

M.Cr.C. No.5837/2010

30.8.13

Per B.D.Rathi,J

Shri S.K.Kashyap, Government Advocate for the applicant-State.

Shri Kamlesh Mishra, Advocate for the respondent.

Heard on I.A. No.10494/10 for condonation of delay in filing this application for leave to appeal.

As per Office note, the application is barred by 52 days.

Considering the reasons assigned therein, the I.A. is allowed and the delay in filing the appeal is hereby condoned.

Heard on admission.

This application for grant of leave to file appeal has been preferred under Section 378(3) of the Code of Criminal Procedure being aggrieved with the judgment dated 29/1/2010 passed by Sessions Judge, Tikamgarh in Sessions Trial No.28/09, whereby respondent Shobharam has been acquitted of the offences punishable under Sections 376 and 450 of the Indian Penal Code ("IPC" for short).

Prosecution case, in brief, is that in the night of 5/12/08, when the prosecutrix was all alone in her home, at about 9 p.m., respondent trespassed into her house and subjected her to rape. Hearing her shouts, Pappu Yadav (PW3), Gourishankar Yadav (PW2), Pappu Kushwaha, Dhaniram Kushwaha, Kura Kushwaha and Midla Kushwaha (PW4), arrived at the spot and they all witnessed the incident. Before them, the respondent fled in a naked condition while threatening that she would be killed if she lodged the report. Report of the incident was lodged by the prosecutrix on 12.30 the same night upon which Crime No.396/08 was registered and after investigation, charge-sheet was filed.

Learned Government Advocate submitted that the impugned judgment was passed without proper appreciation of evidence on record and deserved to be set-aside.

Having regard to the arguments advanced by learned Government Advocate, we have gone through the impugned judgment and record of the trial Court.

Prosecutrix (PW1) testified that on the date of incident, at about 9 p.m., while she was sleeping with her son Chandan, aged about 5 years, and her mother-in-law and sister-in-law were asleep in the adjacent rooms and there was none else in home as her husband, his younger brother and father were suffering incarceration for last 5 years and the door of the room was bolted from inside, respondent came and knocked the door and on not opening the same, broke the door and subjected her to rape. However, her evidence was not supported by the witnesses named in the FIR, who allegedly had reached on the spot, and they were declared hostile by the prosecution. Besides this, Investigating Officer, Virendra Singh (PW8), Assistant Sub Inspector, deposed that during the investigation, he had prepared the spot map (Ex.P/2) and had not found that either the door was broken or there were blood stains on the spot, as stated by the prosecutrix. That apart, prosecutrix deposed that she was burnt by the respondent with a *Bidi* on stomach, thigh and hand, but, this evidence was also not corroborated by Dr.Sheelu Johri (PW5), who had examined the prosecutrix and prepared the medical report (Ex.P/7). Mother-in-law of prosecutrix Ramkunwar (PW10) admitted in her evidence that her son, who is the husband of prosecutrix, had committed the murder of uncle of respondent and was suffering custody in that case and, therefore, they were having animosity with the respondent. In the aforesaid premises, the trial Court found that prosecution had failed to prove its case beyond a reasonable doubt.

We agree with the findings recorded by the trial Court.

It is well settled that the judgment of acquittal should not be disturbed unless the conclusions drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable.

Taking into consideration the reasons assigned on the face of evidence on record establishing the aforesaid facts and

circumstances, the view taken by the learned trial Court was apparently a possible view. As such, no interference is called for with the judgment of acquittal in question.

The application for grant of leave to file appeal, being devoid of merit and substance, stands dismissed.

(AJIT SINGH)
JUDGE

(B.D.RATHI)
JUDGE

AKM