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Shivvam Awasthi & Ors. Vs Vice Chancellolr Jiwaji University and Ors.

3078 of 2016

Court: MADHYA PRADESH HIGH COURT

Date of Decision: Jan. 3, 2017

Acts Referred:
Code of Criminal Procedure, 1973, Section 397, Section 401, Section 161, Section 164, Section 164(5) - Calling for records to exe

Hon'ble Judges: Anjuli Palo

Bench: Division Bench

Advocate: Manish Awasthi, K.S. Patel

Judgement

1. This criminal revision has been filed under Section 397/401 of Cr.P.C. for quashing order dated 23.11.2016 whereby charges have been

framed under Sections 354, 376 (1), 506B of IPC by the learned Sessions Judge, Damoh in ST No.2100156/2016.

2. In short the prosecution story is that on 29.10.2015 at about 2 p.m. the applicant suddenly caught hold the prosecutrix with an intention to

outrage her modesty and taken away the prosecutrix near a drain. When the prosecutrix shouted, her mother-in-law, Sheetrani and Kashiram

alongwith other villagers came there and rescued her. The applicant ran away from the spot and threatened her for dire consequences and

pressurized her not to lodge any report.

3. On the written report, F.I.R. was lodged by the police Chowki Imaliya for offence under Sections 354 and 506 of IPC against the applicant.

During the course of investigation the statement of prosecutrix under Section 161 and 164 of Cr.P.C. has been recorded. She was sent for medical

examination. Later offence under Section 376 of IPC has been added by the police and charge sheet has been filed before the learned trial court.

Trial Court framed the charges under Section 376, 354, 506 (B) of IPC against the applicant.

4. Being aggrieved by the aforesaid order of charge the applicant has preferred this criminal revision on the grounds that the order passed by the

learned trial Court for framing the charges is improper and illegal. Because, in the FIR and the statement of prosecutrix under Section 161 of

Cr.P.C. she has not stated anything about commission of rape. The prosecutrix has stated only about outrage of her modesty and earlier the police

has also registered offence under Section 354 and 506 of IPC against the applicant. Even in the written complaint filed by the prosecutrix, she

nowhere has said about commission of rape with her. However, during the course of recording the statement under Section 164 of Cr.P.C,. the

prosecutrix has stated about ?Bura Kam? and such wording does not come under the purview of rape under Section 376 of IPC. Further the

allegations of rape are not supported by medical report, therefore, the applicant has prayed for quashing of the charges framed by the learned

court below vide order dated 23.11.2016.

5. Learned Panel Lawyer has supported the order of trial court and contended that no illegality or irregularity has been committed by the trial

Court while framing the charges.

6. It is true that the prosecutrix has filed a written complaint at the police station Tejgarh after few hours of the incident wherein she has narrated

nothing about commission of rape. She has stated nothing in her statement recorded by the police under Section 161 of Cr.P.C. on 29.10.2015. In

the memo referred for medical examination by the police has mentioned that the prosecutrix complained about pain of her hands and breast, on the

date of incident i.e. on 29.10.2015. On the said date of incident the police never proceeded for the investigation of offence under Section 376 of

IPC. The police has recorded her statement again on 5.11.2015.

7. She never stated that rape has been committed by the applicant. However, for the first time in the statement recorded under Section 164 (5) of

Cr.P.C. she has stated that the accused has committed ?Bura Kam? with her and fled away on the spot. The said statement was recorded on

2.11.2015 after 5 days of the incident. Under Section 161 of Cr.P.C, wherein she neither stated about the act of rape and herself explained that ?

Bura Kam? means accused has pressed her breast and mouth. Allegation of rape is not supported by medical report. Even medical examination of

the vaginal swab of prosecutrix is not conducted by FSL. The allegation shows that there is improvement in the statement of prosecutrix in the

present case which also indicates that after thought to implicate the applicant for grievous offence a new story has been made. The story seems to

be unbelievable and these material facts have been ignored by the learned court below during framing the charge process.

8. In view of the aforesaid, this revision under Section 397/401 of IPC is partly allowed. Order dated 23.11.2016 so far as it relates to framing of

charge under Section 376 is set aside. However, it is made clear that prima-facie offence under Section 354, 506 (B) of IPC is made out. The

learned trial Court is directed to proceed accordingly.

9. A copy of this order be sent to the trial Court for information and compliance.