
(2011) 04 MP CK 0029

Madhya Pradesh High Court

Case No: Criminal Appeal No. 1050 of 1995

Gauri Shankar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 13, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 374(2)
- Penal Code, 1860 (IPC) - Section 354, 376(2), 511

Citation: (2004) ILR (MP) 511

Hon'ble Judges: Gulab Singh Solanki, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

G.S. Solanki, J.

The appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure against the impugned judgment dated 24/4/1995 passed by the learned Additional Sessions Judge, Gadarwara, Narsinghpur in Sessions Trial No. 126/1994 whereby appellant has been convicted u/s 376(2)(f) read with Section 511 of IPC and sentenced to undergo RI for four years and fine of Rs. 500/-, with default stipulations.

2. Facts of the prosecution case in short are that on 28/7/1993 prosecutrix Seetabai (PW2), aged 11 years, trying to sleep her younger sister, aged 2 years, at her house. At that time appellant, neighbour of the prosecutrix, came there and caught hold of her, gagged her mouth, sat her on his lap and rubbed his private part (penis) against the private part (vagina) of prosecutrix. In this process, appellant ejaculated and tried to attempt to commit rape on her. Bhagwati Bai (PW4), mother of the prosecutrix, came there and witnessed the activity of appellant. When she scolded, the appellant fled away from the spot. An FIR (Ex.P/3) was lodged at 7.45 pm at police station Kareli. Prosecutrix was sent for medical examination. Dr. Indumati

Vishawkarma (PW5) examined her.

3. After usual investigation, the appellant was charge sheeted before the Judicial Magistrate, who committed the case to the Court of Sessions Judge.

4. Learned Additional Sessions Judge framed the charges against the appellants under Sections 376(2)(f) of the Indian Penal Code. Appellant abjured the guilt and pleaded that they have been falsely implicated. Jagannath Singh Yadav (PW1) examined in his favour.

5. On appraisal of evidence on record, trial court convicted and sentenced the appellant, as mentioned herein above. Hence this appeal.

6. Learned Counsel for the appellant submitted that the trial Court committed an illegality in not appreciating the evidence in its true perspective. He further submitted that from the evidence only offence u/s 354 of IPC would be made, therefore, he prays for setting aside the impugned judgment and finding recorded by the trial Court.

7. On the other hand, learned Panel Lawyer formally objected the contention raised by the appellants.

8. I have perused the impugned judgment, evidence and other material on record.

9. Prosecutrix Seetabai (PW2) categorically deposed that in the evening at about 4 O'clock when was alone at her home and she trying to sleep her younger sister, appellant came there and caught hold of her, gagged her mouth, put out his undergarment and rubbed his private part on the private part of Seeta Bai, therefore, her frock get wet. She further deposed at this juncture, her mother came there, the appellant fled away. Despite extensive cross-examination, prosecutrix remained intact in her version supported by her mother Bhagwati Bai (PW4), who deposed that when she returned her house she saw that appellant was rubbing his penis against private part of prosecutrix, on seeing aforesaid activity of the appellant, she scolded him, therefore, he fled away from the spot. She further stated that same facts were narrated by prosecutrix to her (mother of the prosecutrix). The version of prosecutrix further supported by FIR (Ex.P/3).

10. Dr. Indumati Vishawkarma (PW5) deposed that on examination of Seeta Bai, aged 11 years, she found that her hymen was not ruptured and there was no injury on private part as well as on the body, but at the same time she found semen like stains on the cloths of the prosecutrix. Same was sent for chemical examination. Her statement was corroborated by MLC report Ex.P/5 prepared by Dr. Indumati Vishawkarma.

11. Learned Counsel for the appellant submitted that in the FSL report, the semen frock has not been produced by prosecution, therefore, it cannot be said that stains on undergarment and frock of prosecutrix were of semen.

12. On careful scanning of the evidence of prosecutrix and her mother reveals that appellant being a neighbour was a known person of the prosecutrix, he caught hold of the prosecutrix and rubbed his penis against the vagina of the prosecutrix and in this process he ejaculated. Though FSL report was not produced by the prosecution but there is sufficient evidence on record that frock of the prosecutrix got wet at the time of incident and Dr. Indumati Vishwakarma (PW5) found semen like stains on undergarment and frock of the prosecutrix. In these circumstances, it can be safely held that appellant rubbed her penis against the vagina of the prosecutrix and ejaculated whereby the undergarment and frock of prosecutrix became stained. In these circumstances, it is not a case of outraging the modesty of prosecutrix but it is a case of attempt to commit rape on her. In this way there is no illegality committed by the trial Court in recording the conviction u/s 376(2)(f) read with Section 511 of the IPC.

13. Considering the fact that the appellant attempted to commit rape on minor girl which shows perversity of his mind. In these circumstances, the sentence awarded by the trial Court against the appellant also cannot be said to be excessive. In the result, the appeal fails and is hereby dismissed.

14. The appellant is on bail. His bail bond and surety bond stand cancelled and he is directed to surrender before the trial Court to serve out the remaining part of the jail sentence.

15. Record of the trial Court be sent back alongwith a copy of the judgment for compliance and necessary action.