
(2017) 05 MP CK 0039
In the Madhya Pradesh High Court
Case No : 837 of 2000

Raju Khan @ Sadik Khan

APPELLANT

Vs

Hasina Bano & Another

RESPONDENT

Date of Decision : 25-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 374](#) - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 376](#),
[Section 313](#) - Punishment for rape -

Citation : (2017) 05 MP CK 0039

Hon'ble Judges : Rajeev Kumar Dubey

Bench : Single Bench

Advocate : Anand Soni, ?C.S.Ujjainiya

Final Decision : Disposed

Judgement

1. This criminal appeal has been filed under Section 374 of Code of Criminal Procedure against the judgment of conviction dated 27.6.2000 passed by Sessions Judge, Indore in S.T.No.405/1998, whereby learned Sessions Judge found the appellant guilty for the offence under Section 376 of IPC and sentenced him to undergo seven years RI with fine of Rs.1,000/- with default stipulation.

2. Brief facts of the case are that prosecutrix (PW3) (name and identity of the prosecutrix imposed by law contained in section 228A of IPC is not disclosed) and her mother Shanti Bai (PW-1) resident of Shanti Nagar, Musakhedi, Indore used to work as petty labourers. On 4.8.1998 Shantibhai could not go for work on account of illness of younger brother of prosecutrix, whose father was also out of Indore. Thus, the prosecutrix alone came to work with contractor Rewaram, who had been constructing a building in Ranipura, Indore. Accused/appellant Pintoo @ Mukesh was also on work as labourer on that site, whom prosecutrix already knew. On the day, at the time of rest for lunch at about 1.00 PM

prosecutrix went upstairs for taking her food, where appellant Pintoo @ Mukesh came and caught hold of prosecutrix and committed rape with her under the threat of murder. Since nobody was downstairs, prosecutrix could not tell the incident to anybody and returned her home at 3.00 PM, where she narrated the incident to her mother. Since her father was not available, so when her uncle returned at night she accompanied by her mother and uncle went to Police Station for lodging the report. The prosecutrix lodged FIR Ex.P/2 at P.S., Mahila Thana, Indore. On that F.I.R. Crime No.71/1998 was registered against the appellant for the offence punishable under Section 376 and 506 of IPC and investigate the matter. During investigation prosecutrix was medically examined. Spot map was prepared. Doctor also prepared slide of vaginal discharge of prosecutrix and also seized her Salwar and sent to Police Station in a sealed packet along with seal impression which were also seized by the police and seizure memo Ex.P/6 was prepared. The statements of prosecutrix (PW-3), her mother Smt.Shanti Bai (PW-1) and Santosh (PW2) were recorded and accused was arrested on 5.8.1998 and was also medically examined where he was found capable of doing intercourse. Doctor also seized underwear of accused/appellant and also prepared slide of his semen and after packing it sent that articles to P.S., Mahila Thana. Where after seizing that article seizure memo Ex.P/8 was prepared. The seized articles were sent for examination to Regional Forensic Science Laboratory, where human semen and blood stain was noted on slides of vaginal discharge of prosecutrix and on her Salwar. After investigation Police filed charge sheet against the appellant before the Court. On that charge sheet S.T.No.405/1998 was registered against the appellant. Learned Sessions Judge framed charge against the appellant for the offence punishable under Section 376 of IPC. The accused abjured the guilt and took defence that he has falsely been implicated in the case. The prosecution produced as many as five witnesses to prove its case. However, after trial learned Sessions Judge found the appellant guilty for the offence punishable under Section 376 IPC and sentenced him as aforesaid. Being aggrieved with the same appellant has filed this criminal appeal.

3. Learned counsel for the appellant submitted that the prosecutrix in her statement clearly stated that on the date of incident appellant did not commit rape with her and some quarrel occurred with the appellant, so her uncle lodged the report against the appellant. The Police did not tell her that what had been written in the report. Other witness Santosh (PW2) also turned hostile and did not support the prosecution story. The first information report has also been delayed so that the story of the prosecution becomes doubtful. Learned trial Court without considering these facts wrongly found the appellant guilty for the offence punishable under Section 376 IPC.

4. On the contrary learned counsel for the State submitted that although, prosecutrix in her examination-in-chief denied from the fact that appellant committed rape with her on the date of incident, but when Government pleader asked leading question to her. She clearly deposed that on the date of incident appellant committed rape with her. The complete statement of the prosecutrix

shall be read together, and not in piecemeal. Prosecutrix statement is also corroborated from the statement of her mother Smt.Shanti Bai and also supported from the FSL report. So there is no reason to disbelieve the statement of prosecutrix. From her statement which is also corroborated by other evidence, it is clearly proved that at the time of incident appellant committed rape with prosecutrix. So learned trial Court rightly found appellant guilty for the offence under Section 376 of IPC.

Point of determination in this appeal is whether the conviction and sentence awarded by the trial Court to the appellant under Section 376 of IPC is liable to be set aside for the reasons stated in the memo of appeal and raised during argument.

5. On the fact of rape prosecutrix (PW-3) deposed that on the date of incident her mother Shantibhai could not go for work with contractor Rewaram. She alone came to work, where in the noon at the time of lunch appellant caught hold of her and committed rape with her. Her statement was also corroborated from FIR EX.P/2, which was also proved by Nisha Reddy (PW-5), the then Sub- Inspector, Mahila Thana, Indore and from the statement of her mother Shanti Bai (PW-1), who also clearly deposed that on the date of incident her daughter prosecutrix alone went to work with contractor Rewaram. She returned home from work at 3.00 PM and told her that appellant committed rape with her. At that time her husband was not at home, she reported the incident to Chhatar Singh and with whom she went to Mahila Thana, where prosecutrix lodged the report Ex.P/2.

6. Although, prosecutrix (PW-3) in para 2 of her examination-in- chief deposed that accused Pintoo did not commit rape with her and on account of quarrel between her and appellant, her mother lodged the report against the appellant but when Public Prosecutor asked leading questions to her, she supported the prosecution story in toto and stated which reads as thus;-

"VERNACULAR MATTER OMITTED"

7. Only on the count that on being asked leading questions by the prosecution in her further statement prosecutrix deposed that appellant committed rape with her and while denied the fact in her earlier examination-in-chief the statement of Prosecutrix regarding rape cannot be discarded. Her statement will read as a whole not in a piecemeal. She is an illiterate lady. It appears from her statement that due to hesitance and shame she earlier deposed that appellant did not commit rape with her, but on asking leading question she told the truth. Her statement regarding rape was corroborated from other evidence also. Although, the FIR Ex.P/2 was lodged after a gap of about eleven and half hours of the incident at 1.00 AM in the night, whereas the incident is said to have occurred at 1.30 PM, but this delay is satisfactorily explained by the prosecution. Shanti Bai (PW-1) clearly deposed that prosecutrix returned to home at 3.00 PM and when prosecutrix's uncle Chhatar Singh came to home from duty in the night at 12.00 - 1.00 AM, they went to lodge the FIR. Apex court in the case of Satpal singh vs

State of Haryana reported in (2010) 8 Supreme court Cases 714 held "In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon". So only on the ground that incident occurred at 1.30 PM, while the FIR was lodged at 1.00 AM in the night, the prosecution story cannot be doubted.

8. Although, Santosh @ Prakash (PW-2) did not support the prosecution story on the fact that appellant Pintoo @ Mukesh and prosecutrix remained alone at the time of lunch and the fact that prosecutrix was weeping at the time of returning from site yet he has stated to have seen her sad face. In the case of C. Muniappan v. State of T.N., (2010) 9 SCC 567, the Supreme Court has held that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. So the statement Santosh @ Prakash (PW-2) also supported the prosecution story up to that extent that when Santosh returned from lunch the face of prosecutrix was sad. FSL report Ex.P/10 also reveals the presence of semen and human spermatozoa on slide of vaginal discharge and cloths of the victim which is also a strong corroborative piece of evidence to support the prosecution version even if it has not been established that the spermatozoa was that of accused.

9. In this regard Nisha Reddy (PW-5) clearly deposed that after registering the crime on the report of prosecutrix she got her medically examined and after her examination report Ex.P/4 and one sealed packet containing cloth (salwar) and slide of vaginal discharge of prosecutrix was received , which she seized and prepared seizure memo Ex.P/6 and P/7. On 5.8.1998 also arrested the appellant and prepared arrest memo Ex.P/8 and also got the appellant medically examined. After examination of appellant medical report Ex.P/3 was received, which was proved by Dr.Vijay Agrawal. Nisha Reddy (PW-5) further deposed that she sent seized articles to FSL from where report Ex.P/10 was received. In that report it is also mentioned that on slide of vaginal discharge of prosecutrix and her Salwar human blood and semen were found, which also corroborated the prosecutrix statement that at the time of incident appellant committed rape with the prosecutrix. Even appellant admitted during his examination under section 313 of IPC that on the date of incident at noon when prosecutrix was alone at site he caught hold of her. So, there is no reason to disbelieve the prosecutrix statement that appellant committed rape with her. In the considered opinion of this Court, learned trial Court did not commit any mistake in finding the appellant guilty for the offence punishable under Section 376 IPC. 10. As far as sentence is concerned the learned Judge has sentenced appellant under Section 376 IPC to

undergo Seven years RI with fine of Rs.2,000/-. For the offence under section 376 Minimum sentence is prescribed as seven years RI. So learned trial Court did not commit any mistake in awarding seven years rigorous imprisonment, which is quite adequate and this Court does not find any reason to interfere with the sentence given by the trial court.

11. In the ultimate analysis we find no merit in the appeal and consequently the same stands dismissed. As the appellant is on bail his bail bonds stands forfeited and he be taken into custody to suffer the remaining Jail sentence. The appellant Pintoo @ Mukesh is directed to surrender before the trial court on 5.6.17 and the trial court is directed to send him to jail for serving the remaining part of jail sentence. If the appellant Pintoo @ Mukesh does not surrender as directed above, the trial court shall take action according to law for the arrest of appellant. The period of custody during trial shall be adjusted towards the period of substantive sentence of imprisonment.

The appeal is disposed of accordingly.