

HIGH COURT OF MADHYA PRADESH, JABALPUR

Misc. Criminal Case No.22431 of 2015

State of Madhya Pradesh

Vs

Gulab Chand Kahar

**Present : Hon. Shri Justice S.K.Gangele
Hon. Shri Justice Anurag Shrivastava**

Shri Vivek Lakhera, P.L. for petitioner/State.

Whether approved for reporting : Yes/No

Per Anurag Shrivastava, J :

ORDER
(8.3.2017)

Being aggrieved by the judgment of acquittal dated 14.05.2015, passed by Special Sessions Judge, SC/ST (Prevention of Atrocities) Act, 1988, Anuppur, in Special Case No.66/2013, whereby the respondent/accused has been acquitted of the offences under Sections 376(2)(n), 506(Part-2) of IPC and section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, this petition for grant of leave to appeal under Section 378(3) of Cr.P.C., has been preferred by State.

2. The case of prosecution in brief is that on 10.8.2013 the prosecutrix lodged a report in police station Ajak, Anuppur stating that about four years ago when prosecutrix was sitting

in the backyard of her house, the respondent/accused came there and forcefully took her to nearby field and committed rape on her without her consent. She tried to make a hue and cry, but was silenced by the accused by threatening her and also by making her believe that he would marry her. Even after this incident, he had sexual relations with her on more than one occasion for last four years on the pretext of marriage. Some days before lodging of report, when prosecutrix repeatedly made demand for marriage, the respondent denied to marry her. Prosecutrix came to know that the respondent was already married and had children. Thereafter, the prosecutrix lodged the complaint before police as stated above.

3. On complaint of prosecutrix a FIR Ex.P-1 has been recorded and an offence under section 376(2)(n), 506(Part-2) of IPC and section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has been registered against the respondent and after usual investigation a charge-sheet has been filed in the Court. The trial Court framed the charges under section 376(2)(n), 506(Part-2) of IPC and section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 against the respondent, he abjured guilt. After recording of evidence the trial Court passed the impugned judgment and acquitted the respondent on the ground that the prosecutrix is a consenting party and no offence has been found proved beyond reasonable doubt against the respondent.

4. It is argued by learned counsel for the petitioner/State that from the statement of prosecutrix, it is proved that the accused had committed rape and thereafter had sexual

intercourse with the prosecutrix on several occasions during last four years on the false pretext of marriage. The respondent/accused was already married having children. The consent of the prosecutrix was obtained on false representation and promise. Therefore the trial Court had wrongly acquitted the accused treating the prosecutrix as consenting party. The findings of the trial Court are erroneous, arrived at on wrong appreciation of evidence and liable to be set aside. Thus, the leave to appeal may be granted.

5. Considering the arguments of learned counsel for State and on perusal of record, it appears that the main allegation against the accused is that he obtained the consent of prosecutrix on false representation that he intends to marry her. Therefore, this aspect of case whether the prosecutrix has made relations with the accused on her free will or whether her consent was obtained on false representation has to be considered.

6. In the case of **Deelip Singh Vs. State of Bihar** [(2005) 1 SCC 88] Hon'ble Apex Court while defining the consent under section 90 of IPC in para 12 and 14 observed that :

"Section 90 IPC, though, does not define "consent", but describes what is not consent. It says that a consent is not such a consent as is intended by IPC (Sections 375 and 376 IPC in this case) if it is given under a misconception of fact. A misrepresentation as regards the intention of the person seeking consent i.e. the accused, could give rise to the misconception of fact. The consent given pursuant to a false representation that the accused intends to marry, could be regarded as consent given under misconception of fact. But a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90 IPC."

7. The prosecutrix lodged the report after four years of the first instance of alleged rape. From the statement of prosecutrix P.W.1 and eye witness P.W.5, it appears that on the same day, when accused committed rape on prosecutrix first time, this fact was brought into the notice of mother of prosecutrix, but no report of this incident had been lodged to police. Prosecutrix (P.W.1) in her statement admits that she had relations with the accused/respondent for the last four years, because the accused had made a promise to marry her. The parents of the prosecutrix P.W.6 (mother) and P.W.11 (father) also admitted this fact and stated that they knew that the prosecutrix and accused had sexual relations. Prosecutrix (P.W.1) in cross-examination para 14 has admitted that her relationship with the accused was known to everybody in the village and when village community objected to it and outcasted her, she had started living with the accused.

8. Thus, from the statement of the prosecutrix and her parents it is found that the prosecutrix and accused were in love and having relationship for the last four years. During this period the prosecutrix had physical relations with the accused. She lived with the accused in his house openly for long time.

9. Prosecutrix and accused are residents of same village. Accused was living with his wife and children in his house. Prosecutrix in cross-examination para 14 admitted that she had visited the house of accused and met his mother and wife also. The statement of prosecutrix that the accused had introduced his wife to her as maid servant, does not inspire confidence. It is not possible that in the same village, where prosecutrix and accused are living since birth, prosecutrix

could not get information of the fact that the accused was a married person having children. During four years of relationship, it is not stated by the prosecution witnesses when prosecutrix or her parents asked the accused or his parents for marriage of prosecutrix with the accused. There is not even a whisper that they approached the respondent or his family members for marrying the prosecutrix. If prosecutrix was having relationship with the accused on promise of marriage, then it would be natural for her to make demand of performance of marriage within reasonable time. For four years not making any demand for marriage is not natural. Thus the conduct of the prosecutrix creates doubt on her evidence.

10. The finding of the trial Court in the present case is correct that the prosecutrix was aware that the respondent was already married person. It is not proved that accused had concealed the fact of his marriage from prosecutrix. The prosecutrix made sexual relations with the respondent/accused knowingly that he was a married person. It is not believable that the accused gave a false promise to marry her and persuaded her to make sexual relationship with him. It is also not proved that consent of prosecutrix has been obtained by misrepresentation and misconception of facts. Prosecutrix is a major woman, competent to give consent as per her will. For the offence of rape, it is necessary to prove beyond reasonable doubt that the sexual intercourse was committed against her will or without her consent.

11. Therefore, the trial Court has rightly held the respondent not guilty of the alleged offence of rape. Thus there is no substance in this appeal.

12. Consequently, the prayer for leave to appeal is dismissed.

(S.K.GANGELE)
JUDGE

(ANURAG SHRIVASTAVA)
JUDGE

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