

(2011) 04 UK CK 0001

In the Uttarakhand High Court

Case No : Criminal Appeal No. 74 of 2007

Padam Singh Chainsar

APPELLANT

Vs

State of Uttaranchal (now State of Uttarakhand)

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 207, 313, 374
Penal Code, 1860 (IPC) — Section 363, 366, 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) CriLJ 2972

Hon'ble Judges : V.K. Bist, J; Prafulla C. Pant, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order dated 22.02.2007, passed by Sessions Judge, Pithoragarh, in Sessions Trial No. 22 of 2006, whereby said court has convicted accused / Appellant Padam Singh Chainsar u/s 363, 366, 376 of the Indian Penal Code, 1860 (for short I.P.C.), and one punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The convict has been sentenced to rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 2,000/- u/s 363 of I.P.C., rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 2,000/- u/s 366 of I.P.C., rigorous imprisonment for a period of ten years and directed to pay fine of Rs. 10,000/- (under Section 376 of I.P.C.), and rigorous imprisonment for a period of two years and directed to pay fine of Rs. 1,000/- u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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

3. Prosecution story, in brief, is that complainant Jayanti Garbyal (P.W. 2) gave first information report (Ext. A -1) at police station Jauljibi, on 10th of May 2006,

at about 08:45 P.M., stating that her daughter Km. Nidhi, aged seven years, was playing with Pramila (P.W. 3) near her house. Accused / Appellant Padam Singh Chainsar, resident of Village Gunia Gaon, came there and by promising both of them to give sweets took them with him in an isolated place, and committed rape on Km. Nidhi after unclothing her. The little girl came to her house and told that how accused / Appellant Padam Singh has committed rape on her. She was bleeding from her private parts. On the basis of said report, Crime No. 79 of 2006 was registered, relating to offences punishable u/s 363, 366, 376 of I.P.C. and one punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Investigation was taken up by Circle Officer D.S. Negi, and thereafter by P.W. 9 Dy. Superintendent of Police B.R. Arya. The girl was medically examined by Dr. Monika Kharkwal (P.W. 6), who found hymen of the victim torn, redness around the vaginal orifice, heavy bleeding with lacerations in vaginal orifice. P.W. 7 Dr. Vipin Chandra Tripathi gave X-ray report and opined that the victim was 8-9 years old. After interrogating the witnesses and inspecting the place of incident, the Investigating Officer submitted charge sheet (Ext. A -10) against accused / Appellant Padam Singh Chainsar for his trial in respect of offences punishable u/s 363, 366, 376 of I.P.C., and one punishable u/s 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. The Judicial Magistrate, Didihat, on receipt of the charge sheet, after giving necessary copies to the accused as required u/s 207 of Code of Criminal Procedure, committed the case to the court of Sessions for trial. Learned Sessions Judge, Pithoragarh, on 17.07.2006, after hearing the parties, framed charge of offences punishable u/s 363, 366, 376 of I.P.C., and one punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to which the accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Km. Nidhi (victim); P.W. 2 Smt. Jayanti Devi @ Janki Devi (informant); P.W. 3 Km. Pramila, P.W. 4 Daya Ram; P.W. 5 Rawli Gwal; P.W. 6 Dr. Monika Kharkwal (who medically examined the victim); P.W. 7 Dr. Vipin Chandra Tripathi (Radiologist); P.W. 8 Circle Officer Devendra Singh Negi (who started the investigation); P.W. 9 Dy. Superintendent of Police B.R. Arya (who completed the investigation); P.W. 10 K.K. Shukla (Judicial Magistrate who recorded the statement of the victim u/s 164 of Cr.P.C.); and P.W. 11 Sub Inspector Sampurnanand Gairola (arresting officer). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which he alleged that he has been falsely implicated in the crime. In defence he got examined his son Dhiraj Singh as D.W. 1. The trial court, after hearing the parties, found that the prosecution has successfully proved charge of offences punishable u/s 363, 366, 376 of I.P.C., and one punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and convicted accused / Appellant Padam Singh Chainsar, accordingly. After hearing the parties on sentence, the convict was sentenced to rigorous imprisonment for a period of seven years and directed to pay fine of Rs. 2,000/- u/s 363 of I.P.C., rigorous

imprisonment for a period of seven years and directed to pay fine of Rs. 2,000/- u/s 366 of I.P.C., rigorous imprisonment for a period of ten years and directed to pay fine of Rs. 10,000/- u/s 376 of I.P.C), and rigorous imprisonment for a period of two years and directed to pay fine of Rs. 1,000/- u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Aggrieved by said judgment and order dated 22.02.2007, passed by Sessions Judge Pithoragarh, in Sessions Trial No. 22 of 2006, this appeal is preferred by the convict.

5. P.W. 1 Km. Nidhi, aged seven years, deposed before the court that on the day of incident it was between 6-7 P.M., when she was playing with Pramila (P.W. 3), accused / Appellant Padam Singh came there and promised that he would give her and Pramila toffees and Fruity (a fruit beverage). The witness further narrates that he took both (Nidhi and Pramila) with him near Bala Shera temple, where no one was there. Firstly, Pramila was unclothed by accused, who smelt rat and ran away from there. Thereafter, the accused Padam Singh pounced on her (Nidhi) and committed rape on her. The witness further states that she cried and ran towards her house soon after the accused left her. P.W. 1 Nidhi further states that she told the incident to her mother Jayanti Devi.

6. The statement of the above witness not only gets corroboration from the statement of P.W. 3 Pramila, but also from the statement of P.W. 6 Dr. Monika Kharkwal read with medical examination report (Ext. A -3) which suggests that the victim was subjected to rape. P.W. 2 Jayanti Devi has corroborated the fact that her daughter came to her and told about the incident on which she lodged the first information report (Ext. A -1). As to the age of the victim, P.W. 7 Dr. Vipin Chandra Tripathi has affirmed that the victim was around 8-9 years old, on the basis of the radiological examination (Ext. A -4). Apart from this, there is report dated 13.07.2006 (Ext. A -9) received from Forensic Science Laboratory, Agra, that in the "PYJAMA" of the victim and underwear of the accused human semen was found. The statements of the witnesses, including that of the victim and P.W. 3 Km. Pramila, are natural and reliable.

7. It is a case of serious nature in which the little girl was subjected to rape by the accused / Appellant Padam Singh Chainsar after kidnapping her from the place she was playing with intention to commit rape on her. As such, from the testimony of the victim corroborated by the statement of P.W. 3 Pramila and the medical examination report (Ext. A -3), it is proved on the record that accused / Appellant Padam Singh Chainsar committed offences punishable u/s 363, 366 and 376 of I.P.C. To this extent, we concur with the finding of the trial court. There is no room of doubt in the testimony of the victim and the other witnesses examined on behalf of the prosecution. However, as far as offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is concerned, we fail to find evidence on the record that the victim was member of Scheduled Tribe and accused Padam Singh Chainsar was neither member of Scheduled Caste, nor member of Scheduled Tribe. Unless those

ingredients are established on the record, the conviction under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be recorded. It's possible that victim is member of Scheduled Tribe and accused is not, but that fact should have been stated by some witness to bring home the charge on that count. In the circumstances, we find that the trial court has erred in law in convicting the accused u/s 3(1)(x) of the aforesaid Act.

8. Learned Counsel for the Appellant argued that the Appellant has falsely been implicated in the case, and harsh punishment has been given to the convict disproportionate to his act. However, on examination of entire evidence on record, we find that the trial court has rightly found accused guilty of the charge of offences punishable u/s 363, 366, 376 of I.P.C. Only the evidence in respect of offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the conviction is recorded without there being evidence proving the ingredients for said offence.

9. For the reasons as discussed above, this appeal deserves to be allowed, partly. The appeal is dismissed so far as it relates to the conviction of the accused u/s 363, 366, 376 of I.P.C. Sentence awarded by the trial court on those counts also does not require interference. However, the sentencing part on these counts is modified only to the extent that the sentences of imprisonment on the above three counts (i.e. u/s 363, 366 and 376 of I.P.C.) shall run concurrently. The appeal is allowed only so far as the conviction and sentence recorded by the trial court in respect of offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, and from said charge the Appellant is acquitted. Let a copy of this judgment be sent to the Superintendent of jail concerned where the accused/Appellant is lodged. Lower court record be sent back.