

Gajraj Singh Vs State of M.P.

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: May 12, 2000

Acts Referred: Penal Code, 1860 (IPC) â€” 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.