
(2010) 12 UK CK 0184
In the Uttarakhand High Court
Case No : Criminal Revision No. 22 of 2002

Sadab Ali

APPELLANT

Vs

State of Uttaranchal (Now State of Uttarakhand)

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 377, 506

Citation : (2010) 12 UK CK 0184

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties and perused the lower court record.

2. Prosecution story in brief is that Krishna Lal Thukral (PW1) lodged First Information Report (Ex A 1) at Police Station Kotwali, Kichcha, on 25.11.1996, that his son named Shubham aged 9 years had gone to play at about 7 p.m. Near Government Girls Inter College, he (Shubham) was caught by accused/revisionist Shadab Ali, who took him towards Farm Engineering Works. Accused/revisionist Shadab Ali committed unnatural offence with Shubham forcibly. Shubham raised alarm on which Gulshan Kumar (PW5) and one Shyamlal Singh Mehra reached at the spot on which, the accused ran away. On the basis of report (Ex A-1), Crime No. 538 of 1996, was registered relating to offence punishable u/s 377, 323 and 506 I.P.C., against the accused Shadal Ali. The Investigation was conducted by Sub Inspector Nawab Singh (PW6), who interrogated the witnesses and prepared site plan. The victim was medically examined by PW7 Dr. B.P. Joshi, and PW3 Dr. P.S. Kawasi. On completion of the investigation, charge sheet was filed against the accused who pleaded not guilty before the trial court, (Additional Judicial Magistrate, Rudrapur), against the charge framed against him. Prosecution got examined PW1 Krishna Lal Thukral (complainant), PW2 Shubham Thukral (victim), PW3 Dr. P.S. Kawasi, PW4 Kashmir Lal Thukral, PW5 Gulshan Kumar (eye witness), PW6 Sub Inspector

Nawab Singh (Investigating Officer) and PW7 Dr. B.P. Joshi. The evidence was put to the accused u/s 313 Code of Criminal Procedure, in reply to which that he stated that he has been falsely implicated. The trial court after hearing the parties found accused Shadab Ali guilty of charge of offences punishable u/s 377, 323 and 506 I.P.C. After hearing on sentence the trial court sentenced convict Shadal Ali to simple imprisonment for a period of three years and directed to pay a fine of Rs. 1000/-(under Section 377 I.P.C.), simple imprisonment for a period of six months (under Section 323 I.P.C.). Aggrieved by said judgment and order dated 05.12.2001, passed by the trial court in Criminal Case No. 147 of 2000, Criminal Appeal No. 28 of 2001 was filed by the convict before the appellate court. Learned I Ind Additional Sessions Judge, Udhham Singh Nagar, heard learned Counsel for the parties, and dismissed the appeal vide impugned judgment and order dated 08.04.2002, passed with criminal Appeal No. 28 of 2001. Hence this revision.

3. I have gone through the lower court record, impugned judgment, and considered submissions of learned Counsel for the revisionist and learned Counsel for the State. Evidence of the eye witnesses and that of victim has been appreciated by the two courts below, and there is no error of law committed by them in believing the testimony of the victim and the eye witnesses. The statement of the victim is supported by the medical evidence on record. Therefore, so far as the conviction u/s 377, 323 and 506 I.P.C., is concerned, this Court finds no reason to interfere with the same. However, on the point of sentence considering the facts that the accused/revisionist was less than 18 years of age on the date of incident i.e. 25.11.1996, the sentence awarded by the courts below is liable to be set aside. It has come on the record that the date of birth of the accused Shadab Ali was 12.04.1980, as per the certificate issued by the Principal of KMA Inter College Kichcha. In view of the principle of law laid down in *Vikram Singh v. state of Haryana* 2009 (NCC) 434 and *Dharambir Vs. State (NCT of Delhi)* and *Another*, , this Court is of the view that in the case of an accused of less than 18 years on the date of incident, he need not to be sentenced to imprisonment . Therefore, while affirming the conviction, the sentence awarded by the trial court , and affirmed by the lower appellate court, is hereby set aside. The revision stands disposed of. Lower court record be sent back.