

Narayan Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-13-2002

Reported in : 2003CriLJ268; 2002(4)MPHT190

Judge : S.L. Kochar, J.

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

Appeal No. : Criminal Appeal No. 656/2002

Appellant : Narayan

Respondent : State of M.P.

Advocate for Def. : Girish Desai, Dy. Adv. General

Advocate for Pet/Ap. : Sonali Gupta, Adv.

Disposition : Appeal partly allowed

Judgement :

S.L. Kochar, J.

1. The appellant, has preferred this Criminal Appeal under Section 374 of the Code of Criminal Procedure against the judgment dated 27-7-2001, rendered by Sessions Judge, Dewas, in S.T. No. 191/2000 arising out of Criminal Case No. 619/2000, order dated 16-11-2000 convicting the appellant for the offence

punishable under Section 376, IPC and sentencing him Rigorous Imprisonment for 7 years and fine of Rs. 500/-, in default of payment of fine, further sentence of simple imprisonment for 3 months.

2. The prosecution case, in nut-shell is that on 12th September, 2000, in Village Polab, while prosecutrix Shantabai, accompanying by Ganpat (P. W. 2) and Laxman (P. W. 3) was going to work at Village Kelod, on the way, in the vicinity of the field of one Raghavram, convict/accused Narayan reached there and saying them as of men of bad character and take them to Police Chowky, holding the hand of prosecutrix Shantabai took her in the field of sugarcane. Convict Narayan also told Ganpat and Laxman to sit aside and let him finish his work, on his obstruction for taking the prosecutrix Shantabai. Even then convict Narayan took the prosecutrix to the field of sugarcane and committed forcible sexual intercourse with her, without her consent and will. On hue and cry by the prosecutrix, one Raghavram owner of the field, Ganpat and Laxman, companions of the prosecutrix came there. On seeing them, appellant, Narayan fled away from the scene of occurrence, Thereafter, prosecutrix alongwith Laxman and Ganpat went to Police Chowki, Kamlapur, situated 4 km. away from the place of incident, and lodged First Information Report (Exh. P-2). Prosecutrix Shantabai was medically examined and offence was registered. On usual investigation, charge-sheet was filed and appellant Narayan was arrested. Accused abjured his guilt for the offence. Learned Trial Court, after examining the prosecution witnesses and hearing both parties, convicted the appellant and sentenced him as mentioned above, by the impugned judgment, under challenge before this Court.

3. Having heard learned Counsel for the parties and having gone through the entire record of the case, this Court is of the opinion that the prosecution has failed to prove the charge of rape punishable under Section 376, IPC against the appellant.

4. Prosecutrix Shantabai (P.W. 1) a married woman (at the time of her examination in Court) has not uttered in her statement about penetration of male organ into female organ. She has stated only that MERE SATH ULTA KAMKIYA. This has not been explained by the prosecutrix or prosecution by adducing

reasonable evidence to understand that in the local parlance of that area ULTA KAM means sexual intercourse. In absence of such evidence, Court cannot presume that 'ULTA KAM' means penetration of male organ into female organ or commission of sexual intercourse.

5. Learned Trial Court has placed reliance on a judgment passed by this Court in Wahid Khan v. State of M.P. [1998 (1) J.L.J. 290] for interpreting expression and words stated by the prosecutrix 'ULTA KAM KIYA ' as commission of sexual intercourse by the appellant. In the facts and circumstance of the present case, ratio laid down in the judgment is not applicable in the present case. In the case of Wahid Khan (supra) the prosecutrix has stated that she wore petticoat, Dhoti, blouse, which were removed by the appellant and thereafter BURA KAM KIYA. In the case on hand, the prosecutrix has not stated about removal of her clothes but improved in Court the story about raising of her clothes as also the appellant and thereafter 'ULTA KAM KIYA '. This version about raising of clothes of the prosecutrix as also of the appellant is not mentioned in the First Information Report.

6. Section 375, IPC defines rape. It lays down that a man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the descriptions mentioned in this section. In clause sixthly, explanation says that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

7. A Division Bench judgment passed by the Madras High Court in the case of In re .-Anthony alias Bakthavtsalu v. State (AIR 1960 Madras 308) has held that:--

'For an offence of rape, while there must be penetration in the technical sense, the slight penetration would be sufficient and a completed act of sexual intercourse is not at all necessary.'

This view is also fortified by a judgment rendered in the case of Ghanashyam Mishra v. State (AIR 1957 Orissa 78) and in the case of Niranjana Singh v. State [1986 (2) Crimes 335]. Apart from this, there are other circumstances for discarding the story of commission of forcible sexual intercourse upon the

prosecutrix by the appellant discussed hereinbelow.

8. Learned Trial Court has sought corroboration to the testimony of the prosecutrix Shantabai for constituting the offence of rape committed by the appellant, from witness Ganpat (P.W. 2), who has stated that Shantabai (P.W. 1) disclosed before him about threatening by knife and taking her to the sugarcane field and commission of BURA KAM. The witness also stated that the girl has disclosed before him that she was dragged and US KI IJJAT BIGHADI, but the prosecutrix Shantabai has nowhere stated in her statement that she had disclosed about the incident before Ganpat (P.W. 2) and Raghav-ram (P.W. 5). Therefore, statements of both these witnesses in this regard are hit by law of hearsay evidence and the same cannot be considered for corroboration to the testimony of the prosecutrix.

9. The medical report, Exh. P-3 as well as statement of Dr. Namita Thakur (P.W. 4) are also not supporting the case of the prosecutrix of forcible sexual intercourse. The analyst's report has not been filed before the Trial Court.

10. The prosecutrix has been contradicted from her report (Exh. P-2) and the Statement (D-1) about disclosure of fact in the FIR as well as in the statements before the police regarding use of knife and about raising of her clothes as also of the appellant. For this contradiction, omission, the prosecutrix has not given any explanation. According to the First Information Report (Ex. P-2), the appellant ran away from the scene of occurrence but in Court, the prosecutrix Shantabai (P.W. 1), Laxman (P.W. 3) have stated that the appellant was caught on the spot and taken to the police station. The appellant was arrested on 13-9-2000 at 12.00 noon from Bagli Mohalla, Kamlapur. His arrest memo (Exh. P-5) is proved by S.P. Singh (P.W. 6) SHO of Police Station, Bhaurasa. This fact is also showing that there is some concoction and manipulation in the prosecution case. The statement of the witness as well as map (Exh. P-8) proved by Bhojsingh (P.W. 8). Bhojsingh (P.W. 8) has stated that in the field of sugarcane, crops of sugarcane and soyabean were standing (para 4 of the deposition). According to the prosecutrix she was dragged inside the sugarcane field but she has nowhere stated that she was thrown on the ground or laid to the ground and thereafter sexual intercourse was committed. She has stated that she was dragged for about 100-200 paces but

there is absolutely no marks of injury. No hurt or abrasion internal or external was found on her person by Doctor (P.W. 4). The story of the prosecution regarding dragging of prosecutrix for 100-200 paces in the presence of two more persons, is highly improbable. Including the prosecutrix, at the time of alleged incident, there were 3 persons and all of them come from labour class. The prosecutrix herself was 17 years of age, Ganpat (P.W. 2) 19years and Laxman (P.W. 3) aged 18 years and the appellant is of 22 years. Appellant was not possessing any weapon, therefore, it does not sound well that in the presence of two male persons, the prosecutrix could be dragged for 100-200 paces without any mark of abrasion or scratch on her body. Case diary statement of Laxman, his age is mentioned 18 years. It appears that the prosecution has deliberately made the improvement in Court about possession and use of knife for abducting the prosecutrix. This has been done deliberately to establish that because of knife, the prosecutrix and two other major persons would not have resisted the appellant. On all these points, Shantabai (P.W. 1), Ganpat (P.W. 2) and Laxman (P.W. 3) have contradicted from their case diary statements and they have not given any reasonable and plausible explanation. Prosecutrix Shantabai (P.W. 1) has denied the presence of bangles in her hand whereas Laxman (P.W. 3) in Paragraph 2 has stated that Shantabai wore the bangles and the same were broken when her hand was caught and she was being dragged by the appellant.

11. Prosecutrix Shantabai has stated that on the date of incident she came to live that Village Ratatalai and she was not knowing the appellant whereas in the FIR she has given specifically the name of the appellant and his village. This also goes to show that the prosecutrix was trying to hide something. In the FIR she has nowhere stated that her companion Ganpat (P.W. 2) and Laxman (P.W. 3) tried to save her and both were thrown away by the appellant. The material contradiction, improvement and omission in the statements of the prosecutrix Shantabai, Ganpat (P.W. 2) and Laxman (P.W. 3) indicate that either at the time of the incident they were not present and came there later on or the incident of outraging the modesty of the prosecutrix has been converted into case of rape. The prosecutrix and the prosecution witnesses have given unbelievable and unusual story about commission of rape.

12. Looking to the FIR, statements of the prosecutrix and the statements of Ganpat (P.W. 2), Laxman (P.W. 3) and Raghavram (P.W. 5) it appears that the same incident had taken place because all these witnesses had no axe to grind against the appellant. It appears that the prosecutrix and her two companions Ganpat (P.W. 2) and Laxman (P.W. 3) were sitting by the side of the road near agricultural field. Thereafter, appellant came there and outraged the modesty of the prosecutrix. In view of the fact that the prosecutrix has nowhere stated about penetration of male organ by the appellant into female organ of the prosecutrix. Thus, on the evaluation of the evidence available on record, utmost the offence of outraging the modesty of the prosecutrix punishable under Section 354, IPC would be made out.

13. In the result, this criminal appeal is allowed in part. The conviction and sentence punishable under Section 376, IPC is hereby set aside and the appellant is convicted for the offence punishable under Section 354, IPC and is sentenced to the period already undergone with a fine of Rs. 2,000/- (Rupees two thousand only) in default of payment of fine, the appellant to suffer further 6 months RI. The appellant remained in jail as under trial prisoner for 3 months and now he is in jail from 27-7-2001 and in all the appellant has completed one year and four months imprisonment.

14. The Trial Court is directed to release the applicant forthwith subject to deposit of the fine amount as indicated above.

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