

CASES ON SEC. 376 OF I.P.C.

Penal Code (45 of 1860), S. 376 – Offence of rape – Appreciation of evidence – Prosecutrix giving go-bye to the person in material particulars as recorded in FIR in her evidence recorded in Court – Medical evidence not supporting allegations made by prosecutrix – Acquittal not liable to be interfered with. (**State of Andhra Pradesh V. Lankapalli Venkateswarlu, AIR 2000 SUPREME COURT 3555**).

(A) Penal Code (1860), S.376(2)(g) - Gang rape – Rape alleged by two accused – F.I.R. lodged on 6th day – Medical report noting absence of injuries on body and on vagina which admitted two fingers – Omission to state about one of the accused keeping hand on her mouth and restraining her from shouting in statement under S.161 Cr.P.C. - Accused not able to substantiate their plea of false implication – Held their omission to give reasons for false implication will not cure defect in infirmities in statement recorded under S. 161 – Accused extended benefit of doubt and acquitted.

(B) Evidence Act (1872), S.3 – Evidence of witness – Gang rape – Prosecutrix not having animus to falsely implicate accused – Her evidence will not be ipso facto accepted but only if probabilities inspire confidence. (**Undarya Narayan Dokaphode & Anr. V. State of Maharashtra & Anr. 2000 ALL MR (Cri) 426**)

Penal Code (1860), S. 376(2)(g) – Gang rape alleged by two youths aged around 26-27 years on a girl of 16 years – Incident taking place in the house of prosecutrix – prosecutrix raised a hue and cry but nobody was attracted to the place though house was located on a main road in a populated area – Medical evidence that prosecutrix was used to sexual intercourse but no definite opinion could be given about any recent sexual intercourse – Her case that blood had oozed out of her vagina contradicted by report of forensic science laboratory – Testimony of her aunt partially contradicted her narration of incident – Held truthfulness of version of prosecutrix being doubtful accused were entitled to be acquitted (**Dilip and anr. V. State of M.P. 2001 ALL MR (Cri) 2377**).

Indian Penal Code, 1860, Section 376 – Rape – Sole testimony of prosecutrix – Material contradictions and inconsistencies – No resistance was exercised by the prosecutrix when the alleged rape was committed on her – Medical evidence supporting the case of consent on the part of prosecutrix, rather than, commission of rape – Held, sexual intercourse, if at all occurred, it was with consent of the prosecutrix – Accused cannot be convicted for the offence of rape (**Valliappa Harijan V. State of Goa, 1997 (1) B.Cr.C. 587**).

Indian Penal Code, 1860, Sections 376 and 354 – Conviction under Section 376 – Version of the prosecutrix relating to rape found unreliable – Medical examination shows that the hymen was intact – The part of her statement before Court that the appellant penetrated his penis in her private part resulting into bleeding from it missing in her statement before police under Section 161 Cr.P.C. - Held, her statement regarding commission of rape upon her by the appellant is highly doubtful and cannot be accepted – However the appellant is liable to be convicted under Section 354 I.P.C. for outraging the modesty of the prosecutrix, even in the absence of formal charge in this regard (**Jayram David Kalyani V. State of Maharashtra, 1996(1) B.Cr.C. 171**).

Indian Penal Code, 1860, Section 376 (2) (a) (iii) – Rape by a Police Constable on the prosecutrix under his custody – Non-disclosure of offence for three days by the prosecutrix to her parents or others – It is only when she was interrogated in connection with another offence she disclosed the Commission of rape upon her by the appellant – She was medically examined twice, for first time immediately next day of the offence and after five days – Prosecution withhold the first medical report – Second medical report did not disclose any offence of rape having committed upon her – Held, that appellant is entitled for benefit of doubt – Unreliable statement of the prosecutrix can not be accepted without corroboration – Conviction and

sentence of appellant quashed and set aside (**Baburao Ramdas Padgil V. State of Maharashtra, 1996(1) B.Cr.C. 42**).

Penal Code (1860), S. 376 – Evidence Act (1872), S. 3 – Rape – Benefit of doubt – F.I.R. registered almost after 2 days – Delay sought to be explained by prosecution wholly unconvincing – Serious discrepancies in testimony of prosecutrix regarding identity of accused – Held, benefit of doubt should necessarily go in favour of accused (**The State of Maharashtra V. Pandit Maruti Chougule @ Bavadekar, 2001 ALL MR (Cri) 1602**).

Penal Code (1860), S. 376 – Rape – Consenting Party – Prosecutrix and accused known to each other from childhood – No resistance from Prosecutrix when accused allegedly tried to have intercourse with her – No abrasion on body or scratches on any part of her body nor was there any injury on her private parts – Her clothes not torn – Prosecutrix not crying when she went home after the so-called forcible intercourse nor did she tell her mother about the alleged incident of rape – Held, all these circumstances show that the prosecutrix was a consenting party (**The State of Maharashtra V. Shri Subhash Sitaram Sangare, 2001 ALL MR (Cri) 1541**).

Rape – Attempt – Probability – No allegation made in the FIR except the alleged indecent behaviour – Improvement in evidence before Court – No attempt made by the accused person to bolt the door from inside inspite of knowledge that the brother of the victim was outside the room – Allegation extremely improbable – Conviction, set aside (**K.Lakshmana Rao V. The Public Prosecutor, State of Andhra Pradesh and another, 1979 Cri.L.J.1067 : 1979 AIR (SC) 1324**).

Rape – Attempt to commit – Accused going beyond the stage of preparation but short of penetration – Accused is liable to conviction for attempt to commit rape and not for outraging the modesty (**Madan Lal V. State of Jammu & Kashmir, 1998 Cri.L.J.667 : 1998 AIR (SC) 386**).

Rape – Attempt to commit – co-accused – Illiterate villager came to clinic of doctor (accused) with his daughter-in-law – Doctor sent father-in-law to fetch hot water – When he came back clinic he saw co-accused and the accused/doctor scantily dressed and salwar of the patient half folded – In the circumstance offence of accused falls under Section 375/511 IPC – No ground to interfere with conviction and sentence (**Nathu Ram V. State of Haryana, 1994 Cri.L.J. 109 : 1994 SCC (Cr) 88**).

Rape – Corroboration – Necessity of – Prosecutrix who was victim of rape cannot be considered an accomplice but corroboration should be insisted to rule out false implication (**Madho Ram and another V. The State of U.P., 1973 Cri.L.J. 673 : 1973 AIR (SC) 469**).

Rape – Attempt to rape – Accused undressing the child girl and himself but failing to penetrate due to premature discharge-Distinction with outraging the Modesty – Conviction for attempting to rape, restored (**State of Maharashtra V. Rajendra Jawanmal Gandhi, 1997 Cri.L.J. 4657 : 1997 AIR (SC) 3986**).

Rape – Corroboration – Necessity of (**Ram Murti V. State of Haryana, 1970 Cri.L.J.991 : 1970 AIR (SC) 1029**).

Indian Penal Code, 1860, Section 376 – Rape – Accused committed actual intercourse with consent and willingness of the prosecutrix – Prosecution failed to establish that her age was below 16 years – Doctor who performed the radiological test was not sure about her age – Trial Court was not justified to base his finding of guilty on the medical evidence solely and wholly – Held, accused is entitled for the benefit of margin of error and entitled for an acquittal (**Domnic Misquita V. The State, 1997 (1) B.Cr.C. 622**).

(a) Indian Penal Code, 1860, Sections 366 and 376 – Kidnapping and rape – Age of the prosecutrix – Ascertainment – Principles relating to – Discussed.

(b) Indian Penal Code, 1860, Section 376 – Rape case – Medical evidence assumes importance to ascertain as to whether there was sexual intercourse or assault on the victim – Medical examiner should examine the prosecutrix to find out the symptoms of marks of violence near genitals and on the body, Gonorrheal infection, blood and seminal stains, presence of spermatozoa invading and rupture of hymen (**Prakash Sakharam Mandale V. State of Maharashtra, 1997(1) B.Cr.C. 659**).

(ii) Indian Penal Code, 1860, Section 376 – Rape of a child girl – Victim at the time of rape was eight years old – Rape was done by a youth of 18 years – Sessions Court found the accused Om Prakash guilty of an offence u/s 376 IPC, sentenced to 7 years RI and fine of 1000/- and in default to further undergo RI for six months – High Court acquitted on two grounds, the non-examination of other independent witnesses and rejection of medical evidence by PW11 – State's appeal against acquittal to Supreme Court – Whether delay of 26 hours in lodging FIR is satisfactorily explained ? (Yes) (para 9) – Whether accused was capable of doing inter-course as per his age ? (Yes) (Para 10) – Whether the two grounds relied on by High Court to record acquittal sustainable in law ? (No) – The conviction cannot be set aside for non-examination of independent witnesses – For no valid reasons High Court discarded medical evidence of PW11 – Prosecutrix evidence was sufficient to uphold conviction (Para 17) – Absence of injury on raped child is not fatal (Para 18) – Leniency in sentence not called for (Para 20) – Appeal allowed – Order of High Court set aside and that of trial Court restored – Case law referred (**State of Rajasthan V. Om Prakash, 2002(7) SBR 100**).

(A) Penal Code (1860), S. 376 – Testimony of prosecutrix – Reliability – Investigating agency not conducting investigation properly or was negligent – Cannot be a ground to discredit testimony of prosecutrix.

(E) Penal Code (1860), S. 376 – Trial of rape case – Observation by Court that probably the prosecutrix is a girl of loose moral character – Propriety.

(F) Penal Code (1860), S. 376 – Rape – Compensation – Convicts sentenced to 5 years' R.I. and fine of Rs.5,000/- - Compensation not awarded since fine is already imposed.

(G) Penal Code (1860), S. 376 – Rape – Effect on victim – Appreciation of evidence – Court's duty.

(H) Penal Code (1860), S. 376 – Rape – Cross examination of prosecutrix – Scope – Court's duty to see that prosecutrix is not unnecessarily harassed and humiliated. (**State of Punjab V. Gurmit Singh and others, 1996 Cri.L.J.1728**).

Penal Code (1860), S. 376 - Rape – Absence of medical evidence showing that rape was committed on victim – Other circumstances of presence of accused and his conduct of running away, how so ever incriminating it may be, is not sufficient to infer that the accused had sexual intercourse with the victim (**State of Maharashtra V. Teju @ Tejsingh @ Tejkumar, 2004 ALL MR (Cri) 675**).

Penal Code (45 of 1860), S. 376 – Rape – Proof – Failure on part of Investigating Officer to carry out detailed paternity tests in order to establish paternity of child to connect accused – Evidence of prosecutrix totally discredited in cross-examination when confronted with her police statements – Conviction of accused cannot be based on such evidence (**Peter Fernandes V. The State, 1997 Cri.L.J.954**).

Rape – Delay in lodging FIR – Effect – Prosecutrix a married woman – She was living with her parents and was virgin prior to commission of rape – There was communal tinge to whole of the incident – Complainant was prevented from lodging FIR by community fellows of accused – FIR also disclosing that delay was due to village panchayat, insults and social disrepute – Delay held not fatal (**State of Rajasthan V. N.K., 2000 Cri.L.J. 2205 (SC) : 2000(2) Crimes 84**).

Rape – Conduct of prosecutrix – After the act prosecutrix went on dancing performance – In the circumstances it would be unsafe to rely on the words of prosecutrix – Accused given benefit of doubt and acquitted (**V. State of Kerala, 1995 Cri.L.J. 3229 : 1995 SCC(Cr) 826**).

Rape – Conduct of prosecutrix – Veracity of – Prosecutrix did not complain to lady teacher or to other girl students – Waited till she reached home and narrated the incident to her mother – In the normal course of human conduct an unmarried minor girl would not like to give publicity to the traumatic experience she had undergone – The inherent bashfulness of females and tendency to conceal outrage of sexual aggression are factors which Court should not over look. (**State of Punjab V. Furmit Singh and others 1996 Cri.L.J. 1728 : 1996 AIR (SC) 1393**).

Rape – Corroboration – Necessity of – Prosecutrix who was victim of rape cannot be considered an accomplice but corroboration should be insisted to rule out false implication. (**Madho Ram and another V. The State of U.P. 1973 Cri.L.J. 673 : 1973 AIR (SC) 469**).

Rape – Corroboration – Necessity of. (**V. State of Haryana, 1970 Cri.L.J. 991 : 1970 AIR (SC) 1029**).

Rape – Natural conduct of prosecutrix – Improvement in testimony – No injury found on the person of prosecutrix – Conduct of sole eye-witness not natural – Conviction set aside (**V. State of Maharashtra, 1998 Cri.L.J. 4559 : 1998 AIR (SC) 3131**).

Rape – Proof of – Testimony of prosecutrix – Corroboration – Difference in social setting of Indian and Western World – Possibility of false accusation in Western society has no application in Indian set up. (**V. State of Gujarat, 1983 Cri.L.J.1096 :1983 AIR (SC) 753**).

Age – Determination of – Hesitation of Court in holding that prosecutrix was under 16 years of age – Conviction of accused for abduction of prosecutrix not permissible. (**Sm. Ram Devi V. State of Uttar Pradesh, 1955 AIR (SC) 574 : 1955 Cri.L.J.1296**).

Age – Determination of – School register, statement of the girl and also the statement of the father of the girl is admissible evidence. (**Mohd.Ikram Hussain V. The State of Uttar Pradesh and others 1964(2) Cri.L.J. 590 : 1964 AIR (SC) 1625**).
