
(2014) 07 MP CK 0132
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 217/2013

The State of Madhya Pradesh

APPELLANT

Vs

Rajendra Lodhi

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2014) 07 MP CK 0132

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

Bench : Single Bench

Advocate : S.D. Khan, G.A, Advocate for the Appellant

Judgement

N.K. Gupta, J.—Heard on admission.

2. Heard on IA. No.308/2013, an application for condonation of delay in filing the present leave application.

3. Looking to the grounds mentioned in the application, delay of 44 days in filing the present application for leave to appeal is hereby condoned.

4. The State has preferred an application for grant of leave to appeal against the judgment dated 30.7.2012 passed by the Additional Sessions Judge, Pawai, District Pawai in ST. No.122/2011 whereby, the respondent was acquitted from the charges of Sections 363, 366, 376 of I.P.C.

5. The prosecution's case in short is that the complainant Mathura Prasad Lodhi (PW8) had submitted a complaint dated 12.7.2010 to the Portfolio Minister Shri Gopal Bhargav on his Panna tour that he had lodged a missing report on 10.7.2010 about his daughter (the prosecutrix) at Police Station Simariya. Thereafter, the prosecutrix was recovered and given in custody of the complainant. She had informed that the respondent had committed rape upon her but, no action was taken by the Police. After enquiry on that complaint, a case was registered and after due investigation a charge sheet was filed.

6. In the present case, the first most important fact which was decided by the learned Additional Sessions Judge in favour of the respondent is that whether the prosecutrix was above 18 years at the time of incident. In this connection, the mark sheet of the prosecutrix Ex.P/10 is produced in which her date of birth was mentioned to be 9.8.1995. The learned Additional Sessions Judge has observed that it is nowhere made clear by the Police as to how the mark sheet came in the case diary or in the charge sheet. It was not proved by any school authority that the prosecutrix was admitted in a particular school for the first time and her date of birth was recorded on the basis of some document and therefore, no interference can be drawn on the basis of the mark sheet Ex.P/10. The prosecutrix (PW2) has accepted that she was 17 years old at the time of her deposition whereas, the incident took place one year prior to her deposition and therefore, admittedly she was above 16 years of age at the time of incident.

7. According to the version of the prosecutrix, she was taken by the respondent to his house and a fictitious marriage took place in a temple. Thereafter, he committed rape upon the prosecutrix. On the next day when her father was informed, he had lodged an FIR at outpost Hardua of Police Station, Simariya. Thereafter, she was taken to the SDM Court and she was sent with her father. Nothing was done thereafter whereas, her medico legal examination was done on 18.3.2011. Looking to the conduct of the prosecutrix where her statement recorded by the SDM is not produced in the trial, it appears that the prosecutrix had shown her consent to marry with the respondent and therefore, the Police did not take any further action against the respondent. Under such circumstances, the prosecutrix appears to be a consented party. Since she was above 16 years of age at that time and therefore, no offence under Section 376 of I.P.C is made out against the respondent. Similarly looking to the conduct that the prosecutrix was taken by the respondent, her marriage took place at a temple and she did not resist, it appears that she went with the respondent on her own and therefore, no offence under Section 366 of I.P.C is made out against the respondent.

8. During the investigation the prosecutrix was sent for ossification test. Dr. Vijeta Rajput (PW4) has given her opinion on the X-ray report Ex.P/7. She found that the prosecutrix was below 18 years of age. It was mentioned that she was between 15-17 years of age but, in the cross examination, it was accepted by Dr. Rajput that initially it was mentioned that the prosecutrix was 16-18 years of age but, thereafter by overwriting, it was mentioned that she was 15-17 years of age. Dr. Rajput did not mention about the fusion of her various joints in her report Ex.P/7 and therefore, looking to the interpolation done in the report Ex.P/7, in her opinion the prosecutrix was 16-18 years of age. The learned Additional Sessions Judge has observed that looking to the physical appearance of the prosecutrix, two years may be added in radiological computation and therefore, the prosecutrix could be more than 18 years of age at the time of incident. Hence, the learned Additional Sessions Judge acquitted the respondent from the charge of Section 363 of I.P.C.

9. After considering the entire judgment passed by learned Additional Sessions Judge, it appears that the prosecutrix who, was above 18 years of age who went with the respondent, entered into a contract of marriage in a temple and thereafter, for a day resided with the respondent as a wife and therefore, no offence was constituted against the respondent for which he was tried. The learned Additional Sessions Judge has rightly acquitted the respondent from all the charges.

10. On the basis of the aforesaid discussion, there is no basis so that the appeal filed by the State may succeed. Hence it is not a good case in which leave to appeal may be granted. Consequently, leave application is hereby dismissed.

11. Copy of the order be sent to the trial Court along with its record.