

Bhikari Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-04-2010

Judge : Sushma Shrivastava, J.

Appellant : Bhikari

Respondent : The State of Madhya Pradesh

Judgement :

Sushma Shrivastava, J.

1. Appellant has preferred this appeal challenging his conviction and order of sentence passed by Additional Sessions Judge, Multai, District Betul in S.T. No. 94/2000, decided on 28.08.2002.
2. Appellant has been convicted under Section 376/511 of IPC and sentenced to half of the term of the life imprisonment with fine of Rs. 100/-, in default further rigorous imprisonment for three months by the impugned judgment.
3. According to prosecution, on 14.2.2000 about 12 'O'clock in the noon at village Karpa, prosecutrix had gone to her field to give water to her buffaloes. She had taken out the cattle from the hut and was sweeping there. At that juncture appellant Bhikari came there, sat in the hut and called the prosecutrix. When prosecutrix went to the appellant, he caught hold of her hand, fell her down and pressed her breast. When prosecutrix shouted, appellant insisted her for sexual

intercourse, undressed her and committed forcible sexual intercourse with her. On her shouting, appellant also intimidated her and gave threat to her life. On hearing the screams of the prosecutrix, Dropadi Bai, while passing by the hut, came there and scolded the appellant. Prosecutrix then came to her house alongwith Dropadi and narrated the incident to her mother and brother, as also to Sarpanch and Kotwar of the village.

4. The FIR of the incident was lodged next day by the prosecutrix when her father came back to the village. On the basis of her report, an offence was registered at Police Station, Multai against the appellant and was investigated. Prosecutrix was sent for medical examination. She was also subjected to radiological examination for confirmation of her age. On being arrested, appellant was also sent for medical examination. The underwear of the prosecutrix and her vaginal slide collected during medical examination as well as 'dhoti' of the appellant seized by the Police were sent for forensic examination. After due investigation, appellant was prosecuted under Section 376, 506B of IPC and was put to trial.

5. Appellant abjured the guilt and pleaded false implication.

6. Learned Additional Sessions Judge, after trial and upon appreciation of the evidence adduced in the case acquitted the appellant of the charge under Section 506 part II of IPC, but found him guilty under Section 376/511 of IPC for attempting to commit rape on the prosecutrix, convicted and sentenced him as aforesaid by the impugned judgment, which has been challenged in this appeal.

7. Learned Counsel for the appellant submitted that the trial court did not appreciate the evidence in proper perspective and erroneously convicted the appellant on the basis of inconsistent and unreliable testimony of the prosecutrix. Learned Counsel for the appellant further submitted that no case under Section 376/511 of IPC was proved against appellant from the evidence on record.

8. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellant.

9. Impugned judgment and record of the lower court perused.

10. The conviction of the appellant is founded mainly on the evidence of the prosecutrix (P.W-3). Prosecutrix (P.W-3) is admittedly an adult woman of about twenty years of age. A close examination and scrutiny of the evidence of the prosecutrix (P.W-3) reveals that she has given two inconsistent versions of the incident. In her chief examination, prosecutrix deposed that appellant laid her on the ground and committed sexual intercourse with her by inserting his male organ about half inch into her vagina and when she shouted Dropadi, the wife of Dashrath had come there, then she pushed him. However, in her cross-examination prosecutrix (P.W-3) stated that male organ of the appellant did not insert into her vagina. She also said that appellant's male organ was attenuated and he was only moving it on her vagina. She also deposed in her cross-examination that when appellant touched her breast, she screamed and Dropadi came there on her screaming. Thus, when according to prosecutrix (P.W-3), Dropadi Bai had already come on hearing her screams on appellant's touching her breast, her statement that appellant exposed his male organ and moved it on her vagina, becomes quite suspicious and doubtful. It has also come in the evidence of the prosecutrix (P.W-3) that FIR of the incident was lodged by her brother and she had given her evidence in court as explained by her brother. In this view of the matter, the possibility of her making exaggerated version under the guidance of her brother, is not ruled out; rather that might be the reason for her giving two types of version.

11. In view of the aforesaid facts, particularly when prosecutrix (P.W.3) gave two different and contrary versions in her chief and cross-examination, her statement, that appellant exposed or moved his male organ on her vagina, becomes suspicious and does not inspire confidence so as to be accepted beyond doubt.

12. Moreover, according to the evidence of Dr. Mahendra Patil (P.W-1), appellant, upon his medical examination on 17.2.2000, was found incompetent to perform sexual intercourse. In that situation the act of the appellant, if any, of attempting to commit rape on the prosecutrix also becomes doubtful. Be that as it may, the evidence of prosecutrix (P.W-3) herself in this behalf is quite suspicious and not even corroborated by medical evidence of Dr. Nisha Badve (P.W-5) and not liable to be accepted beyond periphery of doubt.

13. However, there can be no doubt that appellant made an indecent assault on the prosecutrix (P.W-3) with intent to outrage her modesty. It is quite evident from her testimony that appellant made an indecent gesture and touched her breast. Such an act on the part of appellant ipso facto indicates that appellant intended to outrage her modesty and therefore, committed such an indecent act when the prosecutrix was alone in the hut. It cannot be assumed that prosecutrix (P.W-3) made totally false allegations against the appellant, who was a sixty years' old person. There are also no reason for false implication of the appellant by the prosecutrix.

14. There is bulk of evidence that the above episode had spread in the village. Although Dropadi (P.W-13) did not support the prosecution case that she witnessed any incident in the hut between the appellant and the prosecutrix, yet independent witness like Deepak (P.W-14), as well as Annu (P.W-6) and Gullu (P.W-7), brothers of the prosecutrix and her mother Bhoori Bai (P.W-2) and father Chhuttan (P.W-4) deposed that the prosecutrix had complained against the appellant and panchayat was also called in this regard. Thus, it cannot be presumed that the prosecutrix (P.W-3) made absolutely false allegation against the appellant. Although, some part of the evidence of the prosecutrix regarding attempting to commit rape on her, being suspicious, is not found to be wholly reliable, but her testimony that appellant came to her when she was alone and made an indecent assault on her with intent to outrage her modesty, is clearly borne out from her testimony. Thus, the conviction of the appellant under Section 376/511 of IPC cannot be safely maintained in the peculiar circumstances of the case. However, the offence under Section 354 of IPC is clearly established against the appellant from the evidence on record. The conviction of the appellant under Section 376/511 of IPC, therefore, deserves to be altered to one under Section 354 of IPC.

15. As regards the sentence, learned Counsel for the appellant submitted that the incident of the case occurred way back in the year 2000 and appellant is presently more than 70 years of age and has already undergone sentence for more than nine months, therefore, he should not be sent back to jail after such a long span of nearly ten years. It was, therefore, submitted that impugned sentence of

imprisonment imposed on the appellant be reduced to the period already undergone by him. Considering the submissions as advanced and the facts and circumstances of the case, including the present age of the appellant, a sentence of imprisonment for a period of nine months or so already undergone by him would meet the ends of justice for an offence under Section 354 of IPC proved against the appellant.

16. In the result, appeal is partly allowed. The conviction of the appellant and sentence passed on him under Section 376/511 of IPC are set aside. Instead his conviction is altered to one under Section 354 of IPC and he is sentenced to imprisonment already undergone by him.

17. Appeal is accordingly disposed of.

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