

Achhelal Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: April 5, 2019

Acts Referred: Indian Penal Code, 1860 " Section 376, 376(1), 450
 Evidence Act 1872 " Section 114A

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: Seema Singh, A.K. Yadav, M. Asha

Final Decision: Dismissed

Judgement

Conviction u/S.,Sentence RI.,Fine,In default of payment of fine

450, IPC",7 Years,Rs. 500/-,2 months SI

376, IPC",7 Years,Rs. 500/-,2 months SI

view of the statutory presumption under Section 114-A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its",,,

veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 IPC has to be treated",,,

but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion",,,

that a case is made out for giving benefit of doubt to the accused."""",,,

14. Hon'ble Supreme Court in the matter of Radhu Vs. State of M.P. [(2007)12, SCC 57], laid down following judicial precedent :-",,,

A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the",,,

basis of minor discrepancies and contradictions. Absence of injuries on the private parts of the victim will not by itself falsified the case of rape, nor",,,

can be construed as evidence of consent nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape,sufficient to",,,

disbelieve the victim. However courts should , at the same time, bear in mind that false charges of rape are not uncommon, and there are some rare",,,

instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to",,,

get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."",,,

15. Hon'ble Supreme Court in the matter of Raju and others -v- State of MP [(2009) 3 SCC(Cri) 751)], held that testimony of the prosecutrix is",,,

believable on a par with that of an injured witness, her testimony cannot always be presumed to be gospel truth. Possibility of exaggeration or",,,

embellishment or false implication where several persons are accused cannot be ruled out. Possibility of immoral past of prosecutrix based on",,,

evidence can be considered.,,,

16. In the matter of Mohd. Ali -v- State of UP [2015 (7) SCC 272], Hon'ble Supreme Court observed in para 30 as under :-",,,

30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars,"",,,

for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it",,,

difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial",,,

evidence which would lend assurance to her testimony."",,,

17. P.W. 2 prosecutrix says in para 31 during her cross-examination that she was not in conscious condition thus she did not bite the appellant by",,,

teeth, did not snatch by nails, did not push him, did not beat him by legs. There is no such material available on record on strength of which it can be",,,

said that such explanation is not natural. Moreover, in such a situation it is natural human conduct that prosecutrix gets disturbed and deviated. Thus,"",,,

not offering physical resistance by the prosecutrix does not amount that she was allegedly a ""free consenting party""."",,,

18. As per Ex. P-4 no injury was found on the body of prosecutrix. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in",,,

the matter of Radhu (supra) and in the matter of Munna (supra), this Court finds that in the absence of injury as opined by P.W. 4 Dr. Smt. R."",,,

Dahariya, it cannot be said that prosecutrix was allegedly "" free consenting party""."",,,

19. P.W.-2 prosecutrix says in para 24 during her cross-examination that she had not narrated incident to her neighbours, members of locality,"",,,

employees who had come for conducting the election, immediately because she was upset. There is no such material available on the record on",,,

strength of which it can be said that the said explanation is not normal and natural. Thus, not informing the alleged incident to the neighbours, members",,,

of locality, the employees does not give rise to the presumption that she was allegedly ""free consenting party""."",,,

20. In the matter of Balwant Singh Vs State of Punjab [(1987) 2 SCC 27] Hon'ble Supreme Court has laid down the following judicial precedent-,,,

Defence case that the father of prosecutrix falsely implicated the accused persons on the ground of litigation and enmity cannot be accepted as it is",,,

absurd that on account of litigation father of prosecutrix would falsely involve his daughter in case of rape by the appellant"" .",,,

21. In the case in hand, appellant failed to prove any documentary evidence to the effect that prosecutrix had allegedly taken grocery of such amount",,,

on credit from his shop. Moreover, he had not lodged any report in any police station alleging that on account of demand of due amount regarding",,,

grocery, she and her husband had threatened him to falsely implicate in criminal case. Moreover, it is absurd that on account of due amount the",,,

prosecutrix would falsely involve appellant in rape case. In these circumstances, the aforesaid judicial precedent laid down by Hon'ble Supreme Court",,,

in the matter of Balwant Singh (supra) is applicable in favour of prosecution case and against the appellant's case.,,,

22. In the matter of State of Madhya Pradesh Vs Ramesh [(2011) 4 SCC 786] Hon'ble Supreme Court has laid down following judicial precedent-,,,

In case deposition of a child witness inspires confidence, the Court may rely upon his evidence""",,,

23. In the matter of Gul Singh alias Gulia -v- State of M.P. [2014 SCC OnLine SC 719] Hon'ble Supreme Court has laid down following judicial,,,

precedent-,,,

Evidence of child witness cannot be rejected unless the same is tutored or unless the same is unreliable."",,,

24. There is no such material available on record on strength of which it can be said that P.W. 9 Archana Agrawal is a tutored witness and she had,,,

made aforesaid statement merely because she was in grip of her mother- prosecutrix who had asked her to say like that. There is no material,,,

available on record on the strength of which it can be said that the aforesaid testimony of P.W. 9 Archana Agrawal is not reliable or does not inspire,,,

the confidence. Thus, the aforesaid judicial precedents laid down by the Hon'ble Supreme Court in the matters of State of Madhay Pradesh -v-",,,

Ramesh (supra) & Gul Singh alias Gulia (supra) are applicable in favour of prosecution case and applicable against the appellant's case.,,,

25. There is no such omission and contradiction have been dealt during the cross-examination of P.W.-2 Prosecutrix & P.W.-9 Archana Agrawal,,,

which can adversely affect the testimony of P.W. 2 Prosecutrix given in para 1 and 2 and testimony of P.W. 9 Archana Agrawal given in para 1, 3, 5",,,

and 6 of their statements.,,,

26. In the matter of State of H.P. -v- Shree Kant Shekari [2004(8) SCC 153], Hon'ble Supreme Court has held in para 18 as under :-",,,

18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating",,,

circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic,,,

formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation,,,

has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to",,,

satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a",,,

relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the",,,

prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere",,,

delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in Tulshidas,,,

Kanolkar v. State of Goa [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .""",,,

27. The relevant portion of para-13 of Puran Chand -v- State of H.P. [(2014) 5 SCC 689] wherein the Hon'ble Supreme Court has made some,,,

observation is quoted below :-,,,

13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the",,,

same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in,,,

lodging the FIR thus stands fully explained.""",,,

28. In alleged FIR Ex. P-3 it has been mentioned that the appellant entered in the house of prosecutrix, pressed her mouth, committed sexual",,,

intercourse with her.,,,

29. The alleged incident took place on 25.11.1998 at about 1.00 a.m. Ex. P-3 was lodged on 25.11.1998 at about 9.05 a.m. In Ex. P-3 the distance,,,

from village Darri to Police Station, Darri is mentioned as 1 k.m. There is no such material available on record on the strength of which it can be said",,,

that the said distance is not believable. Thus, this Court believes that the distance is 1 km. Moreover, it is alleged that at the time of alleged incident",,,

nobody was present in the house of prosecutrix except two minor children. Moreover, it is also natural that she was allegedly upset on account of such",,,

incident. In these circumstances, this Court finds that delay in lodging Ex. P-3 is satisfactory and convincing. Thus, looking to the aforesaid judicial",,,

precedents laid down by Hon'ble Supreme Court in the matters of Shree Kant Shekari (supra), Puran Chand (supra) and Munna (supra), this Court",,,

finds that delay in lodging Ex. P-3 is not fatal to the prosecution case.,,,

30. There is no such evidence on record on the strength of which it can be said that Ex. P-3 is fabricated or concocted to falsely implicate the,,,

appellant in alleged offences.,,,

31. This has been earlier decided that prosecutrix was not a free consenting party. After the appreciation of the evidence discussed hereinbefore, this",,,

Court finds that aforesaid statements of para No.1 and 2 of P.W. 2 prosecutrix, paras No.1, 3, 5 and 6 of P.W. 9 Archana Agrawal are simple,",,

natural, and normal. Thus, on the basis of aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of Radhu (supra), Mohd." ,,,

Ali (supra), Raju and others (supra) and Munna (supra), this Court finds that this Court can act upon aforesaid sole testimony of para 1 and 2 of P.W." ,,,

2 Prosecutrix. Thus, appellant does not get any help from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of Munna" ,,,

(supra).,,,

32. In the case in hand, the aforesaid statement of para 1 & 2 of prosecutrix gets corroboration from the aforesaid statement of para 1, 3, 5 and 6 of",,,

P.W.-2 Archana Agrawal and Ex. P-6.,,,

33. After the appreciation of the evidence discussed herebefore, this Court believes on para 1 & 2 of statement of P.W. 2 Prosecutrix, para 1, 3, 5 & " ,,,

6 of P.W. 9 Archana Agrawal and disbelieves aforesaid statement of D.W. 1 Ramasre in the reference that allegedly prosecutrix had falsely,,,

implicated the appellant on account of demanding due amount regarding grocery, he had not allegedly committed forcible sexual intercourse with her." ,,,

34. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt that,,,

appellant had committed house trespass in order to commit rape with prosecutrix which is punishable with imprisonment for life, and committed rape" ,,,

with prosecutrix which are punishable under Section 450, 376 of the IPC respectively. Thus, this Court affirms the judgment of conviction passed by",,,

the trial Court.,,,

35. As regards sentences awarded to the appellant for offence punishable under Sections 450 and 376(1) of the IPC, considering the facts and" ,,,

circumstances of the case, they appear to be just and proper, and do not call for any interference. Hence, this Court also affirms the sentences" ,,,

regarding Sections 450 and 376, IPC." ,,,

36. The appeal being devoid of merit deserves to be and is hereby dismissed.,,,

37. The appellant is reported to be on bail. His bail and bonds are cancelled. He is directed to surrender immediately before the trial Court for,,,

undergoing the remaining part of sentences. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining,,,

part of sentences.,,,