
(2010) 08 UK CK 0072
In the Uttarakhand High Court

Chandra Bhan (since deceased), Balak Ram and Raj Kumar	APPELLANT
Vs	
State of U.P. (Now State of Uttarakhand)	RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 363, 366, 368, 376

Citation : (2010) 2 UC 1350

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 02.02.1995, passed by Addl. Sessions Judge, Roorkee, in Sessions Trial No. 106 of 1993, whereby said court has convicted accused/appellants Raj Kumar and Balak Ram u/s 368 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced each one of the two to rigorous imprisonment for a period of five years, and to pay fine of Rs. 500/-. Appeal of accused/appellant Chandra Bhan, due to his death during the pendency of this appeal, stands abated.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story, in brief, is that on 24.02.1992, at about 09:15 P.M., P.W. 2 Raj Kumar (complainant) lodged first information report at police station Laksar, stating that his sister Uma (P.W. 1) was missing from her house. She was aged 16 years. It is also mentioned in the first information report (Ext. A ?3) by the complainant that when the inquiries were made, the complainant was told that his sister has been enticed away by accused Chandra Bhan (since deceased). On the basis of said report, Crime No. 47 of 1992 was registered at police station Laksar, against accused Chandra Bhan, in respect of offences punishable u/s 363 and 366 of I.P.C. Investigation was taken up by Sub Inspector Babu Ram. On the

next day i.e. 25.02.1992, Uma Rani (P.W. 1) was recovered from the possession of accused Chandra Bhan (since deceased) near railway crossing Nerojpur, within the limits of police station Laksar, and recovery memo (Ext. A?1) was got prepared by the Investigating Officer. After her medical examination on 25.02.1992, at 12:30 P.M., by P.W. 4 Dr. Sushma Gupta at Primary Health Center, Laksar, who prepared medical report (Ext. A?4), the girl (Uma Rani) was given in the custody of her father on the next day i.e. 26.02.1992, in respect of which memorandum (Ext. A?2) was prepared. After interrogating the witnesses, and on completion of investigation, the Investigating Officer submitted charge sheet (Ext. A ?9) against the three accused Chandra Bhan, Balak Ram and Raj Kumar, for their trial in respect of offences punishable u/s 363, 366, 368 and 376 of I.P.C.

4. The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., committed the case to the court of sessions for trial. Learned Addl. Sessions Judge, Roorkee, to whom the case was transferred, on 21.05.1993, after hearing the parties, framed charge of offences punishable u/s 363, 366, 368 and 376 of I.P.C. against accused Chandra Bhan, who pleaded not guilty and claimed to be tried. A separate charge was framed against accused Raj Kumar and Balak Ram, in respect of offence punishable u/s 368 of I.P.C., to which they also pleaded not guilty, and claimed to be tried. On this, prosecution got examined P.W. 1 Uma Rani; P.W. 2 Raj Kumar (complainant); P.W. 3 Satish Kumar Malhotra; P.W. 4 Dr. Sushma Gupta (who medically examined the girl), and P.W. 5 Sub Inspector Babu Ram (Investigating Officer). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which they alleged the same to be false, and pleaded that they have been implicated due to enmity. In defence D.W. 1 Balbir Kumar was got examined. After hearing the parties, the trial court found accused/appellant Chandra Bhan (since deceased) guilty of charge of offences punishable u/s 366, 376 and 368 of I.P.C. The other two accused/appellants, namely Balak Ram and Raj Kumar were found guilty of charge of offence punishable u/s 368 of I.P.C. After hearing on sentence, accused/appellant Chandra Bhan was sentenced to rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 500/- u/s 366 of I.P.C. He was further sentenced to rigorous imprisonment for a period of seven years and also directed to pay fine of Rs. 500/- under Section 376 of I.P.C., and rigorous imprisonment for a period of five years and also directed to pay fine of Rs. 500/- u/s 368 of I.P.C. Each one of the other two accused/appellants Raj Kumar and Balak Ram were sentenced to rigorous imprisonment for a period of five years and to pay fine of Rs. 500/- u/s 368 of I.P.C. Aggrieved by said judgment and order dated 02.02.1995, passed by Addl. Sessions Judge, Roorkee, in Sessions Trial No. 106 of 1993, the convicts preferred this appeal before the Allahabad High Court on 06.02.1995, where it was admitted on 07.02.1995. The appeal is received by this Court u/s 35 of the U.P. Re-organization Act (Central Act No. 29 of 2000), for its disposal.

5. Before further discussion it is pertinent to mention here the medical report (Ext. A ?4), prepared by P.W. 4 Dr. Sushma Gupta, after examination of Uma

Rani (P.W. 1). She observed in her report that the external genitals were normal, hymen was ruptured, vagina admitted two fingers, uterus size was normal. After receiving X-ray report, the said Medical Officer opined that the radiological age of the girl was 18 years. She finally concluded that no definite opinion about rape could be given.

6. P.W. 1 Uma Rani has stated before the trial court that accused Chandra Bhan (since deceased) promising her to get employment, enticed her away and took her to his house, where he committed rape on her. She has not assigned any role to the accused/appellants Raj Kumar and Balak Ram, except that she says that they were in the sugarcane field where accused Chandra Bhan took her in the intervening night of 24th/25th of February 1992. It is pertinent to mention here that accused/appellant Balak Ram is father of accused/appellant Chandra Bhan. Neither any allegation of rape is made against accused/appellants Balak Ram and Raj Kumar, nor is there any allegation of abduction made by P.W. 1 Uma Rani against them. It is relevant to mention here that they are not facing any charge of offence punishable u/s 366 or 376 of I.P.C. As against the two said accused/appellants, only charge framed is that of offence punishable u/s 368 of I.P.C., in respect of which they were convicted. Section 368 of I.P.C. provides punishment for wrongfully concealing or keeping in confinement, kidnapped or abducted person. It is nobody's case that either accused Balak Ram or accused Raj Kumar concealed or confined kidnapped Uma Rani in their houses or any other place. The allegation made by Uma Rani is against Chandra Bhan, who took her to the sugarcane field. Merely for the reason that Balak Ram and Raj Kumar also came to sugarcane field but did nothing, it cannot be said that they are guilty of charge of offence punishable u/s 368 of I.P.C. Their presence has been shown at the time when Chandra Bhan was taking the girl in a rickshaw on the next day near a railway crossing, from where the Investigating Officer arrested the accused Chandra Bhan and the girl. Addition of names of accused/appellants Balak Ram and Raj Kumar showing their presence near railway crossing also does not constitute the ingredients of offence punishable u/s 368 of I.P.C. P.W. 3 Satish Kumar Malhotra, who is an independent witness, has stated that on the day of incident it was Chandra Bhan who was taking the girl Uma Rani with him. He has nowhere named either accused Balak Ram or accused Raj Kumar with Chandra Bhan.

7. For the reasons as discussed above, after re-appreciating the evidence on record, this Court comes to the conclusion that the trial court has erred in law in holding accused/appellants Balak Ram and Raj Kumar guilty of charge of offence punishable u/s 368 of I.P.C. Therefore, their appeal deserves to be allowed. Accordingly, the appeal of accused/appellants Balak Ram and Raj Kumar is allowed. Conviction and sentence recorded by the trial court is set aside as against accused/appellants Balak Ram and Raj Kumar. They are acquitted of the charge of offence punishable u/s 368 of I.P.C. They are on bail. They need not to surrender. Their bail bonds are cancelled and sureties discharged. As far as the appeal of accused/appellant Chandra Bhan is concerned, the same stands abated

as he has died during the pendency of this appeal. Registry is directed to send the lower court record back to the trial court.