

Pratap Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-31-2012

Appellant : Pratap Singh

Respondent : The State of M.P.

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Shri Justice N.K.Gupta,J.CRIMINAL APPEAL NO.2149 OF 199.Pratap
Singh. Vs. State of Madhya Pradesh.

----- Shri
J.A.Shah, Advocate for the appellant. Shri G.S.Thakur, Panel Lawyer for the
respondent/State.

JUDGMENT

(Delivered on the 31st day of August, 2012) This criminal appeal is filed by the appellant being aggrieved by the judgment dated 8/11/1996 passed by the 5th Additional Sessions Judge, Bhopal in ST No.32/1996, whereby the appellant was convicted and sentenced as under:- Conviction U/S Sentence Fine Default (IPC) (Rupees) sentenc

1. year's RI 200/- RI for 1 mont

5. years' RI 1000/- RI for 6 month

10. years' RI 2000/- RI for 9 months All the sentences were directed to run concurrently.

2. The prosecution's case, in short, is that the prosecutrix (PW-14) was a married woman aged 14 years. In the month of September, 1995 she was ousted by her husband, and therefore she was to return back to her 2 Cri. A. No.2149/1996 parents' house. She was waiting for a bus at bus stand of her husband's village, then the accused Parasram met her. Parasram was known to the prosecutrix, and therefore she told him that she wanted to go to Dhanbad at her parents' house. The accused Parasram took her in the train from the railway station Buxar, but when the train reached to the railway station Bhopal, she again asked that by such train, she could not reach to Dhanbad. Thereafter the accused administered her a cup of tea, and due to that she lost her consciousness. The accused Parasram took her to a house situated at Bairagarh, Bhopal where he kept her for three months and he was regularly committing the rape with the prosecutrix. On 12.12.1995 the prosecutrix told the entire story to the appellant Pratap Singh, who was friend of the accused Parasram, then he agreed to send her to her parents' house at Dhanbad. But the appellant took the prosecutrix to Badi Mungwali District Sehore and confined her in a house where he also committed rape with her for several times. On 17.12.1995 the police went to the spot and found and recovered the prosecutrix from the possession of the appellant. She was sent for her medico legal examination. Dr. Abha Jindal (PW-15) examined her and gave a report Ex.P-16. No external or internal injury was found on her person. The prosecutrix was referred for the ossification test. Dr. R. Verma (PW-4) gave his report Ex.P-5 after performing the ossification test. He found the 3 Cri. A. No.2149/1996 prosecutrix could be 15 years old girl and a variation of six months was possible in the calculation about the age done by Dr. Verma. After due investigation, a charge sheet was filed before the Judicial Magistrate First Class, Bhopal, who committed the case to the Sessions Court, Bhopal and ultimately it was transferred to the 5th Additional Sessions Judge, Bhopal.

3. The appellant-accused abjured his guilt. He did not take any specific plea in the matter, but he has stated that the prosecutrix was recovered from a house situated at Bairagarh. No defence evidence was adduced.

4. The learned Additional Sessions Judge, Bhopal after considering the evidence adduced by the prosecution convicted the appellant for commission of offence punishable under Sections 342, 366 and 376 of IPC and sentenced him as stated above.

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

6. The learned counsel for the appellant has submitted that the main culprit of the case was Parasram, who kept the prosecutrix for three months. In the FIR the prosecutrix has stated that she remained in the house of appellant for five days, but in her statement before the Court she extended that period from five days to a month. The prosecutrix has accepted that she was kept in the house of the sister of the appellant and family of the sister was residing in the same house. It was for the prosecutrix 4 Cri. A. No.2149/1996 to tell the entire story to that family and she could leave the house by her own, but she remained in the house till the police came to the spot, and therefore neither any offence under Section 342 of IPC is made out nor offence under Section 376 of IPC will be constituted. Similarly, the appellant did not abduct the prosecutrix but she came herself with the appellant, and therefore no offence under Section 366 of IPC is made out. In the alternate, it is mentioned that the appellant faced the trial and appeal for last 16 years, and therefore sentence awarded to the appellant may be reduced to the period which he has already undergone in the custody. The appellant remained in the custody for approximately four years, and therefore he may not be sent to the jail again.

7. On the other hand, the learned counsel appearing on behalf of the State has supported the impugned judgment and has submitted that the Court below has not committed any illegality in convicting and sentencing the appellant-accused, therefore no interference is warranted from the side of this Court.

8. After considering the submissions made by the learned counsel for the parties, it is to be considered that what was the age of the prosecutrix at the time of incident?. Whether the appellant can be convicted for the offence under Section 342 or 376 of IPC?. Whether the prosecutrix went with the appellant by herself, if not, what would be the 5 Cri. A. No.2149/1996 consequences?. And whether the sentence directed against the appellant can be reduced?.

9. The prosecutrix (PW-14) has stated that she was 15 years old at the time of incident, but no educational record or any birth certificate could be brought before the Court. In the ossification test, Dr. R.Verma (PW-4) found her to be 15 years of age with correction of six months on each side, but in the cross examination he has admitted that she could be above 16 years of age. The prosecutrix was examined by Dr. Abha Jindal (PW-15) and according to the narration of her secondary sexual characteristic, it appears that the prosecutrix was above 16 years of age. She had all the 28 teeth in her mouth and buds were prepared for wisdom teeth. She was a married woman, then it may be a case of child marriage. Under such circumstances, her age could be assessed to be 16 years. It is a settled principle of law that in computation of age done by the ossification test, two years may be added on both the sides. But in the present case, there is no reason by which such type of addition can be done, and therefore according to the medical evidence adduced, age of the prosecutrix appears to be more than 16 years but less than 17 years.

10. The prosecutrix has narrated the story that she was kept in the house of one sister who was not relative of the appellant, but the appellant was telling her to be a sister and she was residing in that house. She was used to 6 Cri. A. No.2149/1996 play with daughter of that sister. She never told to the alleged sister of the appellant that she was confined. Under such circumstances, where neither she was tied by a rope nor she was kept in a room which was duly locked by the appellant, then it cannot be said that she was confined. The learned Additional Sessions Judge without appreciating the evidence has held that the appellant was liable for the offence of wrongful confinement, whereas the prosecutrix was not wrongfully confined. She did not try by herself to leave the house, therefore it cannot be said that she was confined or a pressure of the sister of the appellant or her family members was there against the prosecutrix. On the contrary, Ghisilal (PW-9), house owner had shown his annoyance that such type of girl was kept by the appellant in his house, and therefore it would be clear that there was no pressure of Ghisilal (PW-9) or his wife upon the prosecutrix, but still she continued to live in the house for five days by herself, and therefore she was not wrongfully confined. The appellant cannot be convicted for the offence under Section 342 of IPC.

11. The prosecutrix has stated that the appellant had illicit intercourses for so many times in those days. However, she has stated in para 17 of her cross examination that she lived with the appellant for two months and eight days, but according to the FIR Ex.P-14, she remained in the house of Village Mungawali for only 7 Cri. A. No.2149/1996 five days. According to the prosecutrix, she was living in the house of alleged sister of the appellant and she has accepted that the appellant told his sister that the prosecutrix was the sister of the appellant. She never told to the sister of the appellant that the appellant committed any rape upon her. She did not make any hue and cry in those five days. If any forceful act was done with her, then she could tell to the sister of the appellant, and also she could tell the entire story to the sister of the appellant. But she did not say anything about the rape to anybody in the house. Also, Dr. Abha Jindal (PW-15) found no external or internal injury to the prosecutrix after her recovery. No signs of violence were found. Under such circumstances, it appears that she was a consenting party to that intercourse, and therefore no offence under Section 376 of IPC is made out against the appellant. The learned Additional Sessions Judge has erred in convicting the appellant for the offence under Section 376 of IPC.

12. So far as the offence under Section 366 of IPC is concerned, it is true that the appellant did not take the prosecutrix away from the custody of her parents or her husband, and therefore no offence under Section 363 of IPC is made out against the appellant. Though the prosecutrix was told to be 18 years of age, and therefore the learned Additional Sessions Judge did not frame the charges of offence under Section 363 of IPC. But it is apparent from 8 Cri. A. No.2149/1996 the evidence of the prosecutrix that she left the house of Parasram and thereafter she went to the house of one Muslim woman and asked about the nearest police station and thereafter she went to the house of her co-villager Surendra so that she could go back to her parents house and unfortunately Surendra was not available at his home, and therefore the prosecutrix again stayed for entire night in an outer place of a hotel. Thereafter she met with the appellant who was known to the prosecutrix, and therefore she requested the appellant that she be sent to the house of her parents at Dhanbad, but the appellant took her to his house instead of sending her to the house of her parents. For the offence under Section 366 of IPC, the age of the prosecutrix is not material, but it is necessary to be proved that

she was induced to go with the appellant and the appellant knew that she could be forced or seduced of illicit intercourse against her will. It is true that for the offence under Section 376 of IPC, it was found that the prosecutrix was a consenting party but initially when the appellant took the prosecutrix from that hotel to his house at Badi Mungawali, then certainly he did not take the prosecutrix towards the house of her parents, but he took her in a rented house, and therefore the intention of the appellant is apparent that he knew that she would be seduced to illicit intercourse by him, and therefore he took the prosecutrix from a hotel and started to his destination of Badi 9 Cri. A. No.2149/1996 Mungawali, then offence under Section 366 of IPC was completed, and therefore it is immaterial that the prosecutrix was willing in residing with the appellant at Badi Mungawali. The appellant took the paradoxical defence that the prosecutrix was living in that house willingly, whereas he has taken the defence before the trial Court that the prosecutrix was not recovered from his possession.

13. In this context, the statement given by the witness Ghisilal (PW-9) is important. He has admitted that the prosecutrix was recovered from the house where the appellant was living with the prosecutrix, and therefore the prosecutrix was found in the possession of the appellant, hence the story told by the prosecutrix appears to be correct that she was taken by the appellant to that house. Under such circumstances, offence under Section 366 of IPC is very well constituted against the appellant.

14. So far as the sentence is concerned, it is apparent that the appellant remained in the custody from 18.12.1995 to 9.9.1999, thereafter he was arrested on 25.3.2012 and he remained in the custody upto 15.6.2012. Under such circumstances, he remained in the custody for four years. Though the appellant has committed the crime of abduction under Section 366 of IPC, but it is also true that he saw the prosecutrix living with the co-accused Parashram for three months without any resistance, and therefore he could 10 Cri. A. No.2149/1996 imagine that he could be able to keep the prosecutrix for sometime. Under such circumstances, when the prosecutrix had already left the house of her husband and was residing with the co-accused Parasram, then offence under Section 366 of IPC done by the appellant appears to be not so grave. Therefore, looking to the

gravity of offence done by the appellant, he could be punished for four years RI at the most and since he has already remained in the custody for more than four years, then it would be proper that he may not be sent to the jail again.

15. On the basis of the aforesaid discussion, the appeal of the present appellant is partly allowed. The conviction as well as the sentence directed against the appellant for commission of offence punishable under Sections 342 and 376 of IPC is hereby set aside. He is acquitted from the aforesaid charges. However, the conviction directed against the appellant for the offence under Section 366 of IPC is maintained, but his jail sentence is reduced to the period which he has already undergone in the custody. There is no change in the fine amount. The appellant can get the fine amount back for the offences under Sections 342 and 376 of IPC, if he has deposited the same before the trial Court.

16. The presence of the appellant is no more required, and therefore his bail bonds shall stand discharged. 11 Cri. A. No.2149/1996 17. A copy of this judgment be sent to the trial Court with its record for information and compliance. (N.K.Gupta) Judge 31/08/2012 Ansari

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