (PW-2) saying that in the next morning prosecutrix narrated about the incident is totally contradictory, hence doubtful.

17. In spite of above facts, as per the First Information Report Ex.P/1, the incident took place on 05.06.1996 in between 5 - 6 pm, the report was lodged on the next day on 06.06.1996 at 15.30 hours. The distance from the place of occurrence to police station Kotwali Sehore is only one kilometer. Therefore, it is crystal clear that there was more than 22 hours delay in lodging the First Information Report Ex.P/1 at police station which was situated only one k.m. away from the place of incident.

18. Delay in every case cannot be a ground to arouse suspicion, it can only be seen when the delay is unexplained. In the instant case, the delay has not been properly explained by the prosecution. This unexplained delay regarding lodging of First Information Report Ex.P/1 is the sole fact which is fatal for the prosecution.

19. Dr. Neera Shrivastava (PW-3) during her cross-examination admitted that contusion which was found on private part of the prosecutrix (PW-1), can be inflicted by the prosecutrix herself.

20. Statements of prosecutrix is not supported by any other evidence regarding under Section 323 or Section 506-B of I.P.C.

21. The learned trial Court in light of above discussed facts and circumstances rightly disbelieved the statement of prosecutrix (PW-1), her mother Amribai (PW-2) and Preeti (PW-4) due to unexplained delay in lodging the First Information Report Ex.P/1.

22. As discussed above, it is held that the prosecution was unable to prove the offence punishable under Section 354, 323 and 506-B of Indian Penal Code against the respondent - accused Mukesh, therefore, there is no cause to interfere in the judgment rendered by learned trial Court. The appeal preferred by the State against the impugned judgment of acquittal dated 16.06.1997 is liable to be and is accordingly dismissed. (SUBHASH KAKADE) JUDGE SJ/-AK/-

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