
(2013) 04 AHC CK 0227
In the Allahabad High Court
Case No : Criminal Revision No. 711 of 2013

Amarjit Singh Shahi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 227, 397, 401
Penal Code, 1860 (IPC) — Section 328, 354, 363, 366, 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2013) 3 ACR 3311 : (2013) 5 ADJ 45 : (2013) 81 ALLCC 895

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : Rajiv Gupta, Dileep Kumar, Manu Raj Singh and Rajrshi Gupta, for the Appellant; Ravi Kiran Jain, L.M. Singh, P.K. Singh and Prabhakar Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—Heard Sri Dileep Kumar, learned counsel for the revisionist, learned A.G.A. for the State as well as Sri Ravi Kiran Jain, senior advocate assisted by S/Sri L.M. Singh, Prabhakar Awasthi and P.K. Singh, learned counsel for the complainant. This criminal revision u/s 397 /401 Cr.P.C. is directed against order dated 8.2.2013 passed by Special Judge, S.C./S.T. Act, Kanpur Nagar in Sessions Trial No. 53 of 2012 [State v. Amarjit Singh Shahi] arising out of case crime No. 534 of 2012 under Sections 363, 366, 354, 504, 506, 328,376IPC and Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, P.S. Chakeri, District Kanpur Nagar whereby the application for discharge u/s 227 Cr.P.C. filed on behalf of the revisionist was rejected.

2. The alleged victim (name withheld) is the daughter of the complainant Capt. Mahesh Chandra Vidyarthi - opposite party No. 2. On 14.3.2012, FIR was lodged by the victim herself against one Shravan and also against her own father

alleging that for the last many years, she was being raped by Shravan, who used to visit her house and her father also committed rape with her. A case crime No. 32 of 2012 u/s 376 IPC was registered at P.S. Cantt., District Kanpur Nagar. In the same crime number, identical statement was given by the victim u/s 161 Cr.P.C. Her statement u/s 164 Cr.P.C. was recorded on 16.3.2012 wherein the victim stated that she consumed poison as her school examination was unsatisfactory, no rape was committed with her by her father or the revisionist. On 15.3.2012, another FIR was lodged by opposite party No. 2 against the revisionist making serious allegations against the revisionist including rape with his daughter. This FIR was registered at case crime No. 534 of 2012 under Sections 363, 366, 354, 504, 506, 328 and 376 IPC and Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 at P.S. Chakeri, District Kanpur. Investigation was subsequently handed over to Jai Narain Singh, Circle Officer, who submitted charge-sheet.

3. In the statement u/s 161 Cr.P.C., the victim stated that she was drugged and raped by the revisionist and her pornographic photographs were taken by the revisionist on mobile phone and MMS was prepared and she and her father were regularly blackmailed and threatened by the revisionist.

4. Sri Dileep Kumar contends that at the relevant time, the revisionist was posted in Kanpur Nagar in Police Department as a Circle Officer. According to Paragraph 486(1)(3) of the U.P. Police Regulations, the investigation should have been conducted by an Officer higher in rank than the Officer charged. It was contended that investigation by a Junior Officer is not permissible in law and the investigation is tainted and it has caused prejudice to the revisionist.

5. The second ground of attack is that the victim was examined twice, once in crime No. 32 of 2012 of P.S. Cantt. and on second occasion, in crime No. 534 of 2012 of P.S. Chakeri and both the statements are contradictory. In the earlier statement u/s 164 Cr.P.C., the victim did not make any allegation against the revisionist and in her subsequent statement in crime No. 534 of 2012 of P.S. Chakeri, the victim gave the statement as a tutored witness, who was under influence of her father.

6. Learned A.G.A. as well as learned counsel for the complainant supported the impugned order and submitted that contention regarding Paragraph 486(1)(3) of the U.P. Police Regulations was not raised before the trial Court and this point cannot be raised for the first time in revision. Regarding second point, it was contended that at this stage, the appreciation of evidence is not permissible.

As regards the contention regarding Paragraph 486(1)(3) of the U.P. Police Regulations, it has been contended that the aforesaid provision is mandatory and any violation of the same may render the charge-sheet submitted by the investigating officer to be a nullity.

7. I do not agree with this submission. Firstly, on account of the fact that the investigation was done by an Officer of the same rank, though he was junior to

the revisionist and secondly that this point was not raised on behalf of the revisionist before the trial Court and lastly, it is incumbent on the part of the revisionist to show that he has been prejudiced by the investigation conducted by a Junior Officer. Whether the revisionist has been prejudiced on account of investigation being conducted by a Junior Officer and in what manner, has to be demonstrated by the revisionist during trial through cross-examination of the witnesses and the investigating officer and by placing other material before the trial Court through defence evidence. At this stage, it would not be proper for this Court to assume that prejudice has been caused to the revisionist. So far as the second point is concerned, whether the first statement of the victim u/s 164 Cr.P.C. is correct, which was recorded in crime No. 32 of 2012 pertaining to P.S. Cantt. or the second statement recorded u/s 164 Cr.P.C. in crime No. 534 of 2012 of P.S. Chakeri is correct, is a matter of appreciation of evidence, which cannot be undertaken by this Court at the stage of framing of the charge or considering the question of discharge. Even the trial Court cannot undertake an exercise to analyse the material available in the case diary threadbare at the stage of charge. This job is to be performed by the trial Court after evidence of the parties at the stage of final judgment.

The point, regarding prejudice to the revisionist, if any, on account of investigation being conducted by a Junior Officer, has to be considered by the trial Court at the time of judgment if Paragraph 486 (1) (3) of the U.P. Police Regulations applies.

The second point, regarding credibility of the statement of the prosecutrix, has also to be decided by the trial Court at the time of judgment after the victim is examined in Court. The credibility of the victim cannot be prejudged even before her examination in Court.

At this stage, I do not find any ground for discharge. The impugned order does not suffer from any illegality and no ground for interference is made out and the revision is accordingly dismissed.