

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 607 of 2000

BETWEEN:-

**MANIA S/o NATHA BHILL, AGED 35 YEARS,
OCCUPATION-GANGMAN, R/O BILADI, PS.
RAVTI, DISTRICT RATLAM (DECEASED)
THROUGH LR BHURIBAI W/O LATE MANIA
R/O BILADI, P.S. RAVTI, DISTRICT RATLAM ,
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI SHRI VIVEK SINGH, ADVOCATE)

AND

THE STATE OF M.P. (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SANTOSH SINGH THAKUR, GOVERNMENT ADVOCATE)

Reserved on : 19.07.2023

Delivered on : 11.08.2023.

This appeal coming on for orders this day, with the consent of parties, heard finally and the Court passed the following:

JUDGEMENT

With consent of the parties heard finally.

01. The present criminal appeal was filed on behalf of Mania who has expired and later on his wife namely Bhuri Bai has filed an

application to continue the appeal on behalf of her husband. Subsequent to that, this Court after considering the contentions of the counsel for LRs of the deceased, has allowed and wife of the appellant is permitted to continue the appeal on behalf of Legal Representatives of the deceased.

02. This criminal appeal has been filed under Section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 09.05.2000 passed by the learned 3rd Additional Sessions Judge, Ujjain in ST No.152/1999 whereby the appellant (deceased) has been convicted for offence under Sections 376 and 448 of IPC and sentenced to undergo 07 years and 06 months years R.I. and fine of Rs.1000/- with default stipulations. However, the learned Court has acquitted the deceased from the charges under Section 506 of IPC alongwith other co-accused persons.

03. As per the prosecution story, on 29.07.1999 complainant Rattobai was resting in her house when applicant forcibly entered into the house of the complainant and committed rape upon her. Earlier also the applicant had tried to commit rape upon complainant against which she had lodged an FIR. Hence, the police party, after following due procedure, arrested the accused person and registered the case against the appellant. After due investigation, charge-sheet was filed against the appellant/accused under Sections 376, 448 and 506(II) of IPC.

04. In turn, the case was committed to the Court of Session and thereafter, appellant was charged for offence under Sections 376, 448 and 506(II) of IPC. He abjured his guilt and took a plea that he had been falsely implicated in the present crime and prayed for

trial.

05. In support of the case, the prosecution has examined as many as 05 witnesses namely Dr. Savitri Harchandani (PW-1), Rattobai (PW-2), Narayan (PW-3), Anju (PW-4) and N.R. Gudawad (PW-5). In his defence, the appellant has adduced the statements of Suresh (DW-1), Satyanarayan (DW-2), Kalu (DW-3) Lunja (DW-4), Saroj Soni (DW-5), Pradeep Kumar Goyal (DW-6).

06. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 09.05.2000 and finally concluded the case and convicted the appellant for commission of the said offence under the provisions of Section 376 and 448 of IPC while acquitted him from the charges under Section 506 (II) of IPC.

07. Learned counsel for the appellant has submitted that the alleged incident took place on 29.07.1999 at about 7:30AM and the FIR was lodged on the same day at about 11:30AM i.e. after a delay of 4 hours. It is further submitted that the appellant expired on 01.04.2010 and his wife filed an application for substitution of LRs, which was allowed and she, as legal heir, has been taken on record. It is further submitted that it is evident from the Statement of P.W-4 that she has deposed the aforesaid statement at the behest of her mother and as per the instructions of her mother. P.W-1(Doctor) has also opined that no external or internal injuries were found on the victim except one contusion on her left thigh. It is also opined that no definite opinion can be given in respect of sexual intercourse. It is further submitted that the prosecutrix herself has assaulted the appellant when he was working on the railway station and due to

the said scuffle, the appellant was wrongly impleaded by the prosecutrix in a false case.

08. It is further submitted that the factum of assaulting by the prosecutrix is well corroborated by the statements of Suresh, Satyanarayan, Kalu and Lunja. It is further submitted that the statements of PW-4 Anju/daughter of the prosecutrix herself has stated that she had given the statements on the instigation of her mother. The learned trial Court has convicted the appellant wrongly even after various contradictions and omissions in the statements of the witnesses. It is further submitted that the learned trial Court has not appreciated the evidence available on record in its right perspective and has committed grave error of law in convicting the appellant. Hence, in view of the aforesaid submissions, the appellant(deceased) is liable to be acquitted by setting aside the impugned judgment.

09. Learned counsel for the State on the other hand supports the impugned judgment and prays for dismissal of this appeal. It is further submitted that the distance of the police station from the place of incident is approximately 10 Kms., hence, there are all possibilities of delay of 4-6 hours, therefore, the submissions regarding delay is baseless. It is further submitted that the statements of the prosecutrix recorded under Section 161 of Cr.P.C. as well as statements of doctor (PW-1) are well corroborative with the version of FIR. It is further submitted that the FSL report is positive. Counsel for the State has however, admitted that in the statements of Anju (PW-4), she has narrated that she has deposed the statements on the instructions of her mother/prosecutrix.

10. Having considered the rival submissions and on perusal of the record, the question for determination is as to whether the findings of the learned the trial Court regarding conviction and sentencing the appellant for the offence punishable under Section 376 and 448 of IPC are correct in the eyes of law and facts or not.

11. The testimony of prosecutrix (PW-2) is as usual significant for deciding the case. The prosecutrix in her statement deposed that at about 7:00 to 7:30 a.m. in morning, she was watching T.V. lying on bed. Her husband namely Narayan (PW-3) gone to his duty in the morning and she was left in her house with her daughter and son. The children were sleeping and door of the house was kept open. At that time, accused Mania came inside her house and climbed on her person and thereafter, he forcefully raped her. She further stated that subsequently, she assaulted with stick to the accused but he snatched the stick and he beaten the prosecutrix. She further stated in her statement that she screamed but none came to her house. Her daughter-Anju woke up and she herself with her daughter started weeping.

12. Now, coming to her cross-examination wherein she has admitted that within the radius of 01 kilometer adjacent to her house, there are as many as 100 to 150 houses. She has also admitted that she knows Kailash with whom she went to lodge F.I.R. on his bike. In Para 7 in her cross-examination, she has denied the fact that earlier she has also made complaint against the accused and obtained Rs.3500/- from Panchayat. In this case Exhibit-D/1 has been placed as a defence document. This is an affidavit of prosecutrix in which she has remonstrated the prosecution case. As per the said affidavit, she has stated on oath

that on 29.07.1999, there was altercation between Mania and herself. She has lodged FIR regarding that and the said affidavit was prepared on 02.11.1999, whereas the said incident of rape was occurred on 29.07.1999. In cross-examination of prosecutrix, she has not directly denied the execution of that affidavit. However, she stated that the affidavit Exhibit-D/1 was prepared at the behest of one Saroj Soni (DW-5) and due to her threatening, she put her thumb impression on the affidavit. Had the false affidavit was drafted due to threatening of person namely Saroj Soni, She would have lodged another FIR against Saroj Soni.

13. On this aspect, the statement of Narayan (PW-3), who is husband of the prosecutrix, is also vital. Nevertheless, he has supported the prosecution case in his examination-in-chief, but in Para-5 of his cross-examination, he has clearly conceded that his wife herself went to Saroj Soni for authentication of the affidavit in question. He has also stated that it is true to say that Bhandari Borasi is his relative. Actually, Bhandari Borasi is a person who has identified the prosecutrix before Notary. Further, he again acceded that it is true to say that the signature of Bhandari Borasi is on affidavit and it was brought by his wife. Looking to the importance of this fact, actual hindi version is quoted here *“यह बात सही है कि भण्डारी बौरासी मेरा रिश्तेदार है। यह कहना गलत है कि वह शपथ-पत्र तस्दीक कराने के लिये गया था। यह बात सही है कि शपथ-पत्र डी-1 पर भण्डारी बौरासी के हस्ताक्षर है जो मेरी औरत लेकर गई थी”*. Under these circumstances, the said affidavit (Exhibit-D/1) cannot be ascertained as a false affidavit.

14. That apart, the statement of Anju (PW-4) (daughter of prosecutrix), in her examination-in-chief is also relevant to consider

here. Nevertheless, she has also supported the prosecution case, but still in cross-examination, she has clearly admitted that she stated the facts what her mother tutored, she also admitted that she has not seen the incident by her eyes. The appellant has also raised allegations in his contentions regarding fabricated and false case. In this regard, he has stated that the false case has been foisted against him with the help of another person namely Kailash. However, the case of prosecution is supported by FSL report and as per FSL report human sperm was found on the undergarment of prosecutrix. As such, the sexual intercourse is established by the prosecution.

15. On the basis of statements of prosecutrix and other witnesses, the appellant raised his contentions regarding consensual relation between the appellant and the prosecutrix and it was further submitted that due to consensual relationship, the prosecutrix has executed the affidavit (Exhibit-D/1) in favour of appellant. However, inasmuch as the relationship became worst, later on, she has tried to deny the execution of said affidavit.

16. In view of arguments and the statements of Narayan, husband of the prosecutrix (PW-3), the execution of said affidavit is proved against the story of prosecution, even it was denied by prosecutrix in her cross-examination. Hence, the version of prosecutrix regarding non-execution of affidavit, cannot be accepted. Virtually, execution of such affidavit unfolds the consensual relation between accused and prosecutrix.

17. On this learned counsel for the appellant, placing reliance upon the case of *Bharat Singh of Jagannath Vs. State of Madhya Pradesh [(2006) 2 MPLJ 141]*, submitted that the statement of

prosecutrix regarding open door of her house, does not appear to be true, as normally a woman in absence of her husband cannot keep the door open for whole night and also in morning.

18. Learned counsel for the appellant has further submitted that the prosecutrix is a married woman, aged about 30 years would not allow anybody to commit forcible sexual intercourse against her will and it is also not possible for a single person to dare to enter in a house for such purpose when the female stayed in the house with her two children. It is further submitted that she would not allow a single person to ravish her without putting stiffest resistance.

19. Learned Government Advocate for the respondent/State controverting the contentions, submitted that generally no lady shall make false allegations regarding outraging of her modesty. Certainly, the arguments of Government Advocate is remarkable but when a person changing her version in affidavit and further in the statements of Court, such type of morality cannot be accepted. On this aspect, the case of State of *Rajasthan Vs. Kishanlal [(2002) 5 SCC 424]* is also relevant. In this case, as per medical examination, no injury was found on person of prosecutrix. So far as the injury of contusion found on prosecutrix is concerned, the same was caused owing to use of stick by the appellant.

20. It is also astonishing and staggering fact that on altercation between accused and prosecutrix, no one could reach on the spot, even children were not woke up. On this aspect, relevant portion of the case of Kishan Lal (*Supra*) is hereby mentioned below :-

Para 24.....

It is rather surprising that the accused entered the house at night and though the brother-in-law of the prosecutrix and his wife were sleeping only 20-25 feet away,

the prosecutrix could not raise alarm so as to attract their attention. It further appears that the prosecutrix was known to the accused and that is why the first question asked by her was as to why he had come in the night.

26. Having regard to these features of the case, the probability of the accused having had sexual intercourse with the prosecutrix with her consent cannot be ruled out. The features that we have noticed above probablise the defence of the respondent, and we entertain serious doubt about the truthfulness of the prosecution case that the accused had sexual intercourse with the prosecutrix without her consent.

27. In the facts and circumstances of the case, we are of the view that the respondent is entitled to the benefit of doubt. In the result this appeal is disposed of with a finding that though the sentence imposed by the High Court was illegal, having considered the evidence on record, we are satisfied that the respondent is entitled to the benefit of doubt. The appeal is, therefore, dismissed and the respondent is acquitted of all the charges levelled against him. The bail bonds of the respondent are discharged.

21. In the case at hand, the alleged incident is said to be occurred in day time, but on screaming of a lady, no one reached to rescue her from the jaw of accused. Even the children of the lady, who were sleeping in the same house, did not wake up and reach there to help their mother, which increases the possibilities of the fact that the accused was permitted for sexual intercourse with her consent.

22. In addition to that, the affidavit executed by the prosecutrix (Exhibit-D/1) is also proved by the statement of her husband Narayan (PW-3), which shows that the prosecutrix is the consenting

party of the case, otherwise such type of affidavit cannot be prepared in favour of appellant.

23. In this regard, the law laid down by Hon'ble Supreme Court in the case of *Bharwada Bhogin Bhai Vs. State of Gujrat [AIR 1983 SC 753]*, is also relevant wherein Hon'ble Supreme Court has expressed the opinion that corroboration may be insisted upon when a woman having attained the majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct is self-preservation or when the 'probabilities-factor' is found to be out of tune.

24. In so far as the offence of house-trespass is concerned, inasmuch as the testimony of prosecutrix does not inspire confidence, therefore, it is not established beyond reasonable doubt that the appellant entered in her house without her consent. As such, the allegation regarding house-trespass also appears to be unsubstantiated.

25. In the wake of aforesaid analysis, it would not be safe and justifiable to convict the appellant on the basis of untrustworthy and hypothetical version of prosecutrix and remaining testimony. Virtually, considering all the annexures, facts and circumstances of the present case and in the light of aforesaid citations, the prosecution is failed to prove its case beyond reasonable doubt that the appellant has committed house-trespass and thereafter committed the offence of sexual intercourse without consent of the prosecutrix (PW-2). Hence, it appears that the findings of the learned trial Court are perverse and deserved to be set aside.

26. In upshot of the aforesaid terms, the present appeal preferred by the appellant (now, through legal representative) is hereby allowed

and in the result thereof, having set aside the impugned judgment, the appellant is acquitted from the charges under Section 376 of IPC and Section 448 of IPC. The appellant (deceased) was on bail, hence, his bail bond and surety bond stand discharged. The appellant is entitled to receive back the fine amount deposited by him in the learned trial Court.

27. A copy of judgment alongwith record be send to the concerned learned trial Court for information and necessary compliance.

28. The order of the learned trial Court regarding disposal of the seized property stands confirmed.

29. With the aforesaid, the appeal is allowed and disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

Vindesh