

SUPREME COURT OF INDIA

Manoharlal

Vs.

State of M.P.

CrI.A.No.1407 of 2013

(Dipak Misra and Uday Umesh Lalit JJ.)

21.11.2014

JUDGMENT

UDAY UMESH LALIT, J.

1. This appeal challenges the judgment and order dated 31.08.2012 passed by the High Court of Madhya Pradesh, Indore Bench in Criminal Appeal No. 442 of 1998 affirming the judgment and order of conviction and sentence passed by the Sessions Judge, Ratlam in Sessions Trial No.18 of 1997.

2. The instant matter arises out of FIR No.93 of 1997 lodged on 31.07.1997 at about 6:10 a.m. by PW-2 victim to the effect that in the previous night the appellant herein had committed rape on her and following was her version. The victim, an adivasi woman, though married was staying with her parents at Devipada. On 30.07.1997 after having visited her brother at Khetalpur, she had returned by bus and alighted at Bajna bus stand at about 10:00 P.M. She was sitting near a Ghumti when the appellant approached her and suggested to her to spend the night at Dharamshala with his children. She then accompanied him to Dharamshala but since there were no children he took her to the house of another person. There a man suffering from fever was sleeping and on the appellant suggesting that the victim be allowed to sleep there, said man raised objection. Thereupon the appellant went to get the keys of his house, during which time she came back to Dharamshala situated at the bus stand. The appellant came back and finding the victim to have fallen asleep, woke her up and

tried to take her to his house. The victim having refused to go, he caught her hand and forcibly took her to his house. In the house the appellant had forcible sexual intercourse with her, after which he asked the victim to spend the night at his house. However she ran away and returned to Dharamshala and slept there. The appellant came back to Dharamshala and suggested that he could make arrangements for her in the bus at which time a policeman also came. At Dharamshala the victim told everything to one Riyaz who was like a brother to her.

3. Next day i.e., on 31.07.1997 she reached the police station and lodged FIR exhibit P-2 as stated above, on the basis of which the investigation was undertaken. The victim was sent for medical examination and was examined by Dr. Sarojini Ben Patel (PW-1) who found no injuries on the private or external parts of her body and the doctor could not give any opinion about rape. The appellant having been apprehended was also sent for medical examination and was found to be capable of having sexual intercourse. After due investigation, the appellant was charged for having committed offence under Section 376 IPC and under Section 3 (2) (5) of the SC/ST Atrocities Act, 1989.

4. In the trial the victim was examined as PW-2 who reiterated her version as stated above. Riyaz who was examined as PW-3 however did not support the case of the prosecution and was declared hostile. Going by the medical evidence the trial court found that no definite opinion could be given about commission of rape. However relying on the testimony of the victim it convicted the appellant under section 376 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.1,000/- in default whereof to suffer further imprisonment for two months. The Trial Court however acquitted the appellant of the offence under section 3 (2) (5) of the SC and ST Atrocities Act, 1989.

5. In the appeal preferred by the appellant the High Court relied on the testimony of the victim and confirming the order of conviction and sentence it dismissed the appeal. The present appeal arises at the instance of the appellant challenging his conviction and sentence. While granting special leave to appeal the appellant was directed to be released on bail vide order dated 09.09.2013. We have heard Mr. Ram Ekbal Roy, learned Advocate for the appellant and Ms. Ayesha Chaudhary, learned Advocate for the State.

6. Though as a matter of law the sole testimony of the prosecutrix can sufficiently be relied upon to bring home the case against the accused, in the instant case we find her version to be improbable and difficult to accept on its face value. The law on the point is very succinctly stated in *Narender Kumar v. State (NCT of Delhi)* reported in (2012) 7 SCC 178, to which one of us (Dipak Misra, J). was a party, in following terms.

"20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial which may lend assurance to her testimony....."

Having found it difficult to accept her testimony on its face value, we searched for support from other material but find complete lack of corroboration on material particulars. First, the medical examination of the victim did not result in any definite opinion that she was subjected to rape. Secondly, Riyaz who was like a brother to the victim and thus a close confidant, has not supported the case of the prosecution and has completely denied having met her when she allegedly narrated the incident to him. Thirdly the person who was suffering from fever and to whose house she was first taken by the appellant was not examined at all. Fourthly, the policeman who the victim met during the night was also not examined. Fifthly, neither the brother nor any of the parents of the victim were examined to corroborate the version that she had come from the

village of her brother and alighted around 10:00 P.M. at Bajna bus stand. Lastly, the sequence of events as narrated would show that she had allegedly accompanied the appellant to various places. In the circumstances, we find extreme difficulty in relying upon the version of the victim alone to bring home the charge against the appellant. We are inclined to give benefit of doubt to the appellant.

7. We, therefore, set aside the order of conviction and sentence passed against the appellant. The present appeal is thus allowed and the appellant is acquitted of the charge leveled against him. The appellant who was released on bail, is discharged of his bail bonds.