
(2012) 05 MP CK 0050
In the Madhya Pradesh High Court
Case No : Criminal Appeal No.1414 of 2002

Shantilal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 376

Citation : (2012) 05 MP CK 0050

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : Raghuvir Singh, for the Appellant; R.S. Bais, learned Dy. Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mrs. Justice S.R. Waghmare

1. This appeal has been filed u/s 374 of the Cr.P.C. being aggrieved by the judgment dated 20/12/2002 passed by Additional Sessions Judge, Mandsaur in Sessions Trial No.108/01 whereby the appellant was convicted for offence punishable u/S 376 of the IPC and sentenced him to undergo seven years rigorous imprisonment with fine of Rs.5000/-, in case of default of payment of fine he was to undergo additional four months rigorous imprisonment. Brief facts necessary for elucidation are that on 20/10/2000 at about 3:30 P.M. accused appellant Shantilal came to the field of complainant Santoshbai where she was working and tried to catch hold of her from backside and fell her down to the ground and forcibly committed rape with her. Upon shouting by the prosecutrix, GangaBai P.W.5 ran towards the field of Santoshbai and accused appellant fled away from the place of occurrence when he saw Gangabai P.W.5. When accused appellant committed intercourse with her, her left hand bangles broke and her blouse was also torn and when she came to her house she narrated the incident to her husband Devilal and her cousin mother-law Rukmanibai. Thereafter she

had filed a report at the Police Station Malhargarh on the next day of the incident and on this offence has been registered u/S. 376 of IPC. Thereafter, investigation has started and during the investigation complainant Santoshbai was medically examined and spot map was also prepared by investigating officer and the clothes and slides were seized and sent it to F.S.L. Indore for chemical examination. After completion of the investigation, the accused appellant was arrested and also sent for medical examination. On completion of the investigation the accused appellant was duly committed to his trial and the lower Court on considering the evidence, convicted and sentenced the appellant as herein above indicated, hence the present appeal.

2. Learned Counsel for the appellant has urged the fact that the prosecutrix was absolutely unreliable and she was caught in the act and she made false case against the accused and the testimony of Gangabai P.W.5 has also not supported the prosecution case. Even if the witnesses are considered, they have failed to prove the prosecution case. Counsel for the appellant also submitted that conviction is contrary to the principles of law. The Court below has failed to appreciate the evidence and there are material omissions and contradictions in the testimony of the prosecution witnesses and in the light of statements of Gangabai P.W.5, the prosecution witness, the appeal deserves to be allowed. Counsel placed reliance on Raja Ram Vs. State of Rajasthan [2005 SCC (Cri)1050] and Javed Masood and Another Vs. State of Rajasthan, to state that the Hon''ble Supreme Court has considered the case where the prosecution witness was not declared hostile and the evidence did not support the prosecution case and the Hon''ble supreme court held that, defence can rely upon evidence of such witness and it would be binding on the prosecution since it had not declared the witness to be hostile and defence would bind the prosecution to the said version of the witness. In the present case the prosecution was bound by the testimony of P.W.5 Gangabai and she has not been declared to be hostile. However, the prosecution has been unable to prove the offence u/s 376 of IPC.

3. Counsel prayed that the appeal deserves to be allowed and the judgment of conviction deserves to be set-aside. In alternate Counsel has prayed that if the Court is satisfied regarding the conviction the custodial sentence be reduced to the period already undergone.

4. Counsel for the State has per contra stated that the judgment of the Trial Court is in accordance with law and does not require any interference and the appeal filed by the appellant be dismissed.

5. On considering the above submissions, impugned judgment and the record, I find that the lower Court has failed to appreciate the evidence on record and in terms of Raja Ram (supra) & Javed Masood (supra) the appeal needs to be allowed. Considering the testimony of P.W. 5 Gangabai I find that she has categorically stated that in impugned Para 2 on her deposition in Court that 2 years ago she was near the well in the afternoon and she was cutting crop of the

soybean. She came near the well and found that the electrical motor was not running and she drew water by the bucket when she went inside she found Santoshbai and accused Shantilal were indulged in sexual intercourse and she cursed the prosecutrix and thereafter the accused Shantilal ran away to the place where buffalos were wandering. Whereas the prosecutrix begged forgiveness and asked her not to inform her husband. She also denied that she had gone to the well on hearing the shouts of the prosecutrix. She stated that she had gone to drink water on her own.

6. Although she has stated in Court, that she was related to accused Shantilal and hence her evidence has to be scrutinized minutely and I find that there is substance in her contention. Consequently the appeal is hereby allowed. The impugned judgment of conviction is hereby set aside. The accused appellant is acquitted from offence u/S. 376 of IPC.

7. The appeal is allowed to the extent herein above indicated. Appellant is on bail. His bail bond and surety bond are hereby discharged. A copy of this judgment be sent to the concerned lower Court for compliance.