

Ram Vilas Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-03-2004

Reported in : 2004CriLJ2903; 2004(2)MPHT135

Judge : A.K. Shrivastava, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; [Evidence Act, 1872](#) - Sections 45, 60 and 156; Code of Criminal Procedure (CrPC) , 1974 - Sections 374

Appeal No. : Criminal Appeal No. 194/96

Appellant : Ram Vilas

Respondent : State of M.P.

Advocate for Def. : Chitra Saxena, Adv.

Advocate for Pet/Ap. : M.M. Tripathi, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence passed by 1st Addl. Sessions Judge, Guna in Sessions Trial No. 240/1994, whereby,

appellant has been convicted under Section 376 of Indian Penal Code (hereinafter referred to as 'the IPC) and has been sentenced to suffer R.I. for seven years and fine of Rs. 500/-, in default three months further R.I., the appellant has knocked the doors of this Court by preferring an appeal under Section 374 of Code of Criminal Procedure, 1973.

2. The facts leading to this appeal lie in a narrow compass. According to the case of prosecution, on 10-6-1994, at about 10 A.M., prosecutrix was washing the clothes on the bank of river, at that juncture, nobody was present there. Appellant at the relevant point of time came there and hugged her. Thereafter, she was thrown on the ground and was ravished by him. During the course of rape, bangles of the prosecutrix were broken. Appellant after satisfying her dirty thirst fled and thereafter, the prosecutrix went to her house. She was weeping. The husband of the prosecutrix, Bharosa (P.W. 1) when came in the evening in the house, the prosecutrix narrated the incident to him, later on when his mother-in-law Narayani Bai arrived, the incident was also told to her. Thereafter, the prosecutrix alongwith her husband and mother-in-law went to lodge the report at Police Station, Kumbhraj, Distt. Guna.

3. On lodging First Information Report in the police station, criminal law was set in motion. The Investigating Officer sent the prosecutrix for medical examination where she was medically examined by Dr. Lekha Tiwari (P.W. 2). Her report is Ex. P-2. The Investigating Officer in furtherance to his investigation, recorded the statements of the witnesses, seized wearing clothes of the prosecutrix, arrested the accused/appellant, sent him for medical examination and after completing investigation, a charge-sheet was filed before the Competent Court who on its turn, committed the case to the Court of Session from where it was received by the Trial Court for trial. ,

4. The learned Trial Judge, after perusing entire charge-sheet framed the charge punishable under Section 376(1) of IPC. The appellant refuted the charge and pleaded complete innocence. His defence was that his catties were drinking the water, as a result of which, clothes of the prosecutrix became dirty with the result, the prosecutrix lodged a false and concocted report.

5. In order to prove the charges, prosecution examined as many as seven witnesses and placed documents (Ex. P-1 to Ex. P-9) on record. In his defence, accused/appellant examined three witnesses. The learned Trial Judge, after considering the evidence, law and submissions of the parties, came to hold that the accused/appellant did commit the offence for which, he was charged and eventually convicted him and passed the sentences mentioned hereinabove. Hence, this appeal.

6. In this appeal, Shri M.M. Tripathi, learned Counsel for the appellant has contended that if the evidence of prosecution witnesses as well as the evidence of defence witnesses is considered in proper perspective, the only inference which can be drawn is that the accused/appellant has been falsely implicated. According to learned Counsel, on account of election rivalry, the appellant has been falsely implicated. It has been further contended by him that despite there being a positive averment of committing rape, lady Doctor did not find any injury either external or internal on the person of the prosecutrix, therefore, either the story of the prosecution is false or the prosecutrix was a consenting party. To bolster his submission, he has placing reliance on the decision of the Apex Court in the case of *Pratap Mishra v. State of Orissa*, reported in AIR 1977 SC 1307, and a judgment of this Court in the case of *Samalu v. State of M.P.*, reported in 1995 (I) MPWN 138.

7. On the other hand, Ku. Chitra Saxena, learned Counsel appearing for the respondent has contended that there is positive evidence against the appellant and after considering the evidence in toto, the learned Trial Judge, came to hold that appellant committed offence for which, he was charged and therefore, there is no infirmity in the judgment and the appeal be dismissed.

8. After having heard learned Counsel for the parties, I am of the view that this appeal deserves to be dismissed.

9. On going through the evidence of the prosecutrix, it is found that after the incident took place she came to her house and did not go to lodge the report till her husband and mother-in-law arrived at the house. This act of the prosecutrix is quite natural. No lady would pivot her modesty and would narrate this shameful act

to every villager. Her conduct is quite natural and when her husband and mother-in-law arrived in the evening at their home, she narrated entire incident to them. Thus, the contention of Mr. Tripathi that before arrival of mother-in-law and husband, umpteen persons came to the house of prosecutrix but she did not narrate the incident to them, docs not find any merit.

10. In the FIR (Ex. P-3), the prosecutrix has stated in detail how the incident took place and stated each and every detail. Whatever she has stated in the First Information Report, was proved by her in her testimony. On going through the testimony of the prosecutrix, one could safely say that she was ravished against her will and wish. The prosecutrix was cross-examined at length but she remained embedded in her version. On going through the entire evidence of the prosecutrix, nothing crept in so as to disbelieve her evidence. On the other hand, if the evidence of the prosecutrix is considered in proper perspective, only inference which could be gathered is that she was ravished against her wishes and it can not be said that she was a consenting party. The contention of learned Counsel for the appellant that if the medical report of the prosecutrix (Ex. P-2) is kept in juxtaposition with her evidence the only inference which could be drawn is that either the medical evidence is false or the evidence of prosecutrix is concocted and in either of the case, the benefit would go to the accused. The argument of learned Counsel for the appellant at the first blush appears to be quite attractive but does not bear close scrutiny. This fact can not be marginalized and blinked away that the prosecutrix is a major married woman and accustomed of sexual intercourse and therefore, if no injury was found on her private part, it can not be said that either the story of the prosecution is false or she was a consenting party. So far as contention of Mr. Tripathi that the prosecutrix did not sustain external injury is concerned, suffice it to say that the incident took place near river bank and it has come in evidence that the bank was full of sand and if that be the position, in my opinion one could hardly think that any external injury would come.

11. The only contention of learned Counsel for the appellant that after the incident when the prosecutrix was coming to her home, Jagdish (D. W. 2) met her but this statement of prosecutrix is not corroborated by the evidence of Jagdish (D.W. 2) who has said that the prosecutrix told that the catties of the accused were run over

on the clothes of the prosecutrix with the result, her clothes became dirty and for that reason, she is weeping. Even if, the prosecutrix has not stated the incident to this witness and narrated some other story, would not weaken the case of the prosecution for the simple reason that it is not supposed to a lady to narrate to a stranger that she was ravished and if any question is being asked by stranger to her, she may narrate some other different story. Why the testimony of the prosecutrix should be disbelieved, there is no material on record to hold so. The judgment of the case of Pratap Mishra (supra), is quite distinguishable from the present factual scenario. In that case, the prosecutrix of that case went alongwith the accused person to a picnic spot and she was persuaded by her husband to accompany the accused where that incident took place. Here in the present case, the prosecutrix was washing her clothes at the bank of river at that juncture, the accused/appellant came and hugged her and thereafter, committed rape upon her and therefore, the case of Pratap Mishra (supra) is not applicable in the present factual scenario. Similarly, Single Bench decision of this Court in the case of Samlu (supra) is also not applicable in the present case. In that case, the case diary statement of the prosecutrix was not corroborating the case. However, in the present case whatever has been said in the FIR by the prosecutrix, does find place in her evidence.

12. Lastly, it is contended by learned Counsel for the appellant that looking to the entire facts and circumstances of the case that the mother of the appellant is a blind lady and her father is a senior citizen and the appellant is having young female child having the age of four months when the judgment was passed, this Court should interfere in the quantum of punishment. The Trial Court took cognizance of this aspect and came to hold that the proper punishment should be seven years' RI and fine of Rs. 500/-. I have considered the reasoning assigned by the Trial Court which are cogent and I see no reason to deviate myself either on the merit or on the quantum of punishment and by this judgment, I hereby put my stamp for approval to the judgment passed by learned Trial Court.

13. In the result, the appeal fails and is hereby dismissed.