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CrI.A.No. 677 OF 1998

ITEM No.103

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.677 OF 1998

BAPULAL Appellant (s)

VERSUS

STATE OF M.P. Respondent (s)

(with appln. For exemption from filing OT & office report)

Date : 06/04/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU

HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. Ranjan Mukherjee, Adv. (AC)

For Respondent (s)Mr. S Dave, Adv. for
Ms. Vibha Datta Makhija, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order and the fee of Amicus Curiae is fixed as Rs.750/- for the assistance rendered to the Court.

(D.L.Chugh) (Vijay Aggarwal)

AR-cum-PS Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.677 OF 1998

BAPULALAppellant(s)

versus

STATE OF M.P.Respondent(s)

O R D E R

The above appeal has been filed by the appellant (original Accused No.1) who faced trial in sessions Trial No.152 of 1987 before the learned Sessions Judge, Mandasaur, M.P. and stood convicted for offence punishable under Section 376 IPC for having sexually assaulted and committed rape on prosecutrix PW 9 and sentenced to suffer seven years rigorous imprisonment. The case of the prosecution which was supported by the evidence of PW 9 as well as PW 8 the husband of the prosecutrix was that when she went with a pitcher to fetch water from the well of one Mahadev, all the accused not only caught hold of and over-powered her also by threatening her with a knife, but committed rape, successively. The occurrence was said to have taken place at 12.00 Noon on 6.2.1987, though the same was disclosed to her husband on 9.2.1987 at 8.00 PM resulting ultimately in the lodging of the FIR at 1.30 PM on 10.2.1987. After the usual formalities of investigation and the examination of the prosecutrix by PW 4 the doctor, the charge sheet was laid for the offence as noticed above.

The learned trial judge on an elaborate consideration of the evidence on record which included PWs 1 to 10 and documents marked as exhibits, found the prosecution case fully substantiated on the basis of the said evidence and convicted all the three accused. Thereupon the accused pursued the matter in Criminal Appeal No.681 of 1987 before the High Court and the learned Judge in the High Court also concurred with the findings recorded by the learned trial judge and confirmed the conviction as well as the sentence imposed. Aggrieved, it is the first accused alone who has come up before this Court in appeal.

Mr. Ranjan Mukherjee, learned counsel appearing as amicus curiae took us at great length to the judgments of the courts below as well as the evidence on record and challenged the conviction mainly on the ground of the belated nature of the lodging of the complaint as to the occurrence, alleged enmity between the two communal groups and the fact that the medical evidence produced could not conclusively establish the claim of the prosecution as to the alleged rape.

Learned counsel invited our attention to some of the earlier decisions of this Court in order to substantiate the grievance based on the above infirmities alleged in support of the challenge. Per contra, Mr. Siddharth Dave, learned counsel appearing for the respondent-State contended that the conclusions arrived at by both the courts below could not be said to be unwarranted and keeping into account the nature of offence and the social impediments and ostracism involved and normal hesitation to rush to the police or courts on such grievance, the question of three days delay in disclosing the unfortunate occurrence and the subsequent lodging of the FIR on 10.2.1987 cannot be pressed into service to totally condemn the prosecutrix or disbelieve her version as not true. It was also further urged that the claim based on alleged enmity was one invented for the occasion and as long as the evidence of PW 9 was found to inspire confidence and truthful there can be no impediment for the courts to accept and act on it as the sole basis for conviction and consequently the concurrent findings recorded by both the courts below cannot be said to suffer from any infirmity to call for our interference on an appeal in exercise of our powers under Article 136 of the Constitution of India.

We have carefully considered the submissions of the learned counsel appearing on either side. In our view, both the courts below have given proper, cogent and convincing reasons after an elaborate detailed independent and exhaustive consideration of the evidence on record. The findings so recorded, in our view, are not shorn to suffer from any infirmity of the nature which could justify call our interference in exercise of powers under Article 136 of the Constitution of India. The relevant reasons for the delay in disclosing the occurrence as also in approaching the police to lodge the complaint have been found to be properly explained and as noticed above in spite of intensive cross examination the credibility of PW 9 as a witness speaking the truth could not be successfully challenged. We also find that some of the suggestions put during the course of cross examination to PW 9 itself would go to further strengthen the claim of rape alleged against the accused, rather than cast any shadow of doubt as to the case of the prosecution. Consequently, we see no reason to countenance the challenge to the judgments of the courts below. The appeal fails and shall stand dismissed.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)

New Delhi,
APRIL 06, 2004

