
(1997) 04 MP CK 0045

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 26 of 1995

Kuthu alias Tejram Rawat and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Penal Code, 1860 (IPC) — Section 34, 354

Citation : (1998) CriLJ 960

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Z.N. Shah, for the Appellant; P.D. Gupta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Misra, J.—The petitioners call in question the propriety of the judgment passed in Criminal Appeal No. 68/92, whereby, the learned First Additional Sessions Judge, Raigarh affirmed the judgment of conviction and order of sentence passed in Criminal Case No. 113/90 by Judicial Magistrate First Class, Raigarh in this revision preferred u/s 401, of the Code of Criminal Procedure.

2. Stated briefly, the prosecution case is that at about 10/11 a.m. on 2-1-90 when Ku. Dulitabai (PW. 1), aged about 12 years, was watching paddy crop the accused petitioners went there and told her that she was required by her elder sister to render assistance as she had collected wood near the bank of the river. Trusting them she went towards the river as told to her by the accused persons but she did not find her sister juncture the petitioners expressed their desire to have sexual intercourse with her. As she did not accede to their carnal desire and cried for help, the accused Kuthu alias Tejram caught hold of her. She fell down on the ground and the said accused pressed a bunch of leaves in her mouth while the other accused opened her legs and untied the garments. Before they could succeed in their perverse design, hearing some noise, they fled away from

the place of occurrence. One Rathi Kumar, a boy aged about 3-4 years, was also with the victim girl and was weeping at the spot. After being relieved from the ordeal while she was coming back to her house she met her mother on the way and narrated the entire incident to her. The incident was also narrated to her uncle Malia (PW. 3) at home. As FIR, Ex. P. 1, was lodged at the police Station at Chakradhar Nagar, Raigarh by the prosecutrix and the same was recorded by the Sub-Inspector, Pramod Kumar Pandya (PW. 4). After completing the other formalities and recording the statements of witnesses chargesheet was laid against the accused persons for the offence u/s 354/34 of the IPC.

3. The accused persons completely denied the charge-sheet. Their further stand was that there are two factions in the village and the informant Dulita Bai (PW. 1) belongs to the opposite compaign and, therefore, they have been falsely implicated in a crime of the present nature.

4. To substantiate the charge against the accused persons the prosecution examined five witnesses. P.W. 1 is the prosecutrix herself, P.W. 2 Sukharibai, is the mother of the victim girl; P.W. 3 Malia, is the uncle of P.W. 1; P.W. 4 Pramod Kumar Pandya, is the Investigating Officer and P.W. 5 is Shekhganiullah is the ASI. On behalf of the defence one witness was examined.

5. The learned trying Magistrate on consideration of the entire evidence on record accepted the prosecution case and rejected the defence version of false implication concluding that the accused persons were guilty of the offence and convicted them u/s 354/34 of the IPC and sentenced each of them to undergo rigorous imprisonment for four months. On appeal being preferred the learned appellate Court held that the conclusions arrived at by the learned Magistrate were infallible and accordingly, dismissed the appeal.

6. Mr. E. M. Shaha, learned counsel for the petitioners has contended that both the Courts below have fallen into error by placing reliance on the evidence of PWs. 2 and 3 as they are extremely interested witnesses being closely related to the victim girl. He has also contended that in view of availability of materials to establish that there is acrimonious relationship between the family of the accused and P.W. 3. The evidence of P.W. 3 should have been discarded being motivated. It has also been convassed by the learned counsel, that the testimony of the prosecutrix is not worth credence inasmuch as there are irreconcilable contradictions in her evidence. Emphasis has also been laid that the courts below have not considered the probability of the occurrence and that alone goes to the root of the sustainability of the impugned order. Lastly, the learned counsel has submitted that the petitioner was a young man of 21 years at the time of occurrence and has already been spent some time in custody and, therefore, he should be leniently dealt with Mr. P. D. Gupta learned Government Advocate appearing for the State, in support of the impugned order, has proponed that the judgment passed by the Courts below do not suffer from any infirmity warranting interference by this Court in exercise of revisional jurisdiction. He has also seriously opposed the submission relating to lenient delineation relating to the

quantum of sentence.

7. On a perusal of the judgment of the Courts below I find that they have placed reliance on PWs. 2 & 3, the mother and uncle of the victim girl as their version have lent requisite corroboration to the testimony of the P.W. 1. It has been observed by them that the close relationship is not a factor to discard the version of the said witnesses. Mr. Shaha has strenuously urged before this Court that due to animosity between the two families the prosecutrix has been set up to have vengeance by falsely implicating the accused persons. This aspect has been dealt in detail by the appellate Court. True it is, there is some evidence that a criminal case is pending against PW. 3 being initiated by the close relations of the petitioner accused No. 1 but that alone would not make his evidence impeachable. In a case of this nature a small girl of 12 years and student of IVth class has too narrated before the mother and the uncle. Eye witnesses are not expected to be around to witness 1998 Cri. L. 61 III this kind of an occurrence. That apart hostility is not a factor for discarding the testimony of a particular witness. The Court has the duty to be cautious and scan the evidence of such a witness with more circumspection. On close scrutiny of the judgment of the Courts below, I am of the considered opinion that the evidence of the P.W. 3 has been properly scrutinised and there is no apparent error in the analysis. Quite apart from the above, the prosecutrix was student going to school and in normal circumstances she would not be made to expose herself to the shame and ignominy as that would affect the equilibrium and the sensitivity of a young girl. The explanation offered by the defence that the P.W. 1 has been chosen as a medium for false implication appears to be a figment of imagination, far from the truth, and an exhibition of the last straw of the defence mechanism. I have also, on a perusal of the evidence of the prosecutrix, notice that she has expressed sustained consistency in her narration of the occurrence, the traumatic experience undergone by her and there is no compelling reason not to accept her version. On a consideration of the materials on record, I am of the considered view that no error is discernible in the impugned judgment and they have to have the stamp of approval of this Court.

8. Now to the last plank of the submissions of the learned counsel for the petitioners relating to the quantum of punishment. Mr. Shaha has brought to my notice that both the petitioners were less than 21 years of age on the date of occurrence and there has been no previous conviction. It is true, absence of criminal antecedent matters in certain cases. It is also equally true age is also taken into consideration while imposing sentence. But the gravity of the crime and its impact on the victim and effect on the society have to be given appropriate weightage. Youth does not have the licence to commit offence and claim for exoneration. It has to be kept in mind an offence of the present nature, is not only an offence against the physical frame of another person but, in fact, it is an offence against dignity of another individual. An Act of molestation is against human morality and a vulgar exhibition of complete disregard of ethics, values, and non-concern for others' emotions, sentiment and feelings.

Imposition of sentence as to have the manifestation of criminal justice keeping in view of the cry of the society. In the case at the hand, the petitioners adopted the method of deception by taking the prosecutrix to a lonely place and in a cruel manner pushed in a bunch of leaves into her mouth, untied her under garments in their design to satisfy their carnal desire. Their act is irrefragably a reprehensible one. They became quite oblivious of the agony and anguish of a young helpless girl. To deal with them leniently would amount to a demonstration of misplaced sympathy. I am of the considered view that the sentence imposed does not call for interference.

9. Consequently the criminal revision fails and the same is accordingly dismissed.