
(2014) 03 MP CK 0049

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 861 of 2003

Smt. Shyama Bai

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 323 354 447

Citation : (2014) 03 MP CK 0049

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant; Akshay Namdeo, Panel Lawyer for the Respondent No. 1/State, for the Respondent

Judgement

N.K. Gupta, J.—The applicant has preferred the present revision against the judgment dated 16.5.2003 passed by the Judicial Magistrate First Class, Gadarwara in Criminal Case No. 339/2001 whereby the respondent No. 2 was acquitted from the charge of offence under Sections 447, 354 and 323 of IPC. The prosecution story, in short, is that on 17.11.2001 the victim/prosecutrix (P.W.-1) was in her house situated at Village Kheri (Police Station Tendukhera District Narsinghpur). At about 8:00 PM the respondent No. 2 went inside the courtyard of the house of the prosecutrix and held her hand. Thereafter he pressed the breasts of the prosecutrix but on her shouting her sister-in-law Ramwati Bai, Munnalal and Badam Bai came to the spot and then the respondent No. 2 assaulted her by a stick causing injury on her right thigh and ran away. In scuffling some bangles were broken, and therefore the prosecutrix sustained some injuries in her right hand. The FIR was lodged on the same day at about 10:25 PM at Police Station Tendukhera. The victim was referred to the Community Health Centre, Gadarwara where she was examined by Dr. S.P. Ahirwar (P.W.-4), who gave a report Ex. P-2. He found contusion on the right thigh of the prosecutrix and scratch on the right forearm. The prosecutrix were also complaining about the pain on her neck and breasts, but no visible injury was found. After due investigation a charge sheet was filed before the competent

Court.

2. The respondent No. 2 abjured his guilt. He took a plea that the applicant was real aunt of the respondent No. 2 and due to political enmity he was falsely implicated in the matter. However, no defence evidence was adduced.

3. The learned Judicial Magistrate First Class, Gadawara after considering the evidence adduced by the prosecution acquitted the respondent No. 2 from all the charges of offence under Sections 447, 354 and 323 of IPC.

4. I have heard the learned counsel for the parties.

5. After considering the submissions made by the learned counsel for the parties, if the evidence given by the various witnesses is examined, then the prosecutrix (P.W.-1) has stated about the incident, whereas Ramwati Bai (P.W.-2) has corroborated the version of the prosecutrix. Also Munnalal (P.W.-3) has partially corroborated her version. Laxmi Bai (P.W.-5) is also examined to corroborate the evidence. However, the name of Laxmi Bai was not given in the FIR, and therefore it can be said that she was a created witness to support her sister-in-law (prosecutrix). Tarachand, husband of the applicant was also examined, who accepted that there was political enmity between Tarachand and the respondent No. 2. Tarachand has accepted that initially Jagannath, brother of Tarachand was the Secretary of the Panchayat, but instead of Jagannath, Narmada Prasad was appointed as a Secretary, and therefore a dispute took place which was contested upto the High Court. Under such circumstances, possibility cannot be ruled out that the respondent No. 2 was falsely implicated in the matter. The witness Ramwati Bai (P.W.-2) and Munnalal (P.W.-3) were the interested witnesses, and therefore they could say in support of the prosecutrix.

6. The learned JMFC found a material contradiction in the statement of the prosecutrix and the medical report Ex. P-2 proved by Dr. S.P. Ahirwar (P.W.-4). Initially the prosecutrix has stated in the FIR that due to assault of a stick, she sustained injury in her thigh. Dr. S.P. Ahirwar (P.W.-4) found a contusion on the right thigh of the prosecutrix, but before the trial Court the prosecutrix (P.W.-1) did not say that the respondent No. 2 was assaulted on her right thigh. On the contrary, she has stated that the respondent No. 2 assaulted her by a stick due to which she sustained injury in her right hand. Ramwati Bai and Munnalal also told in the tune of the prosecutrix that by the assault of a stick, the victim sustained injury in her right hand, whereas Dr. S.P. Ahirwar found a contusion on the right thigh of the prosecutrix and not on the right hand. If a person assaulted the victim on a particular place by a stick, then such person could not forget the place of assault. Looking to this material contradictions, the possibility cannot be ruled out that the prosecutrix sustained injuries due to any other reason and thereafter a false FIR was lodged against the respondent No. 2, otherwise if the respondent No. 2 had assaulted on the right thigh of the prosecutrix and she should have remembered the place of assault. Hence the learned JMFC has rightly disbelieved the testimony of the prosecutrix and the interested witnesses.

Therefore, the entire prosecution case appears to be false. Under such circumstances, the learned JMFC has rightly acquitted the respondent No. 2 from the every charge alleged against him.

7. There is no illegality or perversity visible in the judgment passed by the learned JMFC Gadawara, and therefore there is no basis to accept the revision filed by the applicant/prosecutrix. Consequently, it is hereby dismissed. A copy of this order be sent to the trial Court along with its record for information.