

Madhya Pradesh High Court

Deepak Patidar vs The State Of Madhya Pradesh on 13 May, 2022

Author: Satyendra Kumar Singh

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Cr.Appeal No.1647/2019

HIGH COURT OF MADHYA PRADESH  
BENCH AT INDORE

BEFORE  
HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH  
ON THE 13th OF MAY, 2022

CRIMINAL APPEAL No. 1647 of 2019

Between:-

DEEPAK PATIDAR S/O SHRI MOTILAL PATIDAR , AGED ABOUT 31  
YEARS, VILLAGE SEMLI, TEHSIL MALHARGAR, P.S.  
PIPLIYAMANDI, (MADHYA PRADESH)

.....APPELLANT

(BY SHRI NILESH DAVE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER  
THROUGH P.S. PIPLIYAMANDI, MANDSAUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MUKESH KUMAWAT)

Reserved on: 07.05.2022

This application coming on for judgment this day, Hon'ble Shri  
Justice Satyendra Kumar Singh passed the following:

#### JUDGMENT

Satyendra Kumar Singh, J., Appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973(2 of 1974) [in short Cr.P.C.] being aggrieved by the judgment dated 26.12.2018 passed by the Court of II Additional Sessions Judge, Mandsaur in S.T.No.225/2017, whereby the Cr.Appeal No.1647/2019 appellant has been convicted and sentenced as under:-

CONVICTION		SENTENCE		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of fine
376	IPC	10 years	5000/-	6 months RI
342	IPC	-	1000/-	2 months RI
323	IPC	-	500/-	1 months RI

2. The prosecution case in brief is as follows:

(i) Prosecutrix and appellant both are resident of Village Semli,

Police Station- Piplyamandi, Mandsaur. On 13.10.2013 at about 15:30 hours, when prosecutrix was grazing her cattle in the field of Gangaram Patidar, appellant having seen prosecutrix alone, came there and took her forcibly in near by room situated in the field. Prosecutrix tried to resisted him and raised alarm, then he hit her head against the wall of the room and assaulted her. Thereafter, he forcibly committed sexual intercourse with her and threatened her, if she discloses the incident to anyone, he will kill her. Prosecutrix returned to home and narrated the incident to her elder sister-in-law Ramkunwarbai as well as her husband, and thereafter, on the same day at about 22:00 hours lodge the FIR (Ex..P-1) against the appellant at Police Station Piplyamandi, Mandsaur.

(ii) On the same day, in the intervening night at about 12:15 AM, she was sent to Civil Hospital, Mandsaur for medical examination where Cr.Appeal No.1647/2019 Dr. Meena Verma examined her and prepared MLC report (Ex.P-2). She also prepared prosecutrix's vaginal swab slides, collected her pubic hair and clothes as well as sealed and handed over the same to Police Constable Mamta Sharma who brought the prosecutrix to the hospital. She referred prosecutrix to surgical specialist for the injuries caused in her head.

(iii) I/O SI B.R. Ninama went to the place of occurrence and prepared spot map (Ex.P-3), seized broken bangles of the prosecutrix from the place of occurrence as per seizure memo (Ex.P-8). On 17.10.2013, he arrested the appellant as per arrest memo (Ex.P-9) and vide application (Ex.P-5) sent him to Primary Health Center, Piplyamandi, Mandsaur for medical examination, where Dr. Kailash Garg examined him and prepared MLC report (Ex.P-5). As per MLC report (Ex.P-5) he opined that appellant is capable for doing sexual activities. He prepared his semen slides and preserved as well as sealed the same alongwith his clothes and handed over the same to police constable who brought the appellant to the hospital. SI B.R. Ninama seized all the above articles received from the hospital as per seizure memo (Ex.P-68) and vide letter (Ex.P-11) sent the same to FSL, Rau for chemical examination and obtained the FSL report (Ex.P-15). After completion of investigation, filed the charge sheet before the Court of Judicial Cr.Appeal No.1647/2019 Magistrate First Class, Narayangarh, Mandsaur, who committed the case to the Court of Additional Sessions Juge, Mandsaur.

3. Learned trial Court considering the material prima-facie available on record framed charges u/S 376, 342 323 and 506 of IPC against the appellant who abjured guilt and prayed for trial. In the statements recorded udner Section 313 of Cr.P.C., he took a defence that prosecutrix's cattle used to damage his crops about which a quarrel took place between him and prosecutrix's family, due to which he has been falsely implicated in this case.

4. Learned trial Court after appreciating the oral as well as documentary evidence available on record, acquitted the appellant from the charges u/S 506 of IPC but convicted him for the offences punishable under Sections 376, 342 and 323 of IPC and sentenced them as stated in para 1 of the judgment. Being aggrieved by the said judgment of conviction and order of sentence, appellant has preferred this appeal for setting aside the impugned judgment and discharging them from the aforesaid charges framed against him.

5. Learned counsel for the appellant submits that the learned trial Court has committed legal error while appreciating the evidence available on record. Prosecutrix is a major married lady and her statements are not consistent with the medical evidence as during her Cr.Appeal No.1647/2019 medical examination, no external or internal injury was found on all over her body which makes her statements doubtful as held by the Apex Court in the case of Pratap Mishra & ors. Vs. State of orissa (AIR1977 SC 1307). Her statements recorded during trial are not consistent with her earlier statements recorded under Section 164 of Cr.P.C. as well as with the statements recorded under section 161 of Cr.P.C. (Ex.D-1) and also FIR (Ex.P-1) lodged by her on various material issues. She in her statements recorded under Section 164 Cr.P.C. as well as statement recorded during trial has specifically stated that her elder sister-in-law Ramkunwarbai was grazing her cattle near the place of occurrence, but there is nothing on record to show the reason as to why she did not disclose or narrate the incident to her elder sister-in-law there immediately after the incident. The whole prosecution story is doubtful and inference of consent of prosecutrix can be drawn in the matter. Thus, impugned judgment of conviction and order of sentence deserves to be set aside and appellant may be acquitted from the charges framed against him.

6. Per contra, learned counsel for the respondent/State while supporting the impugned judgment of conviction and order of sentence submits that judgment so passed by the trial Court is based on proper appreciation of evidence available on record. Therefore, confirming the Cr.Appeal No.1647/2019 judgment of conviction and order of sentence, the appeal filed by the appellants deserves to be dismissed.

7. We have heard the parties at length and perused the record.

8. From the record, it is found that on 13.10.2013 at about 22:00 hours prosecutrix (PW-2) who is a major married lady, lodged FIR (Ex.P-1) at police Station Pipliyamandi, Mandsaur that on the same day at about 15:30 hours when she was grazing cattle in the field of Gangaram in village Semli, appellant came there caught hold her waist from behind, took her forcibly in nearby room, assaulted her and committed rape upon her. In the same intervening night of 13 & 14.10.2013 at about 12:15 AM, Dr. Meena Verma (PW-4) medically examined her at District Hospital, Mandsaur and as per MLC report (Ex.P-2), she found no external and internal injury on all over her body.

9. Prosecutrix (PW-2) in her FIR dated 13.10.2013 (Ex.P-1) as well as in her statement (Ex.D-1) recorded on 13.10.2013 under Section 161 of Cr.P.C. stated that at the time of incident, when she screamed loudly for help and requested appellant to leave her, he asked her whether she is menstruating and when she did not answer, he hit her head against the wall of the room and committed rape upon her. She further stated that after the incident, she returned to her house and narrated the incident to her elder sister-in-law Ramkunwarbai (PW-3). It is pertinent Cr.Appeal No.1647/2019 to mention here that on next day i.e. on 14.10.2013, statement of Ramkunwarbai (PW-3) under Section 161 of Cr.P.C. were recorded Wherein she stated that on the date of incident, when she returned home with her cattle, then prosecutrix told her about the incident meaning thereby she was not at home when prosecutrix returned there after the incident. After recording of the statements of Ramkunwarbai (PW-3), prosecutrix (PW-2) in her statement recorded on 24.10.2013 under Section 164 of Cr.P.C. first time disclosed that her elder sister-in-law

Ramkunwarbai also went for grazing cattle and at the time of incident, she screamed loudly but her sister-in-law could not hear her voice because she was far from the place of occurrence. Prosecutrix (PW-2) in her statement recorded during trial reiterated aforesaid facts that her elder sister-in-law Ramkunwarbai was also grazing her cattle near the place of occurrence but nowhere stated any reason as to why she did not inform her elder sister-in-law about the incident who was present at that time near the place of occurrence.

10. Prosecutrix (PW-2) deposed that appellant after taking her to nearby room, assaulted her and hit her head against the wall of the room but Dr. Meena Verma (PW-4) deposed that during medical examination, no external or internal injury was found on all over her body. None of the prosecution witnesses has deposed about the Cr.Appeal No.1647/2019 distance between the place where prosecutrix was standing while grazing the cattle and the nearby room, where appellant took her forcibly. I/O SI B.R.Ninama in his spot map (Ex.P-3) has also not shown the place from where the appellant forcefully took the prosecutrix in room situated near the well of Gangaram. Prosecutrix is a major married lady and as held by the Hon'ble Apex Court in the case of Pratap Mishra Vs. State of Orissa (Supra) that it is very difficult for any person to rape single handed, a grown up and an experienced women without meeting stiffest possible resistance from her, it is not safe to rely upon the testimony of the prosecutrix without any corroboration as it appears unnatural that even after forcibly taken her, assaulted and subjected to sexual intercourse, she did not sustain any external or internal injury on all over her body. Inconsistency in the statement of prosecutrix about the presence of her elder sister-in-law near the place of incident and also about the time when she informed her about the incident, made her statements more doubtful. Prosecutrix is a married lady, therefore, only on the basis of positive FSL report, it cannot be said that the same supports the prosecution case as it has not been mentioned therein that the semen found on her vaginal slide is same as that of the appellant. In such circumstances, prosecutrix's statements cannot be said to be wholly reliable, therefore, the same Cr.Appeal No.1647/2019 cannot be relied upon without any corroborative evidence and only on the basis of her statement, it is not safe to held the appellant guilty for the offences alleged against him.

12. In this regard, observations made by Hon'ble Apex Court in the case of State of Rajasthan Vs. Babu Meena [(2013) 4 SCC 206] can be relied upon. Relevant extracts of the said judgment is reproduced below for convenience and ready reference:

"8. We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused. "

13. In the light of the aforesaid discussion, the defence taken by the appellant that prosecutrix may be consenting party cannot be ruled out and this Court has no hesitation to hold that prosecution has failed to prove the guilt against appellant beyond reasonable doubt. Hence, Cr.Appeal No.1647/2019 conviction of the appellant cannot be upheld and the appeal filed by the appellant deserves to be allowed. Accordingly, this Court passes the following order:

(i) Criminal Appeal No.1647/2019 filed by the appellant -

Deepak Patidar is allowed.

(ii) The judgment of conviction and order of sentence dated 26.12.2018 passed in S.T.No.225/2017 by which appellant has been convicted under 376, 342 and 323 of IPC and sentenced him as stated in para 1 of the judgment is hereby set aside.

(iii) Appellant be set at liberty, if not required in any other case.

(iv) Fine amount(if any) deposited by the appellant be refunded to them.

The Registry is directed to send back the trial Court record forthwith alongwith the copy of this judgment.

Certified copy as per rules.

(Satyendra Kumar Singh) Judge 13.05.2022 vibha/-

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