

Raj Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-28-2012

Appellant : Raj Kumar

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Sankalp Kochar

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.2328/1996 Rajkumar
VERSUS State of Madhya Pradesh
----- Shri Sankalp Kochar,
counsel for the appellant. Shri Ajay Tamrakar, Panel Lawyer for the
State/respondent. -----

JUDGMENT

(Delivered on the 28th day of September, 2012) The appellant has preferred this appeal against the judgment dated 26.12.1996 passed by the learned First Additional Sessions Judge, Sidhi in S.T.No.82/1996, whereby the appellant was convicted for the offence punishable under section 376 of IPC and sentenced for 7 years' rigorous imprisonment with fine of Rs.2,000/-. In default of payment of fine, one year's rigorous imprisonment was also directed.

2. Prosecution's case, in short, is that, on 30.3.1995, at about 10 a.m. in the morning, the prosecutrix (P.W.1) was working in Khalihan, situated at Village Khutar, Dihba Tola (Police Station Waidhan, District Sidhi). Due to power cut, -:- 2 -:- Criminal Appeal No.2328 of 1996 the working of thresher was stopped and therefore, Ramdas, husband of the prosecutrix, went to his house for taking lunch. At about 10 a.m. in the morning, the prosecutrix went to a field of Arhar (Pulse) to answer the call of nature. When she was coming back, the appellant met her and held her hand and tried to drag her towards his field. He pressed her breasts. The prosecutrix shouted then, the appellant threw her on Earth. In the meantime, Ramdas, husband of the prosecutrix reached to the spot and therefore, the appellant ran away from the spot. The prosecutrix thereafter, went to the flour mill of Ramkesh and told the entire story to him. In the evening, she told the entire story to Ramlal (P.W.3). On the next day, at about 3 p.m. in the evening, she had lodged an FIR, Ex.P/2 at Police Station Waidhan, District Sidhi, which was registered for the offence punishable under section 354 of IPC. During investigation, the prosecutrix has stated that the appellant had committed rape with her and therefore, after due investigation, a charge-sheet was filed before the JMFC, Waidhan for the offence punishable under sections 354 and 376 of IPC. The learned JMFC committed the case to the Sessions Court, Sidhi and ultimately, it was transferred to the First Additional Sessions Judge, Sidhi. -:- 3 -:- Criminal Appeal No.2328 o

3. The appellant abjured his guilt. He took a specific plea that Ramdas, husband of the prosecutrix took a sum of Rs.2,200/- from him and he was not returning the same on demand. To pressurize the appellant, a false case was prepared with help of his wife. In defence, Ramkesh (D.W.1) was examined.

4. The learned Sessions Judge, after considering the evidence adduced by the parties, convicted the appellant for the offence punishable under section 376 of IPC and sentenced him as mentioned above.

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

6. The learned counsel for the appellant has submitted that initially a report of offence punishable under section 354 of IPC was lodged by the prosecutrix. FIR

was lodged with delay of at least 19 hours and therefore, no medical examination of either the prosecutrix or the appellant had taken place. It is apparent that she had an opportunity to narrate the facts at the time of lodging the FIR but, she did not tell about the rape and therefore, allegation of the offence of rape was not correct. The prosecutrix was a consenting party. Her conduct and character was duly established by Ramkesh (D.W.1). It appears that when the husband of the prosecutrix went to the spot, a false report was lodged against the appellant otherwise, she was a -:- 4 -:- Criminal Appeal No.2328 of 1996 consenting party. In the alternate, it is submitted that if the appellant is convicted for the offence punishable under section 354 of IPC then, he remained in the custody for one year and 19 days. He has faced the trial and appeal for the last 16 years and therefore, he may not be sent to the jail again.

7. On the other hand, the learned Panel Lawyer has submitted that the conviction as well as the sentence passed by the trial Court appears to be on sound footings and therefore, no interference is warranted in the appeal.

8. After considering the submissions made by the learned counsel for the parties, it is to be considered as to whether the appeal filed by the appellant can be accepted?. Whether the appellant can be convicted for the offence punishable under section 354 of IPC?. And whether the sentence imposed upon the appellant can be reduced?.

9. The prosecutrix (P.W.1) has stated that her husband went to his house to take his lunch and after sometime, the prosecutrix went to answer the call of nature. When she was returning, the appellant held her hand and her waist. He threw her on the Earth and committed rape upon her. She was crying and weeping but, nobody came to the spot. Ultimately, her husband heard her cries and came to the spot and thereafter, the appellant ran away. Ramdas -:- 5 -:- Criminal Appeal No.2328 of 1996 (P.W.2) has stated that he went to take his lunch. Thereafter, when he came back to the Khalian, he found that his wife was not there. When he heard her shoutings, he rushed to the spot and found that the appellant left the hand of the prosecutrix and started running from the spot. His wife informed him that the appellant was taking her to his field to take her Chastity. He did not say

that the prosecutrix informed him that the appellant committed rape upon her.

10. According to the prosecutrix and Ramdas, the prosecutrix thereafter went to the flour mill of Ramkesh and told the entire story to the witness Ramkesh. However, Ramkesh was not examined by the prosecution. He was examined as a defence witness as D.W.1.

11. The prosecutrix had lodged an FIR, Ex.P/2 on the next day of the crime. Ramdas, husband of the prosecutrix had accepted that from his village to the Police Station Waidhan, public transports are available on each and every hour. No reason could be shown by these witnesses as to why they could not go to the Police Station on the same day of the incident. The incident took place at about 10 a.m. in the morning and therefore, they could reach to the Police Station at about 2 p.m. in the evening. On the contrary, the FIR was lodged on the next day at about 3 p.m. and :- 6 :- Criminal Appeal No.2328 of 1996 therefore, FIR is delayed by atleast 25 hours. No reasonable ground could be shown by the prosecutrix or her husband about such a delay. Also in the FIR, no allegation had been made by the prosecutrix about the offence of rape. Under such circumstances, where she did not inform her husband or the witness Ramkesh about the rape and no such allegation was made in the FIR then, it appears that she had alleged a false allegation of rape against the appellant. The appellant could not be convicted for the offence punishable under section 376 of IPC. Learned Additional Sessions Judge has erred in convicting the appellant for the offence punishable under section 376 of IPC.

12. So far as the offence punishable under section 354 of IPC is concerned, it is alleged by the prosecutrix in the FIR that the appellant held her hand to drag her towards the field of Arhar (Pulse) and he pressed her breasts. Ramdas has also confirmed that when he saw the appellant, he left the hand of the prosecutrix and started running. Ramdas did not tell the entire story before the Court. He did not state before the police that when he saw, the appellant left the hand of the prosecutrix and started running. A contradiction was marked with his case diary statement, Ex.D/2. :- 7 :- Criminal Appeal No.2328 o

13. Ramlal (P.W.3) was the witness who was informed about the incident by the prosecutrix in the evening. Ramlal (P.W.3) has stated that in the evening, the prosecutrix was sitting at the flour mill of Ramkesh. When the witness Ramlal asked her as to why she was sitting there, the prosecutrix replied that her husband was not permitting her to go inside the house because the appellant held the hand of the prosecutrix. Thereafter, Ramlal asked the prosecutrix that whether her hand was held by the appellant or not then, she has accepted that her hand was held by the appellant. The witness Ramlal was not declared hostile. The version given by the witness Ramlal was confirmed by Ramkesh (D.W.1). Ramkesh has further stated that the prosecutrix had told that her husband ousted her from the house and thereafter, he advised her husband not to do such a thing. Ramkesh gave his opinion that the prosecutrix was in a habit of doing such an activity with others and therefore, her husband was disheartened due to such a character of her. If the evidence of the witness Ramkesh is not accepted then, still the evidence given by the witness Ramlal indicates that looking at the activity of the prosecutrix, her husband Ramdas thought that the prosecutrix was a consenting party. A patch up took place between Ramdas and his wife :- 8 :- Criminal Appeal No.2328 of 1996 because she had shown her willingness to lodge an FIR and therefore, the FIR could be lodged.

14. By evidence of the witness Ramlal, it appears that the husband of the prosecutrix ousted her from the house and a compromise took place between them and thereafter, the prosecutrix lodged the FIR. Such overt-act of the witness Ramdas indicates that he did not hear any hue and cry of the prosecutrix but, when he came back from his house, he saw that the appellant holding the hand of the prosecutrix and therefore, he was annoyed with his wife because he was of the view that the prosecutrix was a consenting party.

15. If the prosecutrix was not a consenting party then, she must have made hue and cry, so that her husband or other persons could come to the spot. On the contrary, she did not make any hue and cry and even she was not ready to lodge the FIR against the appellant. Under such circumstances, it is apparent that the prosecutrix was a consenting party. If a person teases any woman and she was a consenting party then, it cannot be said that by overt-act of the accused, any

criminal force was used by him and therefore, due to consent of the prosecutrix, no offence punishable under section 354 of IPC shall be made out in such a case.

-:- 9 -:- Criminal Appeal No.2328 o

16. On the basis of the aforesaid discussion, the possibility cannot be ruled out that the prosecutrix was a consenting party and therefore, the appellant cannot be convicted for the offence punishable under section 354 of IPC. An FIR was lodged by the prosecutrix due to pressure of her husband and no crime was committed with her.

17. The appellant cannot be convicted for the offence punishable under sections 376 or 354 of IPC. The learned Additional Sessions Judge erred in convicting the appellant for the offence punishable under section 376 of IPC.

18. Consequently, the appeal filed by the appellant appears to be acceptable. Hence, it is hereby accepted. The conviction as well the sentence directed by the trial Court for the offence punishable under section 376 of IPC is hereby set aside. The appellant is acquitted from all the charges appended against him. He would be entitled to get the fine amount back from the trial Court, if he has deposited.

19. The appellant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

20. A copy of the judgment be sent to the trial Court along with its record for information and compliance. (N.K.GUPTA) JUDGE Pushpendra 28/9/2012

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