

(1989) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : Criminal A. 76/86

Bahadur Singh @ Bahadur Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-08-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 354, 376

Citation : (1991) CriLJ 753

Hon'ble Judges : S.D. Jha, J

Bench : Single Bench

Advocate : Amarsingh, for the Appellant; D.D. Vyas, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.D. Jha, J.—The appellant (hereinafter called "accused") challenged his conviction u/s 376 I.P.C. and sentence of three years R.I. and fine of Rs. 200/-, in default one month simple imprisonment, awarded by First Additional Sessions Judge, Mandleshwar, by his judgment dated 3-2-1986.

2. The accused was prosecuted by P. S. Balwada. The case against the accused was that on 1-2-1985, prosecutrix Musamat Kaweribai (P.W. 1) had gone to the field to graze her cattle. Her husband on that day had gone to village Neemsar. The accused had also come there for grazing his cattle. He conversed with the prosecutrix for some time. At about 5 p.m. addressing the prosecutrix as aunt he requested her to help him, meaning allow him sexual intercourse. The prosecutrix declined the request and stated that she would cry. The prosecution alleges that thereafter accused fell Mst. Kaweribai down and forcibly against her will and without her consent had sexual intercourse with her. Her cries attracted eye witnesses Narendrasingh (P.W.4) and Jaggu alias Jagliya (not examined by the prosecution). The two separated Mst. Kaweribai from the accused who was having sexual intercourse with her. She narrated the incident to her mother in law at her house and then to her husband, after his return. Next day FIR (Ex. P.

5) was lodged at police station Balwada, which was written down by Abdul Nasir (P.W. 6). Dr. Santa Saraf (P.W.5) examined Mst. Kaweribai on 2-2-1985 as per report, Ex. P/3. Investigation completed challan was put up against the accused in the Court of the Judicial Magistrate, First Class, Badawaha, who by order dated 3-7-1985 committed the case to session.

3. The accused pleaded not guilty to charge u/s 376 IPC. In his examination and defence he denied the allegation and pleaded false involvement due to land dispute. He did not examine any witness in defence. He was convicted and sentenced as stated above.

4. In appeal Shri Amarsingh, learned counsel for the appellant has urged that penetration necessary for an offence of rape was not established because Mst. Kaweribai (P.W. 1) does not speak of coitus though persistently questioned on the point. There was no medical evidence on the point. The case appears to be one of consent and for that reason offence u/s 354 I.P.C. would also be not made out. Shri Amarsingh in his submission relied on State Government M.P. v. Sheodayal Gurudayal (AIR 1956 Nag 8) : (1956 Cri LJ 83) for the proposition that where a woman is willing party there is no offence of outraging her modesty.

5. Shri D. D. Vyas, Government Advocate, defended the impugned judgment.

6. Kawaribai (P.W. 1) has stated that he and the accused were grazing cattle in the field for some time. The accused then requested her to allow him to do work meaning to have sexual intercourse. She declined and told him not to make such a request but he did not heed to the protest caught hold of her, fell her down and took her "Ijjat", but she did not explain or say that accused had sexual intercourse with her or that there was penetration. Dr. Shanta Saraf (P.W. 5) as per her report (Ex. P/3) opined that from her examination inference of rape could not be drawn. In this state of evidence of the prosecutrix and Dr. Saraf, the contention of Shri Amarsingh that offence of rape punishable u/s 376 I.P.C. is not made out against the appellant must be accepted.

7. As to whether assault or using criminal force to a woman intending to outrage her modesty punishable u/s 354 I.P.C. is made out against the appellant, Mst. Kaweribai (P.W. 1) has stated that after the accused had fell her down, Narendrasingh (P.W. 4) and Jagliya came to the place and accused then ran away. She does not state that she had cried out. As against this Narendrasingh (P.W. 4) states that he was returning with Jagliya after having collected fuel from the forest, he heard cries of Kaweribai. On going towards the place where she was crying, he saw accused Bahadursingh over Mst. Kaweribai and having sexual intercourse with her. He added that he and Jagliya removed the accused Bahadursingh from over Mst. Kaweribai. He also says that accused told them.

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Then they asked Kaweribai to go to her house and they also came to their houses. It is notable that Mst. Kaweribai herself does not say that she had cried

out when this witness speaks about Kaweribai crying. It appears that the case is one of consent and as the witnesses Narendrasingh Jagliya reached the place, the story of rape was built up.

8. Dr. Shanta Saraf (P. W. 5) as per injury (Ex. P/ 3) had found a contusion 1/4" x 1/4" over right arm in its middle medially. This injury according to the witness was a simple injury caused by hard and blunt object and duration was within 24 hours. Thus injury is not necessarily suggestive of use of force. It could be caused lying or falling on the ground even otherwise. No importance can be attached to this injury in the facts and circumstances of this case.

9. I find that prosecution has failed to bring home any charge against the accused-appellant. Conviction and sentence imposed against the accused-appellant is set aside and the appeal is allowed. Appellant is on bail, his bail bounds are cancelled.