
(2010) 08 UK CK 0022
In the Uttarakhand High Court

Govind Chhetri

APPELLANT

Vs

State of U.P. (Now State of Uttarakhand)

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 354, 376, 457, 511

Citation : (2010) 08 UK CK 0022

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

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 05.04.1997/07.04.1997, passed by First Addl. Sessions Judge, Dehradun, in Sessions trial No. 192 of 1995, whereby appellant Govind is convicted u/s 354, 457 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.). The said court sentenced the accused/appellant to rigorous imprisonment for a period of one year u/s 354 of I.P.C., and rigorous imprisonment for a period of two years, and also directed to pay fine of Rs. 500/- under Section 457 of I.P.C. However, it is further directed by the trial court that if the appellant furnished a personal bond of Rs. 5,000/- and two sureties, each of like amount, for his conduct for a period of two years, he shall be released under Probation of Offenders Act, 1958.

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

3. Prosecution story, in brief, is that in the intervening night of 27th and 28th of March 1994, complainant Smt. Neeta Mishra (P.W. 1) came out of her house in Indrapuri Farm, within the limits of police station Clement Town, Dehradun, to ease out (urinate) herself. When she went back to her house, by then, taking advantage of the open door, accused/appellant Govind had already entered and was hiding under the cot. As soon as complainant Neeta Mishra tried to bolt the

door from inside, accused/appellant Govind pounced on her, pressed her breast, closed her mouth, and attempted to raise her ?petticoat?. In the scuffle, a bicycle kept nearby fell down, and P.W. 2 Manoj Kumar (minor son of the complainant) woke up and raised alarm. At about 03:15 A.M., on 28.03.1994, complainant lodged first information report (Ext. A -1) with police station Clement Town, where Crime No. 89 of 1994 was registered against accused/appellant Govind S/o Chandra Bahadur Chhetri, relating to offences punishable u/s 376, 511, 457 of I.P.C.P.W. 1 Neeta Mishra was taken to the hospital and she was medically examined at 10:45 A.M. on the very day (28.03.1994) by P.W. 3 Dr. Renu Negi, who prepared medical report (Ext. A -3). No mark of external injury was found on the private parts of the victim. After interrogating the witnesses, inspecting the spot, and on completion of investigation, P.W. 4 Sub Inspector H.R. Zaidi submitted charge sheet (Ext. A -9) against accused Govind S/o Chandra Bahadur Chhetri, for his trial in respect of offence punishable u/s 376, 511 and 457 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., appears to have committed the case to the court of sessions for trial. Learned First Addl. Sessions Judge, Dehradun, on 27.10.1995, after hearing the parties, framed charge of offences punishable u/s 457 and one punishable u/s 376 read with Section 511 of I.P.C. against the accused Govind, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Neeta Mishra (complainant); P.W. 2 Manoj Kumar Mishra, aged 13 years (eyewitness); P.W. 3 Dr. Renu Negi (who medically examined the complainant), and P.W. 4 Sub Inspector H.R. Zaidi (Investigating Officer). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which he alleged the same to be false, and pleaded that he has been implicated due to enmity. In defence D.W. 1 Shankhveer was got examined. The trial court, after hearing the parties, found accused Govind guilty of charge of offences punishable u/s 354 and 457 of I.P.C., and convicted him accordingly. After hearing on sentence, the trial court sentenced the convict to rigorous imprisonment for a period of one year u/s 354 of I.P.C., and to rigorous imprisonment for a period of two years and also directed to pay fine of Rs. 500/- under Section 457 of I.P.C. However, giving the benefit of provisions contained in Probation of Offenders Act, 1958, the trial court directed that on furnishing a personal bond of Rs. 5,000/- and two sureties, each of like amount, for keeping good conduct for a period of two years, the sentence shall remain suspended. Aggrieved by said judgment and order dated 05.04.1997/07.04.1997, passed by First Addl. Sessions Judge, Dehradun, in Sessions Trial No. 192 of 1995, this appeal was filed before the Allahabad High Court by the convict on 13th of May 1997, where it was admitted on 14th of May 1997. This appeal is received by this Court u/s 35 of the U.P. Reorganization Act (Central Act No. 29 of 2000), for its disposal.

5. Before further discussion it is pertinent to mention here about the statement of P.W. 3 Dr. Renu Negi. She has stated that on 28th of March 1994, she

examined the person of the complainant Neeta Mishra, and found that there was no external injury on the person of the complainant. She has stated that hymen was found torn. She had further opined that no opinion as to rape could be given. It is relevant to mention here that complainant has nowhere stated that she was raped, as such, the testimony of P.W. 3 Dr. Renu Negi is not of much significance in the circumstances of the case. It is also pertinent to mention here that complainant is a married woman, and it does not make any difference whether the hymen was torn, or not.

6. P.W. 1 Neeta Mishra narrating the prosecution story has stated that in the intervening night of 27th/28th of March 1994, she came out of her house around midnight to ease out (urinate) herself, and when she went back to the room she found that accused/appellant Govind Chhetri had already entered in, and was hiding under a cot. She came to know of this fact only when she attempted to bolt the door from inside and was pounced by the accused. She has further stated that the accused pressed her breast. She further stated that the accused floored her down and closed her mouth and attempted to raise her petticoat?. At this stage, in the scuffle, the bicycle kept nearby fell down, and her son Manoj Kumar (P.W. 2) woke up. She has further stated the Manoj Kumar raised alarm on which accused/appellant Govind Chhetri putting on his pantaloons ran away leaving his underwear. The witness has further proved the first information report (Ext. A -1) lodged by her in the police station.

7. P.W. 2 Manoj Kumar Mishra has corroborated the testimony of his mother. There is no reason to disbelieve the natural and trustworthy evidence adduced by P.W. 1 Neeta Mishra and P.W. 2 Manoj Kumar Mishra.

8. Learned Counsel for the appellant argued that due to enmity the accused has falsely been implicated in the case. In this connection, attention of this Court is drawn to statement of D.W. 1 Shankhveer. In his statement D.W. 1 Shankhveer has stated that since Neeta Mishra's husband used to serve in the Army, the policemen used to come in her house. That evidence does not shake the truthfulness of the testimony of P.W. 1 Neeta Mishra. The first information report is a prompt one. The testimony of the complainant is natural. No woman would like to put herself in a situation endangering her dignity. During investigation the broken pieces of bangles of the complainant were also found at the spot by P.W. 4 Sub Inspector H.R. Zaidi.

9. Having considered submissions of learned Counsel for the parties and after going through the lower court record, this Court does not find any reason to interfere with the impugned judgment and order passed by the trial court.

10. Therefore, the appeal is dismissed. The judgment and order dated 05.04.1997/07.04.1997, passed by First Addl. Sessions Judge, Dehradun, in Sessions Trial No. 192 of 1995, is affirmed. The lower court record be sent back.