SUPREME COURT OF INDIA

Ramkripal

Vs.

State of Madhya Pradesh

(Arijit Pasayat and S.H.Kapadia,JJ.,)

19.03.2007

JUDGMENT

Dr.Arijit Pasayat, J.,

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court at Jabalpur, dismissing the appeal filed by the appellant against the judgment of the learned III Additional Sessions Judge, Satna. Appellant was found guilty of offences punishable under Section 376 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to undergo RI for seven years.

3. Prosecution version as unfolded during trial is as follows:

> "Victim (PW-1) had gone in the field near Makararbandh to bring green grass and after collecting the green grass she was on her way back to her home. The appellant came to her and proposed for sexual intercourse. The victim protested and told that she will inform her mother in respect thereof. The appellant induced her not to say so to her mother as he will provide Rs.10/- to her. The appellant felled her on the ground and removed her undergarment and ravished her. She was crying in pain and at this the appellant had stuffed her mouth by clothes. The genital of the appellant had penetrated in her genital which gave immense pain to her and, thereafter, the appellant left her. She saw blood oozing from her private part which has besmeared her undergarment. After the return from the said field she has narrated the incident to the brothers and their wives.
>
> On completion of investigation the charge-sheet was placed. Accused faced trial. In order to establish the accusations the prosecution examined 10 witnesses. The accused pleaded innocence and false implication. According to him, a false case was posed at the instance of Rambhan Singh, Sarpanch (PW-3). The Trial Court found the evidence of the prosecutrix to be cogent and credible and accordingly as noted above, it found the accused guilty."

4. In appeal, the conclusions of the Trial Court were affirmed by the High Court.

5. In support of the appeal, Ms. Promila, learned Amicus Curiae appearing for the appellant submitted that the Trial Court and the High Court failed to notice inconsistencies in the evidence of the witnesses and in any event no offence under Section 376 IPC is made out. Strong reliance is placed on the evidence of the doctors PW-7 and PW-8 to contend that at the most the offence can be in terms of Section 354 IPC or Section 511 IPC. Per contra, learned counsel for the respondent-State submitted that the Trial Court and the High Court have analysed the evidence in great detail and have rightly concluded that offence punishable under Section 376 IPC.

6. Coming to the question as to whether Section 354 of the Act has any application, it is to be noted that the provision makes penal the assault or use of criminal force to a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are:

> "(a) That the assault must be on a woman.
>
> (b) That the accused must have used criminal force on her.
>
> (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty. What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows:
>
> "Decorous in manner and conduct; not forward or lower; Shame-fast; Scrupulously chast."

7. Modesty is defined as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in *Rex v. James Llyod*[1] in order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is

that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her. Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct".

8. In *State of Punjab v. Major Singh*[2] a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case (supra) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in *Rupan Deol Bajaj (Mrs.) and Anr. v. Kanwar Pal Singh Gill and Anr*[3].

9. The above position was highlighted in *Raju Pandurang Mahale v. State of Maharashtra and Anr*[4] .

10. A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if he fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

11. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

12. The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the Explanation appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the instant case that connection has been clearly established. Courts below were perfectly justified in their view.

13. When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has been established.

14. The evidence of PW-7 is also relevant. It has been noted by the High Court as follows:

> "PW-7, Dr. Asha Saxena has deposed to have examined PW-1, Jalebia on 29.2.1998 and she had found superficial laceration present over perineum just at the bottom of Labia Majora and Labia Minora, the size of which is cms. x cms. She has further deposed that the hymen membrane of the victim was found torn and there was fresh bleeding from slight touch and she has also found that her vaginal orifice admits one finger with difficulty."

15. Above being the position, we find no merit in this appeal which is accordingly dismissed. We record our appreciation for Ms. Promila, learned Amicus Curiae who placed the relevant materials for consideration.

Judgment Referred.

[1]*(1876) 7 C&P 817*
[2]*AIR 1967 SC 0063*
[3]*(1995) 6 SCC 0194*
[4]*(2004) 4 SCC 0371*