

(1993) 02 MP CK 0014

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 256 of 1986

Ramcharan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Feb. 5, 1993

Acts Referred:

- Evidence Act, 1872 - Section 114A
- Penal Code, 1860 (IPC) - Section 376, 376(1), 376(2)

Citation: (1993) CriLJ 1825

Hon'ble Judges: S.K. Chawla, J

Bench: Single Bench

Advocate: Saxena, for the Appellant; V.G. Khot, Dy. Govt. Advocate, for the Respondent

Final Decision: Allowed

Judgement

S.K. Chawla, J.

Accused Ram Charan has preferred this appeal against his conviction u/s 376. I.P.C. and sentence of rigorous imprisonment for 7 years inflicted thereunder.

2. The prosecution story rested on the evidence of the prosecutrix Mst. Kalia (P.W. 2) and the evidence of Kanghi (P.W. 3), a person who chanced to be in a neighbouring house. Mst. Kalia is a married Woman aged about 25 years. The accused Ram Charan is a Chowkidar of the village and lives in the locality of the prosecutrix. Both belong to the same caste, namely, chamar. The evidence of Mst. Kalia is that in broad day light at about 4 p.m. the accused came to her house located in the midst of other houses. She was sitting outside the door of her house. The accused dragged her inside the room of her house and there threw her down. The accused then had forcible carnal knowledge of her. She was not a consenting party. She had put up resistance. Her bangles got broken and buttons of her blouse got uprooted. She had also raised outcries attracting Kanghi (P.W. 3) and Natha (not examined), who were in the latter's house, just adjacent to her house. She further deposed that

her husband had gone to another locality in the same village and hence she was alone in the house. The accused after accomplishing the act completely and fully, left her house even before Kanghi (P. W. 3). and Natha could arrive, as they did afterwards. Her husband arrived still later, to whom also she narrated the incident. Both then went to Badarwas Police Station at a distance of about 6 k.m. Mst. Kalia there lodged a report, Ex. P-3, at about 5.30 p.m.

3. Kanghi (P. W. 3) deposed that he was sitting at the house of Natha at about 4 p.m., when the incident is said to have occurred. Natha's house is separated from the house of the prosecutrix just by a wall of the height of 6 feet, as admitted by the investigating Officer, Satyavir Singh (P. W. 6). The evidence of Kanghi further was that on hearing the cries of Mst. Kalia, he and Natha had rushed to her house, only to find that the accused had already left the house of the prosecutrix and was running away. Kanghi is related to the prosecutrix and is, what the prosecutrix calls, her uncle-in-law (Kakiya Sasur).

4. It was brought out in the evidence of the case that one Jagannath Singh is patel of the village. Jagannath Singh wanted the accused, who is Chowkidar of the village, to be removed from the post of Chowkidar. Jagannath Singh had made a complaint against the accused to the revenue authorities. The complaint was produced and exhibited as Ex.D-1, which was signed, among others, by Kanghi (P. W. 3) and Fitura (P. W. 5), the husband of the prosecutrix. Jagannath Singh was present outside the Court, when the evidence of the prosecutrix was being recorded. Jagannath Singh was also shown as a prosecution witness in the challan but was not examined. The application Ex.D-1, no doubt is dated 15-10-1981 i.e., about 4 years prior to the present alleged incident. The case of the defence was that Jagannath Singh had engineered the entire case against accused and was the brain behind this case.

5. From a narration of the evidence of the prosecutrix Mst. Kalia (P. W. 2) given above, it is evident that her story is all make believe. She wanted it to be believed that a man from her own locality Would come to her house in full day light at about 4 p.m. Her house is surrounded by houses in all directions. It was natural that people should have been near around at that time. In fact, it was the evidence of Kanghi (P.W. 3), as already noticed, that he was sitting in the neighbouring house of Natha, with the house owner Natha also in the house. The story of the prosecutrix was that she was actually sitting outside the door of her house. The accused allegedly dragged her inside her own room and also flung her down. She offered still resistance. Despite that the accused single handedly and successfully committed complete and full act of intercourse with her. It was proper to expect that there should have appeared some marks of resistance on her body or that the accused should have received some injuries in committing the alleged forcible act. But as evident from the evidence of Dr. Sunita Shah (P. W. 7), the prosecutrix had no marks of injuries anywhere on her body. The breaking of bangles and uprooting of the buttons of the blouse are too worn out and hackneyed circumstances, often alleged

in such cases. If anything, these circumstances might indicate the intensity of passion with which the two partners indulged in the act, They may not necessarily indicate that sexual act was accompanied with violence. If the prosecutrix is believed that she had raised outcries, it would appear that those alleged outcries were raised after the completion of the alleged act of intercourse, which explains why when Kanghi (P.W. 3) and Natha allegedly rushed to her house, they found that the accused had already left the house and was seen running away at some distance.

6. When a grown up and married woman gives evidence in Court that she was raped, it is not proper judicial approach to disbelieve her, if only because of absence of the medical evidence that she was forcibly violated, as may be found in the case of an unmarried virgin girl. A woman will not ordinarily stake her reputation by levelling a false charge of rape which tends to soil her own chastity. If, therefore, a woman comes forward and says that she was raped, her evidence should carry the same weight as is attached to the evidence of an injured person who is victim of violence. She is certainly not an accomplice or even akin to accomplice. She is a victim of crime which has caused her deathless shame. An Indian woman attaches maximum importance to her chastity and would not easily be a party to any move which would jeopardise her reputation and lower her in the esteem of others. Corroboration to the evidence of prosecutrix, albeit a grown-up married woman, is not necessary either as a requirement of law or even as a rule of practice. That is not to say that her evidence even if seemingly incredible and exaggerated should be readily accepted. The test as to whether corroboration is necessary to her evidence lies in the naturalness of the story deposed to by her. If there be any doubt as regards its genuineness, there is need of caution and therefore of corroboration. Corroboration would also be necessary if the evidence discloses that the prosecutrix had a motive to falsely involve the person charged. As already observed, the evidence of the prosecutrix, Mst. Kalia (P. W. 2) is all make believe. The story given out by her is unnatural and makes a heavy demand on credulity. It is not improbable that she was falsely implicating the accused having motive against him, because her husband wanted the accused to be removed from the post of Chowkidar. It is also not improbable that if at all the accused had sexual intercourse with her, it was with her tacit consent. There is no corroboration by proof of any clear circumstance which may lend assurance that she had spoken the entire truth. It would be proper to give benefit of doubt to the accused.

7. It is necessary to make here a reference to a common mistake being committed in charging and convicting an accused in cases of rape, which was committed by the learned Additional Sessions Judge in this case too. The accused in the present case was charged and convicted of the offence u/s 376, I.P.C. It is not realised that after 1983, when Section 376, I.P.C. was substituted by a new section by Criminal Law (Amendment) Act No. 43 of 1983, there is now no offence punishable u/s 376, I.P.C. as such. The offence of rape is now punishable either under Sub-section (1) or Sub-section (2) of Section 376, I.P.C. The two offences differ not only in the gravity of

the punishment, with which they may be visited, but also because special rule of evidence, namely, presumption, is attracted to one kind of offences but not to the other. It will thus be seen that while the offence u/s 376(1), I.P.C. is punishable with minimum sentence of 7 years, unless special and adequate reasons are given in the judgment for imposing a lesser sentence, the offence u/s 376(2) is punishable with minimum sentence of 10 years, unless in cases of the said offence also, special and adequate reasons are given in the judgment for imposing a lesser sentence. Thus, the offence u/s 376(2) may be said to be an aggravated offence, for which a distinct charge would be necessary. What is more important is the fact that presumption u/s 114A of the Evidence Act, to the effect that if a woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent, is attracted to cases of rape falling under Sub-section (2), except when the case is under Clause (f) thereof. No such presumption is attracted to cases of rape falling under Sub-section (1) of Section 376, I.P.C. It will be seen that cases of custodial rapes of women by certain public servants, rape on a woman known to be pregnant, or on a woman under 12 years of age or gang rape fall under Sub-section (2) of Section 376, while residuary cases of rape are covered under Sub-section (1) of Section 376, I.P.C. Framing of charge u/s 376, I.P.C. is such, apart from the fact that it is incorrect, may be made a ground by an accused to make a grouse that he had no proper notice of the prosecution case he had to meet. A charge should therefore always be framed in cases of rape either under Sub-section (1) or Sub-section (2) of Section 376, I.P.C. and conviction should also be so distinctly recorded, instead of u/s 376, I.P.C. as such.

8. In view of the foregoing discussion, the present appeal deserves to be allowed. The conviction and sentence of appellant Ram Charan are set aside. He is acquitted of the offence u/s 376, I.P.C. His bail-bonds shall stand discharged.