

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRA No.611/2015

Ugarnath S/o Tulsinath

Vs.

State of MP

Shri Vivek Singh, learned counsel for the appellant.
Shri Amit Singh Sisodiya, learned government counsel for the
respondent/State.

JUDGMENT

(Delivered on this 20th day of July, 2015)

This appeal is directed against the judgment passed by learned Additional Sessions Judge, Khategaon, District – Dewas in Sessions Trial No.230/2013 dated 28.04.2015 whereby, learned Additional Sessions Judge convicted the appellant under section 376(2)(F) of IPC as amended by Criminal Law (Amendment) Act, 2013 and sentenced him to undergo 10 years RI with fine of Rs.10,000/- and also in default of payment of fine, the accused was further directed to undergo RI for 6 months.

The case of the prosecution in brief before the lower

court was that the prosecutrix is married wife of son of the present appellant. She filed a written complaint on 27.05.2013 stating therein that she was married to Rajeshnath S/o Ugarnath, the present appellant, at village – Rantha, Tehsil – Khategaon, District – Dewas. About two and half months back, she was in marital home. On 13.03.2013, all other family members went out to cut crop of Gram. Her husband was also went out on Tractor. The appellant came back, entered into her room and caught hold of her. He closed the door, removed her clothes, threw her on the bed and then committed rape on her. After commission of rape, he threatened her that she should not tell about the incident to anybody and he would bear all her expenses. After that she rang up her parents and her brother came to take her back. She told about the incident to her mother, however, her mother told her that she had four children and so she would call her father in law and talk to him. Subsequently, on 26.05.2013, she narrated the incident to her father and he advised her to lodge complaint. Thereafter, the complaint was lodged on 27.05.2013.

Learned Additional Sessions Judge framed charges under section 376(2)(F) of IPC. The appellant before learned

Additional Sessions Judge abjured his guilt and thereafter trial proceeded.

Aggrieved by the impugned judgment, this criminal appeal is filed by the present appellant on the ground that the judgment of the lower court is not legal and contrary to law and facts. The FIR was filed after two and half months of the incident. No reason for such delay has been given by the prosecutrix. The Court below failed to appreciate that she admitted in para 15 of her statement that as search warrant was issued against her, she lodged false complaint.

On these grounds counsel for the appellant prays that the impugned judgment be set aside and the appellant be acquitted from the charges under section 376(2)(F) of IPC.

Counsel for the State, however, supports the impugned judgment and prays that the appeal be dismissed.

The question to be decided in this appeal is whether, the impugned judgment requires any interference by this Court.

In this case, three main witnesses were examined by the prosecution. The prosecutrix is examined as PW-1. She stated in her statement that about 12 months back from recording her statement on 21.08.2014, she was at her marital home. All the

family members went to the field for cutting crop of Gram. She was alone at home then, she stated that present appellant, who is her father in law, came and committed rape on her. After the incident, she went to her parents house. After two and half months of the incident, she reported the matter to the police. Her written report is Ex.P-1 and FIR is Ex.P-2.

PW-2 Vidya Bai is mother of the prosecutrix. She stated that her daughter told her that present appellant used abusive language against her daughter and also had physical relationship with her. When her daughter came back home, they waited for about two and half months. They accepted that her husband and father in law would come and solve the matter and when they did not come, they reported the matter to the police. Hemraj PW-3 is father of the prosecutrix. He said that when his daughter told him about the incident, he kept mum and went out of the house and thereafter, his daughter filed the report. Apart from these three witnesses, Dr. Sushma Rathi and Dr. RA Khan, who are Medical Officers, who examined the prosecutrix and the appellant, Tehjib Kazi PW-7 is the Investigating Officer.

In this case, the report was lodged with delay of two and

half months. It is to be seen whether, the delay is justified by giving cogent reasons by the prosecutrix. The reason stated in the written complaint submitted before the police on 27.05.2013 which is Ex.P-1 is that the appellant threatened her that if she would tell about the incident to anybody, he would kill her. She told about the incident to her mother and her mother said that as she has four children, they would call her father-in-law and talk to him. However, when she told her father the day before report was filed, he advised her to report the matter to the police.

When the prosecutrix was cross examined before the Court, she stated that four days after she arrives at her parents house, her husband came to take her back then, her mother told him about the incident and what his father did with the prosecutrix. Then, she further said that at that time, only her mother told her father about the incident. This is against the fact stated in the written complaint that the day prior to the report was filed, she told about the incident to her father. In her cross examination, she said that she never told the incident directly to her father and it was her mother, who told about the incident to her father. Thus, there is a major discrepancy in the

facts written in the complaint Ex.P-1 and also statement before the Court, therefore, in the considered opinion of this Court, the delay of two and half months in filing of the complaint is not properly explained and learned Additional Sessions Judge erred in holding that delay was properly explained.

The next important factor that was pointed out by counsel for the appellant is that in para 15 of her statement that she talked through her younger sister's mobile phone to her husband Rajesh, the call was answered by wife of younger brother of her husband (Devrani) Reena. The mobile phone bearing number 9770311206 was produced before the Court and marked as article A-1. The prosecutrix admitted that she told her sister in law that as the warrant was got issued against her by her husband and father in law, she filed a false report against the present appellant. However, hurriedly, she proceeded to explain that in hurry, this came out of her mouth.

Further discrepancy pointed out by counsel for the appellant is observed by the lower court in paragraphs 17 and 18 of the impugned judgment. It was observed by learned lower court that it was admitted fact in this case that during her married life of 8 years, she hardly visited her parents house and

then, suddenly, she came back. Therefore, learned Additional Sessions Judge inferred that it must be due to some serious incident that took place in her matrimonial house which compelled her to return back to her parental house. However, if her statement before the Court is considered that immediately after one year of her marriage, her father-in-law had physical relationship with her many times prior to the incident that was alleged to have been taken place on 13.03.2013. If that is to be taken into account then, her return back to her parents house immediately after the incident is of no importance. This also to some extent, makes her statement doubtful that only when her father advised her to lodge the complaint, she filed the complaint.

Taking all the discrepancies as pointed out above into consideration, I find that statement of the prosecutrix cannot be believed. It is true that as per the established law, single testimony of the prosecutrix is sufficient to base conviction on if her statement is such, which creates confidence in the mind of the Court and which is unimpeachable in all respects. However, in this case, the report of the incident was made with undue delay of two and half months. Her statement was full of

contradictions and, therefore, in my opinion, her statement cannot be believed. On the contrary, evidence raised by the present appellant that she lodged false report only because warrant was issued against her, appears to be true.

In this view of the matter, this appeal deserves to be allowed and accordingly, allowed. The impugned judgment and conviction under section 376(2)(f) of IPC is set aside. The appellant is acquitted from the charges under section 376(2)(f) of IPC. He should be released from custody if his custody is not required in any other case. The order of lower court in respect of disposal of the seized property is confirmed.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-