

(1991) 07 MP CK 0011

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 348 of 1990

Survey @ Servajeet Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 374
Penal Code, 1860 (IPC) — Section 354, 366, 506

Citation : (1991) JLJ 672 : (1992) 37 MPLJ 207 : (1992) MPLJ 207

Hon'ble Judges : K.L. Issrani, J

Bench : Single Bench

Advocate : Rajendra Singh, for the Appellant; P.C. Paliwal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Issrani, J.

This is an appeal u/s 374 of the Code of Criminal Procedure against the judgment and findings dated 22-3-1990, passed by the seventh Additional Judge to the Court of Sessions Judge, Bhopal, in Sessions Trial No. 168/1989 convicting the appellant as under :

Conviction: Sentence : Under Section 366, Indian Penal R.I. for five years. Code. Under Section 354, Indian Penal R.I. for one year. Code. Under Section 506 Part II, Indian Penal R.I. for one year. Code. All sentences to run concurrently.

The appellant, along with two others namely Sunil and Billu, was prosecuted under Sections 366, 354 and 506, Part II of the Indian Penal Code, whereas the remaining two co-accused were prosecuted u/s 506, Part II, Indian Penal Code.

According to the prosecution, on 29-4-1989, at about 9.00 A.M., Ranjana aged about 14 years, student of VI Class of Government Girls' Higher Secondary School Barkheda, Bhopal, had been to her school to know the results of her

examinations. The results were not ready at that time. Therefore, she was returning back to her home along with her girl friend Sulekha. At about 10.00 A.M. when Ranjana along with Sulekha reached near the Kalari (wine shop), the accused-appellant, who was accompanying with other co-accused, caught hold of the hands of Ku. Ranjana and asked her to go with him inside the milk dairy. Sulekha requested the appellant to leave Ranjana but the other accused threatened her that in case she does not run away, she would also be caught. On this she left the spot. The appellant forcibly caught Ku. Ranjana and put her in his laps and took her inside the dairy. The remaining two accused remained outside the dairy as per directions of the appellant. With intention to commit sexual intercourse, the appellant ordered Ranjana to lie down. On her objection, she was threatened to be killed. At that moment, Sulekha along with the father of Ku. Ranjana reached the spot. On seeing them, the accused persons ran away. Ranjana jumped out of the dairy. She narrated the incident to her father and other persons present there: Thereafter, when Ku. Ranjana was going to the police station along with her father for lodging the report, she was threatened by the appellant. However, the crime against the accused persons was registered on the report of Ku. Ranjana.

The defence of the accused was that of denial. According to the appellant, he has been falsely implicated by the Sub-Inspector C. R. Mina (P.W.8). He further States that about one year before when his friend Vijai was dashed by a scooter driver, there was exchange of hot words with the aforesaid witness C. R. Mina (P.W.8).

The prosecution examined as many as eight witnesses. But none of the witnesses have stated against the appellant except Ranjana (P.W.I), Chhabiram (P.W.2) who is the father of Ku. Ranjana and the Investigating Officer, C. R. Mina (P.W.8). The other witnesses became hostile. The accused Nos. 2 and 3 namely Sunil and Billu were acquitted of the charges against them but the present appellant was convicted as shown above. Hence the present appeal has been filed by the appellant.

According to the appellant, in her statement before the Court, Ku. Ranjana had denied the presence of the other co-accused. She was disbelieved on that account. Having been disbelieved partly, she is to be taken to be telling a lie. In that case her sole statement cannot be believed without any corroboration by an independent witness. The learned counsel for the appellant has cited Suraj Mal Vs. State (Delhi Administration), , Namdeo Daulata Dhayagude and Others Vs. State of Maharashtra, and Gurnam Kaur Vs. Bakshish Singh and ors, . Not only that, the learned counsel for the appellant has pointed out the ordersheet dated 10-12-1990 of this Court, on which date, the complainant Ku. Ranjana and her father Chhabiram were present in this Court along with their counsel Shri S. D. Khan, Advocate. Ku. Ranjana has filed an application before this Court in which she has disclosed that her allegations against the appellant are not true and has prayed that the appellant be acquitted. The affidavits of the complainant Ranjana

and her father Chhabiram are also filed along with the application.

The counsel for the respondent has opposed the arguments of the counsel for the appellant and supported the findings arrived at by the lower Court. Regarding the filing of the application before this Court praying for acquittal of the appellant, the learned counsel submits that it is begotten by the appellant and should not be believed.

It is surprising that after giving statement before the Sessions Court, the complainant Ku. Ranjana has filed I. A. No. 4329/1990, supported with her affidavit and the affidavit of her father, praying acquittal of the appellant from this Court. On 10-12-1990, Ku. Ranjana was interrogated on I. A. No. 4329/1990, wherein it is alleged that the allegations made by her against the appellant were subsequently disclosed by her to be untrue. On being questioned, Ku. Ranjana had admitted that she had made false report and given false affidavits against the appellant. On being interrogated, the father of Ku. Ranjana did not confirm the ground on which this application was based. In view of this, it was found by this Court that no good case is made out for grant of leave to compound the offence u/s 354, Indian Penal Code. As such, I. A. No. 4329/1990 was rejected. In view of the clear admissions of Ku. Ranjana that she gave false evidence before the Court resulting in the conviction of the appellant, it was directed that separate proceedings be initiated against her for perjury. A show cause notice was ordered to be issued in this behalf.

However, the statements of Ku. Ranjana and other witnesses are to be re-assessed by this Court. So far as the other witnesses i.e. Neetu (P.W.3), Sulekha (P.W.4), Gangajali (P.W.5), S. Ansari (P.W.6) and Mahendra Pandit (P.W.7) are concerned, they all have turned hostile. They have even denied their statements u/s 161, Criminal Procedure Code before the police. Therefore, their version is of no use and cannot be believed too. So far as Ku. Ranjana (P.W.I) is concerned, there are material contradictions in her statement. There are many omissions also. In her statement, in para 2 of the examination-in-chief, she states that amongst the accused persons she only recognizes the Sardar wearing turban and does not recognize the other two accused persons. She had not seen them earlier also. But in cross-examination, in para 9 of her statement she admits that before the incident she had not seen this accused also i.e. the accused wearing turban.

She also did not know his name. In para 10, she admits that she did not disclose the name of Sardar accused to the police. She states that his name was given by her father. This statement, her application and affidavits and statement before the Court on 10-12-1990 make the case more doubtful against the present appellant also. There are many contradictions and omissions in her statement. In para 12 of her statement she has stated that the appellant had also told Sulekha to run away but she cannot say about this omission in the report Ex.P-1. Similarly, in her statement in para 16, she states that the appellant tried to lie her down and sat on her but this omission in Ex.P-1 is also not explained by her.

In para 18, she has stated that both the co-accused had run away before her father arrived on the scene but this omission in report Ex.P-1 is also not explained. In her statement she does not say about the threat being given to her by the appellant when she had been to the police station for lodging the report. She only states that the appellant had met them in the way. In para 20, she states that she did not tell the police about the conversation of the appellant with her father outside the dairy when he reached there. In para 21 of her statement, she states that on the site where she jumped, there are many houses of other persons. She was sitting inside one of the houses, which is just behind the house of Sulekha. She was sitting over there for more than 5 to 10 minutes. There only Sulekha, according to her, had come to her and had asked her to come out without any fear. She states that there are many houses adjacent to the house of Sulekha; and when she went to her father along with Sulekha, at that time there were many other persons standing there and the appellant was also one of them. In para 21, she further states that when she was taken into laps by the appellant, she had cried for help but at the same time she has stated that her mouth was closed by the appellant but this fact was not told by her to the police. Though she has denied that she is not telling the lie but in para 13 of her statement she has stated that in the Court premises, she and her father were asked by the Sub-Inspector, C. R. Mina (P.W.8) as to what they have to depose. This makes the statements of Ku. Ranjana and her father as concocted and tutored one. In *N. D. Dhayagude v. State of Maharashtra* (supra), it has been held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on more matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused. In *Suraj Mai v. The State Delhi Administration* (supra), also it has been held that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

In this case also it is very difficult to rely on the sole testimony of Ku. Ranjana specially because of the fact that before her statement in the Court she was tutored by the Sub-Inspector and in spite of that there are many omissions and contradictions in her statement and her first information report Ex.P-1. Her further application with affidavit and her statement before this Court on 10-12-1990 make her wholly unreliable witness. She is belied on the point of presence of other accused persons. Her testimony is shaken and contradicted on many pleas. She did not know the name of the appellant at the time of lodging the report Ex.P-1. She only states that one Sardar accused wearing turban was there at the time of the incident. Name given in F.I.R. was said to be given by her father, who does not support this version. It is, therefore, not safe to rely on her sole testimony in view of the fact that Sulekha, who was accompanying her,

has not supported her. Her father Chhabiram (P.W.2) is not an eye-witness. So also the Sub-Inspector C. R. Mina (P.W.8) is not an eye-witness. In view of this, the conduct herself of the complainant Ranjana becomes unreliable. It is not reliable to hold that she cried for help. The prosecution has also not examined the witnesses who saw Ranjana after she jumped from the dairy. It is also surprising to note as to what was the reason to jump away outside the dairy on the other side when according to her, her father and Sulekha had reached the spot before any offence of sexual intercourse was tried to be committed by the appellant. The space of time between the appellant ordering her to lie down and her father along with Sulekha appearing on the spot is too short. It is not explained as to how her father appeared immediately on the spot. There is no medical evidence on record to ascertain the age of the prosecutrix.

Chhabiram (P.W.2) in para 1 of his statement in his examination-in-chief has stated that at about 10.00 A.M. when he was in his house, Sulekha came over there and informed that one Sardar has caught hold of Ranjana but she did not tell the name of the Sardar. In para 2 he states that when he reached the dairy, he found the appellant roaming near the milk dairy. He had seen Ranjana jumping out of the back wall of the dairy. In para 4 he states that the name of the appellant was told to him by Ranjana yet in para 8, he deposes that the whole story was narrated by Ranjana to the police. While the police was taking down the report, he was standing outside the police station and nothing was asked from him. This makes the story further doubtful. Nothing was asked from the Sub-Inspector C. R. Mina (P.W.8) by the prosecution about the contradictions and omissions.

In view of the aforesaid discussion, I have no hesitation to hold that the whole prosecution story becomes doubtful and the case against the appellant has not been proved beyond doubt. The accused is entitled to the benefit of doubt. He is acquitted of the charges against him. The appeal is, therefore, allowed and the judgment and finding passed by the lower Court are set aside.