

**Hurji Vs. State of Rajasthan**

**Hurji Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/771908](http://sooperkanoon.com/771908)

**Court :** Rajasthan

**Decided On :** Aug-08-2001

**Reported in :** 2002CriLJ472

**Judge :** Sunil Kumar Garg, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Cri. Appeal No. 138 of 1987

**Appellant :** Hurji

**Respondent :** State of Rajasthan

**Advocate for Def. :** R. Purohit, P.P.

**Advocate for Pet/Ap. :** Sanjay Mathur, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Sunil Kumar Garg, J.**

1. This appeal has been preferred by the accused appellant against the judgment and order dated 11-3-87 passed by learned Sessions Judge, Dungarpur in Sessions Case No. 29/86 by which he convicted the accused appellant for offence

under Section 376, I.P.C. and sentenced him as under :

Offence Sentence awarded

376, IPC 5 years' R.I. and a fine of

Rs. 1000/- in default to further

undergo 1 year's R. I

2. This appeal arises in the following circumstances :

(i) On 31-5-86 at about 8 p.m. P.W. 1 Smt. Haju (hereinafter referred to as the Prosecutrix) lodged an oral report Ex.P/1 before the Police Station, Dungarpur stating that in the night at about. 12 p.m. there was heavy rain and she came out from the house to tie the cow. She has further stated that she saw the accused appellant standing there and on seeing him she asked as to why he was standing there, thereupon the accused appellant immediately grappled her and threw her on the ground and she was dragged inside the house and thereafter accused appellant committed rape on her. She has further stated that at that time she was having pregnancy of 8 months and in the house there was none else. The accused appellant after committing rape went away and after his departure no body came and her husband who was driver had gone to Aspur, therefore, now she has come to lodge the report.

(ii) On this report police registered a case and started investigation.

(iii) During investigation, medical examination of P.W. 1 Smt. Haju was got conducted by P.W. 7 Dr. Bal Mumund Upadhyaya and her medical report is Ex.P/ 7 and medical report of accused appellant is Ex.P/8.

(iv) After usual investigation, challan was filed against the accused appellant for offence under Section 376, I.P.C.

3. That the learned Sessions Judge, Dungarpur framed charges against the accused appellant for offence under Section 376, I.P.C. on 29 9-86 who pleaded not guilty and claimed trial.

4. During trial, 7 witnesses have been produced by the prosecution and thereafter statement of accused under Section 313, Cr.P.C was recorded and no evidence was led in defence by the accused appellant.

5. At the conclusion of the that, the learned Sessions Judge, Dungarpur vide his judgment and order dated 11-3-87 convicted and sentenced the accused appellant for offence under Section 376, I.P.C., inter alia holding that the prosecution has proved its case beyond reasonable doubt.

6. Aggrieved from the said judgment, this appeal has been filed by the accused appellant.

7. In this appeal, the following submissions have been made by the learned Counsel for the appellant :

The learned trial Judge has failed to appreciate the fact that the medical evidence does not corroborate the statement of P.W. 1 Smt. Haju or if sexual intercourse took place, that must have taken place with tacit consent of the prosecutrix. Hence, it is not a case of forcible intercourse. Hence, the accused appellant should be acquitted.

8. On the other hand, the learned PP has opposed the submission made by the learned Counsel for the appellant and submits that the judgment of the trial Court is based on correct appreciation of evidence and the same does not require interference by this Court.

9 I have heard both.

10. Before proceeding further, to appreciate the contention of the learned Counsel for the accused appellant, medical evidence in the present case has to be looked into and the same is found in the statement of P.W.7 Dr. Bal Mumund Upadhyaya. P.W.7 Dr. Bal Mumund Upadhyaya stated that on 1 -6 86, he examined P.W. 1 Smt. Haju and found that she was pregnant by eight months and he did not find any injury either on her private part or any part of her body. He also found that she was habitual to sexual intercourse. He has proved her report Ex. P/7.

11. Thus, from the statement of P.W. 7 Dr. Bal Mumund Upadhyaya, it is established that P.W. 1 Smt. Haju was habitual to intercourse and she did not receive any sort of injury on any part of her body including her private part.

12. Now the statement of P.W. 1 Smt. Haju who is a married lady and is aged 25 years, has to be examined.

## BURDEN OF PROOF

13. In a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and her mother have falsely implicated the accused. The evidence of the prosecution witnesses cannot be accepted merely because an accused person has not been able to say as to why they have come forward to depose against him. However great the suspicion against the accused and however strong the moral belief and conviction of the Judge, unless the offence of the accused is established beyond reasonable doubt or beyond the possibility of reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring the offence home to the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

14. Apart from this, something should be said about the medical examination of the victim. If the victim is unwilling to yield to sexual intercourse, she is expected to receive some injuries on her person. Absence of injury on her person generally gives rise to an inference that she was consenting party to coitus. Absence of injuries on the prosecutrix or the accused shows that the prosecutrix did not resist. But absence of injuries is not by itself sufficient to hold that the prosecutrix was consenting party.

15. There is also no dispute on the point that corroboration of testimony of the prosecutrix in a rape case is not required as a rule of law. But corroboration should or dinarily be required in a case where woman has attained majority and who is habitual to sexual intercourse as in such cases, there is likelihood of her having

levelled such accusation on account of self-preservation. In the present case there is sole evidence of prosecutrix P.W.I Smt. Haju and she is a married mature lady and, therefore, element of corroboration should remain in the mind of the Court.

16. P.W.I Smt. Haju in her statement recorded in the Court has stated the same contents which she narrated in her report Ex.P/1, but she has further stated that the accused appellant had sex with her continuously for one hour and when he put her on the ground, she did not receive any injury and she has further admitted in her cross-examination that at the time when he was having sex with her, the accused appellant told that he will act slowly so that her pregnancy would not be damaged.

17. In my opinion from the above evidence, it cannot be accepted that the accused appellant had sex with P.W.I Smt. Haju against her will. On the contrary, it appears that it was a case of consent. The fact that during this act, which remained continued for one hour, she did not receive any injury itself shows that whatever was done between P.W. 1 Smt. Haju and the accused appellant was done with her consent. Furthermore had it been a case of forcible intercourse, no question arises that this process would go for one hour. Absence of injury further goes to show that she did not resist and it was a case of tacit consent.

18. Absence of injuries itself on her person negatives the allegation of rape. The medical evidence clearly discloses that P.W. 1 Smt. Haju did not appear to have put any resistance to the alleged onslaught committed on her by the accused. From this the only irresistible inference that can be drawn is that the prosecutrix was consenting party. Thus, from every point of view, the present case is not a case of forcible intercourse with P.W. 1 Smt. Haju or against her will, but it is a case of consent between the two. Hence, statement of P.W. 1 Smt. Haju does not inspire confidence on the point that, the accused appellant committed rape with her as there is no other corroboration to her statement. Hence, findings of learned Sessions Judge Dungarpur by which he convicted the accused appellant for offence under Section 376, I.P.C. are liable to be set aside and the accused-appellant is entitled to acquittal and appeal of the accused appellant is liable to be allowed.

For the reasons mentioned above, the present appeal filed by the accused appellant Hurji is allowed and the judgment and order dated 11-3-87 passed by the learned Additional Sessions Judge, Dungarpur in Sessions Case No. 29/1986 are set aside and the accused appellant is acquitted of the charge for offence under Section 376, I.P.C.

The accused appellant Hurji is on bail. He need not surrender. His bail bonds are hereby cancelled.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**