

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-1-)

Cr.A. No.146/2013

(Manohar Vs. The State of Madhya Pradesh)

Indore, dated: 22.03.2018

Shri S.K. Meena, learned counsel for the appellant.

Shri K.K. Tiwari, learned counsel for the respondent/State.

Present appeal has been filed against the judgment of conviction dated 12.12.2012 passed by the Sessions Judge, Mandleshwar (West Niman), Madhya Pradesh in Session Trial No.15/2012.

2. The facts of the case reveal that on 29.11.2011, the prosecutrix, PW 3, aged about 15 years, as she was unwell, did not go to school and her father- Nannu PW-4 and mother- Umabai WP-5 went to the field and her younger brother Pramod went outside of the house to play and at that point of time, at 12 O' clock in the noon, the appellant – Manohar Rajpoot entered the house and locked the house from inside and forcibly committed rape upon the prosecutrix. She was threatened also and she was told not to tell the incident to any one, however, when her parents came back to the house in the evening, the entire incident was reported to the parents by the girl and on the same day, report was lodged with the police at crime No.0127/11 for offence under Section 452, 376 and 506 Part II of IPC.

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-2-)

3. The matter was investigated by the Sub Inspector – Narendra Gome PW-8 and he obtained consent from the father of the prosecutrix for subjecting the prosecutrix for medical examination Ex.P-5 and she was immediately sent to Primary Health Center, Kasrawad for medical examination. Dr. Amita Pandey, PW-7 on 30.11.2011 has examined the prosecutrix and prepared a slide of vaginal fluid. The spot map was prepared by the investing officer- Narendra Gome and the slide prepared along with the clothes of the prosecutrix was sent for forensic examination. The accused was arrested on 01.12.2011 and he was subjected to medical examination and Dr. Rakesh Patidar PW-1 conducted the medical examination Ex.P-2 and the accused was found to be medically fit to do sexual intercourse.

4. A report was received from the Regional Forensic Science Laboratory, Indore and thereafter, statements of the witnesses and the prosecutrix were recorded by the investigating officer- Narendra Gome PW-8. Later on, charges were framed for offence under Sections 452, 376 and 506 Part II of IPC. The present appellant 'the accused' has denied the allegation and pleaded innocence and it was stated that the father of the girl was required to pay Rs.50,000/- to the appellant and, therefore, as he was demanding money, a false and fabricated case has been registered against him.

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-3-)

5. Before the trial court, statements of the witnesses were recorded. The prosecutrix PW-3 has categorically stated that her parents went out to work in the field at 9 a.m. in the morning and his younger brother was also not present in the house and at that point of time, the accused came inside the house and forcibly committed rape (Khota Kaam) upon the prosecutrix. She was also given a threat of life and it is only after her parents came back to the house, she reported the matter to her parents and thereafter, all of them went to the police station for registration of First Information Report.

6. The statements of the prosecutrix have been supported by her father Nannu and mother Umabai, Ex.P4 and Ex. P5. They have stated categorically that when they came back in the evening to their house, they saw the prosecutrix crying and the prosecutrix told them that she has been subjected to rape by the accused person. She has narrated the incident in depth to her parents and the parents have deposed the entire incident before the trial court as told by their daughter.

7. The First Information Report was lodged with quite promptitude in which it has been stated that (Ex.P-4) it was the present appellant, who has committed rape. Dr. Amita Pandey has conducted the medical examination and she has stated that hymen was ruptured. Dr. Amita Pandey PW-7 has prepared a slide of vaginal fluid and the slide as well as the

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-4-)

other material including the clothes of the prosecutrix were sent for forensic examination. It was sent to Forensic Science Laboratory, Rau, Indore. As per Ex.P-9, vaginal fluid was having sperms and sperms were found on the underwear of the prosecutrix also, meaning thereby, the factum of rape as stated by the prosecutrix has been established before the trial court.

8. A defence has been taken before the trial court as well as before this Court that there are adjoining houses and a large number of people were residing in the adjoining houses, hence, in case, rape was being committed, it was quite natural that screaming of the girl would have been heard by other persons.

9. This Court has carefully gone through the entire evidence of the prosecutrix and she has categorically stated that her mouth was forcibly closed by the accused person and therefore, in light of the statement given by the prosecutrix, there was no occasion that any sound would have gone out of the room as the mouth of the prosecutrix was forcibly closed by the accused person.

10. The other defence which was taken by the accused is that a sum of Rs.50,000/- was to be given by the father of the prosecutrix to the accused person, which was a loan taken by him. There was no evidence brought on record to establish

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-5-)

that a sum of Rs.50,000/- was given by the accused to the father of the girl and in those circumstances, based upon the statements of the prosecutrix and the statements of the parents of the prosecutrix and forensic report, this Court is of the opinion that the prosecution was able to establish beyond reasonable doubt the commission of rape by the present appellant.

11. The trial court has taken into account the judgment delivered by the Hon'ble Supreme Court in the case of **State of U.P. Vs. Chhotelal**, reported in AIR 2011 SC 607 wherein, based upon the sole testimony of prosecutrix, the accused was convicted and in the aforesaid case, it has been held that the testimony of the prosecutrix, if found reliable, by itself is sufficient to convict culprit and no corroborative evidence is necessary in case of rape.

12. In the present case, the testimony of the prosecutrix is corroborated by testimony of her parents. There is a forensic science laboratory report on record which also corroborates the factum of rape. In light of the clinching evidence brought on record by the prosecution, this Court does not find any reason to set aside the judgment delivered by the learned Sessions Judge.

13. At this stage, learned counsel for the appellant has drawn attention of this Court towards the judgment delivered

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-6-)

by Punjab and Haryana High Court in the case of **Sukhdev Singh Vs. State of Punjab**, reported in 2008 Cri.L.J. 3836, wherein a Division Bench of the High Court has converted the punishment of life imprisonment to seven years imprisonment.

14. In the aforesaid case, the accused was charged to have committed rape upon his own daughter and the Division Bench of Punjab and Haryana High Court has declined to interfere with the judgment delivered by the learned Additional Session Judge (Ad hoc) Fast Track, Amritsar, however, it has reduced the sentence from life imprisonment to that of imprisonment of seven years without alteration in the sentence of fine.

15. In the considered opinion of this Court, once this Court has arrived at a conclusion that the prosecutrix was subjected to rape, the question of interference in the quantum of punishment specially in respect of heinous crime like rape does not arise. Learned government advocate has argued before this Court that in crime of rape, no leniency is required, in fact, in the society, such crime are at the rise.

16. The Hon'ble Supreme Court in the case of **State of Punjab Vs. Gurmit Singh**, 1996 (Cri.LJ), 1728 in paragraph No.20 has held as under:-

“We must remember that a rapist not only

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-7-)

violates the victim's privacy and personal integrity, but inevitably cause serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murder destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity,. The Courts should examine the broader probabilities of a case and no get swayed by minor contradictions of insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation.”

17. In light of the aforesaid judgment, as rape is not merely a physical assault, it is often destructive to the whole personality of the victim, this Court is of the opinion that no

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Cr.A. No.146/2013 (Manohar Vs. The State of Madhya Pradesh)

(-8-)

question of interference is warranted in the present appeal in respect of sentence awarded by the trial court. No case for interference is made out in the matter. The appeal is dismissed.

N.R.

(S.C. Sharma)
Judge