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Jagdish.Vs. State of Madhya Pradesh.

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Court : Madhya Pradesh Jabalpur

Decided On : Jun-25-2010

Judge : N. K. Gupta, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 376 Read with Section 511 ;

Appeal No. : CRIMINAL APPEAL NO.1416/1995.

Appellant : Jagdish.

Respondent : State of Madhya Pradesh.

Advocate for Def. : Shri J. K. Jain, Adv.

Advocate for Pet/Ap. : Shri J.A.Shah, Adv.

Judgement :

1. The appellant has preferred this appeal against the judgment dated 10-10-1995, passed by Sessions Judge, Tikamgarh, in S.T. No. 109/1992 by which he was convicted for offence under Section 376 read with Sec.511 I.P.C. and inflicted sentence of rigorous imprisonment for two years with fine of Rs. 500/-. In default he has to undergo six months rigorous imprisonment.

2. In short the prosecution story is that on 20-3-1992, the prosecutrix (PW2) was all alone in her house at village Gova, district Tikamgarh. At about 7:00 pm accused suddenly entered the house and threw the prosecutrix on earth, unwrapped the saree worn by her and committed rape. Witnesses Lakhan,

Ganesh (PW1) and Vijay (PW3) had seen the accused when he was entering the house of the prosecutrix. The prosecutrix on 21-3-1992 at about 4:40 pm lodged FIR regarding the incident. Ultimately Police A.J.K. had submitted challan. J.M.F.C. Jatara committed the case for sessions trial to Sessions Judge, Tikamgarh.

3. After due trial learned Sessions Judge passed the Judgment dated 10-10-95 of conviction with aforesaid punishment order.

4. The prosecutrix (PW2) has stated that the appellant/accused committed rape with her when she was in her house. She has further stated that at that time her husband had already gone to beat drums in a festival. On her shouting witness Ganesh (PW1) and witness Vijay (PW3) came and they saw the accused leaving her house. Ganesh (PW1) has supported the version of the prosecutrix in his evidence but it seems that he has exaggerated the entire story. There is material contradiction in his statement and case diary statement Ex.D-1. Witness Vijay (PW3) did not support the prosecution story. He was declared hostile. However, he accepted having seen the prosecutrix abusing the accused when the accused was standing in front of the house of the prosecutrix. The prosecutrix has lodged an FIR Ex.P-1 in which she has narrated the story in a very short manner. FIR Ex.P-1 was delayed by 21 hours approximately. Incident took place at 7.00 p.m on 20.3.1992 whereas F.I.R was lodged at about 4.40 p.m on 21.3.1992. No sufficient reason has been shown for that delay. The prosecutrix stated that her husband was out and he came in the evening at about 8.00 p.m, accused and his brother Rajaram came and started assaulting her husband and, therefore, her husband left his house and went to his parents house only to return the next day in the morning. Such allegation against the accused and his brothers is neither made in FIR Ex.P-1 nor in case diary statement Ex.D-2. Therefore, story of her husband's moving to his parents house at about 8.00 p.m in the evening seems to be cooked one.

5. Husband of the prosecutrix when came at 8.00 p.m in the evening then he could take the prosecutrix to the Police Station, Jatara in the night or at the most next day in the morning. There was no reason for 3

him to have left his house on that day unless he had found his wife to be guilty. However, explanation given for delay in lodging FIR seems to be after thought and is not acceptable. Secondly in Ex.P-1 it is mentioned that village Gova comes in jurisdiction of Police Station, Jatara but the prosecutrix has not lodged the FIR in Police Station, Jatara which was nearest but she lodged the report in Kotwali, Tikamgarh which was far away. Such selection of Police Station creates a grave doubt that she or her husband could not record a cooked report in Police Station Jatara.

6. The evidence given by witness Vijay (PW3) shows that the prosecutrix was abusing the accused and the accused was standing in front of her door. If he was guilty of some crime then certainly he could not stand to hear her abuses. He being guilty conscious must have left the spot immediately. The circumstances as stated by the prosecutrix do not seem to be natural. The prosecutrix has not said anything about previous relations of accused and her husband. It is not possible for a stranger to go inside any house and do such crime. If the prosecutrix was not known to the accused, accused could not dare to enter in the house in broad day light when the house was situated on the main road of the village. Similarly the prosecutrix has admitted that she has five children. Out of them eldest daughter was of 8-9 years of age and youngest daughter was 1 1/2 years of age but she did not explain the absence of all the five kids at the time of incident, where as the accused would not have done such a crime in presence of five children. Her conduct for not explaining the absence of those five kids creates a great doubt in the prosecution story. The prosecutrix has tried to give an explanation regarding absence of her husband, but she did not tell anything about her children.

7. Apparently it seems that witness Ganesh (PW1) supports the version of the prosecutrix. He was believed by the trial court only because he has stated that the accused assaulted him two months prior to his statements before the Court, whereas he has stated such version without asking. He was suggested that he was in party of one Mahendra Pratap Singh a rival of the accused but he denied. Though he has denied the suggestion, but his evidence seems to be prepared one. In case diary statement Ex.D-1 he has informed that at the time of incident he was sitting in his shop with Vijay and Lakhan, whereas in the Court he claims to

reach the spot earlier than other two witnesses. He said that he was sitting in the shop all alone whereas he has admitted that in those festival days he was extremely busy in his shop. He has denied the presence of other two witnesses at the shop only because he was aware that his story would not be supported by other two witnesses. It is clear that Vijay does not support his story whereas Lakhan was not examined by the prosecution. Learned A.P.P. on 24-9-1993 expressed before trial court that he does not wish to examine him and no summons be issued to him.

8. In the circumstances witness Ganesh being busy in the shop neither he could see the accused entering in the house of the prosecutrix nor he has seen anything. And therefore his confirmation of the version of the prosecutrix against his own previous statement indicates that he is an interested witness telling falsehood before the court.

9. As discussed above, conduct of prosecutrix and her husband makes them disbelievable. In present case entire merits depend upon the testimony of the prosecutrix. If she is believable then appeal shall be dismissed. The learned Sessions Judge erred in disbelieving the prosecutrix in part. He believed the prosecutrix and held that incident took place but he did not hold the appellant guilty for offence under sec. 376 of IPC by disbelieving the prosecutrix. Such an approach can not be said to be legal. He found that there was no injury on any external or internal part of her body. Police has not placed F.S.L. Report before the trial Court. If F.S.L. Report was not produced, that part of evidence may not be available but no adverse inference could be drawn. It is not necessary that a grown up woman who is mother of five children may get injury in such an act though done against her wish. Similarly, due to washing and bathing nothing could be obtained from her vaginal swab prepared after more than 24 hours.

10. If prosecutrix is believable then fact of penetration must be accepted and the offence made out would be rape and not just attempt. Unfortunately learned Sessions judge took a wrong decision on this point. Since the State has not preferred any counter appeal for this purpose, this Court can not interfere in this matter. It is now held that the prosecution story seems to be unreasonable, F.I.R.

is highly delayed and no acceptable reason has been shown, F.I.R. has not been lodged in nearest police station, the prosecutrix has not explained the absence of her five children at the time of occurrence and no witness supports her version accept witness Ganesh who is not at all believable, the prosecutrix can not be believed. Hence the accused can not be convicted for offence punishable under sec. 376 I.P.C. or for offence punishable under sec. 376 read with 511 I.P.C.

11. On the basis of above discussion appeal can be accepted. Hence appeal is hereby allowed. Impugned conviction and sentence is quashed. The appellant is acquitted from the charges appended against him. He will get fine amount back if he has deposited.

12. Appeal is disposed off accordingly.

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