

Manish Kumar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-27-2009

Reported in : 2009CriLJ2115; 2009(2)MPHT463

Judge : A.K. Shrivastava, J.

Appellant : Manish Kumar

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. R.K. Shrivastava

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 19-8-2002 passed by learned Special Judge, Guna in Special Case No. 201/2001 convicting appellant under Section 354, IPC as well as under Section 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act') and thereby sentencing him to suffer imprisonment as mentioned in the impugned judgment, appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

2. In brief, the case of prosecution is that on the date of incident prosecutrix along with her Nanad (sister-in-law) went to evacuate in the field where appellant also arrived and by catching the hand asked her to accompany him to Jhore (a place in the field). It is said that when prosecutrix snatched her hand, appellant grappled and pressed her breast. It is also stated that when prosecutrix screamed, appellant fled from the place of occurrence and he was seen running away by Sukhlal. Prosecutrix after arriving at her home narrated the incident to her husband, but on account of non-availability of the conveyance they could not go to Police Station to lodge the report.

3. It is the further case of prosecution that on the next day at 12.00 in the noon when appellant was going away in front of the house of prosecutrix, she identified him and told her husband that appellant is the person who outraged her modesty yesterday. The husband of the prosecutrix Bhagwanlal inquired from appellant that why he outraged the modesty of his wife, on this, it is said that appellant pelted Gumme (pieces of brick). It is also said that Bhagwanlal was thrown on the ground and one Ghasilal intervened. On being asked the name, appellant told his name to be Manish Kumar.

4. First Information Report was lodged by prosecutrix on the next day of the incident, i.e. 9-7-2001 at 14.00 hrs. On the basis of the First Information Report, a case under Sections 354, 324, IPC as well as under Section 3(1)(xi) of the Act was registered against appellant.

5. The investigating agency after investigation, submitted a charge-sheet before learned Special Judge who framed charges punishable under Section 354, IPC and in the alternative under Section 3(1)(xi) of the Act. The appellant was further charged for the offence punishable under Section 323, IPC. Needless to emphasis, appellant abjured his guilt and requested for trial.

6. Learned Special Judge, on the basis of the evidence placed on record, came to hold that the charge under Section 323, IPC is not proved and, eventually, acquitted appellant from this charge. However, according to learned Special Judge, charges under Section 354, IPC as well as under Section 3(1)(xi) of the Act are found to be proved, eventually, appellant has been convicted for the said

offences and has been directed to suffer imprisonment as directed in the impugned judgment.

7. In this manner, present appeal has been filed by the appellant assailing his judgment of conviction and order of sentence.

8. Shri R.K. Shrivastava, learned Counsel for appellant, has submitted that looking to the evidence of the prosecutrix, it is difficult to hold that appellant has committed the offence for which he was charged. Further, it has been argued by him that the incident is said to have been taken place on 8-7-2001 at 18.30 hrs but the FIR was lodged on next day 9-7-2001 at 14.00 hrs and no reasonable explanation for delay has been given by prosecutrix in her testimony. It has also been put forth by learned Counsel that learned Trial Court has not given due weightage to the defence which has been set forth by appellant that in order to run the grocery business, the husband of the prosecutrix took an amount of Rs. 500/- from appellant and when appellant asked to return the loan amount, the husband of the prosecutrix scolded on him and said that a false case under the Atrocities Act will be lodged against him.

9. On the other hand, Shri D.S. Chouhan, learned Counsel appearing for respondent/State argued in support of the impugned judgment and has submitted that looking to the testimony of the prosecutrix as well as her First Information Report which has been proved by her, the case of prosecution is proved. Further it has been contended by him that the defence set forth by appellant has not been found to be probable by learned Trial Court and in this context he has invited my attention to Paras 13 and 14 of the findings of learned Trial Court. On these premised submissions, it has been submitted by learned Counsel for respondent/State that this appeal sans substance and the same be dismissed.

10. Having heard learned Counsel for the parties, I am of the considered view that this appeal deserves to be allowed.

11. Appellant has been convicted for the charges punishable under Section 3(1)(xi) of the Act as well as under Section 354, IPC. It is well settled in law that in the sexual offence, the statement of prosecutrix alone is to be considered and the

conviction can be accorded solely on the basis of her evidence if it is found to be clear, cogent and trustworthy and in that case no corroboration is required. By keeping this well settled principle in my mind, I shall now examine the testimony of prosecutrix.

12. On going through her statement, it is gathered that on the fateful day at 7.00 in the evening, she went to evacuate along with her Nanad (sister-in-law) Surmati where appellant also arrived and caught hold of her from back. Further she has stated that appellant inserted his hand inside her blouse and asked to accompany him to Jhore (a place in the field). Further she has stated that when she screamed, her sister-in-law arrived there and thereafter appellant fled from that place. Thereafter this witness came to her house and narrated the incident to her husband and they went to lodge the report in Police Station, Esagarh. In cross-examination, she has admitted that appellant was not known to her earlier to the date of incident. She has further admitted that she is not acquainted with his father also. However, she has admitted that her husband is well acquainted with appellant by his name. In Para 7 of her cross-examination she has admitted that her husband is doing the business of grocery in the village and in order to carry out this business several times the amount of loan is to be taken. She has put her inability as to whether her husband has taken loan of Rs. 500/- from appellant. The suggestion put to her that appellant asked her husband to return the loan amount has been denied by her. Further she has denied the suggestion that on the point of return of loan amount quarrel took place between her husband and appellant. In Para 10 of her cross-examination, she has affirmed the presence of one Sukhlal when the incident took place. However, Sukhlal (P.W. 3) has not stated anything about the alleged vile act of the appellant. According to him, he saw appellant simply running away towards the village.

13. Prosecutrix has further stated that when appellant caught hold her hands, her bangles were broken and the broken pieces of bangles pierced her hands but on confronting her from her case diary statement (Exh. D-1), she has put her inability that why this fact has not been mentioned in her case diary statement, she could not say. According to me, if the broken pieces of bangles pierced her hands certainly some injuries would come in her hands, but no medical report of

prosecutrix has been placed on record.

14. Prosecutrix has stated that FIR (Exh. P-3) was lodged by her. On going through the First Information Report, this Court finds that the alleged incident took place on 8-7-2001 at 18.30 hours and the FIR was lodged on the next day, i.e., on 9-7-2001 at 14.00 hrs. The distance from the village of prosecutrix and the police station is only 16 kms. In the First Information Report, it has been mentioned that on account of non-availability of the conveyance, the report could not be lodged. But, this fact has not been so stated by prosecutrix in her testimony. No explanation has been given in her testimony that why the FIR was lodged on the next day at 14.00 hrs. Thus, the statement of prosecutrix does not inspire confidence and, therefore, corroboration is needed.

15. As per the statement of prosecutrix, when she went to evacuate, she was accompanied by her Nanad (sister-in-law) Surmati. On going through the statement of Surmati Bai (P.W. 4), it is revealed that simply she has stated that appellant scuffled with the prosecutrix. Thereafter this witness ran away towards the village and narrated the incident to her brother who is husband of the prosecutrix and thereafter quarrel took place between appellant and the husband of prosecutrix. According to this witness, the FIR was lodged on the same day. But, as per the case of prosecution, the FIR was lodged on next day and quarrel also took place on the next day as per FIR.

16. So far as the evidence of Bhagwanlal Kori (P.W. 2) who is husband of the prosecutrix is concerned, he has stated that his wife went to evacuate along with his sister in the evening and when she came back to home she told that Manish caught hold and was insisting her to accompany to Jhore (a place in the field). According to this witness, prosecutrix named the appellant on the same day, but, in the FIR (Exh. P-3), prosecutrix has stated that on the next day in the afternoon when appellant was passing away in front of her house, at that time she identified appellant by saying to her husband that this person has outraged her modesty and at that juncture she came to know about the name of appellant. According to me, both these facts cannot co-exist at one point of time. According to the FIR, prosecutrix came to know about the name of appellant only on next day in the

afternoon when appellant was going away in front of her house. But, according to her husband Bhagwanlal Kori (P.W. 2) on the date of incident itself, by naming appellant, prosecutrix told that he outraged her modesty. Thus, the story of prosecution becomes highly suspicious.

17. As per prosecutrix, when appellant caught hold of her hands, her bangles were broken and the pieces pierced her hands, but this has not been so stated by Abdul Gafar (P.W. 8) who has written the FIR. Prosecutrix was also confronted from her case diary statement about this omission, but she put her inability that why this fact has not been mentioned in it, she cannot say.

18. One important fact which cannot be marginalised and blinked away is that as per the prosecution's own case, the incident took place on 8-7-2001 at 18.30 hrs. and FIR (Exh. P-3) has been lodged on the next day, i.e., 9-7-2001 at 14.00 hrs. In the FIR, it has been mentioned that report was not lodged on the date of incident because there was no conveyance, but, there is no explanation that why in the morning the FIR was not lodged. On going through the FIR, it is gathered that on account of altercation took place in the afternoon of 9-7-2001 between appellant and husband of prosecutrix, the FIR was lodged. According to me, if, in fact, the incident of outraging the modesty of prosecutrix occurred on a day earlier to 9-7-2001, certainly the FIR would have been lodged on the next day during early hours, if there was no conveyance on the date of incident. The ASI Abdul Gafar (P.W. 8) has admitted in Para 3 of his cross-examination that from Village Khiria the conveyance of Bus is available at 9.00 a.m. as well as at 6.00 p.m. and thereafter Buses are regularly available from Village Pachlana which is four kms far away from Village Khiria. The parties are from Village Khiria.

19. Apart from this, on going through the FIR and the evidence placed on record, I find that FIR was lodged because on 9-7-2001 at 12 in the afternoon, when altercation took place between appellant and the husband of prosecutrix on account of pelting the bricks by the appellant. Basing this incident, FIR was lodged including the incident of outraging the modesty of the prosecutrix. According to me, if in fact the incident of outraging the modesty ever took place a day earlier to the incident and on account of non-availability of the conveyance the report could

not be lodged, certainly it would have been lodged in the morning of next day because it has come in the evidence that Bus was available at 9 a.m. from the Village. But why the prosecutrix did not go to lodge the report in the morning when the conveyance was available from their village and was waiting for the incident of pelting the bricks by appellant. Thus, according to me the case of prosecution becomes highly suspicious and one could infer that on account of pelting the bricks by the appellant on the husband of prosecutrix coupled with the fact that some altercation took place between them in the afternoon, the FIR was lodged by clothing and giving colour of alleged incident of outraging the modesty of prosecutrix alleged to have taken place a day earlier to the date of lodging the FIR.

20. The factum of giving loan by appellant to the husband of prosecutrix has been confronted to all prosecution witnesses though they denied the suggestion. However, on going through the explanation given by appellant in his statement recorded under Section 313, Cr.PC, this Court finds that specific defence and the explanation of the appellant is that he gave loan of Rs. 500/- to the husband of the prosecutrix and when he asked to return the said amount, husband of prosecutrix started quarreling and told that he will not return the money, on the contrary, a case will be lodged against him under the Atrocities Act and by doing so from the State Government also he will receive Rs. 25,000/- and for this reason, he has been falsely implicated. In support of his defence, appellant examined Rajendra Prasad (D.W. 2) who has stated that husband of prosecutrix namely Bhagwanlal took loan of Rs. 500/- from appellant in his presence and when the same was demanded by appellant, Bhagwanlal started quarreling with him. True in the cross-examination, he has stated that no document of loan was executed. But, on going through the testimony of Bhagwanlal (P.W. 2), this Court finds that earlier relations between appellant and this witness were cordial. On going through the statement of mother-in-law of prosecutrix namely Gulab Bai (P.W. 7), it can also be inferred that earlier relation between the parties were cordial and because the relations were cordial, it can be inferred that document of loan was not executed and perhaps it was not executed for another reason that the amount which was given was only Rs. 500/-.

21. Learned Special Judge has disbelieved the probable defence of appellant simply on the ground that particular date, month and year has not been stated on which the said money was borrowed by husband of prosecutrix. According to me, on going through the evidence of defence witness Rajendra Prasad (D.W. 2), no question in that regard was put to this witness and, therefore, I am of the view that the defence appears to be quite probable. It is well settled in law that if the probable defence has been demonstrated by the accused, due weightage should be given to it and it should not be compared with the same standard of proof of prosecution where the prosecution is obliged to prove its case beyond all reasonable doubts. In this context, I may profitably placed on the decision of Supreme Court in Dr. S.L. Goswami v. The State of M.P. : 1972 CriLJ511 . In Para 5 of the said decision, the Supreme Court has held that the standard of proof of the defence is not the same as that which rest upon the prosecution and if the probable defence has been demonstrated by the accused he is entitled for reasonable doubts. In another decision M.S. Narayana Menon alias Mani v. State of Kerala and Anr. : 2006 CriLJ4607 , it has been held by the Supreme Court as under:

Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding.

22. I may also profitably place reliance on another decision of Supreme Court Punjabrao v. State of Maharashtra : AIR 2002 SC486 , in this regard, in which it has been specifically held that if the explanation given by accused under Section 313, Cr.PC can be held to be reasonable, it cannot be thrown away.

23. The testimony of defence witness Rajendra Prasad (D.W. 2) cannot be discarded merely because he has been cited on behalf of appellant. According to me, the credibility of the defence witness is at par with that of prosecution witness and merely because he has been examined by the defence, his evidence will not be diluted or will lose its importance in any manner. In this context, I may profitably placed reliance on the decision of Supreme Court in State of Haryana v. Ram Singh : 2002 CriLJ987 , where in Para 19, it has been held by the Supreme Court that the defence witness is also entitled to equal treatment as that of prosecution

witnesses. In *Dudh Nath Pandey v. State of U.P.* : 1981 CriLJ618 , the Supreme Court categorically held in Para 19 that defence witnesses are entitled to equal treatment with those of prosecution and Courts ought to overcome their traditional instinctive disbelief in defence witnesses and often they tell lies but so do the prosecution witnesses.

24. For the reasons stated hereinabove, I am unable to uphold the conviction of appellant for the charges punishable under Section 354, IPC as well as under Section 3(1)(xi) of the Act.

25. Resultantly, this appeal is hereby allowed. The judgment of conviction and order of sentence passed by learned Trial Court under Section 354, IPC as well as under Section 3(1)(xi) of the Act against the appellant is hereby set aside and he is acquitted from all the charges. Appellant is on bail, his bail bonds are hereby discharged. The amount of fine, if deposited be refunded to appellant.

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