

Smt. Sarita Jain Vs Nishant Jain

Court: MADHYA PRADESH HIGH COURT

Date of Decision: July 25, 2016

Acts Referred: Penal Code, 1860 (IPC) - Section 323, Section 354, Section 376(2)(n), Section 506

Citation: (2016) 168 AIC 504

Hon'ble Judges: S.K. Gangele and Ashok Kumar Joshi, JJ.

Bench: Division Bench

Advocate: None Appears, for the Respondent; Shri Umakant Sharma, learned Senior Advocate Assisted by Shri P.N. Tiwari, Learned Counsel, for the Applicant

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ashok Kumar Joshi, J. - This order is disposing an application filed by the applicant/complainant under Section 378(4) of the Cr.P.C for grant

of leave to appeal against the judgment dated 16.11.2015 passed by the Fourth ASJ, Jabalpur, whereby respondent No.1 Nishant Jain has been

acquitted from the charge of Sections 376(2)(n), 323, 506 part-I and 354 of the IPC and respondent No.2 Hani alias Gaurav Jain has been

acquitted from the of charge of Sections 323, 506 part-II and Section 354 of the IPC.

2. Prosecution"s story in short is that the husband of the prosecutrix (PW-1) was mentally ill and at that time respondent No.1 Nishant Jain used to

come to her house and he was assuring the prosecutrix that he would always help them and take care of prosecutrix and her both children. On this

assurance, respondent No.1 Nishant Jain was sexually exploiting the prosecutrix. Respondent No.1 Nishant Jain assured the prosecutrix that he

loved her. Her husband died in the year 2012. Thereafter, when prosecutrix asked respondent No.1 Nishant for marriage, then Nishant denied her

stating that who would get married with a mother of two children. Respondent No.2 Hani alias Gaurav Jain is the servant of respondent No.1, who

on 24.02.2014 in Bhalpardura area of Jabalpur, gave beating to the prosecutrix and sexually assaulted her and also assaulted the son of the

prosecutrix by belt and stick. Respondent No.2 also threatened the prosecutrix that if she would made report to the police, then he would throw

acid on her and she would be killed with her children. Just after this incident, prosecutrix reached to the police station Kotwali, Jabalpur, where

respondent No.1 was previously present. On report of the prosecutrix, crime was registered and after completing formalities of the investigation,

charge sheet was filed in the Court of concerned JMFC, Jabalpur, who committed the case to the Sessions Court.

3. Prosecutrix (PW-1) and her son Sagar Jain (PW-2) had supported the case of prosecution, but another son of prosecutrix Sumank (PW-3)

deposed that he is not having any knowledge about the incident and he did not wish to give any statement. There are material contradictions

between deposition of prosecutrix (PW-1) and her son Sagar (PW-2) in reference to the alleged incident of 24.02.2014. According to evidence

of prosecutrix, the incident of 24.02.2014 happened on public street, when she was going to report the matter to the police, but according to

evidence of her son the incident of 24.02.2014 had happened in his shop. Prosecutrix (PW-1) deposed in her cross-examination that on

24.02.2014 respondent No.1 Nishant had asked her to make sexual relation with respondent No.2 Hani alias Gaurav, but this very important fact

is totally missing in her written application (Ex.P-1) and signed FIR (Ex. P-2). On this point, her Sagar (PW-2) had not supported her. Thus, it is

clear that prosecutrix and her son had exaggerated their version in the Court, which indicates their clear falsehood. There is material contradictions

about the year, when the husband of the prosecutrix expired. Prosecutrix has deposed in her statement before the trial Court that her physical

relation with respondent No.1 Nishant had started much before the death of her husband.

4. Prosecutrix (PW-1) admitted in her cross-examination that in her lifetime, her husband had been going to his office till his death and was

receiving his salary and prosecutrix also admitted that she used to write letters to Nishant and has also admitted that letters (Ex. D-2 to D-14) have

been written by her. She had given explanation for writing of letters that she was being raped by respondent, so she was writing letters. Such

explanation is highly fanciful and unbelievable. Sagar Jain (PW-2) had admitted in his cross-examination that when the dispute occurred on

24.02.2014 in his shop, the other shopkeepers of the market were seeing and hearing the incident and had admitted that two days later the incident

was reported to the police, but no any independent witness was examined in the Court.

5. Prosecutrix has stated in her written application that respondent Nishant was having physical relations with her since 2010 and her husband had

died in the year 2012. Thus, it is clear that this relation was not started on promise of Nishant to marry her. Contrary to her signed application and

FIR, she deposed before the Court that after about one month of death of her husband, Nishant made physical relation with her for the first time

after giving her some intoxicating drug. The contents of her letters have been excerpted in trial Court's judgment, which indicates that prosecutrix

was having love affair with respondent Nishant and in such state of her evidence and admissions, her deposition about rape appears to be totally

unbelievable. Looking to the facts, stated by her in written application, this possibility could not be denied that due to alleged ill health and mental

condition of her husband, she was having love affair and physical relation with respondent Nishant in the alternative.

6. We are of the opinion that the aforesaid findings of the trial Court are based on just and proper appreciation of prosecution evidence. Upon the

aforesaid findings, acquittal of respondents is entirely justifiable. It is not a case of leave to appeal. There is no reason to grant leave. If leave is

granted, the appeal filed by the applicant shall not succeed.

7. In these circumstances, leave application filed by the applicant is hereby dismissed. Copy of this order be sent to the trial Court along with its

record for information.