

CrI.A.No. 983 OF 1998
ITEM No.108

Court No. 10

SECTION IIA

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

CrI. Appeal No. 983 of 1998

Ehsan Qureshi

...

Appellant (s)

VERSUS

State of M.P.

...

Respondent (s)

(With office report)

Date : 23/03/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N.AGRAWAL
HON'BLE DR. JUSTICE AR.LAKSHMANAN

For Appellant (s) Mr. S.K.Gambhit, Sr. Adv.
Mr. Aditya Sharma, Adv.
Mr. Anil K.Sharma, Adv.
Mr. T.N.Singh, Adv.

For Respondent (s)Mr. R.P.Gupta, Sr. Adv.
Ms. Kamakshi S.Mehwal, Adv.
Mr. Prakash Jha, Adv.

UPON hearing counsel the Court made the following
O R D E R

The criminal appeal is allowed. The impugned judgments are set aside and the appellant is acquitted of the charge. The appellant who is on bail is discharged from the liability of bail bonds.

(Shashi Sareen)
Court Master

(Gyan Bhatia)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 983 OF 1998

EHSAN QURESHI

...

Appellant (s)

Versus

STATE OF M.P.

...

Respondent (s)

O R D E R

Heard the parties.

The sole appellant was convicted by the trial court under section 376 of I.P.C. and sentenced to undergo rigorous imprisonment for a period of 7 years. On appeal being preferred the High Court of Madhya Pradesh upheld the conviction. Hence this appeal by special leave.

The prosecution case in short was that on 3rd December, 1986 at about 2 O' clock in the afternoon when the prosecutrix Sabia Kumari aged 18 years was alone in her house, her mother having already gone for attending duty in the Municipal Corporation, the appellant entered the house, bolted the door from within, committed rape upon her and thereafter went away after giving out threats to her. In the evening when the mother returned to house, no disclosure was made to her in that evening inasmuch as these facts were not disclosed to the mother for ten days and after ten days for the first time when the matter was disclosed to the mother by the prosecutrix, steps were taken for Panchayat and the same having failed, first information report was lodged after two months and six days of the date of the alleged occurrence on 9.2.1987 by the prosecutrix Sabia Kumari.

The police after completing investigation submitted a charge sheet, on receipt thereof the magistrate took cognizance and committed the appellant to the Court of Sessions to face trial.

The defence of the appellant was that no occurrence as alleged had taken place and he was falsely implicated in the present case as members of the prosecution party wanted to marry the prosecutrix with the appellant which was refused by the appellant as well as his family members. During trial the prosecution examined five witnesses in all, out of whom PW1 is the prosecutrix herself, PW2 is her mother, PW3 & 5 are the formal witnesses and PW4 is the Doctor who is said to have examined the prosecutrix. Upon the conclusion of trial the appellant was convicted by the trial court as stated above and the same having been confirmed, the present appeal before us.

Learned counsel for the appellant in support of the appeal very fairly placed before us the evidence of prosecutrix and her mother and submitted that the chances of prosecutrix being a consenting party cannot be ruled out as would appear from the facts stated hereinafter. The prosecutrix, PW1 stated that she and sister of the accused were friends and the accused had on several occasions visited her house, sometime alone and sometime with his sister prior to the date of occurrence. According to her evidence the accused after entering the house bolted the door from within, but there is no evidence to show that when accused bolted door from inside, the prosecutrix raised any hue and cry. When the mother of the prosecutrix returned in the evening no complaint was made to her on that day inasmuch as no disclosure of the fact of commission of rape was made before the mother for a period of ten days which does not appear to be natural conduct of the prosecutrix.

From the evidence of PW2, mother of the prosecutrix, it appears that steps were being taken for reconciliation between the parties and when that attempt failed, the same necessitated filing of the present case. Age of the accused was 26 years, that of the prosecutrix 18 years, both undisputedly belong to one community and they were on visiting terms. The chances of reconciliation may mean that steps were taken to persuade the appellant to marry the prosecutrix which was quite natural and when the same failed the present case was filed after more than two months from the date of the alleged occurrence. In view of the foregoing discussion, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in confirming conviction of the appellant.

In the result the appeal is allowed, the impugned judgments are set aside and the appellant is acquitted of the charge. The appellant who is on bail is discharged from the liability of bail bonds.

.....J.

(B.N.AGRAWAL)

.....J.
(DR. AR. LAKSHMANAN)

New Delhi,
MARCH 23, 2004.