
(2019) 07 MP CK 0125

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 914 Of 2013

Ayitu S/O Mahbu Baiga

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 376, 376(1), 506

Citation : (2019) 07 MP CK 0125

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Pratibha Mishra, Sharad Singh Baghel

Final Decision : Partly Allowed

Judgement

1. This criminal appeal under Section 374 (2) of the Code of Criminal Procedure has been preferred by the appellant being aggrieved by the judgment dated 14.3.2013 passed by the First Additional Sessions Judge, Shahdol in ST No.18/2013, whereby the present appellant has been convicted and sentenced as under:

Conviction u/s

Sentence

Default clause

376(1) of IPC

RI for ten years with fine of Rs.50,000/-.

RI for two years.

506 (Part-I) of IPC

RI for one year with fine of Rs.5,000/-.

RI for two months.

2. In brief, the case of the prosecution is that on 24. 11.2012 the prosecutrix (PW-1) appeared in the Police Station Budhar along with her husband and lodged a reported to the effect that on 16.11.2012 i.e. around eight days ago when she and her niece Sunita aged seven years had gone to bath at a water stream (Naala) situated at a short distance from their house, at that time the appellant Ayitu Bega came and shouted at her niece Sunita and drove her away and thereafter took the prosecutrix near the river and committed rape on her. He also threatened her of dire consequences if she tells anybody about the incident. On such complaint an FIR (Ex.P-1) at Crime No.623/2012 was registered against the appellant on 24.11.2012 under Sections 376, 506 of IPC. The prosecutrix was examined medically and subsequently the accused was also arrested. After investigation, a charge sheet was filed and the learned Judge of the trial Court after recording the evidence has convicted the appellant as aforesaid vide judgment dated 14. 3.2013, which is under challenge before this Court.

3. Learned counsel for the appellant has submitted that it is a clear case of false implication of the appellant, as the FIR itself was lodged after inordinate delay of 8 days for which no plausible reason has been assigned by the prosecutrix. It is further submitted that only on account of enmity between the appellant and the prosecutrix and her husband, the appellant has been falsely implicated in the case. It is further submitted that the prosecutrix was a married woman aged 30 years and she has lodged the FIR after around 8-9 days despite the fact that she informed the incident to every other family members and admittedly there is no medical evidence on record to support her theory, as the doctor has only opined that no cogent opinion regarding the rape can be given. Learned counsel for the appellant has further submitted that the prosecutrix was earlier also involved with other person namely Lallu Loniya in a false case and although the prosecutrix has denied this fact but her husband Tingu Baiga (PW-9), in his cross examination has admitted that his wife had earlier lodged a report of rape against Lallu Loniya and thereafter she had also received a sum of Rs.25,000/-. Thus it is submitted that the prosecutrix was prompted by the fact that such report can fetch Rs.25,000/- and with a view to claim the aforesaid sum of Rs.25,000/- by illegal means the present appellant has been falsely implicated. Thus it is submitted that the appellant be acquitted.

4. On the other hand, learned counsel for the State has opposed the prayer of the appellant and has submitted that if the appellant had come out with such a case that on earlier occasion also the prosecutrix had falsely implicated a person namely Lallu Loniya, in that case some cogent evidence ought to have been produced by him instead of giving some suggestion to the prosecutrix and her husband and in such circumstances even if there are material contradictions in their statements regarding the same, its benefit cannot be granted to the appellant. It is further submitted by the learned counsel for the State that if the report has been lodged against any person by the prosecutrix and she had received a sum of Rs.25,000/- because of that report, then there should be some documents to prove the same. It is further submitted that although there is no

medical evidence available to support the case of the prosecutrix, however the deposition of her niece Sunita (PW-2), who is a child witness is reliable as she has also deposed against the appellant and has clearly stated that the appellant threatened her and drove her away but she had also seen the appellant mounting the prosecutrix. Thus it is submitted that the prosecution has proved its case beyond reasonable doubt, hence the present appeal is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the record.

6. From the record it is apparent that the alleged incident took place on 16.11.2012, whereas the FIR of the same was lodged on 24.11.2012 only. In the FIR the reason for delay of 8 days is stated to be on account of fear and also that the prosecutrix had gone to her maternal home soon after the incident. It is also an admitted fact that the prosecutrix at the time of incident was 26 years old and in her MLC report (Ex.P-7A) proved by Dr. Richa Gupta (PW-10) there is no internal or external injury and as per her opinion no exact opinion regarding the rape can be given. Thus the conviction of the appellant has been based on the testimony of the prosecutrix and other witnesses only, as the FSL report is also negative in the present case.

7. A perusal of the deposition of the prosecutrix (PW-1) reveals that soon after the incident she went to her house and informed the incident to her maternal-in-law and sister-in-law as also her husband to come subsequently. She has also stated that after the incident she had gone to her maternal home and lodged the report on the 9th day and the reason of delay is also stated to be the fact that she had gone to her material home. She has also stated in her examination-in-chief that the accused had also threatened her of dire consequences if she tells anybody. In her cross examination she has also admitted that the accused is the son of her husband's uncle. She has also admitted that earlier she had lodged a report against one Lallu Loniya but she has clarified that the report was not of rape but only that he had grabbed her. She has also admitted that in the aforesaid incident she has received Rs.25,000/- only although she has specifically denied that only to get the said sum of Rs.25,000/- once again she has lodged a false report against the present appellant at the instance of Kalla Pandit. She has also admitted that the appellant's son has also been married and he has grandson also.

8. The prosecution has also examined Sunita, the niece of the prosecutrix as PW-2. She was only seven years old at the time of incident and she has also affirmed the story as narrated by the prosecutrix that she had gone along with her aunt the prosecutrix to bath nearby water stream and at that time the appellant Ayitu met and mounted rape upon her aunt and he also drove her away.

9. On due consideration of her deposition it is difficult to hold that this girl Sunita (PW-2), who is aged seven years old is lying about the incident, although she has also stated in her cross examination that prior to coming to the Court she was

also informed by one Kalla Pandit as to what she has to depose but despite the aforesaid admission on her part, she appears to be a reliable witness, as she has been cross examined in detailed and has remained unshaken that the appellant had mounted her aunt. Although, other prosecution witnesses have not supported the case of the prosecution but the deposition of the prosecutrix (PW-1) and her niece Sunita (PW-2), in the considered opinion of this Court are sufficient to hold the appellant guilty. In her cross examination the prosecutrix (PW-1) has not been suggested about any specific enmity between the appellant and the family of the prosecutrix and earlier report lodged by the prosecutrix against one Lallu Loniya is also of no help to the appellant because merely if the prosecutrix, on earlier occasion has been subjected to indecent behaviour by any other person would not entitle the appellant to take the plea that she has falsely been implicated him. The delay in lodging the FIR can also not be said to be inordinate and has been properly explained by the prosecutrix, who appears to be a rustic villager and is not aware of her legal rights, the same appears to be the situation with her family members. In view of the aforesaid discussion this Court has no hesitation to hold that the impugned judgment of the conviction of the appellant under Sections 376(1) and 506 (Part-I) of IPC does not suffer from any illegality.

10. However, so far as the sentence part is concerned, the learned Judge of the trial Court has sentenced the appellant to a term of ten years and fine of Rs.50,000/- has also been imposed. But looking to the evidence collected by the prosecution, that the FIR has been lodged after 8 days, in the considered opinion of this Court the sentence of ten years' RI with fine of Rs.50,000/- is on higher side, hence, the same is hereby reduced to a period of seven years' RI with fine of Rs.5,000/-, in case of any default in making the aforesaid amount of fine, he is further sentenced to 2 months' rigorous imprisonment. Whereas the sentence awarded to the appellant under Section 506 (Part-I) of IPC is hereby maintained.

11. As a result, the present appeal stands partly allowed. It is directed that if the appellant has already undergone seven year's RI, he shall be released immediately on his depositing the fine amount of Rs.5,000/- under Section 376(1) and Rs.5,000/- under Section 506 Part-I of IPC, if not already deposited. Otherwise, he shall be made to suffer the period of 7 years' RI as aforesaid.

12. A copy of this judgment be sent to the trial Court for information and compliance.