
(2011) 09 MP CK 0076

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1296 of 1996

State of MP

APPELLANT

Vs

Komal

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 354

Citation : (2011) 4 Crimes 408

Hon'ble Judges : Vimla Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vimla Jain, J.—The appellant / State has preferred this appeal being Aggrieved by the judgment dated 20.3.1996 passed by Additional Chief Judicial Magistrate, Waraseoni District Balaghat in Criminal Case No.349/86 wherein the respondent/accused Komal has been acquitted from the charge punishable u/s 354 of Indian penal code (hereinafter referred to as the, IPC).

2. Short facts of the case are that on 17-4-86 at about 10:00 A.M. Kausalyabai (PW-1) had went with her nephew Ramesh Kumar (PW-2) to pick up mahua from the agricultural field Suddenly the respondent/accused came from behind and dragged the right leg of the prosecutrix. Which resulted in her fall on the ground and then he overpower her and tried to rage her modesty by gagging the mouth, molesting her breast and making her nude. The prosecutrix raised alarm for her nephew and after seeing the nephew coming the accused ran from the sport. Report of this incident was lodged at the police station Lalbarra on 17-4-86 and crime u/s 354 of IPC was registered against the respondent/accused.

3. The respondent/accused was charged u/s 354 of IPC. He abjured the guilt and pleaded complete innocence praying that he has been falsely implicated in the case.

4. During the trial, prosecution examined two witnesses and the defence

examined one witness. The trial Court after considering the evidence on record acquitted the respondent /accused.

5. The appellant/State has preferred this appeal against acquittal of respondent/accused after obtaining leave of this Court. Shri Vivek Agrawal learned Government Advocate submitted that the Court has not appreciated the evidence in proper perspective. It has been amply proved by the prosecution that the respondent/accused had tried to outrage the modesty of the complainant Kaushalya Bai, but the trial court has acquitted him from the aforesaid charge. The finding of acquittal is erroneous which deserves to be set aside and the respondent/accused deserves to be punished.

6. On the other hand, learned counsel for the respondent/accused supported the impugned judgment of acquittal and submitted that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The trial court has rightly acquitted him from the aforesaid charge, hence no interference is called for.

7. The main point for consideration before this Court is whether the trial Court has committed an error in acquitting the respondent/accused from the above mentioned charge for trying to outrage the modesty of Kaushalya Bai (PW. 1).

8. From the perusal of impugned Judgment it is revealed that the finding of not-guilty/innocence was recorded on the ground of contradictions and omissions found in the statements of prosecution witnesses.

9. Kaushalya Bai (PW.1) the prosecution in the prosecution case stated that the accused dragged her right leg which resulted in the fall of the prosecutrix on the agricultural field put his hand on her chest trying to make her naked with an intention to outrage her modesty and gagged her mouth. She made alarm for her nephew to rescue her and the accused ran away. She came home and narrated the incident to her husband Loharman Korku and her neighbour Ganesh. Thereafter she went to police station to lodge the report. But police did not examine Ganesh and her husband Laharman Korku.

10. Ramesh Kumar (PW-2). Who is the nephew of prosecutrix Kaushalya Bai, supporting her statement stated that he and Kaushalya Bai were collecting mahua in their field. He heard the cry of Kaushalya Bai and went there. He saw the accused Komal sat on the chest of Kaushalya Bai. On seeing him, the accused ran away. In their cross-examination, both the witnesses denied that Kaushalya Bai was collecting mahua in the field of accused. But defence witness Govinda stated that Kaushalya Bai was collecting mahua in the field of accused Komal. He further stated that Komal questioned Kaushalya Bai why she was collecting mahua in his field. The accused/respondent state in his cross-examination that Kaushalya Bai was collecting the mahua in his field. The investigating officer did not prepare the spot map in this case. Therefore the spot of the incidence which is disputed by both the parties could not be prove. The defence witness is an independent witness, therefore,, his statement that

Kaushalya Bai was collecting the mahua in the field of the accused cannot be disbelieved.

11. The prosecutrix stated that accused Komal gagged her mouth then she raised alarm.

But this statement does not appear to be natural as well as reliable.

12. Kipping in view the said infirmities in the prosecution case the prosecution has failed to establish the guilt beyond reasonable doubt against the respondent. The trial Court has appreciated the evidence in proper perspective and rightly acquitted the respondent/accused. The view taken by the trial court is reasonable.

13. It is established principle of law that when two views are possible, then the view taken by the trial court should be accepted. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, the Apex Court has held thus:

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal. It was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where are two views are possible, the appellate Court should not interfere with the finding of Acquittal recorded by the court below.

Similarly in the case of Budh Singh and Others Vs. State of U.P., it was held that the view of the trial court having regard to the facts and circumstances of the case was a possible view which should not have been interfered with by the High Court.

14. Since no infirmity, illegality or perversity is found in the impugned judgment of acquittal passed by the trial court therefore, no interference is called for. This appeal is devoid of merits and deserves to be dismissed.

15. Consequently this appeal tails and is dismissed accordingly. The respondent/accused is on ball. His ball bond is discharged.