
(2007) 04 AHC CK 0205
In the Allahabad High Court

Beta Lal and Sri Vijai Shanker Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Penal Code, 1860 (IPC) — Section 376
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Citation : (2007) 04 AHC CK 0205

Hon'ble Judges : Shiv Shanker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Shanker, J.—This criminal appeal has been filed on behalf of appellants Beta Lai, son of Sri Ram Charan and Sri Vijai Shanker Singh, son of Sri Ram Krishna against the impugned Judgment and order dated 7.7.1988 passed by Special Judge, (E.C. Act), Banda in Sessions Trial No. 49 of 1986, convicting appellants to undergo ten years R.I. And to pay a fine of Rs. 500/- u/s 376 I.P.C. and in default of payment of fine, the accused persons shall further undergo six month R.I. In Sessions Trial No. 49 of 1986 State v. Beta Lal and Anr. of police station Kotwali, District Banda.

2. Brief facts arising out of this appeal are that the complainant Kamla Bai along with her lover Sri Dharam Singh and his companion Mohan Lal, residents of Mohalla Bhan Talaiya, P.S. Hanuman Tal, District Jabalpur came to Banda by train after having Darshan of the Goddess at Maihar. At about 1 a.m. they were sitting at the platform of Railway station Banda. In the meantime, two constables of P.S.G.R.P., Banda came there in the plain dress. One of them interrogated her at the platform and told that their bonafides seem to be doubtful and they should accompany them and they would detain them and on this pretext, both the

aforesaid persons carried her into the quarter situated near the Pipal tree below the platform stopping her lover and his companion at the distance of about 10-15 steps from the room after threatening them to send the jail, in case they would raise alarm. Thereafter both the police personnel after closing the room, committed rape on Kamla Bai forcibly without her consent. She tried to raise alarm but they used to press her mouth and after committing rape upon her, they left her along with her lover and his companion. Unknown third person also reached there and started the matter of sexual intercourse, but any how she saved herself. The incident was witnessed by the complainant's lover Dharam Singh and his companion Mohan Lal and they went to police station Kotwali Banda and submitted the written report there on 17.4.85 at 7.30 a.m. and on the basis of the written report, the case was registered against the accused Beta Lai, Vijai Shankar Singh and one unknown person u/s 376 IPC. and the case was investigated by S.I. Sri Ram Bahadur Yadav. She was also medically examined. No mark of injury was present on her body and no definite opinion about rape was given. After completion of the investigation, the charge sheet was filed against both the accused persons and they were charged u/s 376 I.P.C. They have pleaded not guilty to the charge levelled against them and have claimed to be tried. Accused Beta Lal and Vijay Shanker Singh have further stated u/s 313 Cr.P.C. that there was enmity with the journalists, so they have been implicated falsely by them.

3. The prosecution has examined Kamla Bai P.W. - 1, Dr. M.C. Mittal P.W. - 2, Dr. P. Kumar P.W. - 3, Sri Shobaran Singh, Head Constable P.W. - 4, Sri Ram Bahadur Yadav I.O., P.W. - 5 and Sri Rajendra Pratap Singh, S.P. Intelligence, Lucknow P.W. - 6. Kamla Bai P.W. - 1 is the only witness of fact in this case.

4. The trial court has convicted accused appellants for the charges levelled against them as above. Feeling aggrieved by it, this criminal appeal has been preferred.

5. Heard Sri P.N. Misra, learned Senior counsel appearing for appellants and learned A.G.A. as well as perused the whole record.

6. Learned Counsel for the appellants has contended that they are not named in the F.I.R. They were also not named by the prosecutrix in her statement recorded u/s 161 Cr.P.C. and 164 Cr.P.C. She did not know the appellants prior to the alleged occurrence. No any other witnesses like Dhabewala and Press Reporters have been examined in support of the prosecutrix. The appellants had been firstly identified in the court during the course of trial when the statement was being recorded and no identification parade was made against the appellants. In such circumstances, identity of appellants have become suspicious. However, the court below has committed error and illegality by convicting the appellants for the charge levelled against them.

7. On the other hand, learned A.G.A. has urged that there was sufficient evidence on record against the appellants. Therefore, the trial court has not

committed error or illegality in convicting the appellants as they have been named by the prosecutrix.

8. According to the F.I.R., P.W. - 1 Smt. Kamla Bai did not know the appellants prior to the alleged occurrence. After occurrence, the names of the appellants were disclosed by other persons who were present at the platform of Railway Station Banda. Therefore, she has nominated the present appellants by name in her F.I.R.

9. The question of identity of the appellants has been challenged by learned Counsel for the appellants. The factum of rape has not been challenged during the course of arguments. P.W. - 1 Kamla Bai is the prosecutrix who has only been examined on behalf of prosecution during the course of trial. She has stated in her deposition that she knows the accused Beta Lal and Vijay Shankar Singh as they met with her at the time of incident. She has also stated according to the facts mentioned in the F.I.R. that after committing offence of rape, she, her lover Dharam Singh and his friend Mohan Lal returned to the Railway Station and enquired from the Press Reporters and persons available at the Railway Station regarding whereabouts of the accused who committed offence of rape with her, upon which they disclosed the name of accused as police personnel Beta Lal and Vijay Shankar Singh and with the help of Press Reporters she had gone to the concerned police station and lodged the F.I.R. against both the accused persons who are the present appellants. Therefore, the testimony of P.W. - 1 reveals that she had seen the appellants firstly at the time of incident and they were not known by her prior to this incident. The names of appellants were disclosed by the persons available at the platform and the Press Reporters. The appellants were not arrested on the spot. Therefore, the appellants were also seen in the second time in the court when her statement was being recorded in the trial when P.W. - 1 did not know the appellants prior to this incident and appellants were not arrested on the spot in committing offence of rape. Her lover Dharam Singh and his friend Mohan Lal also did not know the appellants prior to this incident. In such circumstances, it was essential that identification parade should have been held for identification of appellants from the prosecutrix P.W. - 1, her lover Dharam Singh and his friend Mohan Lal. In this regard she has specifically admitted in her cross-examination that Mere Mulziman se pahale se koi mulakat jan pahichan nahin thee. Mulziman ke karvasinakht mujhse nahin karai thee". Therefore, the appellants had been seen by P.W. - 1 firstly at the time of incident and secondly at the time of recording her statement during trial, wherein the appellants were identified in the court. In absence of identification parade from P.W. - 1, identification made in the court during trial, has no significance. It was bounden duty upon the Investigating Officer who could hold identification parade regarding appellants from P.W. - 1 and other witnesses who did not know them prior to this incident. It is also worthwhile to mention here that her lover Dharam Singh and his friend Mohan Lal had also not been examined on behalf of prosecution for supporting testimony of P.W. - 1, although they also did not know the appellants prior to this incident and no identification parade was held by the

Investigating Officer from this witness for identifying the appellants. It is also worthwhile to mention here that P.W. - 1 has admitted in her examination-in-chief that after the incident she returned to the Railway Station Banda and contacted the persons stood there and Press Reporters. Consequently she could know the name of both the appellants. Therefore, those persons available at Railway Station or Press Reporters who were most important witnesses who told the name of appellants at Railway Station and on that basis, the F.I.R. was lodged by P.W. - 1 against the appellants. In such circumstances, the statements of such persons and Press Reporters should have been recorded by the Investigating Officer in this case. P.W. - 5 Ram Bahadur Yadav S.I. has admitted in his cross examination that he did not record the statement of Station Master, owner and servant of Canteen situated at Banda Railway Station-platform. He also did not record the statement of persons present at the waiting room at the time of incident and the statement of any neighbour of such quarter was also not recorded by him. He further admitted in his cross-examination that he never went inside the quarter and never made inspection where offence of rape was committed. Therefore, the statement of other persons available at the platform and Press Reporters etc. had not been recorded by the Investigating Officer who could establish the identity of the appellants in absence of identification parade of the appellants. Therefore, such persons and Press Reporters etc who knew the appellants prior to this incident, could not be produced in evidence in support of testimony of P.W. - 1. This is the gross negligence on the part of Investigating Officer who did not record the statement of above persons u/s 161 Cr.P.C. There is only one evidence of P.W. - 1 who identified the appellants in the court at the time of recording her statement during i.ial. This identification has no value as no identification parade was held earlier regarding appellants.

10. Learned Counsel for the appellants has invited my attention towards the decisions of Hon. Apex Court in case of Sohan and Another Vs. State of Haryana and Another, in case of Kanan and Others Vs. State of Kerala, and in case of Jaspal Singh alias Pali v. the State of Punjab with Darshan Singh and Ors. v. State of Punjab reported in Mode of Citation 1997 S.C. Cri.R. 616 The Supreme Court.

11. I Therefore, identity of appellants merely on the basis of statement of P.W. - 1 is liable to be suspicious at the time of incident. In absence of any other evidence on record, offence of rape could not be proved against the appellants. However, the appellants have been convicted by the trial court by committing manifest error of fact & law and the appellants could not be convicted for the charges levelled against them merely on the basis of testimony of P.W. - 1.

12. In view of above discussion, this appeal deserves to be allowed and impugned Judgment and order passed by the trial court is liable to be set aside.

13. Thus this criminal appeal is hereby allowed. The impugned Judgment and order dated 7.7.1988 passed by the trial court, by which the appellants were convicted for the charges levelled against them, is hereby set aside and their

conviction is also set aside and they are acquitted by giving benefit of doubt for the charges levelled against them.

14. The appellants were on bail during the appeal. Therefore, their bail bonds are cancelled and their sureties are discharged.