

Vishnu Vs. State of Madhya Pradesh

Vishnu Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/498566

Court : Madhya Pradesh

Decided On : Feb-05-2004

Reported in : 2004(2)MPHT164

Judge : A.K. Shrivastava, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 511; [Evidence Act, 1872](#) - Sections 45, 60 and 156; Code of Criminal Procedure (CrPC) , 1974 - Sections 374

Appeal No. : Criminal Appeal No. 10/2001

Appellant : Vishnu

Respondent : State of Madhya Pradesh

Advocate for Def. : P.D. Bidua, Adv.

Advocate for Pet/Ap. : Mahaveer Pathak, Adv.

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 20-10-2000 passed by Fourth Additional Sessions Judge, Gwalior in Sessions Trial No. 341/1996, by which the appellant has been convicted under Section 376,

IPC (hereinafter referred to as 'IPC') and has been sentenced to suffer rigorous imprisonment of ten years and fine of Rs. 2500/-, in default further R.I. six months, the appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure.

2. No exhaustive statement of facts are necessary for the disposal of this appeal. Suffice it to say that on 31-7-1996 at 2.30 p.m. when the prosecutrix did not turn to her house, her mother Parwati Bai went to search her. While she was searching the prosecutrix she entered in one temple, the door of which was closed but not bolted, when she opened the door she saw that prosecutrix was lying undressed and the appellant was also undressed and was lying on her, on seeing the mother of the prosecutrix appellant fled from the spot. Thereafter on being screamed by Parwati Bai, the mother of the prosecutrix, inhabitants of the locality assembled there thereafter on the same day, i.e., 31-7-1996 First Information Report (Ex. D-2) was lodged by Parwati Bai. On lodging the FIR the criminal law was set in motion. The Investigating Officer sent the prosecutrix for medical examination where she was examined by Dr. A.K. Noona (P.W. 7) the report of the doctor is Ex. P-4.

3. In furtherance to its investigation, the Investigating Officer arrested the accused, sent him for medical examination, seized the necessary articles and also recorded the statements of the witnesses and after completion of the investigation, a charge-sheet was submitted before the Competent Court who on it's turn committed the case to the Court of Sessions and from where it was received by the Trial Court for the trial.

4. On going through the charge-sheet, the learned Trial Judge framed the charge punishable under Section 376, IPC against the appellant. Needless to emphasis that the appellant abjured his guilt and pleaded complete innocence. His defence is of maladroitness implication.

5. In order to prove the charge, the prosecution examined as many as nine witnesses and placed Ex. P-1 to Ex. P-8 the documents on record.

6. The learned Trial Judge after scanning the evidence came to hold that appellant did commit the offence punishable under Section 376, IPC and eventually convicted him and passed the sentences as mentioned herein-above. Hence this appeal.

7. In this appeal Shri Mahaveer Pathak, learned Counsel for the appellant has submitted that on going through the evidence led by the prosecution it can not be said that any offence is proved against the appellant. In the alternative it has been put forth by him that even if the case of the prosecution is taken into its entirety, it would not fall beyond Section 376/511, IPC.

8. On the other hand, it has been contended by Shri P.D. Bidua, learned Counsel appearing for the State that the Trial Court has assigned cogent reasons in order to hold that the appellant committed the offence under Section 376, IPC and therefore, no interference is required and the appeal deserves to be dismissed.

9. After having heard the learned Counsel for the parties, I am of the opinion that this appeal deserves to be allowed in part.

10. According to the prosecution the age of the prosecutrix was below 16 years and on the date of incident her age was 9 years. There is overwhelming evidence in that regard. The evidence of Radiologist is clear, cogent and trustworthy, according to him the age of the prosecutrix was above 6 years and below 11 years. The learned Trial Judge in Para 5 while X-raying the evidence adduced by the prosecution in respect to the age of the prosecutrix, came to hold that at the most the age of the prosecutrix could be 11 years but in any case it was below 16 years.

11. On the basis of the evidence of prosecutrix corroborated by the statement of her mother Parwati Bai, it is gathered that the prosecutrix and the appellant were seen in the position of bawdy they were totally undressed. Though, there is specific evidence of the prosecutrix that there was a penetration as a result of which blood came out and she sustained injuries but, according to me her evidence in this respect is false. The doctor who examined the prosecutrix did not find any injury either external or internal, the medical report of the prosecutrix is

Ex. P-4. On going through this report it is gathered that the hymen of the prosecutrix was intact, there was no redness or tenderness, there was no swelling and no bleeding, though, it has been said by the prosecutrix as well as by her mother that there was bleeding and was injury. One important fact which can not be marginalised and blinked away is that the prosecutrix was examined soon after the incident and if that be the position and if the version of the prosecutrix and her mother is true then certainly the doctor must have noticed the injury as well as bleeding etc. However, the evidence of the doctor and medical report (Ex. P-4) is altogether contrary to the version of the prosecutrix.

12. It has come in the evidence that the appellant and prosecutrix were lying undressed and the appellant was lying over the prosecutrix. In this view of the matter, according to me, an offence under Section 376/511, IPC is made out. In this regard it shall be profitable to rely the decision of Apex Court in the case of State of Maharashtra v. Rajendra Jawanmal Gandhi, 1998 Cr.LR (SC) 122, wherein a similar situation was there. In that case, the girl was pushed inside the car and at that time she was wearing a midi-frock and a nicker. The accused pulled down her nicker and laid her on the seat in the car. The accused thereafter opened the zip of his trouser and started pressing his penis on her private part. In these facts and circumstances the Apex Court held that the offence under Section 376/511, IPC is made out. If the ratio decidendi of the case of Rajendra Jawanmal Gandhi (supra) is tested on the anvil of the present factual scenario, it would reveal that this decision squarely covers the fate of this case.

13. On the basis of aforesaid discussion, I have no hesitation to hold that the prosecution has failed to prove its case that the appellant committed the offence under Section 376, IPC, however, on the basis of evidence it is proved that appellant did commit the offence under Section 376/511, IPC and I accordingly hold so.

14. 'It has been contended by the learned Counsel for the appellant that the appellant had already undergone a period of four and half years, this position has not been disputed by the learned Counsel appearing for the State, Under Section 511, IPC the imprisonment may be extended to half of the imprisonment of the

substantive offence. Under Section 376, IPC minimum sentence is seven years and if that be the position, as the appellant had already undergone for a period of four and half years according to me this would be sufficient punishment for him.

15. In the result the appeal succeeds in part and hereby allowed. The conviction of the appellant is altered from under Section 376, IPC to Section 376/511, IPC, he shall be enlarged for the period he had already undergone. The sentence regarding the amount of fine shall remain intact. The amount of fine if not deposited, be deposited by the appellant failing which the appellant shall further undergo a sentence of six months.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com