

Rajesh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-29-2012

Appellant : Rajesh

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.278 OF 199.Rajesh. Vs.
State of Madhya Pradesh.

----- Shri
Ashutosh Dubey, Advocate for the appellant. Shri S.K.Kashyap, Public Prosecutor
for the respondent/ State.

JUDGMENT

(Delivered on the 29th day of August, 2012) This criminal appeal is preferred by the appellant being aggrieved by the judgment dated 10/1/1997 passed by the 10th Additional Sessions Judge, Jabalpur in ST No.814/93, whereby the appellant was convicted for commission of offence punishable under Section 354 of IPC and sentenced for two years' rigorous imprisonment with fine of Rs.1,000/-. In default of payment of fine, three months additional RI was directed.

2. The prosecution's case, in short, is that on 22.4.1993 the prosecutrix (PW-1) was sleeping in her house situated at Bajrang Nagar, Jabalpur. In the noon the

appellant went inside the house of the prosecutrix from the open gate and slept over her. When the prosecutrix saw the 2 Cr.A.No.278/1997 appellant, she started shouting, and therefore Phoola Bai (PW-3), Malti Bai (PW-2) and other neighbours came inside the house, then the appellant ran away. The prosecutrix had lodged an FIR Ex.P-1 on the same day at Police Station Ranjhi, Jabalpur, and therefore a crime was registered. After due investigation, a charge sheet was filed before the Judicial Magistrate First Class, Jabalpur, who committed the case to the Sessions Court and ultimately it was transferred to the 10th Additional Sessions Judge, Jabalpur.

3. The appellant-accused abjured his guilt. He did not take any specific plea in the case, but he has stated that he was falsely implicated in the matter. In defence, Jayanti Bai (DW-1) was examined.

4. The learned 10th Additional Sessions Judge, Jabalpur after considering the evidence adduced by the parties, acquitted the appellant from the charge of offence under Section 376 read with Section 511 of IPC, but convicted him for commission of offence punishable under Section 354 of IPC and sentenced as mentioned above.

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

6. The learned counsel for the appellant has submitted that the appellant was falsely implicated in the matter. He did not commit any offence. In the alternate, it is submitted that the appellant has faced this trial and appeal for last 19 years, whereas he remained in the custody for 12 days during the trial. He was 18 years old at the time of 3 Cr.A.No.278/1997 incident and he was the first offender. Under such circumstances, he may not be sent to the jail again.

7. On the other hand, learned counsel for the State has submitted that the trial Court has rightly convicted and sentenced the appellant, and therefore no interference is warranted from the side of this Court.

8. After considering the submissions made by learned counsel for the parties, it is to be considered as to whether the present appeal can be accepted on merits?.

Whether the sentence passed by the trial Court can be reduced?.

9. The prosecutrix (PW-1) has stated about the incident. Her statement was duly corroborated by the witnesses Malti Bai (PW-2) and Phoola Bai (PW-3). However, Phoola Bai turned hostile. She has stated that the prosecutrix was shouting her when the appellant entered into the house. She has also accepted that there was a quarrel between the prosecutrix and one Jayanti Bai, sister of the appellant. Ultimately Phoola Bai was declared hostile and she accepted so many suggestions given by the prosecution. Jayanti Bai (DW-1) has stated about the quarrel between her and the prosecutrix. However, the story of quarrel between the prosecutrix and Jayanti Bai was initiated for the first time in the evidence of Phoola Bai. No such suggestion was given either to the prosecutrix (PW-1) or the witness Malti Bai (PW-2). Under such 4 Cr.A.No.278/1997 circumstances, it appears that the story of quarrel was cooked by the appellant, and it was inserted for the first time after examination of the prosecutrix as well as Malti Bai (PW-2), and therefore such a cooked story cannot be believed.

10. No enmity has been proved between the prosecutrix and the appellant, and therefore there was no reason for the prosecutrix to implicate the appellant falsely. The testimony of the prosecutrix is duly corroborated by the statement of the witness Malti Bai, though some minor contradictions are present in the statements of the prosecutrix as well as the witness Malti Bai, but by such minor contradictions, their testimony cannot be disbelieved. Their evidence is duly corroborated by the timely lodged FIR Ex.P-1. Under such circumstances, it is established that the appellant went inside the house of the prosecutrix and lay upon her. Hence, he has used the criminal force to outrage her modesty. The learned trial Court has rightly convicted the appellant for commission of offence punishable under Section 354 of IPC.

11. So far as the sentence is concerned, it is true that the appellant was 18 years old at the time of incident. He was the first offender. But looking to his overt-act, it is not a good case in which benefit of probation may be given to the appellant. However, looking to the circumstances that he was the first offender and his age with the circumstance 5 Cr.A.No.278/1997 that he has faced the trial and appeal

for last 19 years, whereas he remained in the custody for 12 days during the trial, it would be proper not to send him in the jail again, but some heavy fine may be imposed upon him.

12. On the basis of above discussion, the instant appeal filed by the appellant is partly allowed. The conviction directed against the appellant by the trial Court for commission of offence under Section 354 of IPC is hereby maintained, but the sentence is reduced to the period which he has already undergone in the custody by enhancing the fine amount from Rs.1,000/- to Rs.5,000/-. The appellant is directed to deposit the remaining fine amount before the trial Court within two months from today, failing which he shall undergo RI for six months. If fine amount is deposited, then a sum of Rs.2,500/- may be given to the prosecutrix W/o Ramesh, R/o Vehicle Estate, Bajrang Nagar, Jabalpur by way of compensation.

13. Presence of the appellant is no more required, and therefore his bail bonds shall stand discharged.

14. A copy of this judgment be sent to the trial Court with its record for information and compliance. (N.K.Gupta) Judge 29/08/2012 Ansari.

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