



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 142/1995

Khema S/o Shri Kalia, B/c Adiwasi, R/o Village Loharia, PS
Loharia, District Banswara. (At present in Central Jail, Udaipur).

----Appellant

Versus

State of Rajasthan

----Respondent

For Appellant(s) : Mr. Mridul Jain
For Respondent(s) : Mr. KS Kumpawat, PP

HON'BLE MR. JUSTICE MANOJ KUMAR GARG
Judgment

REPORTABLE
12/05/2025

Instant criminal appeal has been filed by the appellant under Section 374(2) Cr.P.C. against the judgment dated 14.02.1995 passed by learned District & Sessions Judge, Banswara, in Sessions Case No.11/1993 by which the learned Judge convicted and sentenced the appellant as under :

Offence	Sentence	Fine & default sentence
Sec. 376 IPC	7 years RI	Rs.500/- & in default of payment, undergo 1 month RI
Sec. 447 IPC	--	Rs.300/- & in default of payment, undergo 1 month RI

Both the sentences were ordered to run concurrently.

Brief facts of the case are that complainant gave an order report at Police Station Loharia to the effect that the appellant had committed rape with her. On this report, Police registered a case against the accused appellant for offence under Sections 447 & 376 IPC and started investigation.



On completion of investigation, the police filed challan against the accused appellant for offence under Sections 323, 447 & 376 IPC. Thereafter, the charges of the case were framed against the appellant, who denied the same and claimed trial.

During the course of trial, the prosecution examined as many as 7 witnesses. Thereafter, statement of the appellant under section 313 Cr.P.C. was recorded. In defence, no witness was examined by the appellant.

Upon conclusion of the trial, the learned trial court vide impugned judgment dated 14.02.1995 convicted and sentenced the appellant as mentioned above.

Counsel for the appellant submits that the learned trial court has committed a grave error of law in convicting the appellants under Section 447 and 376 of IPC. Counsel submits that a false case has been fabricated against the appellant. It is contended that the FIR in this matter was lodged after a delay of three days from the date of the incident, and the prosecution has failed to furnish a satisfactory explanation for this delay. It is further argued that the agricultural fields of the appellant and the prosecutrix are adjacent, rendering them neighbours. Additionally, it is alleged that the prosecutrix's husband, Hardariya, harbors animosity towards the appellant. In fact, it is claimed that both Hardariya and the prosecutrix assaulted the appellant, and that the false case has been instituted. Moreover, there are significant contradictions, omissions, and improvements in the statements of the prosecution witnesses as well as in the First Information Report. It is also noted that out of the two eyewitnesses to the incident, only one, namely Ramesh, was examined, while the



prosecution failed to examine the other eyewitness, Raman. Further, the medical evidence does not corroborate the narrative presented by the prosecution. Counsel contends that the prosecutrix has concocted a completely false story to inflict harm upon the appellant. The learned trial court, in passing the impugned order of conviction, allegedly failed to properly evaluate the evidence and other pertinent aspects of the case, thereby erroneously convicting the appellant of the offences. Therefore, it is submitted that the judgment of conviction is fundamentally flawed and illegal, warranting its quashing and setting aside. The appellant may be acquitted from the aforesaid offences. To buttress his contentions, counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bibhishan Vs. State of Maharashtra [2008(1) WLC (SC) Criminal 254]** and the judgments of this Court in the cases of **Sanwaliya Vs. State of Rajasthan [2008(2) Cr.L.R. (Raj.) 1071]**, **Mahesh Chand Sharma Vs. State of Rajasthan [2009 (2) R.Cr.D. 51 (Raj.)]**.

On the other hand, the learned Public Prosecutor has opposed the submissions made by the learned counsel for the appellant and submitted that after proper consideration of the evidence, the learned trial court rightly convicted the appellant for the aforesaid offences. The impugned judgment is a detailed order and required no interference from this Court.

Heard learned counsel for the parties and perused the evidence of the prosecution as well as defence and the judgment passed by the trial court regarding conviction of the accused-appellant as well as the case law cited by the counsel for the appellant.



PW-2, Ramesh, an eyewitness, corroborated the occurrence of a quarrel between the prosecutrix and the appellant, stating that the appellant sustained an injury to his leg which was bleeding. PW-3, the husband of the prosecutrix, also supported this account, asserting that he and Ramesh arrived subsequently on the scene and that he himself inflicted an axe wound on the appellant's leg. These testimonies suggest a heated altercation involving physical violence from both sides.

PW-6, the medical officer who examined the prosecutrix, reported the presence of abrasions on her back and injuries on other parts of her body. However, the medical report (Ex-P/4) revealed that no seminal fluid or blood stains were found on her clothing. This discrepancy between her account of being raped and the medical findings significantly undermines her credibility, as the absence of biological evidence pertinent to sexual assault casts doubt on her allegations. Moreover, the prosecution failed to produce an FSL (Forensic Science Laboratory) report, which could have provided scientific validation of the sexual assault claim. It is a well-established principle of law that "while a man may lie, circumstances do not," and in this case, the scientific and medical evidence should have corroborated the prosecutrix's testimony; their absence raises a reasonable doubt regarding the veracity of her version.

Under Section 313 of the Criminal Procedure Code, the appellant has explicitly stated that a quarrel occurred between him, the prosecutrix, and her husband. He admitted that the prosecutrix struck him with a lathi and that her husband inflicted an axe injury on his leg. Notably, the eye-witness, Ramesh and



the appellant's medical report (Ex-P/5) corroborates his version of events. This consistency between his testimony and medical evidence significantly diminishes the strength of the prosecution's case, which is primarily based on the prosecutrix's accusations.

Considering the totality of the evidence, several factors cast serious doubt on the prosecution's case. The prosecutrix's testimony lacks corroboration from scientific and medical evidence, and the discrepancies between her account and the medical report undermine her credibility. The non-production of FSL reports further weaken the allegations. Additionally, the FIR was lodged with a delay of three days without any satisfactory explanation, which is often indicative of a fabricated or exaggerated story. The inherent improbability of the prosecutrix's version, combined with the consistent admissions of violence from both sides and the corroborative medical evidence supporting the appellant's account, suggest a likelihood that the case has been falsely fabricated. It is plausible that the prosecutrix and her husband may have lodged a false complaint to settle personal scores or for ulterior motives. Therefore, in light of the entire evidence and legal principles, the case against the appellant is not conclusively established beyond a reasonable doubt, and the evidence points towards the possibility of false implication. Consequently, the benefit of doubt must be given to the accused, and the case should be acquitted.

In the case of **Radhu Vs. State of Madhya Pradesh** reported in **(2007) 4 Cr.L.J. 4704**, the Hon'ble Supreme Court has observed :



"5. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

In the case of **Yogesh and Ors. Vs. State of Haryana** reported in **AIR 2021 SC 1904** the Hon'ble Supreme Court found that the prosecution's case relied heavily on circumstantial



evidence and the testimony of witnesses. The court noted the lack of conclusive evidence linking the appellants to the crime, such as the absence of forensic evidence of sexual assault and unclear circumstances. Citing the principles of circumstantial evidence from *Sharad Birdhichand Sarda v. State of Maharashtra*, the court concluded that the prosecution failed to prove the case beyond reasonable doubt. The relevant para cited below:-

20) The evidence on record discloses that out of three witnesses, who were stated to be the eye-witnesses, two witnesses, viz, PW12 Rajiv and PW15 Neeraj turned hostile and did not support the case of the prosecution. Both these 10 witnesses are close relations of the victim and there is nothing on record to indicate that they were either put under any pressure or that there was any element of suspicion. Both these witnesses were categorical that the persons who kidnapped the victim were not before the Court in the capacity as the accused.

21) We are thus left with the testimony of PW10 Manoj, the informant and the father of the victim. The reporting made by this witness, based on which the crime was registered neither shows that he was an eye-witness to the occurrence nor does it disclose that the identity of the accused who had kidnapped the victim was in any way known at the stage when the occurrence took place. The statement given by the witness in his cross-examination further discloses that he was sitting inside the house when the incident had occurred and that the shouts of the children and other passers-by had attracted his attention where after the witness came out of the house. In the circumstances, it is extremely difficult to accept PW10 to be an eye-witness to the



occurrence. The observations made by the High Court while placing reliance on his version, in our view, were totally incorrect. Thus, all three witnesses who were claimed to be the eye-witnesses to the occurrence and on whose testimonies, reliance was placed by the prosecution, are of no help.

22) We now turn to the other circumstances on record to see whether circumstances on record by themselves are sufficient to bring home the guilt of the accused.

23) The law on the point of circumstantial evidence cases is very clear and as laid down by this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, the well settled principles are as under:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrI LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to



say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

24) Certain salient features of the instant case are:-

(a) Though the post-mortem report discloses that the victim was sexually assaulted, the FSL Report on record does not establish any connection of the accused with the sexual assault on the deceased victim.

(b) The dead body of the victim was found lying in an open field.

(c) The record is again not clear as to when the present appellants were arrested and how and in what manner their disclosure statements led to the recovery of the dead body.

25) There are of course circumstances like recovery of clothing apparel as well as tiffin box etc. belonging to the victim. However, such recoveries by themselves, in the absence of any other material evidence on record pointing towards the guilt of the accused, cannot be termed sufficient to hold that the case was proved beyond reasonable doubt. Not only those circumstances are not conclusive in nature but they also do not form a cogent and consistent chain so as to exclude every other hypothesis except the guilt of the appellants."

Therefore, this Court opines that judiciary must exercise prudence and discernment, particularly in cases involving serious



allegations such as rape, recognizing that false accusations are not uncommon. Such charges may be motivated by motives such as revenge, extortion, or the desire to evade financial obligations. Therefore, the determination of whether an act of rape has occurred must be based on a thorough examination of the specific facts and circumstances unique to each case. In light of this perspective, and considering the inherent improbability of the allegations presented, this Court is compelled to conclude that the prosecution has failed to establish its case beyond a reasonable doubt. The principles of justice and fairness necessitate that guilt be established with unequivocal evidence, and in the absence of such proof, the benefit of the doubt must be given to the accused. Accordingly, the accused is entitled to be acquitted of the charges under Section 376 IPC.

Based on the comprehensive examination of the facts, circumstances, and the evidence available on record, this Court is of the considered opinion that no case has been established to warrant a conviction under Section 447 of the Indian Penal Code, which pertains to criminal trespass. The evidence presented does not substantiate the essential elements required to establish that the accused unlawfully entered into or remained on the defendant's property with criminal intent. Furthermore, the circumstances do not demonstrate an intention to commit any offence or to cause unlawful dispossession. In the absence of concrete and convincing evidence, the presumption of innocence must prevail. Consequently, the Court finds that the prosecution has failed to prove the guilt of the accused beyond a reasonable



doubt. Accordingly, the accused is entitled to be acquitted of the charges under Section 447 IPC.

Resultantly, the present appeal is allowed. Accordingly, the conviction of the appellant as recorded vide judgment dated 14.02.1995 passed by learned District & Sessions Judge, Banswara, in Sessions Case No.11/1993 is quashed and set aside. The appellant is acquitted of offence under Section 447, 376 IPC. The appellant is on bail; he need not surrender. His bail bonds stand discharged accordingly. Record of the learned court below be sent back forthwith.

Keeping in view, however, the provisions of Section 437-A Cr.P.C. the accused appellant is directed to forthwith furnish personal bond in the sum of Rs.50,000/- and a surety bond in the like amount before the learned trial court within a period of one month, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellant, on receipt of notice thereof, shall appear before Hon'ble Supreme Court.

Record of the trial court be sent back forthwith.

(MANOJ KUMAR GARG),J

1-MS/-