
(2012) 08 AHC CK 0022
In the Allahabad High Court
Case No : Criminal Appeal No. 5367 of 2008

Bhaiya Lal Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xii), 3(2)(v)

Citation : (2012) 3 ACR 3265

Hon'ble Judges : Vijay Prakash Pathak, J; Amar Saran, J

Bench : Division Bench

Advocate : G.K. Maurya, Satyendra Singh, R.N. Shukla and B.K. Tripathi, for the Appellant;

Judgement

Amar Saran, J.—This criminal appeal arises from the judgment of the Additional Sessions Judge/Special Judge, S.C./S.T. (Prevention of Atrocities) Act, Fatehpur dated 30.7.2008, whereby the appellant Bhaiya Lal Pal has been sentenced to 7 years R.I. and a fine of Rs. 3,000 u/s 376, I.P.C. In default of payment of fine, he has to undergo further simple imprisonment for four months. u/s 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (hereafter the S.C./S.T. Act) the appellant has been sentenced to imprisonment for life with a fine of Rs. 5,000. In default of payment of fine, he was to undergo six months simple imprisonment. The prosecution case as disclosed in the F.I.R. lodged by Bipati on 21.2.1999 at P.S. Khaga was that on 21.2.1999, the victim, P.W. 1, the wife of Bipati had gone to cut mustard branches from the field of Badloo Lodh in village Padari. The appellant, who was watering his field asked the victim to pick up his fodder. When P.W. 1 proceeded to pick up the fodder, the appellant snatched the hasia from her hand and at about 11 a.m. he hurled her in a wheat field. When the victim raised a cry, he closed her mouth and threatened her that if she made a noise he would kill her and thereafter he committed rape on her. The informant was present at the canal at that time. When his wife reported the

matter to him, the informant went towards the field of the appellant, which led the appellant to flee to his own house and to lock himself inside. With the help of villagers, the appellant was apprehended and taken to the police chauki. The villagers were pressing the parties for a compromise. But as the incident had taken place with the wife of the informant, the informant caught hold of the appellant and took him to the police chauki alongwith the victim. The appellant was handed over to the police. The S.H.O. P.S. Hathgam was also given the yellow coloured petticoat worn by the victim, which bore semen marks. They also took the underwear of the appellant, which also had semen marks, which were encircled with a sketch pen. The investigation was conducted by C.O. Hathgam, Banshi Dhar Mishra. He was however not examined, as he had died before he could be examined during trial. The charge-sheet and site plan prepared by Banshi Dhar Mishra were proved by P.W. 5, S.I. Durgesh Chandra Srivastava.

2. The victim was got medically examined at Women's Hospital, Fatehpur by P.W. 3, Dr. Suraiya Jabin on 22.9.1999. No mark of injury was seen on her person. The vagina was well dilated and easily admitted two fingers, old tabs of torn hymen with healed up edges were present. Vaginal smear was taken and sent for histopathological examination for presence of spermatozoa. The report of the Pathologist District Women Hospital, Fatehpur dated 23.2.1999 indicates that there was no evidence of any living or dead spermatozoa in the smear slides provided. However, on the petticoat and underwear semen and spermatozoa were seen. As per the radiological examination, the age of the victim was determined to be about 30 years.

3. Charges were framed against the accused u/s 376, I.P.C., 3 (1) (xii) and 3 (2) (v) of S.C./S.T. Act, to which the appellant pleaded not guilty and claimed trial.

P.W. 1 the victim and P.W. 2 Bipati, the informant are the witnesses of fact. P.W. 3 Dr. Suraiya Jabeen medically examined the victim and P.W. 4 Dr. K.P. Singh conducted the radiological examination. P.W. 5 Durgesh Chandra Srivastava proved the steps taken in the investigation of this case by C.O., Banshi Dhar Mishra.

P.W. 2 Bipati, the informant, who is the husband of the victim, has deposed that he knew the appellant Bhaiya Lal from before. He was a co-villager. The appellant was of gadariya caste, whereas the informant was a chamar by caste. At that time, his wife had gone to cut wood in the field of Badloo Lodh, resident of village Padari. The appellant Bhaiya Lal was watering his field. The appellant asked his wife to pick up the fodder. When his wife tried to pick up the fodder the appellant snatched the hasia from her hand and hurled her in the wheat field. When his wife tried to cry out, he forcibly shut her mouth and warned her that if she raised a cry, he would kill her. Then the appellant committed rape on his wife. Then his wife came to him and disclosed the facts about the incident. When he ran towards the appellant's field, then the appellant ran away and entered into his house and locked the door. With the aid of villagers, he arrested the appellant and took him to the police chauki, where he dictated the report to

Prem Shankar. The victim's petticoat and the appellant's underwear were taken by the police.

P.W. 1 reiterated the aforesaid facts mentioned in the F.I.R. in her examination-in-chief.

4. In his 313, Cr. P.C. statement, the appellant admitted that he belonged to a backward class, whereas the victim belonged to the chamar sub-caste, a scheduled caste. However, he pleaded that a false F.I.R. has been lodged against him and that the report of the Forensic Laboratory was fabricated. The complainant had taken Rs. 10,000 as loan from the appellant and had falsely implicated him when he demanded return of the money.

5. We have heard Sri B.K. Tripathi, learned counsel for the appellant and the learned A.G.A.

6. Sri Tripathi urged that as the appellant had already been in jail for over 4-1/2 years, which included the period spent in jail after conviction, i.e., from 30.7.2008 as well as the four months period that the appellant had spent in jail after he was arrested on 21.2.1999 until he was granted bail on 1.6.1999 during trial.

7. Learned counsel for the appellant also submitted that he had no objection, if instead of recording a finding of acquittal on merit in the present case, this Court could be pleased to dispose of the appeal on the question of sentence.

8. Learned A.G.A., on the other hand, contended that there was no illegality or impropriety in the findings of the trial Judge convicting and sentencing the appellant as above.

9. As we are not called upon to express our opinion on merit in this matter, it may be assumed for the sake of argument that the prosecution has succeeded in proving the charge of rape against the appellant only on the evidence of victim P.W. 1 and her husband Bipati, P.W. 2, the informant. The question that we need to consider is whether there are any grounds for reducing the sentence awarded to the appellant.

10. It may be noted that the present case is not a case of rape with a minor girl or a case of gang rape, but it is a case where intercourse has taken place with a married woman aged about 30 years. The medical report also does not give any indication of any Injury on the victim or the appellant, which could have conclusively established that the appellant committed forcible rape against the will of the victim. Ordinarily it is very difficult for a single male person to commit rape on a fully grown-up woman without her struggling with the accused with all her might, which could have resulted injuries to the victim and sometimes on the appellant also. It is the prosecution case that after the appellant had taken a hasia from the hands of victim he had thrown it aside and thus he was unarmed. Therefore, he was not in possession of any weapon to cause her injury or for threatening her to comply with his wishes. The victim has deposed that the

appellant had tried to stop her on the way and threatened her that if she disclosed this fact to any one, he would shoot her. But, immediately after the incident, the victim claims to have gone to her husband who met her on the way and to have disclosed the facts to him. When, her husband arrived at the field, the appellant ran away to his house and locked himself there and thereafter he was meekly apprehended when the villagers arrived at his house. This also indicates a singular lack of aggressive behaviour on part of the appellant. It has also come in the evidence that between 3 p.m. to 7 p.m., there was a discussion amongst the villagers that the matter be compromised. But as no compromise was arrived at, the report was lodged at 7.15 p.m. Consequently, the report was lodged after a delay of 8 hours and 15 minutes as the Incident had taken place at 11 a.m. The mere presence of spermatozoa and semen on the underwear of the appellant and petticoat of the victim only indicates that sexual intercourse had taken place between the parties. It does not give any indication that the said intercourse was committed forcibly. Although the victim claimed in Court that the appellant had thrown her down and she had received some injury on her head. It is noteworthy that the doctor had not found any external or internal injury on the victim and there was no spermatozoa in the vaginal smear.

11. Our attention was also drawn to a line in the cross-examination where the victim has admitted that she had entered the field only on a signal given by the appellant to pick up the fodder. It is also mentioned that the victim had sent away her two children, who were earlier with her. However, as under ordinary circumstances there was no reason for the victim, a married lady to have falsely preferred a charge of rape against the appellant, we find no reason to differ from the finding of the trial Judge recording a finding of guilt u/s 376, I.P.C. against the appellant.

12. However on the totality of circumstances mentioned above, we think that as the victim was an adult married woman over 30 years in age, who had suffered no internal or external injuries, when the appellant single handedly committed rape on her, and that this was neither a case of rape with a minor nor a gang rape. Also the victim appears to have entered the field of the unarmed appellant on his signal, after her children had gone away from the place. The appellant was also meekly arrested from his house by the informant, the husband of the appellant and other villagers soon after the incident. The F.I.R. was delayed as there was a local panchayat to settle the dispute. We think in these mitigating circumstances the special reasons needed for reducing the sentence of the appellant u/s 376, I.P.C. are present.

13. So far as the charge u/s 3 (2) (v) of the S.C./S.T. Act is concerned, the material provision reads as follows:

3 (2); Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property

on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

According to Section 3 (2) (v) the enhanced penalty of imprisonment for life would only apply if the Penal Code offence punishable with imprisonment with ten or more years is committed by a person who is not a member of a scheduled caste or scheduled tribe against the person or property of a person who belongs to the latter two categories. But the important requirement is that the offence was committed on the ground that the person was a member of a scheduled caste or the property belonged to such member. Thus this provision for enhanced penalty would not apply if the offence committed was an offence simplicitor under the Penal Code. In the present case, the appellant appears to have caught hold of the victim when she was all alone, persuaded her to enter a field and then to have committed rape on her. The prosecution allegation or charge was not that the offence was committed "on the ground" that she belonged to the Scheduled Caste. Thus the appellant could not be held guilty of a charge u/s 3 (2) (v) of the S.C./S.T. Act.

So far as the charge u/s 3 (1) (xii) which speaks of a person not belonging to the Scheduled Caste or Scheduled Tribe, "(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed".

Significantly the trial Judge has acquitted the accused under this charge, and there has been no appeal against the said acquittal. But as we find that offences u/s (3) (2) (i to xv) of the S.C./S.T. Act are punishable with sentences not below six months which may extend to five years with fine, even for the offence u/s 3 (1) (xii) of the S.C./S.T. Act, if we ignore the fact that the appellant was not convicted under this provision, we think that the appellant who has served out about 4 years and ten months imprisonment would have served out a sufficiently long period of imprisonment even under this provision.

In the circumstances mentioned above we think that the appeal needs to be partly allowed. We accordingly reduce the sentence of the appellant u/s 376. I.P.C. from 7 years R.I. and a fine of Rs. 3,000 to the period of approximately 4 years and 10 months already undergone by him, whilst reducing the fine to Rs. 500, in default to one months S.I. He is acquitted of the charge u/s 3 (2) (v) of the S.C./S.T. Act.

Appeal is partly allowed.