
(2017) 01 MP CK 0249
In the Madhya Pradesh High Court
Case No : 607 of 2015

Kashiram (Deceased) through LRs Durgashankar and another	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 161](#)/
[Section 164](#), [Section 227](#) -
Calling for records to exerci

Citation : (2017) 01 MP CK 0249

Hon'ble Judges : S K Awasthi

Bench : Division Bench

Advocate : R K Sharma, L K Mishra

Final Decision : Disposed Of

Judgement

1. The applicant/accused has filed this criminal revision under Section 397 read with Section 401 of Cr.P.C. against the order dated 08.11.2014 passed by the 5th Additional Sessions Judge, Gwalior in Sessions Trial No. 188/2015, whereby the charges under Section 323 and 376-D of IPC has been framed against the applicant.

2. Brief facts of the case are that on 08.11.2014 prosecutrix lodged a report at police station Bahodapur that prosecutrix and co-accused Dheeraj Goyal met in Vinay Nagar, Bahodapur and thereafter he took the prosecutrix to his house where the applicant (wife of Dheeraj Goyal) was not present. After some time Dheeraj Goyal caught hold hand of the prosecutrix and also acted in obscene manner with the prosecutrix. After some time applicant came there and asked that why she has come to her house and gave beating to prosecutrix. On the basis of this report police registered FIR bearing crime No. 872/2014 under Section 354,323 read with Section 34 of IPC. After recording the statement of prosecutrix and witnesses, the charge-sheet was filed under Sections 294,

354, 323 and 376-D read with Section 34 of IPC before the competent Court.

3. After committal of the case an application was filed under Section 227 of Cr.P.C. on behalf of applicant for discharging her from the case but the same was dismissed and the learned trial court framed the charges against the applicant under Sections 323 and 376-D of IPC which has been assailed in this revision application.

4. Learned counsel for the applicant submits that as per the FIR and initial statement of prosecutrix recorded under Section 161 of Cr.P.C. that the applicant was not present in her house when prosecutrix went along with co-accused Dheeraj Goyal according to her own will and when applicant came there and saw the prosecutrix, then she gave beating to the prosecutrix. It might be natural conduct of a wife to beat a lady due to sudden impulse when she saw the prosecutrix with her husband in her absence at home. It is evident that the applicant did not voluntarily cause any hurt to the prosecutrix. Thus, even as per the prosecution case no offence under Section 323 or 376-D of IPC is made out against the applicant. Hence, learned trial Court has committed gross error to frame the charge under Sections 323 and 376-D of IPC against the applicant.

5. Learned Panel Lawyer for the State supported the impugned order and prays for rejection of this revision petition.

6. The wordings of Section 376 of IPC start with "a man". Hence, the intention of legislature is ample clear that only a man can commit rape within the meaning of Section 376 of IPC. Thus, there is no scope to incorporate commission of rape by woman under Section 376-D of IPC. In case of Omprakash Vs. State of Haryana reported in (2015) 2 SCC 84 the Hon'ble Supreme Court has held that:-

"17. In the light of the above provisions of law, we have carefully gone through the record and considered the cases referred to above. We find that in the present case, there is positive evidence adduced by the prosecution that accused Chhoti has aided the commission of offence by asking the victim to go to her house to take "lassi" where accused Om Prakash and Kartar Singh bolted the room and subjected the victim to rape. From the record, it appears that for about an hour, the victim was not allowed to go out from the house where she was subjected to rape. It was the house of accused Chhoti and her husband where the incident is said to have taken place. As such, both the courts below have rightly concluded that it cannot be said that accused Chhoti has not abetted the crime in the manner suggested by the prosecution. We concur with the view taken by the courts below. Intentional aiding of the offence is covered by the third clause mentioned in Section 107 IPC."

7. From the above mentioned aspect, it is not worthy that a woman though cannot commit rape, can still be held liable for abetment under Section 109 of IPC. "abetment is separate and distinct offence than rape" and if the act abetted is committed in consequences of the abetment, then the person i.e. man or woman abetting such crime is liable to be punished under Section 109 of IPC.

Thus, a woman can definitely be held liable for abetment to rape under Section 109 of IPC and can be punished accordingly.

8. No doubt, in the FIR and statements of the prosecutrix dated 08.11.2014 recorded under Section 161 of Cr.P.C., it was alleged that the husband of the applicant Dheeraj Goyal caught hold her hand and acted in obscene manner with the prosecutrix. After some time the applicant came there and gave beating to the prosecutrix but in the statement recorded on 21.11.2014 under Section 164 of Cr.P.C. and on 22.12.2014 under Section 161 of Cr.P.C. prosecutrix alleged that the co- accused Dheeraj Goyal applied his hand over whole body of the prosecutrix. On her alarm the applicant came there and helped her husband in committing such crime.

9. On perusal of the statement of the prosecutrix recorded under Section 161 and 164 of Cr.P.C., prima facie it shows that an offence is made out against the applicant and at this stage, this Court has not to see whether the allegations made in the aforesaid statements are correct or not.

10. In my opinion, looking to the allegation made in the statements under Section 161 and 164 of Cr.P.C. by the prosecutrix, prima facie it seems that the applicant committed an offence under Section 323 and 376 read with Section 109 of IPC.

11. In view of aforesaid discussion, the impugned order is modified to the extent that instead of charge under Section 376-D of IPC, the trial Court is directed to frame the charge under Section 376/109 of IPC against the applicant, however, remaining part of the order shall remain intact.

12. With the aforesaid modification in the order dated 08.11.2014, the revision petition stands disposed of.