

Kogi Ram Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-27-2003

Reported in : 2004(1)MPHT292

Judge : A.K. Shrivastava, J.

Acts : [Indian Penal Code 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 1851/99

Appellant : Kogi Ram

Respondent : State of M.P.

Advocate for Def. : R.N. Yadav, Adv.

Advocate for Pet/Ap. : Subodh Kathar, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence passed by learned Sessions Judge, Mandla, in Sessions Trial No. 9/1999, convicting the appellant under Section 376, IPC and directed him to suffer R.I. of seven years and fine of Rs. 500/- in default three months further R.I., the appellant has

preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

2. No exhaustive statement of facts are necessary, for the disposal of this appeal, suffice it to say that on 20-10-1998, at five in the evening the prosecutrix went to store the water from a small spring (Jhiria), which is situated at the outer skirt of the village and when she was storing the water at that juncture accused/appellant came and hugged her thereafter he threw her on the ground. It is said that thereafter the prosecutrix hurled the abuses to him, but the accused did not allow her to escape, and despite she resisted, he undressed her and thereafter committed rape on her. It is the further case of the prosecution that while the appellant was in compromising position with the prosecutrix, Rangia Bai (P.W. 2) arrived there and on seeking her the accused flee away. Thereafter the prosecutrix along with said Rangia Bai came to her house and narrated the incident to her husband Ratan. On the next day there was a Panchayat and accused was summoned, who admitted his guilt before the Panchas and after that Panchas directed the prosecutrix to lodge the report and eventually on 22-10-1998 an F.I.R. (Ex. P-1) was lodged and in this manner the criminal law set in motion.

3. The investigating agency sent the prosecutrix for her medical examination; seized the sari of the prosecutrix on which semen spot were found; the doctor prepared the slides of vaginal discharge; the I.O. prepared the spot map; seized the undergarments of the accused; the doctor prepared a slide of the semen of the accused and sent it for chemical examination.

4. In furtherance to his investigation the investigating officer recorded the statement of the witnesses, arrested the accused and after completion of the investigation submitted a charge-sheet in the Competent Court, who on its turn committed the case to the Court of Sessions for trial. The learned Trial Judge framed charge punishable under Section 376(1) of the IPC against the accused/appellant. Needless to emphasise the appellant abjured his guilt and pleaded complete innocence and maladroitness.

5. In order to prove the charges the prosecution examined as many as 5 witnesses and placed Ex. P-1 to Ex. P-8, the documents on record. The learned Trial Judge

after scrutinizing the evidence came to hold that the appellant did not commit the offence for which he was charged and eventually convicted him for the said offence and passed the sentence, which I have already mentioned hereinabove. Hence this appeal.

6. In this appeal Shri S.K. Kathar, learned Counsel for the appellant has contended that the appellant is a major married lady and if her evidence considered in a proper prospective, the only inference which could be drawn is that she was a consenting party.

7. On the other hand it has been contended by Shri R.N. Yadav, learned Counsel appearing for the State/respondent that the Trial Court after scanning the entire evidence and the surrounding circumstances came to hold that the appellant did commit the offence under Section 376 of the IPC and accordingly he was rightly convicted by the Trial Court. The judgment of the Trial Court is based on cogent reasons, and hence there is no merit in the appeal and the same be dismissed.

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

9. Cheti Bai (P.W. 1), is the prosecutrix, according to her statement, on the date of the incident while she was storing the water from small spring (Jhiria) the accused/appellant came and hugged her, thereafter he threw her on the ground and undressed her, He took off the towel (Gamcha) which he was wearing and thereafter when the prosecutrix tried to shriek he closed her mouth by keeping his hands on the mouth. The accused also warned her that if she would shriek she would be thrown by him in the spring, thereafter Rangia Bai came there to store the water and on seeing the accused in compromising position, she tried to release the prosecutrix and thereafter the prosecutrix as well as Rangia Bai pelted the stones, thereafter accused flee away. After the departure of the accused the prosecutrix and Rangia Bai came back to their house, where she narrated the story to her husband.

10. She has further stated that her husband went to narrate the incident to Kotwar, who on the next day called the Panchayat, in which she narrated the incident and

the appellant was also summoned before the Panchas where he admitted his guilt and therefore, on the insistence of the Panchas, she lodged the report.

11. In the cross-examination this witness has said that before she was thrown on the ground she was undressed by the accused. She has further stated that by one hand he was holding her body and his another hand was busy in undressing her, thereafter he threw her on the ground and took off the towel, which he was wearing. In the very specific words she has stated that when they were in a compromising position and were cohabiting, at that juncture Rangia Bai arrived at the spot and on her arrival she screamed. She has further stated that when the cohabitation was being taken place her both the hands were lying parallel to her body. Thereafter she was confronted by the major contradictions and omissions of her statement in the FIR and her police statement. She admitted that in the FIR she did not mention that accused warned her from screaming otherwise, she would face the dire consequences. The fact of pelting stones to the accused is also totally lacking in the FIR. She has further stated that in the report she stated that the appellant closed her mouth, so that she may not raise alarm, but why this fact does not find place in the FIR, she could not say.

12. The other important witness is Rangia Bai (P.W. 2), who has stated that on the date of incident she went to store the water from spring and noticed that the prosecutrix was lying on the ground and was in a compromising position with the accused. On seeing this witness, the accused fled and thereafter .she and the prosecutrix came back to the village.

13. On going through the testimony of these above two said eye witnesses, the only inference which could be gathered is that the prosecutrix was a consenting party. It has come in her own evidence that while they were in compromising position and were cohabiting, her both hands were lying parallel to the body. She has also stated that before she was thrown on the ground, the accused undressed her and also took off the towel, which he was wearing but she did not refrain. It is only when they were seen by Rangia Bai, she screamed. The story of pelting stones, has not been corroborated by Rangia Bai and this fact does not find place in the FIR, as well as in the police statement. This important fact was also

confronted to the prosecutrix. On X-raying the evidence of above said two witnesses, I have no hesitation to hold that the prosecutrix, who was a major lady, having age of 25 years, on the date of incident, was a consenting party and if that be the position, no offence is made out.

14. The prosecutrix was examined by lady doctor Dr. Kirti Singh (P. W. 3), but she could not notice any injury either external or internal, on the person of the prosecutrix. Needless to emphasise, on examining the prosecutrix it was opined that the prosecutrix being a married lady, no definite opinion of commission of rape could be given.

15. In the case of *Pratap Mishra and Ors. v. State of Orissa*, AIR 1977 SC 1307, Their Lordships has held that in the absence of any injuries either on the accused or on the prosecutrix, clearly shows that she did not put up any resistance to the alleged rape, committed by the accused. The only irresistible inference therefrom can be gathered that she was a consenting party and that was re-enforced by the other circumstances in the case. Otherwise also under ordinary circumstances, it is not possible for a single man to hold sexual inter-course with a healthy adult female in full possession of her senses, against her will, unless she has taken unawares, thrown accidentally on the ground and placed in such a position as to render her completely helpless. In this context it would be apposite to rely the Modi's Medical Jurisprudence, 21st Addition, Page 381.

16. If the ratio decidendi of the case of *Pratap Mishra* (supra) is tested on the anvil of the present factual scenario, it is gathered, that present case in hand is rather on a better footing. In the present case, as discussed hereinabove, there is definite evidence of the prosecutrix that before she was thrown on the ground, she was caught hold by the accused with one hand and his other hand was busy in undressing her, thereafter when they were in compromising position and were cohabiting, her both the hands were lying parallel to her body. In these state of affairs it can not be said that she was ravished against her will and wish. It is not the case of the prosecution that accused was having any weapon with him and therefore, it can not be said that on account of fear she accorded her willingness.

17. As discussed hereinabove that while the accused and the prosecutrix were in a compromising position Rangia Bai (P. W. 2) arrived there and saw them in such a position, the only option left to the prosecutrix, was to present herself to be a victim of rape. In this context I may rely on the decision of this Court in the case of Sitaram Rameshwar Kewat v. State of M.P., 1995 MPLJ 1009.

18. The prosecutrix was a fully grown up lady, she did not put any resistance, the doctor did not find any injuries on her person. The FIR was also lodged on the next day, despite it has come in the evidence that she narrated the incident to her husband and the husband stated the incident to Kotwar. The Kotwar has not been examined by the prosecution. It is the case of the prosecution that on the next day the Kotwar called the panchayat before whom the entire incident was narrated by the prosecutrix, however, the story to assemble the Panchayat and to narrate the entire scenario before the Panchas appears to be highly unnatural. In this context, I may refer to the decision of this Court in the case of Puran Singh v. State of M.P., 2000(1) Vidhi Bhasvar 136.

19. True on the basis of sole testimony of the prosecutrix, in a case under Section 376, IPC, a judgment of conviction can be passed, but the statement of the prosecutrix should inspire the confidence. I have discussed the evidence of the prosecutrix in detail and after X-raying her evidence, I can safely say that her evidence does not inspire any confidence and if that be the position, the conviction of the appellant can not be sustained and I have no option except to acquit the appellant.

20. In the result the appeal succeeds and is hereby allowed. The judgment of conviction of the appellant under Section 376, IPC is hereby set aside and he is acquitted from the said charge. The appellant is in jail, he be set at liberty forthwith, if not required in any other case.