

Dinesh Kumar Vs. State of Madhya Pradesh

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Court : Chhattisgarh

Decided On : Jan-09-2012

Reported in : 2012CrLJ2867

Judge : Pritinker Diwaker

Appeal No. : Criminal Appeal No. 815 of 1996

Appellant : Dinesh Kumar

Respondent : State of Madhya Pradesh

Judgement :

1. This appeal has been preferred against the judgment and order dated 16.4.1996 passed by Additional Sessions Judge, Durg, in Sessions trial No. 46/1994 holding the accused/appellant guilty under Section 376/34 IPC and sentencing him to undergo rigorous imprisonment for seven years.

2. Case of the prosecution in short is that on 18.10.1993 at about 8.30 p.m. FIR Ex. P-1 was lodged by the prosecutrix (PW-1) aged about 21 years alleging that on that day at about 4 p.m. when she was preparing bundles of crop in the field, co-accused Ramesh came there carrying axe in his hand and asked for sexual favour. Immediately thereafter, accused/appellant herein also came there and was asked by co-accused to catch hold of the prosecutrix. Co-accused then put the axe on her neck, felled her down, sat over her, by one hand he pressed her mouth and by the other held her breasts. Present appellant is said to have caught hold of

both her hands and then the co-accused after removing his clothes and upturning her sari and petticoat committed forcible sexual intercourse with her. Based on this FIR, offence u/s 376/34 IPC was registered against the present appellant and after investigation challan was filed by the police on 28.11.1993 for the said offence.

3. So as to hold the accused/appellant guilty, prosecution has examined 08 witnesses. Statement of the accused/appellant was also recorded under section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of this judgment. Hence, this appeal.

5. Counsel for the appellant submits that the present appellant has not committed rape on the prosecutrix and therefore he cannot be convicted under Section 376 IPC. According to him, the allegation of rape is only against co-accused Ramesh. He further submits that the present appellant has been falsely implicated in the case because of old enmity and that the prosecutrix appears to be a tutored witness. He submits that the FIR has been lodged by the husband of the prosecutrix and not by the prosecutrix herself.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the accused/appellant has facilitated commission of rape by co-accused Dinesh by holding both her hands when the incident of rape was going on and that being so his conviction under Section 376/34 IPC is in accordance with law. He submits that FIR was duly signed by the prosecutrix and that she being a rustic villager, minor contradictions in her statement should be ignored. State counsel submits that co-accused Ramesh has already undergone the sentence imposed on him and withdrawn the appeal.

7. Heard counsel for the parties and perused the material available on record.

8. Prosecutrix (PW-1) has stated in her evidence that on the date of incident when she was preparing bundles of the crop in the field of one Chetan, co-accused

Ramesh came there carrying axe in his hand and asked for sexual favour. Thereafter, the present appellant also came there and he was asked by the co-accused Ramesh to hold her. Co-accused then put the axe on her neck, felled her down on the ground, sat over her, by one hand he pressed her mouth and by the other held her breasts. Present appellant then caught hold of both her hands and then the co-accused after removing his clothes and upturning her sari and petticoat committed forcible sexual intercourse with her. Thereafter, co-accused and the present appellant left the spot. She has further stated that at the time of incident she was carrying five months pregnancy due to which she was not in a position to walk properly and when the co-accused sat over her, she was feeling pain. Thereafter, she somehow managed to reach her house and narrated the incident to her sisters-in-law Kanti Bai and Janki Bai and brother-in-law Ghanshyam. After her husband returned from his workplace, she narrated the incident to him also and then the report Ex. P-1 was lodged. She, thereafter, was sent for medical examination and her sari and petticoat were seized vide Ex. P-2. The prosecutrix who happens to be a rustic villager, it appears, was subjected to lengthy cross examination and in these circumstances; minor contradictions in her evidence being insignificant are of no help to the accused/appellant. Tularam (PW-2) - the husband of the prosecutrix has supported the case of the prosecution and stated that when he returned home from his workplace, prosecutrix was weeping and she narrated the entire incident to him. Though the evidence of this witness carries minor contradictions, they being insignificant are not fatal to the case of the prosecution. Harilal (PW-3) is the witness to seizure of towel and underwear of the co-accused and one axe made under Ex. P-2 and P-3 who has duly supported the case of the prosecution. Indru (PW-4) - the witness to seizure of pieces of bangles made under Ex. P-4 has also supported the case of the prosecution. Dr. R.K. Khandelwal (PW-5) is the witness who had medically examined co-accused Ramesh and found him to be capable of performing sexual intercourse. J.S. Dhruv (PW-6) is the witness who prepared the spot map and filed charge sheet. R.S. Thakur (PW-7) is the investigating officer who has supported the case of the prosecution. Dr. Madhuri Gupta (PW-8) is the witness who had medically examined the prosecutrix and given her report Ex. P-8A stating that as she was a married lady carrying pregnancy of four months, no definite opinion regarding rape

on her could be given.

9. Thus in view of the aforesaid discussion, it is clear that while the prosecutrix was working in the field preparing bundles of crop, co-accused Ramesh went there and asked for sexual favour from her. Co-accused then put an axe on her neck and asked the present appellant to catch hold of her. Accordingly, by catching hold of the hands of the prosecutrix who at that time was carrying five months pregnancy, the appellant facilitated commission of rape on her by the co-accused. This Court does not find force in the argument of the counsel for the appellant that the report was not lodged by the prosecutrix but it was lodged by her husband because the report though was given by her husband, it very much bears the signature of the prosecutrix. Even the argument of false implication of the accused/appellant at the hands of the prosecutrix does not appear very appealing because the defence has utterly failed to substantiate this point by leading any cogent evidence. Thus the findings recorded by the Court below convicting the accused/appellant under Section 376/34 IPC are based on due appreciation of the evidence on record and therefore the judgment impugned cannot be said to suffer from any illegality or infirmity.

10. Accordingly, the appeal being without substance is liable to be dismissed. It is dismissed as such. Accused/appellant is on bail. His bail bonds stand cancelled. He be sent to jail forthwith to serve out the remaining part of the sentence.

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