

Santosh Kumar Gupta Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-17-2012

Appellant : Santosh Kumar Gupta

Respondent : The State of M.P.

Judgement :

1 Cr.A No.2018/2003 HIGH COURT OF MADHYA PRADESH AT JABALPUR
DIVISION BENCH:HON'BLE SHRI JUSTICE RAKESH SAKSENA HON'BLE SHRI
JUSTICE T.K. KAUSHAL CRIMINAL APPEAL No.2018 OF 200.APPELLANT:
Santosh Kumar Gupta, S/o Baratilal Gupta, aged 32 years, R/o Village- Devra,
P.S. Maihar At present Shiksha Karmi Grade-III, Karaiya (M.P) Versus
RESPONDENT: State of MP

***** For appellant : Shri
Deepak Pendharkar, Advocate For Respondent : Shri Amit Pandey, Panel Lawyer

***** Date of hearing :

17. 07/2012 Date of judgment: /07 /2012 This appeal has been preferred under
section 374(2) of the Code of Criminal Procedure, 1973 (in short Cr.P.C) against
judgment dated 25/11/2003 passed by Additional Sessions Judge, Maihar in
Sessions Trial No.34/2003 convicting the appellant under section 376 IPC and
under section 342 IPC for committing rape on minor prosecutrix, after confining her
in his house, sentencing to life imprisonment and with fine of Rs.10,000/- and to 1
year R.I and with fine of Rs.1000/- respectively.

2. Facts of the case, in short, are that on 03/10/2002 at about 10.00 A.M prosecutrix aged 14 years (PW-5) was asked by her mother Smt. Arun Tiwari (PW-6) to go in neighbouring house of Ramniwas Pandey (PW-8) to extend help to his wife for cleaning of grains. Appellant was residing in the house of PW-8 as tenant. Appellant was working as Teacher (Shiksha Karmi) in the same school in which prosecutrix was studying in Class-VIII. Appellant 2 Cr.A No.2018/2003 forcibly took the prosecutrix inside his room. After undressing her and himself committed rape on her. Appellant locked the room from inside and threatened the prosecutrix to keep on sitting there. Appellant cooked food and after taking meals again committed rape on her. Appellant left the room and locked that from outside. Prosecutrix could, somehow, manage to come out of the room from another door of the room, and reached to her house. Prosecutrix narrated the incident to her family members.

3. Vishnu Datt Tiwari, father of prosecutrix (PW-7) was not keen to lodge FIR apprehending the loss of reputation etc. After consultation with his family members, living outside the village and with Vishnu Pratap Singh, Sarpanch (PW-9), ultimately, decided to lodge the report. On 09/10/2002 prosecutrix lodged FIR Ex.P-5 against the appellant at police station Maihar. A case at crime No.407/2002 under section 342, 376, 506B IPC was registered against the appellant. Prosecutrix was sent for her medical examination. Dr. Smt. S.B. Awadhiya (PW-1) examined prosecutrix and prepared MLC report Ex.P-1 and referred the prosecutrix to Radiologist for ascertaining her age. During investigation, police obtained school records in support of age of the prosecutrix. On 29/10/2002, appellant was arrested and was sent for his medical examination. After completing the investigation, police-Maihar submitted a charge sheet under section 342, 376, 506B IPC against the appellant. Then case was committed to the trial Court. Trial Court framed charges under section 342, 376, 506B IPC. Appellants abjured guilt. Defence of the appellant in the Trial Court was that of false implication at the instigation of Sarpanch (PW-9) who had past enmity with him.

4. To substantiate the case of the prosecution, statements of Dr. Smt. S.B. Awadhiya (PW-1), Rajendra Prasad Pandey, Head Master (PW-2), Dr. A.R. Singh, Medical Officer (PW-3), Sadhana Tiwari, Sister of prosecutrix (PW-4), Prosecutrix,

14 years (PW- 3 Cr.A No.2018/2003 5), Smt. Arun Tiwari, mother of prosecutrix (PW-6), Vishnu Datt Tiwari, father of prosecutrix (PW-7), Ramniwas Pandey (PW-8), Vishnu Pratap Singh (PW-9), Dr. A.K. Saraf, Radiologist (PW-10), and D.P. Pandey, ASI (PW-11) were recorded. In support of the defence, statements of Dr. R.G. Choudhary, Medical Officer (DW- 1), Govind Prasad Badgaiyan (DW-2), Ram Dayal Garg, Head Constable (DW-3), Smt. Amita Singh, Teacher (DW-4) and Rakhilal Kushwaha, Teacher (DW-5) were recorded. After appreciating the aforesaid evidence, trial court has convicted and sentenced the appellant as above.

5. Challenging the impugned judgment, this appeal has been preferred on the grounds that appreciation of evidence is not proper. Trial court did not appreciate evidence on the point of age of the prosecutrix. Prosecution failed to prove prosecutrix to be minor. Defence evidence has been disbelieved on flimsy and baseless grounds. Conviction is bad in law and sentence is harsh. On the other hand, learned Panel Lawyer supported the impugned judgment and findings of conviction and sentence both.

6. Dr. Smt. S.B. Awadhiya (PW-1), examined the prosecutrix on 09/10/2002 i.e after about 6 days of the incident and found tear mark on hymen and also found tenderness and signs of recent healing on the private parts of the prosecutrix, suggestive of the commission of the intercourse with her about a week back. PW-1 further opined the age of the prosecutrix to be from 14 to 16 years. In view of the aforesaid medical evidence, it remains no longer disputed that prosecutrix was subjected to intercourse at the relevant time.

7. In respect of age of the prosecutrix at the time of the incident, prosecution relied upon the oral evidence of family members, documentary evidence of school record and on medical evidence. Prosecutrix stated herself to be 14 years of age. Sadhana Tiwari, sister of prosecutrix (PW-4) stated age of 4 Cr.A No.2018/2003 herself to be 18 years i.e. 4 years elder to the prosecutrix, meaning thereby the age of the prosecutrix to be 14 years. Date of birth of the prosecutrix was entered 01/07/1988 in school register Ex.P-3. This is also suggestive her age to be little more than 14 years at the time of incident.

8. Learned counsel for the appellant submitted that Dr. Smt. S.B. Awadhiya (PW-1) opined her age to be between 14 to 16 years. Smt. Arun Tiwari, mother of prosecutrix (PW-6) stated the age of prosecutrix to be 16-17 years and Dr. A.K. Saraf, Radiologist (PW-10) opined the prosecutrix to be of age more than 17 years but below 18 years. PW-10 prepared report Ex.P- 10 in this regard. Placing reliance on AIR 201.SCC 71.(Alamelu and another Vs. State) learned counsel for the appellant submitted that none of the prosecution witness has stated the date of birth of prosecutrix to be 01/07/1988. Entry of school record may be relevant and admissible under section 35 of the Indian Evidence Act, but its evidencial value should be assessed by any positive evidence adduced before the court only then any conclusive finding of age can be given.

9. After considering all the aforesaid evidence regarding age of the prosecutrix we are of the view that medical evidence is simply an opinion of expert and mother of prosecutrix has given a very vague estimate of age of the prosecutrix on the date of recording of her evidence. Date of birth shown in the school record appears definitely more convincing and reliable because it was entered in the school record in the year 1994 and there appears no reason for us to suspect that the date of birth recorded therein was incorrect. Trial court has appreciated evidence in right perspective and rightly held her age to be under 16 years.

10. It is further submitted by learned counsel for appellant that FIR has been lodged with a delay of 6 days without any explanation at the behest of the Sarpanch (PW-9) because he 5 Cr.A No.2018/2003 had a quarrel with him in respect of dispute of mid day meal in school. On 24/08/2002 Dr. R.G. Choudhary, Medical Officer (DW-

1) had examined the injuries of appellant and prepared MLC report Ex.D-9. Ram Dayal Garg, Head Constable (DW-3) proved Roznamchasana No.451 of 24/08/2002 of P.S- Maihar showing that appellant had lodged a report against Sarpanch (PW-9). Sarpanch (PW-9) also admitted the fact that considering the apology of the appellant, he withdrew the police case.

11. Evidence of PW-4, PW-5, PW-6 and PW-7, reveal that father of the prosecutrix remained in regular contact with PW-9 from the date of incident till the date of FIR.

Learned Panel Lawyer submitted that father of prosecutrix was reluctant to lodge report because her daughter was of marriageable age and such type of stigma on her would have earned a bad name to the family and might result in delay and obstruction in marriage. There is evidence on record to show that advice of elder brother of father of prosecutrix was also obtained who lived in another village and two sittings of panchayat were also held prior to the lodging of FIR.

12. In our opinion delay of 6 days in lodging FIR stands explained well. In so far as enmity of PW-9 with the appellant is concerned it is apparent that delay has been caused due to hesitation of the family members. In no way it can be attributed to PW-9 to cook a false case to settle the score between him and appellant. Evidence of prosecutrix stands duly corroborated by medical evidence and evidence of other family members. We find it trustworthy. Appellant has committed sexual intercourse with a minor girl, thereby committed offence of rape. Trial Court has appreciated the evidence properly and has rightly reached to the conclusion of the guilt of the appellant. We accordingly confirm the conviction of appellant recorded by the Trial Court.

13. At this stage it is submitted by learned counsel for the appellant that it was not a case worth extreme punishment 6 Cr.A No.2018/2003 rather offence has been committed in the uncontrolled impulse of lust for sex. Appellant had no bad antecedents or any other criminal record. He prayed for lesser punishment. It is a case of borderline age of the prosecutrix. Because of the minor age of the prosecutrix, element of consent could not be taken into account.

14. In our considered opinion, in view of the totality of the facts and circumstances of the case, punishment of life imprisonment seems to be harsh and excessive instead it appears to be a fit case for award of punishment of 10 years R.I, that will be sufficient to will meet the ends of justice.

15. Consequently, this appeal is partly allowed on the point of sentence. Conviction of appellant under section 342 and 376 IPC is affirmed. For offence under section 376 IPC, sentence of life imprisonment, is reduced to R.I for 10 years. Sentence for offence under section 342 IPC is maintained. Appeal is allowed in part as indicated above. (RAKESH SAKSENA) (T.K. KAUSHAL) Judge

Judge tarun/

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