DINESH JAISWAL

v.

STATE OF M.P.

(Criminal Appeal No. 956 of 2005)

JANUARY 12, 2010

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

Penal Code, 1860:

ss. 376, 323 and 506 – Rape – Conviction on the basis of evidence of prosecutrix – HELD: The test always is whether the given story prima facie inspires confidence – In the instant case, the story given by prosecutrix that the accused after giving tangi blows on her head and hand raped her and when the accused was leaving she snatched tangi from him and caused injuries to him does not inspire confidence – Her son and another relative who had reached the spot did not support her and were declared hostile – Even her husband who had accompanied her to the police station was not examined in court – Doctor was unable to confirm the factum of rape – Prosecution story that the accused, a youngman of 31 years was overpowered by the prosecutrix, a much older woman of 42 years, is rather difficult to believe – Three injuries found on hands of prosecutrix are simple in nature whereas out of 6 injuries found on hand and head of accused, one is a grievous injury – The case of the accused that he had gone to the house of the complainants to recover his cow and in a quarrel both received injuries was not verified by investigating officer – In the circumstances, some corroboration for the statement of the prosecutrix was required – In this view of the matter, judgments of courts below convicting and sentencing the accused are set aside and he is acquitted – Evidence – Testimony of prosecutrix – Reliability of.

A *Motilal vs. State of Madhya Pradesh* **2008 (10) SCR 983 = (2008) 11 SCC 20, referred to.**

Case Law Reference:

2008 (10) SCR 983 referred to para 3

B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 956 of 2005.

From the Judgment & Order dated 24.11.2003 of the High Court of Madhya Pradesh Bench at Jabalpur in Criminal Appeal
C No. 1365 of 1998.

Rameshwar Prasad Goyal for the Appellant.

C.D. Singh, Sunny Choudhary and Shashank S. Parihar for the Respondent.
D

The following Order of the Court was delivered

O R D E R

E The facts leading to the appeal are as under :

At about 4.00 P.M. on 8th July, 1987 the prosecutrix (PW-1) was alone in her house situated in Village Magrohar, Police Station Rampur Naiken. The appellant, who was known to her, entered the house and after having inflicted three tangi blows
F on her head and hands, raped her. The prosecutrix also, in defence, snatched the tangi from the appellant and caused several injuries on his head while he was leaving the room. As a result of the injuries suffered, both became unconscious. In the meanwhile, Sampat the husband of the prosecutrix, arrived
G at the scene and she told him about what had happened. She also called Babulal (PW-2) her son and Shivbalak (PW-3) a distant relative, and they along with several other persons reached the spot. The prosecutrix thereafter accompanied by her husband Sampat, Babulal and the others afore referred
H lodged the First Information Report (Exhibit P-1) at Police

Chowki Khaddi on the same day at about 7.30 p.m. The prosecutrix was also sent for a medical examination which was carried out the next day by Dr. Kalpana Ravi (PW-5), who found three injuries on her and further recorded that as she was a married woman of 42 years, it had not been possible to give a categoric opinion about any recent sexual encounter. The appellant was also examined by Dr. S.B. Khare (PW-6) and his report Ex. P-6/A revealed six injuries, several of them on the head including Injury No. 6, which was grievous as his teeth had been knocked out. On the completion of the investigation a charge for offences punishable under Sections 376, 323 and 506 of the Indian Penal Code was framed. The appellant denied the charge and was brought to trial. During the course of the trial, PWs 2 and 3, Babulal and Shivbalak the son and relative of the prosecutrix who had reached the place of incident, soon after the alleged rape, were declared hostile and they gave a version contrary to what had been deposed to by the prosecutrix. The trial court also found, endorsing the view of Dr. Kalpana Ravi (PW-5), that as the prosecutrix was a married woman, it was impossible to give a categoric opinion about any recent sexual intercourse but relying on the sole testimony, of the prosecutrix, sentenced the appellant to undergo rigorous imprisonment for 10 years under Section 376 of Indian Penal Code and to other terms of imprisonment for the other offences. The High Court dismissed the appeal and confirmed the sentence. The matter is before us after the grant of special leave.

The learned counsel for the appellant has raised three arguments during the course of hearing. He has first pointed out that the two primary witnesses, both relatives of the prosecutrix, including Babulal her son had been declared hostile and had not supported the prosecutrix's case and as the story preferred by her was far fetched, it could not be believed. It has also been submitted that the medical evidence which could be a corroborating factor, too was uncertain, as

A Dr. Kalpana Ravi had stated that the factum of rape could not be ascertained. The learned counsel has finally emphasised that the defence version that the appellant had reached the house of the prosecutrix to recover his cow and in a quarrel between them that followed, both had suffered injuries and that
B he had thereafter been falsely implicated in a case of rape. To highlight this argument, the learned counsel has referred us to the medical evidence of Dr. S.B. Khare (PW-6).

Mr. C.D. Singh, the learned counsel for the respondent State has however submitted that the prosecutrix case was
C liable to be believed and has relied upon the judgment of this court in in [*Motilal vs. State of Madhya Pradesh*] 2008 SCC (Vol.11) 20. It has also been submitted that the evidence clearly showed that the appellant had been arrested from the house of the prosecutrix which proved the factum of rape.
D

We have heard the learned counsel for the parties at length. We find that this case is rather an unusual one. The fact that the appellant was in the house of the prosecutrix is admitted on both sides. The prosecution story that the appellant a young
E man of 31 years had been overpowered by a much older woman is rather difficult to believe. The injuries received by the appellant are given below :-

1. Parted wound, whose shape is 1.5 c.m. X 1/5 c.m. on the right side of the hand.
F

2. Swelled injury, whose shape is 1.5 c.m. X 1 inch, which is on the upper side of the right hand.

3. Swelled injury, whose shape is 1/2" X 1/2", which
G is on the elbow of the left hand.

The injury of accused are given below :-

1. Parted wound, whose shape is 1 ½ inch X 1/2 c.m. X 1 c.m. on the middle of the head.

H

2. Parted wound, whose shape is 1" X 1/2 c.m. X 3 m.m. on the front side of the head. A

3. Parted wound, whose shape is 1/2" X 1/2" c.m. X 3 m.m. on the right of the head.

4. Swelled injury, whose shape is 1/2" X 1/2". B

5. Swelled injury, whose shape is 1" X 1/2" on the chin.

6. Two central incisers tooth and right canine tooth of upper jaw were broken and the enamles were swelled. C

Injury No. 6 is a grievous one. As per the prosecutrix she had caused these injuries to the appellant during the time of rape and thereafter that the accused had caused her three D minorinjuries as well whereas the case of the appellant is that he had gone to her house to recover his cow and in a quarrel that followed both had received injuries. In any case as the investigating officer had not verified the statement of the appellant some corroboration for the prosecutrix's story was E required. As already mentioned, her son Babulal and Shivbalak, a relative, who had reached the place of incident, were both declared hostile and did not support the prosecutrix. We find that even her husband Sampat who had accompanied her to the police station to lodge the report did not come into F the witness box and the doctor was also unable to confirm the factum of rape.

Mr. C.D. Singh has however placed reliance on *Moti Lal's* case (supra) to contend that the evidence of the prosecutrix was liable to be believed save in exceptional circumstances. There G can be no quarrel with this proposition (and it has been so emphasised by this Court time and again) but to hold that a prosecutrix must be believed irrespective of the improbabilities in her story, is an argument that can never be accepted. The H

A test always is as to whether the given story prima facie inspires confidence. We are of the opinion that the present matter is indeed an exceptional one.

As already mentioned above, in our opinion, the story given by the prosecutrix does not inspire confidence. We thus B allow this appeal, set aside the impugned judgments and direct that the appellant be acquitted.

R.P. Appeal allowed.