

Suresh Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-26-2013

Appellant : Suresh Kumar

Respondent : The State of M.P.

Judgement :

Criminal Appeal No.528/1998. HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.528/1998 Appellant : Suresh Kumar, S/o Mole Lal Sahu, aged 27 years, R/o Pondi, P.S. Mohgaon, Tehsil & District- Mandla (M.P.) Vs. Respondent : The State of Madhya Pradesh Present: Hon. Shri Justice B.D.Rathi For appellant : Shri Surendra Singh, Senior Advocate with Shri R.K. Shukla, Advocate. For the respondent : Shri Amit Pandey, Panel Lawyer

JUDGMENT

(26 /7/13) The appellant has been convicted under Sections 450, 376 & 323 of the IPC and sentenced to undergo R.I. For 5, 7 and 1 years respectively with fine stipulation. The impugned judgment dated 29/1/1998 was passed by I Additional Sessions Judge, Mandla in Sessions Trial No.103/97.

2. According to the prosecution case, on 15/04/1997 the prosecutrix, aged about 29 years was sleeping inside her house with her son, aged about 6 years. Her husband had gone to a temple. The appellant entered in the house and forcible committed rape upon her. As she tried to shriek, she was gagged. In between, as her husband Lalman arrived, the appellant hid himself in another room and when

Lalman went to look after him, appellant started assaulting him with a stick. As she went for his rescue, she was also given a Stick blow on the back side of her head. She fell down and was rendered unconscious. A report of the incident was lodged next day on 16/04/1997 at 9.45 a.m. and Crime No.37/97 was registered at Police Station Pondi for the offences punishable under Sections 450, 376 & 323 of the IPC. After completion of investigation, charge-sheet was filed and thereafter impugned judgment was passed.

3. Charges under Section 450, 376 & 323 of the IPC were framed. Appellant pleaded false implication and not guilty. 2 Cr.A. No.528/1998 4. At the outset, learned Senior Counsel submitted that he does not want to press the appeal in so far as it relates to conviction under Section 323 of the IPC. However, he prayed that the corresponding sentence may be altered to fine sentence. He further argued that the prosecutrix was medically examined and no opinion could be given by the Dr. K.Uike (PW6) that she had been subjected to rape recently. It is also submitted that the prosecutrix was a consenting party. Learned senior counsel further submitted that the impugned judgment was passed without proper appreciation of evidence on record.

5. In response, learned Government Advocate, while making reference to the incriminating pieces of evidence on record, submitted that the conviction is well merited and the impugned judgment does not deserve to be interfered with. Alternatively, it was also submitted that even if element of consent is found present, then too appellant can be convicted for (i) the offence of adultery under Section 497 of the IPC for committing sexual intercourse with the prosecutrix, who was the married wife of Lalman and (ii) for the offence of house trespass, that was done for committing adultery and causing hurt to the prosecutrix and her husband.

6. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

7. During the course of arguments, learned counsel invited the attention of the Court to paragraph 7 of the evidence of prosecutrix (PW1), wherefrom it can be easily inferred that during the course of sexual assault, she had maintained such a

posture that facilitated the intercourse voluntarily and did not try to resist the attempt of the appellant. In paragraph 10 of the evidence, she has also admitted that during the course of sexual assault, she had neither bitten nor scratched the appellant with her nails. The fact that her son remained asleep while the offence was being committed, itself reveals that the prosecutrix did not raise any hue and cry at the time of sexual assault and so called gag has also not been seized by the police. That apart, mentioning of words Pura kaam suresh nahi kar paya tha. in FIR (Ex.P/1) by the prosecutrix, itself shows that either of the parties was not fully sexually satisfied before being caught red handed. It also reflects consent.

8. So in the aforesaid premises, in the opinion of the Court, prosecutrix was a consenting party and it was perhaps when the appellant and the prosecutrix were caught red handed, the story of rape had been cooked up. 3 Cr.A. No.528/1998 9. Having regard to the alternative submission made by learned Government Advocate, on perusal of evidence and material on record, appellant cannot be held guilty for the offence of adultery and house trespass under Section 451 of the IPC in absence of complaint as required by Section 198 of the Code of Criminal Procedure. Besides this, it is also not found proved that appellant had entered into the house after having made preparation for causing hurt.

10. Therefore, the convictions under Section 450 and 376 of the IPC cannot be upheld. So far as the conviction under Section 323 of the IPC is concerned, the same deserves to be affirmed. However, in view of the fact that the appellant is facing ordeal of trial and appeal since 1996, interests of justice would be met if custodial sentence, as awarded by the trial Court, is altered to fine sentence.

11. In the result, the appeal stands allowed in part. Impugned convictions and consequent sentences under Sections 450 and 376 of the IPC are hereby set aside. Conviction under Section 323 of the IPC (on two counts) for assaulting the prosecutrix and her husband is maintained. However, the corresponding custodial sentence is set aside and it is directed that the appellant shall pay a fine of Rs.1000/- on each count i.e. Rs.2000/- in total in default to suffer R.I. for six months on each count. Bail bonds of the appellant stand discharged.

12. Copy be sent to the trial Court for immediate compliance. (B. D. RATHI)
JUDGE 26 7/13 (and)

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