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Mohan and anr. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-02-2000

Reported in : 2000(3)MPHT233

Judge : S.P. Khare, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 376(2); Evidence Act, 1872 - Sections 6, 8 and 157

Appeal No. : Criminal Appeal Nos. 1581 and 2361 of 1997

Appellant : Mohan and anr.

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, Panel Lawyer

Advocate for Pet/Ap. : S. Datt, ;V. Pandey and ;Savita Tiwari, Advs.

Disposition : Appeal dismissed

Judgement :

S.P. Khare, J.

1. Appellants Mohan and Dilip have been convicted under Section 376(2)(g) Indian Penal Code and sentenced to rigorous imprisonment for ten years and a fine of Rs. 2,000/- each.

2. The prosecution case was that Soni Bai (P.W. 1) aged about 16 years was alone in her house in village Belsari on 5-3-1996. That was the day of Holi. Accused Mohan and Dilip entered in her house at about 2.00 P.M. and asked her where her maternal uncle Rekhalal (P.W. 2) had gone. She replied that he has gone to another village. Both the accused persons took her inside a room and bolted it. Accused Mohan was first to commit rape on her. At that time accused Dilip kept her mouth closed. Thereafter accused Dilip had forcible sexual intercourse and at that time accused Mohan was keeping her on the ground. Both the accused persons left her house after commission of the crime. After gaining some consciousness she took water and hastened to the house of her maternal aunt Kamla Bai (P.W. 3) and narrated her tale of woes to her. Rekhalal (P.W. 2) returned to the village on the next day. He took her to Takhatpur Police Station where she lodged the report (Ex. P-1). She was sent for medical examination. Dr. Smt. S. Jitpure (P.W. 5) examined her but she did not find any external sign of recent sexual intercourse with her. Her report is Ex. P-12. She was further examined by Dr. R.S. Tripathi (P.W. 10) on 23-4-1996. He also gave the opinion that the prosecutrix is accustomed to sexual intercourse as per his report (Ex. P-24). The underwear of the prosecutrix was seized and it was sent for chemical examination. It was stained with semen and human spermatozoa, as per report (Ex. P-23).

3. Accused persons pleaded not guilty. Their defence was that they have been falsely implicated.

4. The trial Court after appreciation of the evidence held that Soni Bai (P.W. 1) was about 16 years of age. It was further held that both the accused persons have committed gang rape on her.

5. In this appeal it has been argued that there was delay in lodging the F.I.R., the prosecutrix was already accustomed to sexual intercourse, there is no corroboration from any independent source or medical evidence and therefore the charge against the appellants cannot be said to have been proved beyond reasonable doubt.

6. The evidence on record has been carefully scrutinised. The trial Court has observed that the version of the prosecutrix is worthy of reliance. After going through the deposition of Soni Bai (P.W. 1), this Court is also of the opinion that her testimony is of sterling variety and unimpeachable character. She has deposed that after ensuring that she was alone in the house accused Mohan bodily lifted her and took her inside the room. She has further deposed that accused Dilip bolted the door of the room from inside. She has given a graphic description how both the accused one by one ravished her. They left her after the commission of rape. After sometime she gained consciousness and took some water. She has further stated that she immediately went to the house of her maternal aunt Kamla Bai (P.W. 3) and narrated the whole incident to her. She told her that accused Mohan and Dilip have committed rape on her. Next day she went to the Police Station with her maternal uncle Rekhalal (P.W. 2) and lodged the report (Ex. P-1). Her underwear was seized by the police as per seizure memo (Ex. P-2). She is categorical in her statement that there was no consent on her part.

7. Soni Bai (P.W. 1) has stated in cross-examination that the accused persons had threatened to cause her death and thereafter she could not offer stiff resistance. It is obvious that her resistance was not sufficient to match the onslaught. That explains the absence of the injuries on her body or on her genitals. She has further stated that her parents have died and she is living with her maternal uncle Rekhalal (P.W. 2). There has been some delay in lodging the report but that has been fully explained. Rekhalal (P.W. 2) was a person in whose care and custody she was living and she could proceed to the Police Station for lodging the report only after the return of her guardian. The testimony of the prosecutrix in this case is credible. Her version is truthful and fully reliable. Therefore, there is no need of any further corroboration. In such a case corroboration is not a sine-qua non for a conviction in a rape case. (Bhoginbhai v. State of Gujrat, AIR 1983 SC 753, State of Maharashtra v. C.K. Jain, AIR 1990 SC 658, State of Punjab v. Gurmit Singh, AIR 1996 SC 1393, State of A.P. v. G.S. Murthy, AIR 1997 SC 1588 and Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635.).

8. Kamla Bai (P.W. 3) has deposed that on the Holi day at about 2.30 P.M. Soni Bai (P.W. 1) came to her house and disclosed to her that accused Mohan and Dilip have committed rape on her by entering into her house. The evidence of Kamla Bai (P.W. 3) is fully corroborative of the testimony of the prosecutrix. The statement made by the prosecutrix to Kamla Bai (P.W. 3) immediately after the occurrence is 'res-gestae' and is relevant fact under Section 6 of the Evidence Act. That is also relevant as her conduct under Section 8 of the Evidence Act. There was spontaneity in the disclosure of the incident by the prosecutrix. This disclosure was made almost contemporaneous with the occurrence. There was not much interval. Such a statement immediately after the incident has a greater value as res-gestae and it is a substantive evidence. (State of Tamilnadu v. Suresh, (1998) 2 SCC 372 : Para 26). There was no time for any fabrication or concoction. The prosecutrix was still under the stress of excitement of the main incident. That reinforces her credibility.

9. The statement made by the prosecutrix to Kamla Bai (P.W. 3) immediately after the incident can be used for corroboration under Section 157 of the Evidence Act also. She made the statement to Kamla 'at or about the time when the fact took place' within the meaning of this Section. As already stated there was no scope for any concoction or tutoring. In Nathuni Yadav v. State of Bihar (AIR 1997 SC 1808) it has been held that any former statement made by a witness at or about the time when the incident took place becomes usable as of corroborative value under Section 157 of the Evidence Act. Though such statements are not part of the main transaction, they have a probative value for corroborative purposes if such statements have been made without delay. It has been further clarified in this case that Section 157 must receive a pragmatic and liberal construction. The principle is that the time interval between the incident and the utterance of the statement should not be such as to afford occasion for reflection or even contemplation. If the time interval was so short as between the two that the mind of the witness who made the statement was well connected with the incident without anything more seeping into, such statement has a credence, and hence can be used, though not as substantive evidence, as corroborating evidence, on the principle adumberated in Section 157 of the Evidence Act. While laying down this principle the Supreme Court has relied upon the test propounded by Vivian Bose J., in Rameshwar v.

State of Rajasthan (AIR 1952 SC 54).

10. It has been argued that as per medical evidence the prosecutrix was accustomed to sexual intercourse and there was old tear of her hymen and therefore, her testimony should not be relied upon. This argument is not acceptable. In the present case there is no plea that the accused persons had sexual intercourse with the prosecutrix with her consent. That is also not borne out from the material elicited in the cross-examination of the prosecutrix. It is not permissible for anyone to take liberty with a girl if on medical examination it has been found that she had sexual intercourse earlier. The decision of the Supreme Court in State of A.P. v. G.S. Murthy (AIR 1997 SC 1588) is relevant on this point. It has been held that even if the Court formed an opinion, from the absence of hymen that the victim had sexual intercourse prior to the time when she was subjected to rape by the appellant she had every right to refuse to submit herself to sexual intercourse by the appellant, as she certainly was not a vulnerable object or prey for being sexually assaulted by anyone.

11. The conviction of the appellants under Section 376(2)(g) I.P.C. is well merited. There is no scope for any reduction in the sentence. The appeals are dismissed.

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