

Uttam Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-24-2013

Appellant : Uttam

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Smt. Chanchal Sharma, Smt. Chanchala Sharma

Judgement :

1 Cr.A. No.1090 of 2007 HIGH COURT OF MADHYA PRADESH AT JABALPUR
SINGLE BENCH: HONBLE SHRI JUSTICE SUBHASH KAKADE CRIMINAL
APPEAL NO.1090 of 2007 APPELLANT : Uttam S/o Sitaram Yadav Aged 25
years, R/o Village Madavan Gouri, Thana Multhoun, District Sagar (M.P.) Versus
RESPONDENT : The State of Madhya Pradesh Through P.S. Multhoun District
Sagar (M.P.) ----- Smt.
Chanchal Sharma, Advocate for Legal Aid for the appellant. Shri Piyush
Dharmadhikari, Government Advocate for the respondent /State
----- Judgment reserved
on :

25. 07.2013 Judgment delivered on :

24. 09.2013 (

JUDGMENT

) Appellant Uttam has filed this appeal under Section 374(2) of Criminal Procedure Code, 1973 being aggrieved by the judgment dated 17/02 / 2 007 passed by the Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Sagar in Special Case No.21 of 2005 (State of M.P. Through P.S. Multhoun vs. Uttam), whereby the appellant was convicted under Section 376(1) of IPC and awarded a punishment of rigorous imprisonment of seven years and fine of Rs.1,000 / - , in default of payment of fine, further to suffer six months' rigorous imprisonment. 2 Cr.A. No.1090 of 2007

02. Brief facts of the prosecution case are:- (A) On dated 14.10.2004 prosecutrix went with her daughter Roshni at the house of the accused to collect chaff (cut-straw) at about 10:00 a.m. The prosecutrix was collecting the chaff same time the accused entered in the room, locked the door from inside. The accused dashed down the prosecutrix on bulk of chaff to over power her and unrobing her to commit rape. The prosecutrix raised cry for help so her husband Suresh came there and knocked at the door. Meanwhile the prosecutrix also given jolt to the accused so he felt down then prosecutrix unlocked the door. The accused run away after saw the Suresh. The prosecutrix narrated entire incident to her husband and Jithani Siyabai (husbands brother Premnarayan's wife). (B) On next day 15.10.2004 the prosecutrix went to P.S. Multhoun to report the matter which set criminal law in motion. Sub Inspector Shri K.K. Agrawal written the FIR and managed to sent the prosecutrix to Community Health Center, Multhoun where Dr. V.L. Uikey examined her. The prosecutrix was belonging to Scheduled Caste, therefore, further investigation completed by Shri Surendra Singh Gour, SDO(P) Khurai. Shri Gour recorded statements of the prosecutrix as well as other witnesses, arrested appellant and after completion of investigation, a challan was submitted before the learned trial Court.

03. The learned trial Court on the basis of evidence available on record framed charge against the appellant punishable under Section 450 and 376

(1) of Indian Penal Code and Section 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, who abjured the guilt, therefore, he was put to trial. 3 Cr.A. No.1090 of 2007

04. The prosecution in furtherance of its case examined the prosecutrix (PW/1), her husband Suresh (PW/2), daughter Roshni (PW/3), Jithani Siyabai (PW/4) and other 5 witnesses who participated in investigation as per their official capacity. Documents Ex.P-1 to Ex.P-9 were filed. During statement under Section 313 of Cr.P.C., the appellant denied all the evidence put forth against him and pleaded his innocence on the ground that he was falsely implicated in the case. Defence not examined any witness.

05. The learned trial Court after appreciating the evidence available on record held the appellant guilty under Section 376(i) of Indian Penal Code and convicted and sentenced him as mentioned herein above, against which this appeal. Though, the learned trial Court acquitted the appellant from the charges punishable under Section 450 of Indian Penal Code and Section 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against which respondent /State does not prefer an appeal.

06. Smt. Chanchal Sharma, learned counsel for the appellant has submitted that oral version of the prosecutrix and other witnesses are seriously contradictory, and several omissions, exaggerations are present in their evidence. She further submitted that the learned trial Court did not look into the fact that oral version of the prosecutrix is also not corroborated by the medical evidence and FIR were lodged delayed without any explanation. Thus, the appeal deserves to be allowed.

07. Per contra, Shri Piyush Dharmadhikari, Government Advocate for the respondent has submitted that after due appreciation of prosecution evidence, the learned trial Court has 4 Cr.A. No.1090 of 2007 found the offence proved against the appellant, which requires no interference.

08. Considered the rival submissions made by learned counsel for the parties at length and perused the impugned judgment and entire record carefully.

09. It is no doubt true, that conviction can be based solely on testimony of the prosecutrix, but that can be done in a case where the Court convinced about the truthfulness of the prosecutrix and there exist no circumstances which caste a shadow of doubt over her veracity. If the evidence of prosecutrix is of such quality

that may be sufficient to sustain an order of conviction solely on the basis of her testimony.

10. Smt. Chanchala Sharma, learned counsel for the appellant rightly argued that going through the averments made in the FIR that after dashed down the prosecutrix on bulk of chaff the accused over power the prosecutrix and unrobed her. Next important version is basis of arguments of learned counsel for the appellant that while accused trying to rape with her same time she raised cry for help so her husband came over there and knocked at the door. She further attracted attention to the fact that the same is the part of the police statement of prosecutrix and these versions does not completed the offence of Section 376 of the IPC.

11. Rape has been often described as the easiest charge to make and most difficult to refute, and consequently, the Court seldom convicts upon the uncorroborated evidence of the woman.

12. In interpreting the explanation to Section 375, IPC whether complete penetration is necessary to constitute an offence of rape, various High Courts have taken a consistent view that even 5 Cr.A. No.1090 of 2007 the slightest penetration is sufficient to make out an offence of rape and the depth of penetration is immaterial.

13. As regards the proof of offence under Section 376 of the IPC, it is seldom, that direct evidence is available beyond the evidence of the raped woman. It is an essential part of the proof of rape that there should have been not only an assault but actual penetration. The only witness who can prove that is the woman. The adult and married prosecutrix nor narrated any word about actual penetration in FIR (Ex.P-1) as well as during her police statements.

14. In the instant case, there had not been any attempt of penetration to the slightest degree. It is no where mentioned in the FIR (Ex.P-1) that the appellant undressed himself so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Section 376 of the Indian Penal Code is wholly illegal and unsustainable.

15. It is true that the contents of FIR (Ex.P-1) as mentioned in above para 2(A) reveals that rape was not committed but, it was an attempt to rape.

16. Against above versions the prosecutrix (PW/1) stated contradictory statement during her court evidence that the appellant over power her and committed rape with her, which is at all not contains of FIR (Ex.P-1), then how it can be accepted?.

17. The prosecutrix (PW/1) does not narrated a single word about this substantial averment of FIR (Ex.P-1) that when she cried for help her husband Suresh came to house of the appellant and knocked at the door. She also does not stated this fact that she given a jolt to the appellant so he fell down so she opened the door. 6 Cr.A. No.1090 of 2007 FIR (Ex.P-1) also contains that when the prosecutrix opened the door to see her husband Suresh the appellant run away.

18. In this sequence the prosecutrix exaggerated her statement stating that her bangles were broken by the appellant. This statement is not found place in FIR (Ex.P-1). It is also pertinent to mention here that the broken piece of the bangles were not recovered and seized by the investigating agency.

19. The prosecutrix (PW/1) stated that when the appellant came in the room Roshni started weeping and crying and she also cried but, nobody of the vicinity came over there, not even her husband. It going to show that the prosecution wants to pose 8 years old witness Roshni (PW/3) as an eye witness. The prosecutrix also supported this aggregative version of Roshni (PW/3) but, these statements are not part of the FIR (Ex.P-1).

20. Suresh (PW/2) also admitted that when he reached to the spot he found his daughter was also inside the room. This is at all not case of the prosecution. Statement of Suresh (PW/2) also not supporting the case of the prosecution as mentioned in FIR (Ex.P-1). He stated that when he reached on the spot he asked her wife to open the door till then the appellant were already left the spot.

21. The prosecutrix (PW/1) stated this new fact that the appellant run away from back door. Roshni (PW/3) also corroborated this fact. But, these statements of mother and daughter are contradictory to the version of FIR (Ex.P-1), so cannot

believe.

22. In examination- in- chief prosecutrix (PW/1) categorically stated she narrated the incident to her husband and Jithani Siyabai. It is pertinent to mention here that nearest relative Siyabai 7 Cr.A. No.1090 of 2007 (PW/4) were declared hostile because, she stated that the prosecutrix did not narrate her any fact about the incident of rape with the prosecutrix and also contradicted her police statement Ex.P-3.

23. Suresh (PW/2) denied these suggestions that due to doubt he reported the matter and scolded her wife while he himself sent the prosecutrix to bring the chaff from the house of the appellant.

24. But, the prosecutrix (PW/1) stated that her husband scolded her why she went to house of the appellant whereupon she replied that you have told her to bring the chaff from the house of appellant and now scolding her.

25. The prosecutrix (PW/1) further admitted that her husband brought her that day to the police station. It goes to show that she herself was not willing to go to the police station. In this sequence her following statement is very much important that at night she went to house of her sister at village Barodiya. She also admitted this fact that she did not narrate the incident to the Sarpanch or Village Kotwar because her husband denied it.

26. The prosecutrix (PW/1) stated that on the same day she went to the Police Station Multhoun. She categorically stated that the FIR (Ex.P-1) were reported on the second day.

27. The same is the version of Suresh (PW/2). Suresh (PW/2) during his examination- in- chief stated that he went to the police station on the same day at 9:00 a.m. but, at police station any police officer was not present so matter was reported at night. Non presence of any police officer of police station categorically rebutted by Shri Agrawal (PW/7). 8 Cr.A. No.1090 of 2007 28. Going through the admissions of the prosecutrix (PW/1) and her husband Suresh (PW/2), it is clear that the prosecutrix did not clarify why FIR (Ex.P-1) lodged after delay of 25

hours?. This unexplained delay for filing of FIR (Ex.P-1) is fatal for the prosecution.

29. Having carefully gone through the evidence of the prosecutrix (PW/1) as discussed above I found that the evidence of prosecutrix is not trustworthy, she has deviated from the case narrated in the First Information Report Ex.P-1. Admitted medical report (Ex.P-9) is also not supportive to evidence of prosecutrix. In case of *In Re:Karichiappa Goundan vs Unknown*, AIR1942 Mad. 285 = 1943 Cr.L.J.

576 it is held that the Court seldom convicts upon the uncorroborated evidence of woman.

30. Husband and daughter of the prosecutrix also not supported the version of the prosecutrix, hostility of another important witness Siyabai (PW/4) creating serious doubtful situation. FIR (Ex.P-1) also lodged after delay of 25 hours, which is unexplained. Therefore, the conviction under Section 376 (1) of IPC cannot be sustained.

31. The appeal is, therefore, allowed. Conviction and sentence awarded to the appellant Uttam by the learned trial Court is hereby set aside and he is acquitted from the charges under Section 376 (1) of Indian Penal Code leveled against him.

32. Appellant Uttam be released forthwith from custody unless required to be in custody in connection with any other case. Appeal allowed. (SUBHASH KAKADE)
JUDGE AK/

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