

Ankariya Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-21-1989

Reported in : 1991CriLJ751

Judge : S.D. Jha, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 354, 376 and 511

Appeal No. : C.A. No. 183/86

Appellant : Ankariya

Respondent : State of M.P.

Advocate for Def. : D.D. Vyas, learned G.A.

Advocate for Pet/Ap. : Jaisingh, Adv.

Disposition : Appeal dismissed

Judgement :

S.D. Jha, J.

1. Appellant Ankariya S/o Hardi challenges his conviction Under Section 376/ 511 I.P.C. and sentence of four years rigorous imprisonment awarded to him by Additional Judge Camp Barwani of the Court of Session Judge, Mandleshwar by his judgment dated 9-4-1986.

2. The case for prosecution is that appellant (hereinafter called 'the accused') was stranger to prosecutrix Phoolbai (P.W. 3). In the night of incident on 25-6-1985 the accused went to Renja's house and represented that he is a surpunch of village 'Aamjhiri Gumadia' and his name is Ankaria. He was afraid as it was dark, he requested Renja to allow him to sleep in his house that night. Renja acceded to his request gave him food and piece of cloth to lie on. The three accused, Phoolbai (P.W. 3) and her husband Renja (P.W. 4) slept in the same room 'Tapra'. At about 11-00 p.m. in the night, Phoolbai (P.W. 3) was awakened and she found the cord of her petticoat loosened and the accused trying to sit on her waist. She pushed the accused and cried out to her husband, who got up and lighted the lamp 'Chimni'. Phoolbai (P.W. 3) complained to Renja (P.W. 4) that the accused was trying to molest her, had removed her cloth and sit on her waist. They narrated the then took the accused to Hathha (P.W. 6) patel of the village, who asked them to lodge a report at the out-post. While going to the out-post on the way, they met three police-men who took them to out-post, Chachria where Phoolbai (P.W. 3) lodged First information report Ex. P/3, which was written down by Sohanlal (P.W. 8) and offence Under Section 376/511 I.P.C. was registered, and accused sent for medical examination. After investigation challan was put up against the accused.

3. The accused pleaded not guilty to the charge Under Section 376/511. In his examination while denying material allegations, he stated that on the date of incident, he had drunk liquor, he had 500/- rupees in his pocket, which Renja had seen. On Renja's asking he drank more liquor. It was raining. When he was going to his house, Renja (P.W. 4) asked him to stay for the night. Renja quarrelled with him about money, snatched his money, slapped him and lodged false report against him about injuries on his person he stated that it was due to beating by police. He did not examine any witness in defence.

4. Shri Jaisingh learned counsel for the appellant submitted that whole story was unnatural and it was sheer concoction. According to him, no man, while husband of a woman was sleeping nearby would try to molest his wife. The accused was not armed. It is unreasonable that an unarmed man would dare to make an attempt to commit rape on Phoolbai when her husband was sleeping nearby. It also appears unnatural that the accused would remain at the place while Renja

lighted a lamp and Sukhlal came to the place. According to him, whole story is a pure fabrication and the accused deserves an acquittal. In the alternative, he submitted that the offence if any made out against the accused would not be one Under Section 376 IPC attempt to commit rape but one Under Section 354 IPC assault or use of criminal force to woman with intent to outrage her modesty. In support of this argument, Shri Jaisingh relied on Phanu @ Chhotelal v. State of M.P. (1972 J.L.J. 124). The point for determination is whether any and if so what offence is made out against the appellant.

5. Phoolbai (P.W. 3) has stated about accused coming to her house, requesting for stay for the night and sleeping at her house. She also stated that in the midnight accused had removed cord of her peticoat and was sitting on her waist and that she pushed him, cried out to her husband. Her husband Renja (P.W. 4) corroborating his wife Phoolbai (P.W. 3) speaks of allowing the accused to stay in his house for the night. He further states that in the midnight he saw his wife naked and the accused sitting holding his wife. He cried out to Sukhalal and on his coming narrated the incident to him. Sukhalal (P.W. 5) speaks of Renja's crying at about 12-1 in the night and his going to Renja's place with a torch in under garments only. He met Renja on the way who told him that Ankariya caught hold of his wife. On reaching he saw Phoolbai having caught hold of the accused and at that time she was naked. He also testifies to Phoolbai telling him that the accused had removed her cloth and wanted to molest her. Renja (P.W. 4) Phoolbai (P.W. 3) Sukhlal (P.W. 5) then took the accused to village Patel. Hathha (P.W. 6) Phoolbai (P.W. 3) narrated the incident to him also. He asked them to lodge a report at the police out post. First information report Ex. P. 3 was lodged the same night at 0.45 a.m. at out-post Chacharia. In the first-information-report, Phoolbai's case is materially the same version as given by her in the Court.

6. Shri Jaisingh submitted that in the First information report, it was given out that while going to patel's house, Phoolbai and Renja met Sukhalal on way and then narrated him the incident whereas according to version in the Court, Sukhalal had come to Renja's house on his shouting to him. The discrepancy is so inconsequential that on the basis of this discrepancy the whole prosecution case cannot be thrown out.

7. Shri Jaisingh submitted that according to Babulal (P.W. 1) Renja (P.W. 4) Phoolbai's husband sells illicit liquor, whereas this denied by Phoolbai herself (P.W. 3) (para 7), Renja (P.W. 4) (para 5), Sukhalal (P.W. 5) (para 5), and Hathha (P.W. 6) (para 4). According to him, these witnesses are suppressing the fact of Renja's selling illicit liquor because incident took place in the manner alleged by the accused in his examination. Except Babulal (P.W. 1) other witnesses even the independent witnesses, Sukhalal (P.W. 5) and Hathha (P.W. 6) have denied that Renja (P.W. 4) sells illicit liquor. Assuming for the argument that Renja sells illicit liquor it does not appear credible that he would snatch the appellant's money and get false report lodged against the accused involving his wife Phoolbai. It is beyond imagination that in concocting a story they would call Sukhalal (P.W. 4) inform Patel Hathha (P.W. 6) in the same night and also lodge First information-report the very night itself. If they wanted to snatch money from the accused, their purpose ended as soon as money was snatched and there was no need for them to go and lodge report at the police station or inform the village-patel. If such were the grievances, one would expect the accused himself to lodge a report and that he has not done.

8. Shri Jaisingh also submitted that it was unbelievable that while Phoolbai (P.W. 3) cried and her husband Renja (P.W. 4) was awakened, the accused would continue to sit there and not run away. No sensible person would do like this. The argument is mentioned only to be rejected. Different persons may act differently in the same circumstances. He seems to have been suffering from sex-urge. It is idle to expect, a man afflicted with sex or 'Kam' to behave like a sane or prudent person or rationally. The argument is not acceptable.

9. Shri Jaisingh drew my attention to the statement of Dr. Sitaram Malviya (P.W. 7) who had examined the accused for his injuries as per injury-report EX. P/4 and found :

- i) Swelling -- 2' x 1' on the upper lip.
- ii) Abrasion -- 1/2' x 1/2' on the left elbow posticous side
- iii) Swelling with pain -- 2' x 2' on the left knee.

He submitted these three injuries were caused to the accused after his money was snatched by Renja. The presence of these injuries on the accused probablised his defence. The accused in answering the question No. 24 in his examination ascribed the injuries to beating by police. Therefore, this argument is not acceptable.

10. The presence of the accused in the house of Renja (P.W. 4) is not in dispute. As against overwhelming evidence of the prosecution the defence suggested by the accused appears inrridible. The evidence satisfactorily establishes that the accused removed Phoolbai's cloth and sat on her waist in the night of incident.

11. As to offence committed by the accused in Phanu's case (Supra) where the appellant was convicted Under Section 376 I.P.C. Spermatozoa were found on the sari of the prose-cutrix and penetration of male organ in private parts of the prosecutrix was not proved. The offence made out against the appellant in the case was held as being one Under Section 354 I.P.C. In the present case, Phoolbai (P.W. 3) has stated that the accused had removed cord of her peticoat and was about to sit on her waist (Mere Kamar Par Baithne 1991 Cri. L. J./48 III Laga). In this state of evidence, that act of the accused would constitute not an attempt to commit rape but only preparation for the same. The offence against the accused would, therefore, be one Under Section 354 I.P.C. assault or use of criminal force to woman with intent to outrage her modesty.

12. The appellant is acquitted of the charge under Section 376/511 I.P.C. but instead, convicted Under Section 354 I.P.C. As for sentence, considering all the facts and circumstances of the case, he is sentenced to suffer six months rigorous imprisonment.

With this alteration in conviction and modification in sentence, the appeal otherwise fails and is hereby dismissed. The appellant who is on bail to surrender and serve out remaining sentence.