

(2000) 05 MP CK 0032

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Appeal No. 126/95

Gajraj Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: May 12, 2000

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376, 506

Citation: (2000) CriLJ 3765 : (2000) 3 MPHT 445 : (2001) 1 MPLJ 202 : (2000) 4 RCR(Criminal) 730

Hon'ble Judges: Shambhoo Singh, J; Jayant Govind Chitre, J

Bench: Division Bench

Advocate: T.M. Panjwani, for the Appellant; G. Desai, Dy. A.G., for the Respondent

Final Decision: Dismissed

Judgement

J.G. Chitre, J.

The appellant is hereby assailing correctness propriety and legality of the judgment and Order passed by the 16th Addl. Sessions Judge, Indore in the matter of Sessions Case No. 204/93, wherein the appellant has been convicted for committing an offence punishable under the provisions of Section 376 of IPC. He has been sentenced to undergo imprisonment of life and fine of Rs. 5000/-; in default to undergo R.I. for six months. He has been also convicted for offence punishable u/s 506 Pt. I, IPC and has been sentenced to undergo R.I. for six months. The amount of fine, if paid, is directed to be given to Lalkunwarbai, the prosecutrix.

The prosecution case in brief is that prosecutrix happens to be the daughter of the appellant. Near about 12th January, 1992 she was minor and was residing with the appellant in his hut in Sudamanagar, Indore. It is the prosecution case that Santosh and Manoharsingh, the brothers of the appellant approached P.W. Ramkunwarbai who happens to be the real sister of the mother of the prosecutrix Lalkunwar and requested her to take Lalkunwar in her custody from the hut of the appellant and in

response to that she went to the hut of appellant at Sudamanagar and noticed that Lalkunwar was bleeding excessively per vagina. Ramkunwarbai brought Lalkunwar to her house and started asking her about the reason of the said bleeding. But Lalkunwar did not tell her about that till 14-1-92 as she was in fear. When Ramkunwarbai asked Lalkunwar by affectionate way, she told her on 14-1-92 that on 10-1 -92 her father the appellant committed sexual intercourse with her by threatening her and on account of that she was bleeding per vagina. Ramkunwarbai went to her father Hirasingsh and told him about what Lalkunwar had told her. Both Hirasingsh and Ramkunwarbai went to Police Station and lodged the F.I.R. against the appellant in that context. The investigation resulted in charge-sheet against the appellant who was tried before the learned Addl. Sessions Judge who after recording and appreciating the evidence on record found the appellant guilty for the offences mentioned above and passed the Order of conviction and sentence against him and that is put to challenge in this appeal.

Shri Panjwani, counsel appearing for the appellant submitted that the learned trial Judge committed the error of accepting the prosecution evidence and rejecting the defence evidence and holding the appellant guilty of committing the rape on her own daughter. He submitted that the appellant has been falsely implicated in the said charge of commission of the crime as the kiths and kins of the mother of Lalkunwar were against the appellant accusing him that he was responsible for causing the death of mother of Lalkunwar. Shri Desai, learned Dy. Advocate General, supported the judgment of the trial Court as correct, proper and legal by pointing out the evidence on record.

We dismiss the submissions advanced by Shri Panjwani because the evidence of prosecutrix Lalkunwar is by itself inspiring the confidence and in addition to that it has been well corroborated by the evidence of P.W. Ramkunwarbai, Chandabai, Hirasingsh, Arjunsingh, Sunil Rathore as well as the evidence of Dr. Smt. Shanta Saral which proved that there was inflammation in the vagina of the prosecutrix which was rendering strong corroboration to her evidence. In comparison to that evidence of D.W. Santosh and Dr. Ashutosh Sharma was totally insufficient to disprove the evidence of the above mentioned prosecution witnesses, which remained unshattered in spite of strenuous cross-examination.

The defence of the appellant is totally false because for taking the revenge, of the death of Vishnubai the deceased wife of appellant, Ramkunwarbai, Hirasingsh would concoct the story of appellant raping his daughter which would create a prominent stigma on prosecutrix Lalkunwar which would spoil her future. If at all they were to take the revenge against the appellant, they could have resorted to some other criminal prosecutions.

This defence of the appellant also deserves to be dismissed because why prosecutrix Lalkunwar would give false evidence against her own father by putting such heinous charge against him. In case of such false accusation the evidence of

Dr. Smt. Shanta Saraf would have been different. Her evidence would not have gone to the extent of indicating that when she examined the prosecutrix Lalkunwar, there was swelling on her vagina which was indicative of a sexual violence against her.

Shri Panjwani submitted that there has been delay in lodging the FIR and before lodging the FIR there was discussion between Ramkunwarbai and Hirasingh and, therefore, there is support to theory of concoction. We dismiss this submission also because that discussion shows that Ramkunwarbai narrated the story, which was told by prosecutrix Lalkunwar to her, to her father. This conduct of Ramkunwarbai is very much natural because the story told by prosecutrix Lalkunwar was altogether a shameful affair on the part of appellant Gajrajsingh. The story told by Lalkunwar was a stigma on their family. In such case a daughter like Ramkunwar was bound to take the advice of her father and exactly she has done the same. After discussion between both Ramkunwarbai and Hirasingh, the FIR came to be lodged. This is not a concoction at all on the contrary it is consistent with normal human behaviour.

When a minor, the child witness is giving evidence against her very near relative, and that too in context with commission of heinous crime, the Court has to examine evidence of such child witness with utmost caution because if such evidence is accepted and acted upon, it ruins the future life of the accused. In the case of such evidence Court has to search for reliable corroborative evidence either oral or documentary as a matter of prudence after getting satisfied that the evidence of such child witness is itself free from infirmity and is sterling sound. In rape cases, it is utmost necessary.

The learned trial Judge has appreciated the evidence from all aspects and after elaborated discussions he had concluded that the guilt of the appellant has been proved beyond reasonable doubt. He concluded that by giving the threats to Lalkunwar the appellant had committed rape on her. We find that the impugned judgment is correct, proper and legal and, therefore, we confirm it so far as the conviction is concerned, in context with both the offences; one, punishable u/s 376 and other punishable u/s 506 Pt. I of I.P.C.

Shri Panjwani submitted that the sentence which has been undergone by the appellant be treated sufficient punishment for his guilt. Shri Desai, Dy. A.G. opposed this submission. We come to the conclusion that the sentence of imprisonment for life is appropriate sentence for a shameful act on the part of the appellant Gajrajsingh. We do not find any ground for reducing the substantive sentence. Same is the case in respect of sentence of fine and the Order passed by the trial Court in that context.

Thus, the appeal stands dismissed.