

Manoj Kumar Minj Vs State of M.P.

Court: Chhattisgarh High Court

Date of Decision: Nov. 22, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 307, 324, 34, 343, 354

Citation: (2013) 1 CGBCLJ 127

Hon'ble Judges: Pritinker Diwaker, J

Bench: Division Bench

Advocate: Vivek Ranjan Tiwari and Mr. N. Naha Roy, for the Appellant; Dev Karan Gwalare, GA, for the Respondent

Judgement

Pritinker Diwaker, J.

As these two appeals arise out of the same judgment and order dated 12.2.1996 passed by Additional Sessions

Judge, Jashpur Nagar, in Sessions Trial No. 242/1995 convicting accused/appellant-Manoj Kumar Minj under Sections 458, 324, 366 and 376

IPC and sentencing him to undergo R1 for 3 years with fine of Rs. 300/- u/s. 458 & 324 IPC separately, and R1 for 4 years with fine of Rs. 400

u/s. 366 & 376 IPC separately whereas convicting accused/ appellant Thadiyus Tirki u/s 458 IPC and sentencing him to undergo R.I. for 3 years

with fine of Rs. 300/-, plus default stipulations, they are disposed of by this common judgment. Facts of the case in brief are that on 12.6.1995 at

7.15 a.m. FIR Ex. P-3 was lodged by Kamla Bai (PW-2) - mother of the prosecutrix alleging that on 11.6.1995 at 12 midnight, accused/appellant

Manoj along with three other persons entered her house, caught hold of her elder daughter Rekha (PW-3), assaulted her with knife and thereafter

kidnapped her younger daughter (prosecutrix PW-1). Based on this FIR, offences under Sections 307, 452, 363, 366, 376 and 34 IPC were

registered against the accused Manoj and three others. Injured Rekha (PW-3) was medically examined on 12.6.1995 vide Ex. P-20 by Dr. Vijaya

Sharma (PW-12) who found as many as five injuries on her body. Rekha (PW-3) remained in hospital from 12.6.1995 to 19.6.1995. Prosecutrix

(PW-1) was recovered on 15.6.1995 vide Ex. P-5 from Jalpaigudi, West Bengal and medically examined on the same day vide Ex. P-28 by Dr.

(Smt.) J. Minj (PW-14). After completion of investigation, charge sheet was filed on 21.8.1995 against five accused persons namely Prakash,

Thadiyus Tirki, Sunil Tirki, Vijay Prakash and Manoj, under Sections 307, 363, 366, 343, 376, 450 and 34 IPC.

2. In support of its case, prosecution has examined 19 witnesses. Statements of the accused persons were also recorded u/s 313 of the Code of

Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

3. After hearing the parties, the Court below has acquitted accused Sunil and Vinay Prakash of all the charges levelled against them. Accused

Manoj and Prakash have also been acquitted of the charge u/s. 307 but convicted u/s. 324 and 366 IPC. Accused Thadiyus Tirki has been

acquitted of all the charges levelled against him except one u/s. 458 IPC and likewise the accused/ appellant Manoj has been convicted and

sentenced as mentioned in paragraph No. 1 of this judgment.

4. Shri Vivek Ranjan Tiwari, counsel for accused/appellant Manoj submits that he (accused Manoj) was having affair with the prosecutrix (PW-1)

and she accompanied him up to Jalpaigudi (WB) without making any protest. According to him, as the finding has been given by the Court below

that prosecutrix was aged about 16 years at the relevant time, accused/appellant Manoj cannot be convicted u/s 376 IPC. He submits that there is

no evidence to show that the prosecutrix was kidnapped or abducted with intent to compel her to marry the accused/appellant against her will or

to seduce her in any manner to have illicit intercourse with him and in these circumstances he cannot be convicted u/s 366 IPC also. Similarly,

according to Shri Tiwari, even for the offence u/s. 458 IPC, accused Manoj and Thadiyus Tirki cannot be convicted because the prosecutrix was

having affair with accused Manoj and that they had entered her house with her consent. He however submits that accused/appellant can at the

most be convicted u/s 354 IPC for which he has already remained in jail for six months and therefore his sentence may be reduced to the period

already undergone by him.

Shri Naha Roy, counsel for accused Thadiyus Tirki submits that the only allegation against this accused is that he accompanied accused Manoj

while entering the house of the prosecutrix and as accused Manoj was having affair with her, it cannot be said that they entered her house against

her wishes or with an intention to commit any offence. Thus, according to Shri Naha Roy, offence u/s 458 IPC is not made out against accused

Thadiyus Tirki. He submits that in the FIR also name of this accused has not been mentioned and no identification has been conducted and

therefore also it will not be safe for this Court to convict him for any offence.

5. On the other hand, supporting the judgment impugned counsel for the respondent/State submits that in a very daring manner accused Manoj in

the company of his colleagues entered the house of the prosecutrix, assaulted her sister Rekha (PW-3) causing as many as five injuries on her body

and then forcibly took the prosecutrix up to West Bengal and during this period he subjected her to forcible sexual intercourse. He submits that

once the sexual intercourse has been done by the accused against the wishes of the prosecutrix, offence u/s. 376 IPC is very much made out

against him. Likewise, according to him, the accused persons had entered the house of the prosecutrix in the night, therefore, the offence u/s. 458

IPC is also made out against both of them. According to him, considering the injury sustained by Rekha (PW-3), offence u/s 324 IPC is also made

out against accused Manoj. State counsel further submits that FIR is not an encyclopedia and even if the name of some person is missing but

specific role has been attributed against him by the witnesses including the injured, he can be convicted and in these circumstances conviction of

accused Thadiyus Tirki though his name is not there in the FIR, is fully justified.

6. Heard counsel for the parties and perused the material available on record.

7 Prosecutrix (PW-1) has stated that she knew accused Manoj but did not know accused Thadiyus Tirki. Then she has stated that she knew him

by name. In the Court she has identified only accused Manoj. She has again stated that she had not seen any of the accused persons before the

date of recording of her statement. According to her, in the month of June there was some quarrel with accused Manoj. On being warned by the

Court below to give answer timely as she used to keep quiet, this witness has stated that on the date of incident at about 12 midnight when she

along with her elder sisters Rekha and Renu, younger brothers Sachin Nayak and Amit Nayak and her father, was in her house, accused Manoj,

Prakash, Vinay, Thadiyus and Vinay Prakash entered her house and accused Manoj and Prakash had assaulted her sister Rekha with knife as a

result of which she sustained injury on head and started bleeding. According to this witness, they then took the prosecutrix to Assam and kept her

there for three days. She has clarified that in Assam only accused Manoj was there with her. First she was taken to Gholen by the accused persons

and after staying there for one day she was taken to Assam. At Gholen she stayed in the house of maternal uncle of accused Manoj and in Assam

in the house of his maternal aunt. According to her, in Assam, accused/ appellant Manoj had subjected her to rape. She has further stated that in

three days he raped her only once in presence of his aunt. Thereafter, by some police personnel, she was taken to Assam police station and then to

Kunkuri. In cross examination, this witness has stated that for the first time she had seen accused Thadiyus, Vinay Prakash and Sunil in the Court

and there-before she had never seen them. According to her, as there was no electricity in her house, she along with her family members was

sleeping in the courtyard and after someone had pushed open the door, all of them woke up. First she went to Kunkuri and then to Gholen and

during this period only accused Manoj was with her. She has admitted that when she was taken by accused Manoj no cry was raised by her as her

mouth was tied. Then she has stated that accused persons had threatened to kill her in case she raised cry. Other accused persons except Manoj,

according to this witness, had left their company, in midway. According to this witness, though she was able to write letters, she never wrote any

letter to anyone nor did anyone write to her. Just thereafter, she has stated that she wrote a letter or two to Manoj and so did he to her. She went

on stating that Manoj and she used to exchange letters personally. This witness has admitted that she did not inform the uncle of the accused

Manoj about being forcibly picked up by him (accused Manoj). She has further stated that it took three days for her to reach Assam and during

this period she used to have food in hotel but she did not disclose the incident to anyone. Kamla Bai (PW-2) - lodger of the report has stated that

she knew the present appellants and accused Prakash and that on the date of incident when she along with her family members was sleeping in the

courtyard, all the accused persons entered her house and accused Manoj and Prakash assaulted her daughter Rekha with knife causing injury to

her on head. Thereafter, accused/appellant Manoj and his friends took away the prosecutrix with them. They first took the prosecutrix to Ranpur,

then to Kunkuri, then to Gholen and then to Assam and that accused Prakash remained with accused Manoj throughout whereas accused Vinay,

Sunil, Thadiyus left their company at village Ranpur. According to this witness, accused Thadiyus had inflicted a knife blow in her neck and shown

some pistol like weapon to her whereas accused Sunil and Vinay picked up the prosecutrix and took her out. According to her, three days

thereafter, prosecutrix returned home and informed that she was taken away by accused Manoj and subjected to rape by him, and then the matter

was reported to the police. Ku. Rekha (PW-3) has stated that she knew accused Manoj and Prakash and not others. On the date of incident at

about 1 a.m., accused persons had entered her house by pushing open the door, accused Manoj tried to cause injury with knife on her stomach

but as she had caught his hand, the knife blow fell on her hand. She has further stated that accused Prakash also caused knife injury on her head as

a result of which she started losing her consciousness and was shifted to hospital at Kunkuri. Then she states that first she was taken to

Narayanpur to lodge the report where her condition improved and then she was taken to hospital at Kunkuri where she remained under treatment

for eight days. She has stated that two accused persons had taken away the prosecutrix but as she became unconscious, she could not say as to

who they were. Ku. Renu (PW-4) -another sister of the prosecutrix has stated that in the midnight accused persons entered her house and that

accused Manoj and Prakash started assaulting her sister Rekha and that her other sister (prosecutrix) was kidnapped who returned home after two

days and informed that she was taken to Bengal. Ramtahal (PW-15) father of the prosecutrix and Rekha (PW-3) has stated that when he was

sleeping, five persons entered his house and started beating Rekha. He has stated that he knew accused Manoj only and not four others. In the

Court, by holding accused Manoj, he has stated that he identified him only and not others. According to him, his daughter (Rekha) had sustained

injury on head and palm. After the incident when the accused persons left the spot, he called the villagers, then the report was lodged and Rekha

was taken to hospital. According to this witness, after assaulting Rekha, accused persons took away his other daughter (prosecutrix) who was

brought back by the police from Bengal. After reaching home, the prosecutrix informed that she was taken to Bengal by accused Manoj. He has

further stated that mother of accused Manoj was teacher and as she used to teach his children also, he knew her. This witness has admitted that

accused/appellant Manoj and the prosecutrix spent three nights in jungle. After the prosecutrix was kidnapped, he did not make any effort to

search her and it is after her return from Bengal, he came to know that she was taken away by accused Manoj. According to this witness, earlier

when the prosecutrix had spent three nights with accused Manoj in jungle, he went to police station to lodge the report but the police people had

told him to first make a search for her. This witness has stated that he did not know about the date of birth of his children. Lorence Kujur (PW-5)

- uncle of accused Manoj has stated that 2-3 months prior thereto, accused Manoj had come to his house with a girl and stayed there for one

night. He is also the witness to Ex. P-5. Liro (PW-6), Manik Chand (PW-7) and Premanand (PW-8) have not supported the case of the

prosecution and have been declared hostile. Ghansai Ram Pradhan (PW-9) is the Patwari who prepared spot map Ex. P-18. Brijmohan Ram

(PW-10) - the witness to seizure made under Ex. P-19 has not supported the case of the prosecution and has been declared hostile. Kaundharam

(PW-11) - witness to seizure and memorandum has not supported the case of the prosecution and has been declared hostile. Dr. Vijaya Sharma

(PW-12) is the witness who had taken x-ray of head and hand of Rekha vide Ex. P-21 and P-22 but no fracture was found. This witness has also

proved her bed head ticket vide Ex. P-20. S. Toppo (PW-13) is the witness who medically examined Rekha and found as many as five injuries on

her body vide Ex. P-23 which read as under:

(i) Incised wound over Rt. side of frontal region, transversely, clear cut edges, dry (black) clot over wound, size 1 1/2" x 3 cm.

(ii) Incised wound over Rt. side of occipital region-transversely, size 1 1/2" x 5 cm. x.5 cm., clear cut edges, dry clot over wound (black).

(iii) Incised wound-three in number-over Rt. hand between thumbs and index finger, one index and middle finger, on middle & ring finger. Clear

cut edges-dry black clot over wound, each one size 1 1/2" x.5 cm. x.5 cm. Palmer side.

(iv) Incised wound over left hand three in number, one between thumb & index finger, one index & middle finger, one middle & ring finger, clear

cut edges, dry black clot-each one size 1 1/2" x.5 cm. x.5 cm.

(v) Multiple small size incised wound over terminal phalanx of both hand except thumb.

He has stated that he did not find any fracture on the body of Rekha and that the injuries could have been caused from the weapon shown to him.

This witness has also medically examined accused Manoj and given his report Ex. P-27 stating that he was capable of performing sexual

intercourse.

Dr. (Smt.) J Minj (PW-14) is the witness who medically examined the prosecutrix (PW-1) and gave her report Ex. P-28 stating that no external or

internal injury was noticed on her person, her secondary sexual characters were developed, hymen was old ruptured, two fingers easily entered her

vagina and that no definite opinion regarding rape on her could be given. Ishaq (PW-16) has not supported the case of the prosecution and has

been declared hostile. Yakub (PW-17) - headmaster of the school has proved school register Ex. P-30 and stated that at S.No. 681 of the said

register date of birth of the prosecutrix was recorded as 1.6.1979 and that he had issued certificate Ex. P-31 in respect of date of birth of the

prosecutrix. In cross examination, this witness has stated that the prosecutrix had studied in his school from 12.6.1994 to 30.5.1995 and that

admission in his school was given on the basis of transfer certificate only, but said certificate has not been produced by him in the Court. Ishwar

Chand Yadav (PW-18) - has not supported the case of the prosecution and has been declared hostile. R.A. Chhatre (PW-19) is the investigating

officer who has duly supported the case of the prosecution.

8 Minute examination of the evidence makes it clear that in the intervening night of 11/12.06.1995 accused/appellants Manoj Kumar Minj,

Thadiyus Tirki entered the house of prosecutrix, accused Manoj assaulted her sister Rakha (PW-3) with knife and co-accused Prakash caused

injury on her head. Thus, the Court below has rightly convicted accused Manoj and Thadiyus Tirki for the offence u/s 458 of IPC and no

interference there-with is called for.

9 From the statement of Rekha (PW-3) which is duly supported by Dr. Vijay Sharma (PW-12) it is established that on the date of incident

accused Manoj assaulted Rekha by means of knife causing injury on her hand and therefore conviction of accused Manoj u/s 324 of IPC appears

to be justified and accordingly the same is maintained.

10 As regards conviction of appellant Manoj u/s 366 and 376 of IPC, it is apparent from the record that the prosecutrix accompanied accused

Manoj firstly to village Gholen, then to Assam and then to Jalpaiguri (W.B.). The evidence also makes it clear that when the prosecutrix was taken

by the appellant to all these places, she did not offer any resistance or made any effort to come out from his clutches. Further, the prosecution has

failed to establish the fact that at the time of commission of offence the prosecutrix was minor as there is no reliable and legally admissible evidence

in respect of her age. Thus, considering the conduct of prosecutrix and the evidence available on record it will not be safe for this Court to uphold

the conviction of accused Manoj for the offence u/s 366 and 376 of IPC. Accordingly, his conviction under Sections 366 and 376 IPC is set

aside. In the result, Criminal Appeal No. 476/1996 being without substance is liable to be dismissed and it is dismissed as such. Criminal Appeal

No. 381/ 1996 is however partly allowed. Conviction of accused Manoj under Sections 366 and 376 IPC is set aside. However, his conviction

u/s. 324 and 458 IPC is maintained. Accused/appellants are on bail. Their bail bonds stand cancelled. They be sent to jail immediately to serve out

their remaining sentence.