
(2013) 08 MP CK 0355
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 12332 of 2010

The State of Madhya Pradesh

APPELLANT

Vs

Kallu @ Prakashpuri

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 376(1), 506(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xii), 3(2)(v)

Citation : (2013) 08 MP CK 0355

Hon'ble Judges : B.D. Rath, J;Ajit Singh, J

Bench : Division Bench

Advocate : S.K. Kashyap, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Rath, J.—Heard on admission. This application for grant of leave to appeal has been preferred u/s 378(3) of the Code of Criminal Procedure (hereinafter referred to as "the Code") being aggrieved with the judgment dated 9/9/10 passed by the Special Judge, (under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act")) at Katni, in Special Case No. 11/2008, whereby respondent has been acquitted of the offences punishable under Sections 376(1) & 506(1) of the Indian Penal Code ("IPC" for short) and under Sections 3(1)(xii) & 3(2)(v) of the Act.

2. Prosecution case, in brief, is that in the night intervening 8th and 9th of July 2010, at about 12, as the prosecutrix turned after urinating outside her house, respondent caught her from behind and after tying her mouth with a piece of cloth, dragged her inside a school situated in front of her house through its broken window, subjected her to rape and threatened to kill her in case she disclosed the incident to anyone. After commission of the offence, when the respondent was getting dressed, she removed the cloth from her mouth and

screamed, hearing which her family members reached at the spot and the respondent fled through the window. Respondent had subjected her to sexual assault four months back also. Report of the incident was lodged by her on 9/7/2010 at Police Station Badwara. After investigation, respondent was apprehended and charge-sheet was filed.

3. Learned Government Advocate submitted that the impugned judgment was passed without proper appreciation of evidence on record and the same deserved to be interfered with.

4. Having regard to the arguments advanced by learned Government Advocate, impugned judgment and record of the trial Court were perused.

5. Admittedly, date of birth of the prosecutrix is 10/5/1990, and she was a major on the date of incident. Caste certificate was not produced by the prosecution to prove that the prosecutrix belonged to a scheduled caste. Prosecutrix (PW3) had admitted that she was subjected to sexual assault by the respondent, prior to this incident also. She deposed that she was impregnated by the respondent, but had not disclosed this fact to any of her family members due to the threats given by the respondent. Dr. Uma Nigam (PW10), on examination of the prosecutrix, did not find any external injury on her body, which was un-natural as, according to the prosecution, she had been dragged to the spot by the respondent. The doctor also opined that the prosecutrix was habitual to sexual intercourse. In paragraph 16 of her cross-examination, she deposed that there was inimical relationship between her family and that of the respondent in view of the fact that uncle of respondent had murdered her uncle. In the aforesaid premises, the trial Court found that the prosecutrix was a consenting party and the prosecution had failed to prove its case beyond a reasonable doubt.

6. We agree with the findings recorded by the trial Court that prosecution has failed to prove its case beyond reasonable doubt.

7. It is well settled that the judgment of acquittal should not be disturbed unless the conclusions drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable.

8. Taking into consideration the reasons assigned on the face of evidence on record establishing the aforesaid facts and circumstances, the view taken by the learned trial Court was apparently a possible view. As such, no interference is called for with the judgment of acquittal in question. The application, being devoid of merit and substance, stands dismissed.