
(1997) 04 AHC CK 0105
In the Allahabad High Court
Case No : Criminal Appeal No. 737 of 1983

Sabir Shah and Anr.	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Evidence Act, 1872 — Section 9
Penal Code, 1860 (IPC) — Section 366, 376

Citation : (1997) 04 AHC CK 0105

Hon'ble Judges : R.P.Nigam, J

Final Decision : Allowed

Judgement

R. P. Nigam, J.—This criminal appeal has been preferred against the judgment and order dated 1281983 passed by Second Additional Sessions Judge, Lakhimpur Kheri in ST. No. 116 of 1983. Slate v. Sabir Shah and another by which the appellants were convicted under Sections 366, 376 and 341. IPC and each appellant was sentenced to undergo rigorous imprisonment for three years under Section 366, IPC, to undergo rigorous imprisonment for five years under Section 376, IPC and to undergo simple imprisonment for one month under Section 341. IPC and it was ordered that the sentences of the appellants would run concurrently.

2. The appellant No. 1 Sabir Shah died during the pendency of this appeal and, therefore, this criminal appeal was abated against him on 341997,

3. The case of the prosecution as disclosed in the written report Ex. Ka1 lodged by Sri Mohan Rain PW4 in Chandan Chowki of police station Palia, district Kheri on 23101982 at 2.00 p.m. is as follows;

4. Mohan Ram PW4 is the resident of village Surma. On the last Sunday which was on 18101982 Mohan Ram, his brother Khushi Ram and Smt. Ram Beti, wife of Khushi Ram had gone to forest for cutting Munj at about 4.00 p.m. and they were at a distance of 1 Km. from the village Surma towards west in the forest and at the said time three persons came and had tied the hands of Mohan Ram

by Munj on his back and had also tied Mohan Ram by a rope with a tree and they had also tied Khushi Ram with the same tree and the said persons had taken Smt. Ram Beti with them. Mohan Ram and his brother Khushi Ram got themselves freed when some darkness had arrived and came in the village and they and the persons of the village searched Smt. Ram Beti in the forest and in the villages which were nearby but could not trace Smt. Ram Beti.

5. On the basis of written report Ex. Ka. 1, chick FIR Ex. Ka2 was prepared and the case against three unknown persons was registered at report No. 11 of the G.D. on 23101982 at 2.00 p.m. under Sections 346, 363 and 366, IPC and the copy of report No. 11 is Ex. Ka3.

6. After registration of the case, usual investigation followed. Sri Ranbir Singh PW7 started investigation of the case from 25101982. When Ranbir Singh PW7 was investigating the case crime No. 244 and then he received information through an informer at 44.30 p.m. and on this information the appellant Sabir Shah and Harpal Singh were arrested on Chandan Chowki Dadhuwa Road ahead of Zauheraha Nala in case crime No. 244 along with goods of the said case. After the arrest of Sabir Shah and Harpal Singh on their interrogation their names came in the light in the crime of this case. Appellants were put for identification on 2121982 and the witnesses Smt. Ram Beti, Mohan Ram and Khushi Ram PW5 correctly identified appellant No. 1 Sabir Shah in the test identification parade and committed no mistake. The witness Smt. Ram Beti PW6 had correctly identified the appellant No. 2 Harpal Singh in the test identification parade and committed no mistake. After getting the result of the test identifications and completion of the investigation, PW7 Ranbir Singh submitted a chargesheet Ex. Ka12 against the appellants under sections 346, 363 and 376, IPC on 17121982.

7. Appellants were charged under Sections 341, 366 and 376, IPC by the court below.

8. The appellants denied the prosecution case and pleaded not guilty. The appellants had stated that they were kept in the police station upto two days and they were shown to the witnesses. The appellants did not lead any evidence in their defence.

9. The prosecution in order to prove its case against the appellants had examined Sri Ram Dev Arya as PW1, Dr. P.L. Singh as PW2, Jai Ram as PW3, Mohan Ram as PW4, Khushi Ram as PW5 Smt, Ram Beti as PW6 and Ranbir Singh as PW7.

10. After considering the evidence adduced by the prosecution and die cases of the appellants, the court below came to a conclusion that the prosecution had successfully proved its case against the appellants and the charges under sections 366, 376 and 341, IPC were fully established against the appellants and therefore, the appellants were convicted under Sections 366, 376 and 341, IPC and were sentenced under the said sections as said above. Ram Dev Arya PW1 and Jai Ram PW3 are the formal witnesses, Ranbir Singh PW7 is the I.O. of the

case. He investigated the case as stated above Dr. P.L. Singh PW2 had medically examined the prosecutrix Smt. Ram Beti on 30/10/1982 at 10.45 a.m. and according to her statement the age of Smt. Ram Beti was 19 years and she was used to sexual intercourse. Dr P.L. Singh PW2 could not give any opinion about rape.

The prosecution had led evidence to this effect that after arrest the appellants were kept in Baparda and they remained continuously in Baparda till they were lodged in District Jail. As said above, the appellants Sabir Shah died during the pendency of this appeal and therefore, it would be of no use to consider the evidence adduced by the prosecution against him as the appeal had been abated against him.

11. I have heard the learned counsel for appellant No. 2 and the learned A.G.A. The learned counsel for appellant No. 2 has contended before me that there was single identification evidence of Smt. Ram Beti PW6 against the appellant No. 2 Harpal Singh and the appellant No. 2 was shown to the witness Smt. Ram Beti PW6 before identification, therefore, her identification evidence had no value and was liable to be rejected and the learned court below was not justified in placing reliance upon the statement of Smt. Ram Beti PW6 and was not justified in convicting and sentencing the appellant No. 2. The learned A.G.A. has supported the judgment and order rendered by the court below. I find that the said contention of the learned counsel for the appellant No. 2 is correct.

12. Smt. Ram Beti PW6 has stated that Khushi Ram is her husband and Mohan Ram is brother of Khushi Ram and about 10 months ago, she, Khushi Ram and Mohan Ram had gone to forest for cutting Munj and three bandits came there at about 4.00 p.m. and one of the said bandits had caught hold of her and her husband and Mohan Ram were tied with a tree by a rope and the said persons had forcibly taken her towards west and after covering some distance one bandit had met them and he was also carrying a woman with him and all the four bandits had taken both the ladies in the forest and had kept them in the forest upto 23 days and after that they had kept them in a sugarcane field and she and other lady were in the custody of the bandits up to 8 days and the said bandits had violated her person and had also committed rape on the other lady and the bandits continuously committed rape on her and on the other lady when they were in their custody. She has further stated that she had seen the faces of the bandits and she did not know the bandits from before and on 9th day one bandit had taken her and the other lady to the road outside the forest and had given Rs, 3/ to her and said that she would find Meera ahead and she could have gone by Bus from there and she and other lady come by Bus up to Palia and at Palia, Pradhan of the village of the other lady had met them and with the said Pradhan she had gone upto Pachpara and from there she had sent information to her house and the persons of her house came there and had taken her from there. She has further stated that she had gone to jail to identify the bandits and she identified the accused Sabir Shah and Harpal Singh in jail and the said accused

were amongst the bandits and she had seen them in jail and she did not see them in between the incident and identification. She has further stated that these two accused violated her person.

13. According to the statement of Smt. Ram Beti PW6 she did not know the appellant No. 2 Harpal Singh from before and she had seen him during the incident and she identified him in the test identification parade in jail and she did not see the appellant No. 2 after the incident and before identification. I find that there is single identification evidence of Smt. Ram Beti PW 6 against the appellant No. 2 Harpal Singh. Smt. Ram Beti PW6 has stated in her cross-examination that she did not tell the Darogaji that she would not be able to identify the bandits. She stated in her statement under Section 161, Cr.P.C. that she would not be able to identify the persons who abducted her. It means that she had stated under Section 161, Cr.P.C. before the I.O. that she would not be able to identify the bandits. The said statement given by Smt. Ram Beti under Section 161, Cr.P.C. was put to her in her cross-examination and then she stated that she did not give this statement that she would not be able to identify the bandits. Ranbir Singh PW7 has stated in his cross-examination that it is wrong to say that Smt. Ram Beti gave this statement that she would not be able to identify any bandits. He has further stated in his cross-examination that inadvertently it was written in her statement that she had said that she would not be able to identify any bandits. This reveals that when Smt. Ram Beti PW6 was interrogated by the I.O. and her statement was recorded by him at that time, she had stated that she would not be able to identify the bandits. It means that she could not identify the bandits who had abducted her and had committed rape on her and therefore, it appears that the appellant No. 2 was shown to Smt. Ram Beti before identification and that is why she correctly identified him in the test identification parade and as appellant No. 2 was shown to Smt. Ram Beti PW6 before the identification therefore, her identification evidence was of no value and should have been discarded by the learned court below and the learned court below was not justified in placing reliance upon the statement of Smt. Ram Beti PW6 and was not justified in convicting and sentencing the appellant No. 2. Smt. Ram Beti PW6 is not a truthful witness and, therefore, no reliance can be placed upon her testimony therefore, hence no reliance upon her statement. The prosecution has miserably failed to prove its case against appellant No. 2 beyond reasonable doubt and therefore, the appeal deserves to be allowed and the conviction and sentence recorded against appellant No. 2 Harpal Singh deserves to be set aside.

14. Appeal is allowed. The convictions and sentences recorded under Sections 366, 376 and 341, IPC against appellant No. 2 Harpal Singh are set aside. He is acquitted of the offence with which he was charged. He is on bail. His bail bonds are cancelled and sureties are discharged. He need not surrender.