

Pratap Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Dec-01-2011

Judge : U.C. Maheshwari

Appeal No. : Criminal Appeal No. 944 of 1996

Appellant : Pratap

Respondent : State of M.P.

Judgement :

U.C. Maheshwari, J.

1. This appeal is preferred by the appellant/accused under Section 374 of the Cr.P.C being aggrieved by the judgment dated 4.10.96 passed by Addl. Sessions Judge Manawar district Dhar in S.T.No.241/90 convicting him under section 376 of the IPC with a direction to undergo for RI 7 years with fine of Rs.1000/-. In default of depositing such fine, further four months rigorous imprisonment.

2. The facts giving rise to this appeal in short are that on dated 4.6.98 at about 8 O' Clock in the evening, the prosecutrix Samoti Bai, the daughter-in-law of the appellant, who was also residing in the family of the appellant, was sleeping in her room. At the same time, the appellant entered in her room and committed rape on her against her will and thereafter he went away. Immediately after such incident, the prosecutrix ran away towards the village and narrated the incident to witnesses Hamiro, Chhitu, Devi Singh, Nathia and also to her brother Bavlia. As the incident

took place in the night, so the prosecutrix went to the police station Manawar on the next day i.e 15.6.90 and lodged the FIR (Ex.P/7) at 12.30 in the noon, on which, the offence of section 376 of the IPC was registered against the appellant. After holding the investigation, the appellant was charge sheeted for such offence.

3. After committing the case to the Sessions Court, on evaluation of the charge sheet, the charge of section 376 of the IPC was framed against the appellant. He abjured the guilt, on which, the trial was held. On appreciation of the evidence, after holding guilty to the appellant under such offence, he was punished with the sentence as mentioned above. Being aggrieved by such conviction and sentence, the appellant has come to this court with this appeal.

4. Shri Sunil Jain, learned appearing counsel of the appellant, after taking me through the record of the trial court including the deposition of the examined prosecution witnesses and the exhibited papers of the charge sheet so also the impugned judgment, argued that on taking into consideration the face value of the evidence led by the prosecution as accepted in its entirety, the offence of section 376 of the IPC is not made out but under wrong appreciation of the same, the appellant has been convicted under such sections. In continuation, he said that mere perusal of the deposition of the prosecutrix it is apparent that not a single word or line regarding penetration by the appellant in her private parts has been stated by her. In the lack of such material evidence in the testimony of the prosecutrix herself, it could not be deemed that the appellant has committed the alleged rape on her. He further argued that whatsoever story stated by the prosecutrix Samoti Bai (PW

5) in her deposition, the same has not been supported by the examined witnesses Hamira (PW

1) and Chhitu (PW

2) whom she narrated the story immediately after the incident. On the contrary, on recording their depositions, they turned hostile and did not state anything implicating the appellant with the alleged offence. It was also argued that as per deposition of the prosecutrix she went to the police station accompanied with the

watchman and village Patel but, out of them, no one has been examined by the prosecution to support its case. Besides this, on going through the MLC report of the prosecutrix (Ex.P/9), it is apparent that no definite opinion for committing the rape on her was given by the doctor. Even on recording the deposition of such doctor S.L.Gupta (P.W3), he has not specifically stated that any sign of violence or committing rape on her, was found on the person of the prosecutrix. He also said that in the lack of FSL report on the record and also on account of non examination of the investigating officer of the case to explain the entire incident of the case, the impugned conviction of the appellant, could not be sustained. It was also argued that the inconsistencies between the averments of the FIR, the interrogatory statements and deposition of the prosecutrix, have not been considered by the trial court with proper approach and prayed for extending acquittal to the appellant. In alternate, he argued that in any case after extending the acquittal to the appellant from the charge of section 376 IPC if the Court comes to the conclusion that the appellant has committed the offence of outraging the modesty of the prosecutrix made punishable under section 354 of the IPC then, considering the circumstance that the alleged incident was happened long before 22 years i.e on 14.6.90 and thereafter or prior to that no criminal antecedents had been reported against the appellant, so, in such premises, he being first offender and, also in view of his present age near about 72 years, by adopting some lenient view, he be extended the benefit of Probation of the Offenders Act or, in any case, he be punished with the jail sentence for which he has already undergone i.e 19 days during pendency of the trial and suffered the jail sentence for 49 days subsequent to the impugned judgment of the appellate court till passing the order dated 21.11.97 by this court for suspension of his remaining jail sentence with fine under discretion of the court and, prayed to allow this appeal accordingly.

5. On the other hand, responding the aforesaid arguments, Shri Rawal, GA by justifying the impugned judgment of conviction and sentence of the appellant said that the same being in consonance with the evidence led by the prosecution, does not require any interference at this stage. He also said that as per settled proposition mere on the deposition of the prosecutrix, without any other independent corroboration or also without any sufficient medical evidence, in the

matter of rape, the accused like the appellant, could be convicted and in such premises also the impugned judgment does not require any interference. He fairly conceded that in the deposition of the prosecutrix, she has not stated anywhere the fact regarding penetration by the appellant in her private parts; only the version "Meri Ijjat Le Li" has been stated by her and, in such premises, he made his alternate submission that in case the appellant is acquitted from section 376 of the IPC, then there is sufficient evidence on record to convict him under section 354 of the IPC and prayed to pass appropriate order in this regard. In continuation, he also said that in any case, this is not the case for extending acquittal or the benefit of Probation of the Offenders Act or to reduce the jail sentence because looking to the nature of the offence in which the father-in-law has committed the alleged act with the daughter-in-law, the appellant does not deserve for adopting any lenient view in imposition of the sentence and prayed for dismissal of this appeal.

6. Having heard the counsel at length, keeping in view their arguments, I have carefully examined the record of the trial court. On perusing the deposition of the prosecutrix Samoti Bai (PW 5), I have not found a single averment or line stating that the appellant has committed act of penetration in her private part in the alleged incident. She only stated that the appellant, his father-in-law, entered in the room and outraged her modesty (Meri Ijjat Le Li). Besides this, no other averments showing that rape was committed on her by the appellant, has been specifically stated. Besides this, the named witnesses of the FIR Hamiro (P.W.1) and Chhitu (P.W.2), to whom immediately after the incident, the prosecutrix narrated the incident, have not supported the story putforth by the prosecutrix. Even after lodging the report, on sending her to hospital for her medical examination, the concerning doctor, according to the MLC report (Ex.P/3), had not found any signs of violence or committing rape on her. As such, no definite opinion about committing rape was given by such doctor and the same thing was stated by such doctor S.L.Gupta (PW 3) on recording his deposition. Apart this, in order to prove rape, the relevant medical evidence, the FSL report with respect of the clothes and the semen slides of the prosecutrix, have neither been produced nor proved on the record. The Investigating Officer of the case has also not been examined. So, in such premises, the appellant could not get proper opportunity to put his defence with respect of the aforesaid lacunas left by the prosecution in the

cross-examination of such Investigating Officer. In all these circumstances, the impugned conviction of the appellant under section 376 of the IPC, is not sustainable, hence conviction under such section along with its awarded jail sentence, is hereby set aside.

7. Extending the acquittal to the appellant from the charge of section 376 of the IPC does not mean that he has not committed any offence. In view of the evidence led by the prosecution, as discussed above, it is held that by entering in the room of the daughter-in-law, the appellant has outraged the modesty of the prosecutrix and to draw the inference regarding such offence, mere testimony of the prosecutrix is sufficient and no medical evidence or independent evidence is required. So, in the available factual matrix, the appellant is held to be guilty for the offence of section 354 of the IPC.

8. Looking to the relation of the appellant with the prosecutrix as she was daughter-in-law of the appellant, although subsequently she got married with some other person in other family by leaving the son of the appellant, I am not inclined to extend the benefit of Probation of the Offenders Act and, therefore, such prayer of the appellant's counsel is hereby rejected.

9. So far the other prayer for adopting the lenient view in imposing the punishment for the aforesaid offence of section 354 of the IPC is concerned, I have found some substance in it. It is apparent fact from the record that except the present offence, no other criminal antecedent, has been reported against the appellant. In such premises, he does not have any criminal past and on the date of the offence the appellant was 50 years of the age and, in such premises, at present he must be aged 72 years and, in such circumstance, instead to send him in jail again by imposing any higher sentence, I deem fit to punish him with the jail sentence of 68 days which is already suffered by him, for 19 days during trial and 49 days subsequent to the impugned judgment of the trial court with the fine of Rs.5000/-.

10. Therefore, by allowing this appeal in part, the appellant is acquitted from the charge of section 376 of the IPC. Pursuant to it, his awarded jail sentence under such section is also set aside. Instead the aforesaid section, the appellant is convicted under section 354 of the IPC with the jail punishment of 68 days for

which he has already undergone as stated above with fine of Rs.5000/-. The same is to be deposited by the appellant within sixty days from today, failing which he has to suffer further three months RI. On depositing the aforesaid fine amount, the entire sum shall be given to the prosecutrix Samoti Bai, by calling her in the trial court through summons.

11. The appeal is allowed in part as indicated above.

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