
(2011) 01 MP CK 0042
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 1489 of 1995

Balakram	Vs	APPELLANT
The State of Madhya Pradesh		RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 323, 376, 451, 506

Citation : (2011) 2 JLJ 189

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.—The Sessions Judge, Betul passed the impugned judgment dated 20.09.95 in S.T. No. 85/95 by which the Appellant/accused has been convicted u/s 376 of I.P.C. and sentenced to undergo Rigorous Imprisonment for 7 years.

2. Being aggrieved the Appellant/accused has preferred this appeal u/s 374(2) of Code of Criminal Procedure

3. It is undisputed that prosecutrix Suganti bai (P.W.-1) is a sister-in-law(bhabhi) of Appellant/accused Balakram and witness Bhure (P.W.3) is a brother-in-law(jeth) of prosecutrix.

4. The prosecution case in short is that husband of prosecutrix(P.W.1) was in Bhopal Jail therefore she was living separately along with her 4 years child in village Gyaraspur. On 17.03.95 at about 10.00 p.m. Appellant/ accused Balakram entered into her house and committed rape on her.

5. According to prosecutrix, she tried to shout but the Appellant threatened her and said that if she disclose this incident to any one then he will desert her from the house. It is, further alleged that after half an hour of this incident, Appellant/ accused further committed rape on her and when she resisted, she was assaulted

by the Appellant. Therefore she received the injuries on different part of her body.

6. It is further, alleged that due to the threat given by the Appellant/accused she did not disclose this fact to any one for next two days. On third day she disclosed this fact to village Kotwar Soorat Lal (P.W.2) and Bhure(P.W.3) brother-in-law(jeth) of the prosecutrix and lodged the report on third day i.e. 20.03.95 in Police Station Amala vide Ex. P-10.

7. The prosecutrix was sent to medical examination. She was examined by lady doctor and examination report(Ex. P-9) was prepared.

8. Appellant/accused was arrested. He was also medically examined. After usual investigation Appellant/accused was charge-sheeted.

9. Learned Session Judge framed the charges against the Appellant under Sections 451, 506 Part-II, 376, 323 of I.P.C.

10. The Appellant abjured the guilt and pleaded that he is falsely implicated and further pleaded that prosecutrix is having illicit relation with one Ramadhar, being a near relative of prosecutrix Appellant/accused objected and beaten her therefore, he was falsely implicated.

11. After completing trial, on appraisal of evidence of record Learned Sessions Judge acquitted the Appellant/ accused under Sections 451, 506 Part-II, 323 of I.P.C. but convicted him u/s 376 of I.P.C. and sentenced as mentioned above. Hence, this appeal.

12. Learned Counsel for the Appellant submitted that trial Court failed to appreciate the evidence on record in its proper perspective and committed error in passing the impugned judgment.

13. On the other hand learned Panel Lawyer supported the impugned judgment and finding of the trial Court.

14. I have perused the impugned judgment, evidence and other materials on record.

15. Prosecutrix(P.W.1) deposed that on the fateful night she was sleeping, after closing the door of her house. At about 10-11 p.m. in the night Appellant/accused entered in her house after broken the door of house and caught hold her. She tried to ran away, then Appellant/accused assaulted her by stick and then committed the rape on her. She further deposed that witness Bhure(P.W.3) came over there on her hue and cry and he saved her. She further deposed that she narrated the incident to Sarpanch Ramsingh and on the very same night Sarpanch sent him to Kotwar, but Kotwar was not available therefore, she lodged the report after 2-3 days.

16. Later on she added that her brother-in-law(jeth) Bhure and father-in-law threatened her not to report the matter, therefore, she reported the matter belatedly. But this fact not found place in F.I.R., therefore explanation for delayed

F.I.R. can not be said to be reliable.

17. Soorat lal(P.W.2) is a village Kotwar. He did not support the prosecutrix therefore, he was declared hostile by the prosecution. Further, he deposed that prosecutrix came to him in the fateful night and told him that Appellant/accused beaten her.

18. Bhure(P.W.3) is a brother-in-law of prosecutrix also not supported her and was also declared hostile by the prosecution.

19. In these circumstances, only statement of prosecutrix remains on record. No doubt if statement of prosecutrix found to be truthful and there exist no circumstances which cast on shadow of doubt on her veracity, conviction can be based on single testimony of prosecutrix.

20. Keeping in mind aforementioned principle of appreciation when I carefully peruse the cross-examination of prosecutrix, I am of the view that single testimony of prosecutrix can not be said to be reliable because prosecutrix herself stated in her examination-in-chief that at the time of incident witness Bhure(brother of Appellant/accused) came over due to hue and cry made by her and he saved her. In her cross-examination, para 9, she categorically admitted that as soon as Appellant entered in her house and assaulted her, she made hue and cry, therefore his brother-in-law Bhure(P.W.3) came over there and he saved her. She further deposed that immediately Appellant/accused went from her house, she immediately rushed to the Sarpanch Ramsingh to narrate the incident.

21. There is material omission brought on her cross-examination from her police statement(Ex. D-1) in regard to the fact that Appellant/accused entered the house after broken the door of the house. Trial Court also not believed her in regard to broken of door, therefore Appellant was acquitted to the charge u/s 451 of I.P.C.

22. On perusal of FIR(Ex. P-10) it reveals that according to prosecutrix she narrated the incident to witness Bhure, brother-in-law(jeth) of the prosecutrix after two days of the incident but in the statement before Court she deposed that Bhure came over there at the time of incident and saved her.

23. In these circumstances, defence of the Appellant/ accused appears to be probable that prosecutrix was entangle with one Ramadhar by taking the advantage of absence of her husband who was in jail. Being a near relative Appellant had assaulted her and according to prosecutrix on the same night Bhure(P.W.3) brother-in-law(jeth) of the prosecutrix also saved her.

24. This fact is also precepted from her cross-examination, para 9 that as soon as Appellant accused entered in her house he beaten her, she made hue and cry and Bhure(P.W.3) came over there and saved her.

25. In these circumstances, single testimony of prosecutrix can not be said to be reliable. Because her statement is not corroborated by medical evidence and FIR.

F.I.R. appears to be product of after thought. In these circumstances, prosecution failed to prove the offence u/s 376 of I.P.C. against the Appellant/accused and trial Court has committed error in not appreciating the evidence on record in its proper perspective.

26. Thus appeal succeed. Appeal is allowed and impugned judgment dated 20.09.95 is hereby set aside and Appellant is acquitted to the charge u/s 376 of I.P.C.

27. Appellant is in jail he be set free forthwith.

28. Record of the trial Court be sent back immediately along with the copy of judgment for compliance and necessary action.