

Suresh Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-18-2012

Appellant : Suresh Kumar

Respondent : The State of M.P.

Judgement :

1 HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT, JABALPUR
SINGLE BENCH PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA CRIMINAL
APPEAL NO.1765/1997 Suresh Kumar Vs. State of Madhya Pradesh

..... For the
appellant : Shri Mukesh Pandey, Advocate. For the respondent : Shri Ajay
Tamrakar, Panel Lawyer.
.....

JUDGMENT

(Delivered on the 18th day of July, 2012) The appellant has preferred this appeal against the judgment dated 21.8.1997, passed by the Special Judge under SC/ ST (Prevention of Atrocities) Act in Special Case No.26/97 whereby the appellant was convicted for offence punishable under Sections 448, 354 of I.P.C and Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act (hereinafter it would be mentioned as the Special Act.) and sentenced for three months rigorous imprisonment with fine of Rs.300/- and one year rigorous imprisonment with fine of Rs.1000/-. In default of payment of fine, he was to undergo additional simple imprisonment for six months.

2. The prosecution's story in short is that on 6.3.1994 at about 8.00 pm in the night the prosecutrix (P.W.2) was in her 2 house situated at Village Gadaghat, Police Station Patan, District Jabalpur. At about 8.00 p.m in the night the appellant went inside the house and held her hands. He had blown the lamp which was in the hand of the prosecutrix and thereafter, he pressed her breasts and tried to drag her to the inner room. The prosecutrix shouted and therefore, her husband Vishwanath (P.W.4), Rajjo Bai (P.W.1), Ghasita (P.W.3) etc. came to the spot and therefore, the appellant ran away. The prosecutrix (P.W.2) had lodged an FIR in Police Station, Patan at about 9.00 p.m in the same night. A case was registered and investigation was done. After due investigation a charge sheet was filed before the Special Judge, Jabalpur. Ultimately the case was transferred to Special Judge (since no Special Court was constituted in the beginning therefore, the Sessions Judge was working as a Special Judge and after constitution of Court of Special Judge the case was transferred to that Court).

3. The appellant abjured his guilt. He took the plea that he was falsely implicated due to enmity and therefore Sheikh Rasool (D.W.1) and Lochan Patel (D.W.2) were examined in defence. The learned Special Judge after considering the evidence adduced by the parties convicted and sentenced the appellant as mentioned above.

4. I have heard learned counsel for the parties.

5. The learned counsel for the appellant has submitted that the appellant was falsely implicated in the matter. The witnesses are not reliable. Learned Special Judge overlooked the 3 evidence given by the defence witnesses. No offence is made out against the appellant. He has further submitted that in the present case investigation was done by Sub Inspector, G.R. Kasera (P.W.7) whereas it was to be done by some officer having the rank of DSP and therefore, Rule 7 of the Rules made in the Special Act is violated. Similarly a charge sheet was to be filed before the Magisterial Court and case was required to be committed as per dictum laid by Hon'ble the Apex Court in the case of Gangula Ashok and another Vs. State of A.P [(2000) 2 SCC 504]. and therefore, the Special Court could not take any cognizance in the case. The learned counsel for the appellant placed his reliance

upon the judgment passed by the single Bench of this Court in the cases of Bhagwan Singh & others Vs. State of M.P.

. [2009 (1) MPLJ 353 ., Dhanraj Singh Vs. State of M.P.

. [2006 (1) MPJ.70]. and Bharatsingh and another Vs. State of M.P.

. [2007(1) MPHT 451 . and it is prayed that appeal may be accepted.

6. On the other hand learned Panel Lawyer has submitted that conviction and sentence passed by the trial Court appears to be correct and no interference can be made in the appeal. He has also submitted that in the light of the the judgment passed by Hon'ble the Apex Court in the case of State of M.P. Vs. Bhooraji and others. [(2001) 7 SCC 679]. in which it is directed by Hon'ble the Apex Court that if objection about the cognizance is not taken by the accused before the trial Court then such objection cannot be taken at a later stage and therefore, the 4 appellant cannot get advantage of aforesaid case laws.

7. After considering the submissions made by learned counsel for the parties and looking to the evidence adduced by the parties, it is to be considered that whether the investigation officer was not competent to investigate the matter and if Yes then what would be the effect ?. Whether the Special Court tried the case which was not committed to it by any Magisterial Court if Yes then what would be the effect ?. Whether the prosecution evidence is believable and the conviction directed by the trial Court can be maintained and lastly as to Whether the sentence awarded by the trial Court can be reduced ?.

8. First objection raised by the learned counsel for the appellant is that case is investigated by a Sub Inspector whereas according to the Rules framed under the Special Act investigation must have been done by a Officer not below the rank of Deputy Superintendent of Police. In support of his contention learned counsel for the appellant has relied upon the aforesaid three judgments of this Court in the case of Dhanraj Singh (supra), Bhagwan Singh (supra) and Bharatsingh (supra). In the present case, it is apparent that investigation took place in the year 1994. At that time such rules which were enacted in the year 1995 were not existing. After

enactment of these rules it is nowhere mentioned that such rules have retrospective effect and therefore, if any investigation is done prior to the enactment of such rules then it cannot be said that it is violative to Rule 7 of the Rules of the Special Act. When the investigation of this case took place, such rules were not existing and therefore, such rules cannot be applied in the present case. The dictum laid in the case of Dhanraj Singh (supra), Bhagwan Singh (supra) and Bharatsingh (supra) relating to this objection has no relevancy in the present case and thus objections and observations made about that rule in those judgments are not applicable in the present case. Since there was no bar of any Police Officer to investigate such a crime in the year 1994, therefore, it would be observed that investigation has been done by the competent Police Officer.

9. It is true that the charge sheet was filed before the Special Court. It was nowhere committed by any Magisterial Court therefore, in light of the dictum laid by Hon'ble the Supreme Court in the case of Gangula Ashok (supra) the Special Court could not take cognizance in the case but, factual position of this case is that law laid by the High Court of M.P at that time, was that the Special Court could take cognizance directly as a Special Court and therefore, by the dictum laid by the Hon'ble Apex Court whether such proceedings can be quashed and matter may be sent back for a fresh trial ?. Such a situation arose before Hon'ble the Apex Court in the case of Bhooraji (supra) in which it is held by Hon'ble the Apex Court that if trial having not adopted the procedure, it is not appropriate for the High Court to quash the entire trial and to direct for a fresh trial. It is further held that it was for the accused to show that a failure of justice. had occasioned on account of such irregularity in the trial proceedings. In the present case, no such objection took place before the trial Court at the time of trial. What is the grievance caused to the appellant is not shown by the learned counsel for the appellant. If case was committed then trial would have been done by the Special Court in a similar manner as it was done by the trial Court. Every opportunity was given to the appellant to defend the case and therefore, the appellant could not show that due to that irregularity of committal proceedings a failure of justice. has occasioned on account of such irregularity. Under such circumstances, in the light of judgment passed by Hon'ble the Apex Court in the case of Bhooraji (supra) the trial Court cannot be directed to try the case again but, this appeal will be

considered on merits. Objection raised by the appellant appears to be not acceptable.

10. Prosecutrix (P.W.2) has stated that at about 8.00 p.m in the night the appellant came inside her house and held her hands and at that time she had a burning lamp in her hand but, it was blown by the accused. On shouting Ghasita (P.W.3), Rajjo Bai (P.W.1) and Vishwanath (P.W.4), husband of the prosecutrix, came to the spot and thereafter the appellant ran away. Vishwanath, husband of the prosecutrix has stated that at about 8.00 p.m he went to see off his maternal uncle-in-law and when he was coming back he heard the cry of his wife and thereafter, he rushed to the spot. He saw that the appellant was running from his house and he was forty steps away from the house. Story told by the witness Vishwanath, appears to be unnatural. At about 8.00 p.m when he went to see off his maternal uncle-in-law then sufficient time was 7 required for him to come back and therefore, if he heard the cry of his wife from 25 ft. away of his house then he could reach to the spot immediately and he could catch the appellant. It is stated by the prosecutrix that after seeing the witnesses, the appellant ran away but, when the lamp was blown and there was no light then husband of the prosecutrix could be seen by the appellant when he had entered in the house in the dark night, the witness Vishwanath could not see the appellant not the appellant could see the witness Vishwanath. In this context statement given by the witness Ghasita (P.W.3) is important. He has stated that he was the first person who, visited to the spot and husband of the prosecutrix came one hour after the incident. Ghasita is a witness of the prosecution and therefore, when he is not declared hostile, his testimony is binding to the prosecution. Under such circumstances, it would be apparent that the witness Vishwanath is telling a falsehood. He did not see the appellant and he did not reach to the spot soon after the cry of his wife.

11. Rajjo Bai (P.W.1) has stated that she was an almost blind woman who, could not see anything in the night and therefore, after hearing the cry of the prosecutrix, she sent her husband to the prosecutrix but, she never visited to house of the prosecutrix at that time. Statement given by Rajjo Bai (P.W.1) appears to be correct. Similarly Ghasita (P.W.3) also says that he is also a partially blind person.

He was awoken by his wife that the prosecutrix was crying and thereafter, he rushed to the spot but, he could not see anyone and it was the prosecutrix who, told 8 that the appellant was the person who entered in the house and held her hand. Under such circumstances, this fact is established beyond doubt that the prosecutrix cried out and she told immediately after the incident that it was the appellant who came inside the house and held her hand but, whether the testimony of the prosecutrix can be believed ?.

12. Defence witness Sheikh Rasool (D.W.1) and Lochan Patel (D.W.2) have stated that they went to the spot after hearing of the cry of Satto Bai (P.W.2) but, there was nobody. The prosecutrix did not tell the name of anyone. These two witnesses have also stated that the prosecutrix had made such allegations against one Ramesh and in the Panchayat a fine was imposed upon the prosecutrix for making such false allegations. However, no such suggestion relating to Ramesh was given either to the prosecutrix or to her husband Vishwanath and therefore, when no proceedings of that Panchayat is produced it cannot be presumed that the prosecutrix made such false allegations against one Ramesh. However, the evidence of prosecutrix is to be seen with care and caution because incident took place in the night.

13. The prosecutrix has stated that on her shouting Ghasita (P.W.3) and Rajjo Bai (P.W.1) came to the spot whereas Rajjo Bai did not visit the house of the prosecutrix at that time and Ghasita went after some time. If the appellant entered in the house and he had an opportunity to overcome the prosecutrix then why he has not done more to the prosecutrix. After hearing the cry of the prosecutrix, Rajjo Bai awoke her husband. Thereafter, Ghasita 9 (P.W.3) who was a partially blind man went to the house of the prosecutrix and therefore, Ghasita must have reached to the spot after 10 minutes of the first call of the prosecutrix. In the meantime, the appellant could throw the prosecutrix on earth and he could snatch the clothes of the prosecutrix at that time but, there is no such allegations made by the prosecutrix.. She did not say that when she cried the appellant ran away. On the contrary she has stated that when the witnesses came to the spot then the appellant ran away. When all the lamps were blown by the accused then neither the witnesses could see anything from outside of the house not the appellant could

see that the witnesses were coming towards the house. Under such circumstances, the appellant had a lot of opportunity to do much bigger crime with the prosecutrix but, it is not stated by the prosecutrix that after pressing her breasts the appellant has done anything more. Under such circumstances, it is possible that either nobody entered in the house and the prosecutrix cried on the basis of the suspicion or somebody came inside the house and held her hands but, she could not see the person who, did such things. Thereafter, she thought that it was the appellant and therefore, she cried by taking the name of the appellant. The prosecutrix and her husband were asked a specific question that at the time of their examination, one Hiralal was sitting in the Court who, was uncle of the witness Vishwanath and there was an enmity between the appellant and Hiralal. The witnesses denied about the enmity but, they accepted that Hiralal was sitting in the Court

14. Under such circumstances, doubt is created that nothing has happened with the prosecutrix or she shouted by taking name of the appellant in the night so that a case may be lodged against the appellant otherwise, the story told by the prosecutrix appears to be unnatural. If the appellant was present and he committed some crime with the prosecutrix then there was nothing to prevent the appellant to do more overt act against the prosecutrix and in such a case the appellant must be found inside the house when Ghasita (P.W.3) came inside the house after hearing the cry of the prosecutrix.

15. Under such circumstances, the prosecutrix cannot be believed beyond doubt that the appellant was the person who went inside her house and outraged the modesty by using any criminal force. In such circumstances, when doubt is created, benefit of doubt is to be given to the appellant and appellant cannot be convicted either for offence punishable under Section 448 or 354 of I.P.C or Section 3(1)(xi) of the Special Act. The learned Special Judge did not appreciate the evidence in an appropriate manner. Conviction directed by the trial Court cannot be sustained.

16. On the basis of the aforesaid discussion the appeal filed by the appellant appears to be acceptable and therefore, it is accepted. Conviction and sentence

directed for offence punishable under Section 448 of I.P.C and Section 354 of I.P.C read with Section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act are hereby set aside. The appellant is acquitted from all such 11 charges framed against him. The appellant is entitled to get the fine amount back if he has deposited the fine amount before the trial Court.

17. Presence of the appellant is not required before this Court and therefore, his bail bonds stand discharged.

18. Copy of the judgment be sent to the trial Court for information and compliance.
(N.K.GUPTA) JUDGE 18 7.2012 bina

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