

Kriparam Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-06-2004

Reported in : 2005CriLJ746; 2004(4)MPHT18; 2004(3)MPLJ33

Judge : A.K. Shrivastava, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 363, 366, 376, 376(1) and 376(2)

Appeal No. : Criminal Appeal No. 564 of 2001

Appellant : Kriparam

Respondent : State of M.P.

Advocate for Def. : Mukund Bhardwaj, Adv.

Advocate for Pet/Ap. : R.P. Singh, Adv.

Judgement :

A.K. Shrivastava, J.

1. 1. Feeling aggrieved by the judgment of conviction and order of sentence passed by IV Addl. Sessions Judge, Gwalior in Sessions Trial No. 282/1996, dated 27-9-2001, convicting appellant under Sections 363, 366 and 376 of IPC, the appellant has preferred this appeal under Section 374 of Cr.PC.

2. In brief, the case of the prosecution is that complainant Sunita alias Sua Bai alongwith her two minor children came to Gwalior. She was a labourer. On 15-9-1995, complainant went to her work place, at that juncture, prosecutrix aged about 11 years was present in the house, the accused who was residing alongwith her mother was also present. It is said that appellant by enticing, carried away the prosecutrix with him. When complainant came back to her house, she did not find prosecutrix, as a result of which, she searched her but did not find her. She also noticed that appellant is also not present at his house therefore, she made a complaint to the police but nothing was done against the appellant. Later on, she went to her native place at Distt. Chhattarpur and there she, submitted a written report to the Superintendent of Police, Chhattarpur on the basis of which, a case was registered against the accused persons initially under Section 363/34 of IPC.

2. After registering the case, Investigating Officer, recovered the prosecutrix vide seizure memo (Ex. P-8) at the instance of appellant from his Village Garha, Police Station Uldan, Distt. Jhansi on 18-11-1995. The prosecutrix was thereafter referred for medical examination to Kamla Raja Hospital, Gwalior where she was examined by a lady doctor. For age verification, she was referred for Radiological examination, in which, her age was found to be above 12 years and below 15 years. In furtherance to his investigation, the Investigating Officer recorded the statements of the witnesses and after completion of the investigation, a charge-sheet was submitted against the present appellant, Kunwarlal and Smt. Pushpa in the Competent Court, which on its turn committed the case to the Court of Session and from where it was received by the Trial Court for trial.

3. The learned Trial Judge after perusing the charge-sheet, framed charges punishable under Sections 363, 366 and 376 of Indian Penal Code (in short 'IPC') against appellant Kriparam. Other accused persons Kunwar Lal and Smt. Pushpa were charged under Sections 363 and 366 of IPC. Needless to emphasis, all the accused persons abjured their guilt and pleaded complete innocence. Their defence is of maladroitness implication.

4. Learned Trial Judge after appreciating and marshalling the evidence came to hold that accused persons Kunwarlal and Smt. Pushpa did not commit any offence

and eventually, they were acquitted. However, learned Trial Court on the basis of evidence placed on record, found that appellant committed offence for which he was charged as a result of which, convicted him and passed sentences which has been mentioned in the impugned judgment. Hence, this appeal.

5. In this appeal, Shri R.P. Singh, learned Counsel for the appellant has submitted that Ex. P-6 which is a written report, has been lodged after great delay of nearabout two months. It has also been contended by him that if the evidence of the prosecution is considered in proper perspective, no case against appellant is made out. It has been proponed by him that the evidence of the prosecutrix does not inspire any confidence and therefore, the learned Trial Court erred in convicting the appellant.

6. Per contra, learned Counsel appearing for the State Shri Bhardwaj argued in support of the impugned judgment.

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

8. In a case under Sections 363, 366 and 376 of IPC, age of the prosecutrix plays a vital role. In order to prove the age of the prosecutrix, and to demonstrate that she was below 16 years, the prosecution has placed reliance on Ex. P-1 which is a report of Radiologist, proved by Dr. R.C. Chakrawarty (P.W. 1). According to Doctor, he examined prosecutrix and on the basis of the X-rays taken by him, he found age of the prosecutrix, above 12 years and below 15 years. I could not find any infirmity in the evidence of the Doctor or his report (Ex. P-1). Apart from the evidence of Radiologist, the prosecution examined complainant Sua Bai alias Sunita (P.W. 2) who categorically stated that at the relevant time, the age of the prosecutrix was 11-12 years. Though certain questions were put to this witness, in respect of the age of her other children but nothing crept out from her evidence in order to show that the age of the prosecutrix was 16 years or above. Though accused examined Bhagwat Prasad (D.W. 1) who had said that the age of the prosecutrix was 18-20 years but, he is not the family member of the prosecutrix and whatever he has said is only a guess work and therefore, no reliance can be placed on his evidence. Though it has been said by the mother of the prosecutrix

that the age of the prosecutrix was 11-12 years but if the evidence of this witness is read conjointly alongwith the evidence of Radiologist and his report (EX. P-1), according to me, the evidence of Radiologist appears to be probable and acceptable. Thus, I hold that the age of the prosecutrix was above 12 years and below 15 years. The ruling of Amar Singh v. State of M.P., 2004 (I) MPJR 133, relied by learned Counsel for the appellant is tangentially off the point because in that case report of Radiologist was taken into consideration and it was found that the age of the prosecutrix was in between 16 to 18 years and therefore, the case of Amar Singh (supra), is not at all applicable in the present factual scenario.

9. In the case of Sukhman Singh v. State of M.P., 2002 (I) MPWN 37, this Court on the basis of the evidence of that particular case, found that the age of the prosecutrix was more than 16 years and the prosecutrix was found to be consenting party. For this reason the conviction was set-aside and therefore, the case of Sukhman (supra) is not applicable in the present case.

10. It has been vehemently argued by Shri Singh, learned Counsel for the appellant that the incident occurred on 17-10-1995 and written report (Ex. P-6) addressed to Superintendent of Police, Chhattarpur was submitted by the mother of the prosecutrix on 17-10-1995, on the basis of which, FIR (Ex. P-3) was registered on 30-10-1995 and therefore, it raises a doubt regarding the truthfulness of the incident. In support of his contention, learned Counsel has placed reliance on Kalyan and others v. State of U.P., SAR (Cri) 861. The argument at the first blush, though appears to be quite attractive but on deeper scrutiny found to be devoid of any substance. It has come in the evidence of complainant Sua Bai who is mother of prosecutrix that she tried to pursue the local police and submitted her agony and requested to register the report, but local police did not help her. Ultimately, she went back to her native place at Distt. Chhattarpur and submitted written report (Ex. P-6) to Superintendent of Police. On bare perusal of written report (Ex. P-6), it is gathered that this fact did find place in her report. Therefore, in my opinion, if the case was registered after considerable time, it would not be fatal for the prosecution. One important fact which can not be marginalised and blinked away is that the prosecutrix was recovered in a house of appellant's village and at his instance. The recovery memo of prosecutrix is Ex. P-

8. On bare perusal of this recovery memo, it is revealed that when prosecutrix was recovered, she was having vermilion mark as well as she was wearing Bichhia (an ornament which is being worn by married ladies). Thus, this fact corroborates the story of the prosecution that appellant had kidnapped the prosecutrix with an intention that she may marry or she was compelled to marry against her will. There is positive evidence of the prosecutrix that she did not accord her consent for marriage and she was removed from the lawful guardianship of her mother. Even if it is assumed that the prosecutrix was a consenting party, it would not benefit the accused for the simple reason that the prosecutrix was minor. The learned Counsel for the appellant placed reliance on *Manharan v. State of M.R.*, 2000(3) M.P.H.T. 114 = 2001 Volume (I) MPJR 448, but the facts of that case are altogether different because in that case, the girl was found to be major and the enticement was not found to be proved. Thus, according to me, the learned Trial Court did not err in convicting the appellant under Sections 363 and 366 of IPC.

11. So far as conviction of appellant under Section 376 of IPC is concerned, suffice it to say that it is well settled in law that no corroboration is needed and the evidence of prosecutrix alone is to be considered if it is found to be trustworthy.

12. I have gone through the evidence of the prosecutrix which revealed that appellant against her wishes kidnapped her and committed sexual intercourse with her. It has been submitted by learned Counsel for the appellant that the lady doctor did not find any injury either external or internal on the person of the prosecutrix but at this juncture, it would be apposite to mention that the prosecutrix remained for nearabout two months with the appellant and therefore, injury marks could not be noticed. There is specific evidence of the prosecutrix that against her wishes appellant cohabited with her. I do not find any infirmity in the evidence of the prosecutrix, her evidence is clear, cogent and trustworthy. According to me, learned Trial Judge has not committed any error in convicting appellant by placing reliance on the evidence of the prosecutrix.

13. Learned Counsel for the appellant placed reliance on *Bane Singh v. State of M.P.*, 2002(I) MPWN 33. In that case, the accused persons were tried for gang rape and on the basis of the evidence of that particular case, it was found that co

accused did not commit any offence as he did not take any active part in the commission of offence. In *Sukhvir Singh v. State of Haryana*, 2002 SAR (Cri) 283, it has been held by the Apex Court that if two views of the occurrence is possible, the view taken by one of the Court, Le., Trial Court or Appellate Court which is in favour of the accused, should be given credence. There is no quarrel to this proposition. However, in the present case, the only and singular view is that the appellant committed vile act and just to satisfy his lascivious thirst he ravished a girl who did not see even her 15th spring and therefore, in my opinion, the learned Trial Judge, did not commit any error in holding that appellant committed rape upon the prosecutrix.

14. On going through the evidence of Radiologist and his report (Ex. P-1), it is gathered that the age of the prosecutrix was above 12 years and below 14 years and if this is the position, in my opinion, the conviction of appellant accorded by Trial Judge under Section 376(2)(f) of IPC, can not be sustained, however, his conviction is altered to Section 376(1), IPC and he is hereby directed to suffer R.I. for seven years for the said offence. The sentences awarded under Sections 363 and 366 of IPC is hereby affirmed. Needless to mention that all the sentences shall run concurrently.

15. In the result, appeal succeeds in part and conviction of appellant under Sections 363 and 366 of IPC is affirmed, however, his conviction under Section 376(2)(f) of IPC is altered to Section 376(1), IPC and he is directed to suffer the sentence, mentioned hereinabove.