
(2013) 12 UK CK 0001

In the Uttarakhand High Court

Case No : Criminal Appeal No. 174 of 2009

Mohd. Haris @ Aayen @ Aryan

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 NCC 315

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Judgement

V.K. Bist, J.—Additional evidence i.e. School Leaving Certificate issued by the Principal, Sadhana Shishu Niketan Ram Bagh, Herbertpur, District Dehradun, is accepted on record. The Misc. application (I.A. No. 3724 of 2013), made therefor, is disposed of. This appeal, preferred u/s 374(2) of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order dated 12.08.2009 passed by Addl. District & Sessions Judge/IVth Fast Track Court, Dehradun in Sessions Trial No. 97 of 2008 "State v. Mohd. Haris @, Aayen @.Aryan", whereby the accused/appellant Mohd. Haris @ Aayen @ Aryan has been convicted under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (for short I.P.C.) and has been sentenced to undergo rigorous imprisonment u/s 376 of I.P.C. for a period of seven years and directed to pay fine of Rs. 5,000/-, and in default of payment of fine further simple imprisonment for a period of six months, rigorous imprisonment u/s 363 of I.P.C. for a period of one year and directed to pay fine of Rs. 1,000/, and in default of payment of fine further simple imprisonment for a period of one month, rigorous imprisonment u/s 366 of I.P.C. for a period of one year and directed to pay fine of Rs. 1,000/, and in default of payment of fine further simple imprisonment for a period of one month. It was directed that all the sentences shall run concurrently.

2. Prosecution story, in brief, is that on 16.06.2008, P.W. 2 Ram Bahadur (father of the prosecutrix) gave a written complaint at Police Station, Dakpatthar, Vikas Nagar, stating therein that on that day i.e. on 16.06.2008 at around 05:00 p.m.,

Mohd. Haris @ Aryan S/o. Shri Femuddin, Ashabagh, Thana Vikas Nagar has enticed away her daughter Km. Basanti. It is stated in the written complaint that his daughter is the student of Class IX and her age is around 15 years. In the said complaint, the complainant requested to lodge an F.I.R. Treating said report dated 16.06.2008 as F.I.R., Case Crime No. 16 of 2008 was registered at R.O.P. Dakpatthar, Police Station Vikas Nagar, District Dehradun against the accused/appellant Mohd. Haris @ Aryan relating to offences punishable under Sections 363 and 366 I.P.C. After the matter was investigated upon, it culminated into filing of charge sheet against the accused under Sections 363, 366 and 376 I.P.C. Upon hearing the parties, learned Special Judge N.D.P.S., Dehradun framed charge of offences punishable under Sections 363, 366 and 376 I.P.C. against the accused, to which the accused pleaded not guilty and claimed to be tried. To prove its case, the prosecution got examined P.W.-1 Km. Basanti, P.W.-2 Ram Bahadur, P.W.-3 Rajendra Singh, P.W.-4 H.S. 152 Soban Singh, P.W.-5 S.I. Mahendra Singh, P.W.-6 Dr. Sujata Singh and P.W.-7 Dr. G.S. Rana. Statements of the accused u/s 313 Cr.P.C. were recorded. The accused did not produce any evidence in defence.

3. In the statement- recorded before the Court below, the victim Km. Basanti, who was at that time 14 years of age and after ensuring that the witness is capable to tender evidence, as she gave answers to the questions put to her correctly, she was permitted to tender her testimony. This witness has stated that the incident was of 15/16.06.2008 at around 05:00 p.m. She stated that she was at that time at her home. Mohd. Haris, the accused, had taken her away from her home. He took her by saying that he would marry her and if she declines, he would kill her family members. After taking her from home, he took her to Vikas Nagar Market for shopping. Thereafter, on the very day, he took her to Saharanpur through bus. She stated that they reached Saharanpur in the morning. As soon as they alight from the bus, police caught them. When police caught them, the accused was also with her. She stated that the accused raped her. She stated that she knows the meaning of rape. She stated that rape means, making illegal relationship, which is only made between husband and wife. Due to this relationship, child gets birth. She stated that accused used to come at her home and made physical relations with her. On her resist, he threatened her to kill her and her family members. Police brought them from Saharanpur to Dakpatthar Police Station. From Police Station, she was taken to Doon Hospital, where she was medically examined.

4. P.W.-2 is Ram Bahadur, who lodged the F.I.R. at police Station. This witness proved the F.I.R. P.W.-5 is S.I. Mahendra Singh, Investigating Officer. P.W.-6 is Dr. Sujata Singh, Medical Officer, who conducted medical examination of the victim.

5. Learned counsel for the appellant submitted that on the basis of School Leaving Certificate issued by the Principal, Sadhana Shishu Niketan Ram Bagh, Herbertpur, District Dehradun, on the date of incident, the appellant was juvenile, but the trial of the appellant was conducted before Sessions Court,

instead of Juvenile Court and as such, the entire trial of the appellant was without jurisdiction and on this ground alone, the conviction of the appellant is liable to be set aside.

6. On 07.10.2013, this Court granted time to the respondent for filing reply to the Misc. application (I.A. No. 3724 of 2013) filed by the appellant. In compliance of the order dated 07.10.2013, Mr. Ram Naresh Sharma, Sub Inspector, Police Station Kotwali Vikas Nagar, Dehradun, District Dehradun filed affidavit of compliance. Along with the affidavit of compliance, duly verified and attested copy of the School Leaving Certificate of the accused/appellant issued by the Principal, Sadhna Shishu Niketan Rambagh, Harbartpur, Dehradun has been annexed. Thus, the respondent has also admitted the date of birth of the appellant as 22.07.1992 and as such, on the date of alleged incident i.e. on 16.06.2008, the appellant was juvenile.

7. Now this Court has to examine as to whether at the time of the incident, the accused/appellant was juvenile having the age below 18 years or not. In the School Leaving Certificate issued by the Principal, Sadhana Shishu Niketan Ram Bagh, Herbertpur, District Dehradun, the date of birth of the accused/appellant is shown as 22.07.1992. Thus, at the time of incident, the accused/appellant was juvenile. In view of the law laid down by the Hon"ble Supreme Court reported in Bhim @ Uttam Ghosh Vs. State of West Bengal, , while confirming the conviction, the sentence awarded to the accused/appellant is liable to be set-aside and the same is set-aside.

8. Accordingly, the appeal preferred by the accused/appellant Mohd. Haris @ Aayen @ Aryan is partly allowed. The sentence awarded to the accused/appellant is hereby quashed. He is on bail. He need not to surrender. His personal bond and sureties are hereby discharged. Let a copy of this judgment, along with the record of the Court below be sent to the trial Court.