

(2014) 09 CHH CK 0008
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 3125 of 1998

Prabhuram Satnami

APPELLANT

Vs

State of Madhya Pradesh (Now C.G.)

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 122, 354, 376, 399, 506

Citation : (2015) 1 CGLJ 442 : (2015) CriLJ 1275

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Ravi Maheshwari, Advocate for the Appellant; O.P. Sahu, Govt. Advocate, Advocate for the Respondent

Judgement

Prashant Kumar Mishra, J.

1. This appeal is directed against the judgment of conviction and sentence dated 18/12/1998 passed by the II Additional Sessions Judge, Baloda-Bazar in S.T. No. 458/96 whereby learned Additional Sessions Judge convicted the appellant under Section 376 read with Section 511 of IPC and sentenced him to undergo rigorous imprisonment for five years with fine of Rs. 500/-, in default of payment of fine, to further undergo simple imprisonment for three months.

2. Appellant has been convicted for attempting to commit rape with the prosecutrix at 06.45 am on 11/01/95.

3. FIR Ex. P/1 was lodged by the prosecutrix at 14.15 hours on the date of incident itself. She informed the Police that in the morning she had gone to attend nature's call in the nearby agricultural field. When she was about to return, the appellant came to the place and threatened that he would ruin her. He caught hold of her, fell on the ground and climbed over her. She pushed the appellant by kick and raised alarm on which the appellant pressed her mouth. When she tried to raise further alarm, the appellant freed her and went away. When she was coming back weeping, the appellant again threatened that if the

incident is disclosed to anybody she would be killed. The incident was informed to Chamar Sai, Gendi Bai and her husband. Mother of Abdul had also heard the alarm raised by the prosecutrix. She stated in the FIR that she has pain over her neck. After recording the FIR, the Police conducted the investigation and submitted the charge-sheet for committing offence under Section 376 and 506 of the IPC and the trial Court framed charges under the said sections. At the end of trial, the appellant has been convicted under Section 376/ 511 of IPC.

4. Learned counsel for the appellant has argued that even if the prosecution case is believed, the offence would fall under Section 354 of IPC and not under Section 376 read with Section 511 of IPC, therefore, the impugned judgment and conviction deserves to be set-aside.

5. Learned State counsel would support the impugned judgment.

6. Prosecutrix has been examined as PW-1. She has supported the version stated to the Police as recorded in the FIR. Her evidence is duly supported by PW-2 Rekhabai who happens to be her sister-in-law (Devrani), PW-4 Peer Bi, PW-5 Chamar Sai (father-in-law of prosecutrix). PW-6 Harishchandra is a witness who was one of the person assembled in the house of the prosecutrix when a meeting was convened immediately after the incident. This witness has also supported the evidence of prosecutrix by saying that she had narrated the incident to the villagers, who assembled in the house of prosecutrix. PW-8 Hariram Sahu is another witness, who has supported the case of prosecution. PW-9 Dr. (Smt.) Bhanu Deshlahra has medically examined the prosecutrix. The prosecutrix had informed this Medical Officer about pain over both the ears and neck.

7. From the above evidence, it would clearly appear that the prosecutrix has neither resiled from her version nor diluted case against the appellant. Her version finds support from other witnesses, therefore, it is fully proved that the incident had happened wherein the appellant caught hold of the prosecutrix, fell her on the ground and tried to disrobe her by climbing over the prosecutrix.

8. The question now to be determined is as to whether the act of the appellant would amount to attempt to commit rape or it would amount to outraging the modesty of the prosecutrix.

9. The law as to when offence under Section 376 read with Section 511 of the IPC would apply has been dealt with by the Supreme Court in Koppula Venkat Rao Vs. State of Andhra Pradesh, . Paras 8 to 11 reads as under:-

"8. The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law punishes the person attempting the Act. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to

commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

9. A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."

10. In Attorney General's Reference (No. 1 of 1992) [1993] 2 All ER 190 Lord Taylor of Gosforth CJ, while presiding over the Court of Appeal, Criminal Revision, held thus:-

"In order to raise a prima facie case of attempted rape under s. 1 (I)a of the Criminal Attempts Act 1981 it is not necessary for the prosecution to prove that the defendant had with the requisite intent necessarily gone as far as to attempt physical penetration of the victim's vagina. If there is evidence from which the intent can be inferred and there are proved acts which a jury could properly regard as being more than merely preparatory to the commission of rape and as showing that the defendant had embarked on committing the offence that is sufficient to raise a prima facie case of attempted rape."

11. When the evidence is closely scrutinized, it is manifest that the appellant not only tried to use criminal force in order to outrage the modesty but had undertaken further steps like felling her on the ground, trying to disrobe her and thereafter climbing over her. Had the prosecutrix not kicked the appellant and raised alarm, the appellant would have succeeded in committing rape. The intention of the appellant appears to be of committing rape and in furtherance thereof he did the above mentioned acts. Outraging the modesty of a woman may occur when there is indecent assault. In the case in hand, the appellant not only committed indecent assault but appear to be determined to gratify his passion which he could not succeed because of the resistance offend by the prosecutrix. Thus the intention and preparation to commit an attempt to rape exists and the appellant has rightly been convicted for committing offence under Section 376/ 511 of IPC.

12. The appellant has been convicted for attempt to commit rape. The minimum sentence for committing rape is rigorous imprisonment for seven years. Under Section 511 of IPC, when no express provision is made under the IPC for punishment of such attempt, the person attempting to commit the offence shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one and half years of imprisonment or as the case may be, one and half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both. The present incident has taken place in the year 1995, thus, almost 19 years have elapsed thereafter.

13. Considering the measure of punishment to be awarded under Section 511 of IPC and other relevant aspect of the matter, I find that the jail sentence imposed on the appellant deserves to be reduced to one and half of the minimum sentence provided under Section 376 of IPC. Thus the jail sentence of five years awarded to the appellant is reduced to 3 ½ years.

14. For the foregoing, conviction imposed on the appellant under Section 376 read with Section 511 of the IPC is hereby maintained, however, his sentence is reduced to 3½ years. His bail bonds are cancelled and he be arrested forthwith to serve out the remaining sentence imposed upon him.

15. The appeal is allowed in part.