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Ambaram Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-04-2008

Reported in : 2009CriLJ1059; 2009(1)MPHT134

Judge : A.K. Shrivastava and ;K.S. Chauhan, JJ.

Appellant : Ambaram

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. S.K. Garg

Disposition : Appeal dismissed

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 30-3-2000 passed by learned Sessions Judge, Hoshangabad, in Sessions Trial No. 11/2000 convicting the appellant under Sections 376(1), 342 and 506 later part, IPC and sentencing him to suffer life imprisonment, one year RI and five years RI respectively with a further stipulation that all the sentences shall run concurrently, the appellant has preferred this appeal under Section 374(2) of Code of Criminal Procedure, 1973.

2. In brief, the case of prosecution is that appellant is the father of prosecutrix and the age of prosecutrix is 16 years. Krishna Bai who was mother of the prosecutrix died 6-7 years earlier to the incident, since then she is residing with her father/appellant. Although prosecutrix has been married but since Gauna ceremony was not solemnised, she was residing with her father at his work place. Appellant is employed in brick furnace nearby Gurukul Ashram a: Bhopal-Hoshangabad Road.

3. It is the further case of prosecution that two months prior to 9-11-1999, appellant used to beat prosecutrix by Danda and was also electrocuting her. It is also said that appellant committed rape over the prosecutrix in the night and was giving threat to her not to say the incident to anybody otherwise she will be killed, hence, she did not tell anybody about the vile act of the appellant. The grand-mother of prosecutrix and mother of appellant namely Radha Bai was residing separately with her second son Atmaram who is brother of appellant. One day prior to Deepawali festival of the year 1999 appellant carried prosecutrix to his mother's and brother's place. It is said that when appellant was not there, prosecutrix narrated the incident to her grand-mother and uncle Atmaram and also to Satyasindhu of Gurukul Ashram. On the next day, viz., 9-11-1999 prosecutrix along with her uncle Atmaram and Satyasindhu of Gurukul Ashram went to Police Station and lodged First Information Report.

4. On lodging of First Information Report, criminal law was set in motion. Prosecutrix was referred to medical examination where lady doctor, Dr. Smt. Smita Saxena after examining the prosecutrix externally and internally found that she was having injuries of Danda and the duration is 2-3 days to several months. Lady doctor also found the injuries and marks of nails and electric current. Lady doctor further found injuries on the private part of the prosecutrix. According to lady doctor, prosecutrix was brutally beaten and was subjected to rape. The slide of her vaginal discharge was prepared and her petticoat as well as panty were seized and these articles were sent for chemical examination. Investigating agency in furtherance to its investigation, recorded the statement of the witnesses; arrested accused and sent him for medical examination.

5. After the investigation was over, a charge-sheet was submitted in the Committal Court which on its turn committed the case to the Court of Session where appellant was tried.

6. Learned Sessions Judge, on the basis of the averments made against the appellant in the charge-sheet, framed charges punishable under Section 376(1), 342 and 506 later part, IPC, which he denied and requested for trial.

7. Prosecution examined as many as nine witnesses and placed Exhs. P-1 to P-14, the documents on record. The defence of appellant is of false implication, however, he did not choose to examine any witness in support of his defence.

8. Learned Sessions Judge, after scrutinising the oral and documentary evidence placed on record, came to hold that the charges framed against the appellant are proved and, eventually, convicted him and passed the sentences which we have already mentioned herein above.

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

10. We have heard Shri S.K. Garg, learned Counsel for the appellant and Shri R.S. Patel, learned Additional Advocate General for respondent/State.

11. Having heard learned Counsel for the parties, we are of the view that this appeal deserves to be dismissed.

12. This case is one of rarest of the rare case and one could admire that appellant's devil of lust became so powerful that in order to satisfy his lascivious activity by crossing all the shame, limitation and dignity, he committed rape over his own daughter.

Mathew has said:

Whoever looketh on a woman to lust after her hath committed adultery with her already in his heart.

13. In the present case, prosecutrix has specifically stated that her mother had died at the time when she saw only five springs of her life and since then she is residing with appellant who is her father. Specifically she has stated that both of them were living alone in the house. According to her, she had been married to Chhagan of Village Sethguriya but Gauna ceremony has not been performed, hence she did not go to her husband's house and is residing with the appellant even after the marriage.

14. Prosecutrix has stated that she was electrocuted by the appellant and was also beaten by Danda. Prosecutrix has also stated that irrespective of time, appellant happened to commit rape over her repeatedly. She has also stated that appellant was confining her in the house and after bolting the house from the outside, used to go to his work place. He was also not permitting prosecutrix to interact with any other person. Since all the time appellant confined prosecutrix in the house and was not permitting her to meet anybody, she did not state the vile act of appellant to anybody. Specifically prosecutrix has stated that appellant committed rape over her against her will and wishes and whenever she tried to refrain or resisted, she was beaten by appellant.

15. According to this witness, after one month, a day earlier to Deepawali festival, appellant carried prosecutrix to her grand-mother's place who was residing with her uncle Atmaram and at that place there was an occasion for her to narrate the incident to her grand-mother. Her grand-mother thereafter narrated the incident to her uncle also and thereafter she went to lodge report along with Satyasindhu of Gurukul Ashram and her uncle Atmaram and from where she was sent for medical examination. It has also been stated by her that on account of beating by appellant, she received injuries on her back, hands, thighs and legs. According to her, when the rape was committed by her father, blood also came out from her private part. In cross-examination, this witness has stated that appellant after confining her inside the house and by inserting lock from the outside, happened to go to his work place and, therefore, she was not able to narrate the incident to anybody. It has also been stated by her that she used to scream as well as slammed the door but nobody came there for her help because the houses of other persons are far away. It has also been stated by her that whenever appellant

went to evacuate, he used to go after bolting the door from outside. Further she has stated that after tying her hands and legs she was subjected to rape.

16. On scanning the testimony of the prosecutrix, we find that there is specific evidence of her that she was confined inside the house where she was living along with her father and was not permitted to go outside. Even when appellant happened to go to his work place, he used to bolt the door from outside so that prosecutrix may not flee away. She was also subjected to rape against her will and wishes and was also beaten. After X-raying the testimony of prosecutrix, we do not find anything in order to hold that she is a liar or not stating the truth. In absence of any material and evidence to the contrary why a daughter will give evidence against her own father. According to us, the testimony of prosecutrix inspires full confidence.

17. The evidence of prosecutrix is also corroborated by medical evidence. According to Dr. Smita Saxena (P.W. 1), prosecutrix was having old injuries' marks on her forehead, she was having abrasions on her right and left cheeks which were in healing condition and these abrasions may come by nails. On the lower lip also there was a mark of abrasion which was in healing condition. On the right shoulder also bruise marks were found. Similarly on the neck region also there were abrasions which may come by nails, these abrasions were in the process of healing. The injuries were caused within ten days. On the both ends of collar bone there were lacerated injuries. On the back of prosecutrix there were bruises which were 15 in number and they were caused between 3 to 10 days. The doctor also found several abrasions on the entire back. Not only this, several abrasions 5 to 7 cm on left breast, upper portion of abdomen and on both the side of waist were also found. There were three abrasions on each buttock which were appearing to be ten days older and the skin nearby these injuries became dark. On feet several marks of bruises were found which were healed.

18. On examining the private part of the prosecutrix, it was found by the lady doctor that hymen was torn in shape of 3 o' clock and one more lacerated wound in the position of 4 to 6 o'clock which was inside the vagina, was found. There was swelling on the vagina and on touching the private part, prosecutrix was

complaining the pain. According to lady doctor, one finger was easily entering inside the vagina but prosecutrix was complaining pain on inserting two fingers. The lady doctor prepared two slides of vagina discharge of prosecutrix, sealed it and handed over to the Constable for chemical examination. Petticoat and panty of the prosecutrix which she was wearing were also sealed and were handed over to Constable for chemical examination.

19. According to lady doctor, prosecutrix was brutally beaten and the injuries which were found on her, were 2-3 days to 1-2 months older. The lady doctor specifically stated that positive symptom of committing rape was found by her on examining the prosecutrix. The lady doctor has also stated that the external injuries which were found on the person of the prosecutrix, may come by Danda and nails. The place where colour of skin became dark, that injury may come by administering electric current. The lady doctor has proved his report (Exh.P-1). Thus, on the basis of the evidence of prosecutrix which is corroborated by medical evidence also we are of the view that the charges including charge of Section 376(1), IPC have been proved and learned Trial Court did not commit any error in convicting appellant for the offences punishable under Section 376(1), 342 and 502 later part, IPC. The conviction of appellant is, accordingly, affirmed.

20. The hallmark of relationship between father and daughter is worldwide known and it is beyond expectation of any daughter that adultery in this sweet relation finds any place. If the protector himself becomes violator, the degree of vulnerability becomes more greater and, according to us, leniency in passing the sentence finds no place in such a case. Ordinarily, the adequate sentence for the offence under Section 376(1), IPC is between 7 to 10 years, but, looking to the act of the appellant who is father of prosecutrix and since in order to satisfy his lust and lascivious activity, he committed rape over his own daughter who was helpless and was residing alone with him, we are of the view that learned Trial Court did not commit any error in sentencing him to suffer life imprisonment for the offence under Section 376(1), IPC.

21. The Supreme Court in State of H.P. v. Asha Ram 2006 Cri.LJ 139, enhanced the sentence from five years' RI to life imprisonment where accused committed

rape over his own daughter. Thus, on the point of sentence also we do not find any justification to pass lesser sentence.

22. For the reasons stated herein above, we do not find any merit in this appeal and the same is hereby dismissed.

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