

Mohan @ Mohan Lal Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-10-2013

Appellant : Mohan @ Mohan Lal

Respondent : The State of M.P.

Judgement :

[1]. [Criminal Appeal No.1093/1997]. HIGH COURT OF MADHYA PRADESH : JABALPUR Criminal Appeal No.1093/1997 Mohan @ Mohanlal Vs. State of M.P. As Per : G.S.Solanki, J.

Shri Rakesh Kumar Jain, Advocate for the appellant. Shri Aditya Singh, Public Prosecutor for the State.

JUDGMENT

[10.10.2013].

1. This appeal has been preferred by the appellant under Section 374(2) of Cr.P.C. being aggrieved by conviction and sentence recorded by Additional Sessions Judge, Begumganj, District Raisen in S.T. No.72/94 vide judgment dated 9.5.1997 whereby the appellant has been convicted for the offence punishable under Sections 376(1), 366 of the IPC and sentenced to R.I. for 5 years with fine of ` 2,000/- and R.I. for 3 years with fine of ` 1,000/- respectively, with default stipulations.

2. The facts, in short, giving rise to this appeal are that on 7.4.1994, Baliram lodged an FIR at P.S. Begumganj to the effect that his daughter (hereinafter referred to as the prosecutrix), aged about 17 years, had gone to answer the call of nature but she did not return back to home and when he had gone to search the prosecutrix, Kashiram (PW-6) and [2]. [Criminal Appeal No.1093/1997]. other witnesses informed him that the appellant had abducted her. Thereafter, a crime for the offence punishable under Sections 363, 366 was registered against the appellant. During investigation, the prosecutrix was found living with the appellant at village Piparia, District Hoshangabad. She was sent for medical examination and x- ray examination for determination of her age. The appellant was arrested.

3. After due investigation, the appellant was charge sheeted before committal Court, from where the case was committed to the Court of Session and thereafter the case was sent for trial. The learned Additional Sessions Judge, Begumganj framed the charge under Sections 366, 376(1) of the IPC against the appellant.

4. The appellant abjured the guilt and pleaded false implication. In support of his defence, he filed 8 love letters, which are stated to have been written by the prosecutrix to the appellant along with the affidavit of the prosecutrix regarding their marriage. The appellant has examined Nandlal (DW-1) and Phool Singh (DW-2) as defence witnesses. [3]. [Criminal Appeal No.1093/1997].

5. On appraisal of evidence on record, learned Additional Sessions Judge convicted and sentenced the appellant as mentioned hereinabove, hence this appeal.

6. Learned Counsel for the appellant has submitted that the trial Court has committed illegality in not appreciating the evidence on record in its proper perspective. The prosecutrix herself had gone with the appellant because they were in love affair and they lived together at Piparia for about a month, therefore, the prosecutrix was a consenting party to the sexual intercourse with the appellant. Neither she was compelled to marry with the appellant nor she was seduced to have illicit intercourse and the trial Court has failed to take into consideration the aforesaid aspect of the case, therefore, the conviction and sentence recorded by the trial Court be set aside and appellant be acquitted to the aforesaid charges.

7. Learned Panel Lawyer for the State has supported the conviction and sentence recorded by the trial Court and prayed for dismissal of this appeal.
8. I have heard the learned counsel for the parties at length and gone through the impugned judgment and other material on record specially the statement of prosecutrix [4]. [Criminal Appeal No.1093/1997]. (PW-2). Initially she stated that the appellant took her forcibly on the point of knife but in her cross-examination she admitted that the appellant was well known to her. She further admitted her signature on the affidavit (Ex.D-1). She further admitted that she lived with the appellant for about a month at Piparia District Hoshangabad. Dr. (Smt.) Preeti Deopujari (PW-100) examined the prosecutrix. She was unable to give any opinion in regard to commission of rape on the prosecutrix, thus, there is no medical corroboration on record. Dr. S.S. Kushwaha (PW-8) conducted the ossification test and opined that the prosecutrix was more than 18 years of age. In these circumstances, it is proved on record that on the date of incident, the prosecutrix was more than 18 years of age.
9. On careful scanning of the statement of the prosecutrix, it reveals that she was more than 18 years of age. She had gone with the appellant on her own accord, she lived with him for about a month but she did not make any complaint to anyone. She has also admitted her signature on the affidavit (Ex.D-1) regarding their marriage, which shows that she was a consenting party to the sexual intercourse with the appellant. There is no evidence on record to show that either she was compelled to marry with the appellant or [5]. [Criminal Appeal No.1093/1997]. she was seduced for illicit intercourse with the appellant. This fact further finds support by the statement of Nandlal (DW-1) and Phool Singh (DW-2), who deposed that the prosecutrix herself came with the appellant and she was agreed to marry with the appellant.
10. Considering the aforesaid evidence on record, I am of the considered view that the trial Court has committed illegality in recording the conviction of the appellant under Sections 366, 376 of the IPC and same is liable to be set aside.
11. Consequently, the appeal is allowed. The conviction of the appellant recorded under Section 366, 376(1) of the IPC is hereby set aside. The appellant is

acquitted to the aforesaid charges. The appellant is in jail, he be released forthwith if not required in any other offence. The fine amount be refunded to the appellant, if already deposited. Let record of the trial Court be sent back immediately along with the copy of this judgment for information and necessary action. (G.S.Solanki)
Judge PB

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