

(2013) 01 MP CK 0129
In the Madhya Pradesh High Court
Case No : Criminal A. No. 345 of 2009

Anand

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 324, 376(2)(f)

Citation : (2013) ILR (MP) 668 : (2013) 5 MPHT 208

Hon'ble Judges : G.D. Saxena, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : Raghuvir Singh, for the Appellant; B.K. Sharma, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—Feeling aggrieved by the judgment of conviction and order of sentence dated 30/3/09 passed by the learned Additional Sessions Judge, Mungaoli, District Guna (M.P.) in S.T. No. 358/06, convicting the appellant under sections 376(2)(f) and 324 I.P.C. and sentencing him to suffer life imprisonment with a fine of Rs. 1,000/-, in default of payment of which, one year's R.I., and again one year's R.I. with a fine of Rs. 500/-, in default of payment of which three months' R.I., the appellant has knocked the doors of this court by preferring this criminal appeal u/s 374(2) of the Criminal Procedure Code. In brief, the prosecution case is that on the date of incident, i.e., on 12/5/06 at 12 o'clock, in the afternoon, the prosecutrix was at her home. At that juncture, the appellant, who is her own father, entered inside the house and bolted the door from inside and thereafter committed sexual intercourse with his own daughter. In the evening, when her mother arrived at, she narrated the entire episode and thereafter the F.I.R. was lodged.

2. The Investigating Agency after investigation, submitted charge-sheet before the committal court which committed the case to the court of Sessions and from

where it was received by the Trial Court for trial. The learned Trial Court on the basis of the averments made in the charge-sheet, framed the charges u/s 376(2) (f) and also u/s 324 of I.P.C. against the accused-appellant, which he denied and requested for trial.

3. In order to bring home the charges, the prosecution examined as many as nine witnesses including the lady doctor and the prosecutrix. The plea taken by the accused in defence is of false implication but in support of his defence, the accused did not examine any witness.

4. The learned Trial Court on the basis of the evidence adduced, found the charges proved and accordingly convicted the appellant and sentenced him for the charges, which we have mentioned in the preceding paragraphs.

5. In this manner, this appeal has been preferred by the appellant.

6. The contention of the learned counsel for the appellant is that the appellant has been falsely roped by his own wife and therefore the conviction is bad in law. On the other hand, the learned Public Prosecutor for the respondent/State in support of the impugned judgment contended that cogent reasons have been assigned by the learned Trial Court and prayed for dismissal of the appeal.

7. We have heard the learned counsel for the parties and also perused the evidence on record. It is well settled in law that when the charge of committing sexual offence has been framed against the accused, the statement of the prosecutrix alone has to be considered and no corroboration is needed provided her statement inspires full confidence. Keeping this principle in our mind, now we shall scan the testimony of the prosecutrix.

8. The prosecutrix is a minor girl having age of 8 years as stated by her mother Kesharbai (PW-1). In her testimony, the prosecutrix has categorically stated that when her mother had gone out of the home in the afternoon, her father entered and bolted the door of his home from inside and after putting off her clothes, he committed rape upon her. The prosecutrix was cross-examined at length by the defence but she remained embedded despite there being roving cross-examination over her. On scanning the testimony of the prosecutrix, we find that her testimony is clear, cogent and trustworthy. In her statement, she has specifically stated the incident. The statement of the prosecutrix is also corroborated by the testimony of the lady doctor Sudha Bhargava (PW-8). The doctor has also proved the MLC report of the prosecutrix which is Ex. D/2. On bare perusal of this document, we find that the lady doctor physically examined the prosecutrix and found the following injuries:-

O/E An adolescent girl with no seen sex characteristics.

(breast, pubic & armpit hair-not developed)

Bruise (in term of human bite) 2 cm. long X 1 cm. width present at left cheek, right arm.

L/E/Internal Examination

Left Labia Majora-Contusion of about 2 X 2 cms present. Recently torn, ragged margin of hymen present whole introitus and area-very tender to touch. Index finger introduced with difficulty and slide is made from fluid taken from posty (posteriorly).

Alleged H/o-Bleeding after sexual assault-clothes through away by accused.

Opinion-In my opinion examined girl has undergone sexual assault recently within 24-36 hours.

All injury (Bruise at left cheek, right arm suggestive of human bite) at private part suggestive of sexual assault.

Bruise is simple in nature and within 24-36 hours. Given for laceration + injury at private parts for age determination patient is referred to District Hospital Guna."

9. Not only this, the undergarments of the prosecutrix were sent for chemical examination in which presence of the semen was found and in this regard the report of the chemical examination (Ex. P/12) is quite material. In these state of affairs, we have no scintilla of doubt in our mind in holding that the appellant has committed offence u/s 376(2)(f) I.P.C. Matthew has said:-

Whoever looketh on a woman to lust after her hath committed adultery with her already in his heart.

Not in the eye of law but according to us when the lascivious man like the appellant entered inside is own home and bolted door of his own home from inside with certainty in his heart and mind he already raped her own daughter and in order to give his lustful thought committed rape over his own daughter.

10. Further looking to the statement of the prosecutrix that the appellant bite her cheek and also her private part, which is also corroborated by the medical evidence, according to us, the learned Trial Court did not commit any error in convicting the appellant u/s 324 of I.P.C. also.

11. At the last, Shri Raghuvir Singh, learned counsel for the appellant submitted that some leniency be adopted in awarding sentence to the appellant. In this case, the appellant who is the father of the prosecutrix has committed rape over his own daughter. We find that he was perverted man and the degree of lust and lascivious attitude of the appellant was of higher degree that even he did not spare his own innocent daughter who did not see even ninth spring of her life and therefore if any leniency is given in such type of cases, it would amount to throttle the law. In the eye of law, we have already held herein above that the appellant has committed an offence u/s 376(2)(f) I.P.C. W.S. Gilbert has said:-

The law is the true embodiment Of everything that"s excellent It has no kind of fault or flaw And I, my Lords, embody the law.

12. Thus, according to us, the sentence of life imprisonment has rightly been awarded to the appellant by the learned Trial Court. This appeal has no force and is dismissed.