
(2003) 07 AHC CK 0270
In the Allahabad High Court
Case No : Criminal Appeal No. 393 of 1989

Sita Ram and Others (in Jail)	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 374(2)
Penal Code, 1860 (IPC) — Section 109, 376, 511

Citation : (2003) 3 ACR 2583

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : Fakeer Chandra Singh, for the Appellant; G.A., for the Respondent

Judgement

N.K. Mehrotra, J.—This is a criminal appeal u/s 374(2) of the Code of Criminal Procedure against the judgment and order dated 5.4.1989 passed by the I Ind Additional Sessions Judge, Sultanpur in S.T. No. 23 of 1988 convicting the Appellants u/s 376, I.P.C. and sentencing them to undergo for seven years" R.I. and a fine of Rs. 1,000 each.

2. During the pendency of the appeal, the accused-Appellant Sita Ram has died, therefore, the appeal filed by Appellant Sita Ram stands abated.

3. On the date of hearing, neither the accused-Appellants even after service of the notice nor the counsel engaged by them appeared to argue the appeal.

4. Since the appeal is of the year of 1989 and there was sufficient notice to the accused-Appellants and their counsel, it was considered proper in the interest of justice to dispose of the appeal on merit after following the decision of the Supreme Court in Bani Singh and others Vs. State of U.P., It was held by the Supreme Court that:

It is the duty of the Appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385 and 386 of the Code.

The law does not enjoin that the Court shall adjourn the case if both the Appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court.

5. In this case, it was not found a fit case to grant indulgence when the appeal was filed in the year 1989 and since then, it is pending and there is sufficient notice to the learned Counsel for the Appellant, therefore, I heard the Additional Government Advocate, perused the record and made scrutiny of the evidence on record myself.

6. The prosecution story in brief is that complainant Smt. Putkunna and accused Sita Ram both reside in the same Mauja. On 11.10.1986 accused Sita Ram enticed Smt. Putkunna away under the pretext that he would arrange for her a good home and husband ; that on the way, he arranged a Rickshaw for her. Co-accused Bhagwandin was the Rickshaw puller. Both of them committed sexual intercourse one by one. Both of them took her from Beersinghpur Semri to Birmapur and thereafter accused Bhagwandin returned back with his rickshaw and accused Sita Ram took her to the village Bela, P.S. Bhati, district Faizabad where accused Bhagelu resides. At the residence, of accused Bhagelu, accused Sita Ram stayed for a day and both of them committed sexual intercourse with her one by one without her consent and thereafter accused Sita Ram sold her to accused Bhagelu but she did not like either accused Bhagelu or his house due to which in the night of 17.10.1987 she escaped from the house of the accused Bhagelu and came to her husband in the village Mahmoodpur aforesaid. At the time when she was enticed away by accused Sita Ram, she went away with ornaments and with a cash of Rs. 500. On return, she narrated the story to her husband and father-in-law and thereafter dictated the report to Kundan son of Kalloo of her village and the said report was handed over at the police station Jaisinghpur, on 18.10.1986 where at 3.30 a.m. head constable Akbal Bahadur Tiwari wrote the F.I.R. Ext. Ka-5 and made an entry of the cognizable offence in G.D. No. 3. Thereafter, she was sent to the District Women's Hospital, Sultanpur where on 19.10.1986 Dr. (Smt.) Neena Vatsa examined her at 1.30 p.m. and on her general examination, she found that her hymen was old torn healed up and her vagina was found to have been admitting two fingers easily and the size of the uterus was found normal. Thereafter, Dr. Vatsa sent the vaginal smear of the prosecutrix for detection of spermatozoa and advised X-ray. On the basis of the X-ray report Dr. Vatsa determined the age of the prosecutrix to be more than 19 years. No spermatozoa were found. No definite opinion about rape could be given.

7. The investigation was entrusted to S.I. Babu Singh Rathaur who during the course of the investigation prepared the site plan of the house of the prosecutrix and after completing the investigation submitted charge-sheet Ext. Ka-4 against the accused-persons.

8. After committing the case to the Court of Sessions, the accused-persons were

charged u/s 376/511/109, I.P.C. to which they pleaded not guilty and claimed to be tried. They alleged their false implication due to enmity.

9. In support of its case, the prosecution examined Smt. Putkunna (P.W. 1), Kundan (P.W. 2) the scribe of the F.I.R., Dr. V. K. Verma, Senior Radiologist (P.W. 3), I.O. B.S. Rathaur (P.W. 4), head constable Akbal Bahadur Tiwari (P.W. 5) and Lady Dr. (Smt.) Neena Vatsa (P.W. 6) were examined.

10. The statement of the prosecutrix was also recorded u/s 164 of the Code of Criminal Procedure on 22.10.1986. After taking into consideration the entire evidence on record, the learned Sessions Judge, Sultanpur found the accused-persons guilty u/s 376, I.P.C. and convicted them to seven years" R.I. and to pay a fine of Rs. 1,000 each. It is against this judgment, the present appeal has been filed.

11. After perusal of the evidence on record, I find that Smt. Putkunna after being escaped from the custody of the accused lodged the F.I.R. on 22.10.1986 and she was produced before the Magistrate for recording her statement u/s 164 of the Code of Criminal Procedure. Smt. Putkunna has given the statement that she was enticed away by Sita Ram 10-12 days before the date of the statement. She was taken away in a rickshaw during night hours. She has further stated that Sita Ram and Bhagwandin, the rickshaw puller both had committed sexual intercourse with her. She has further stated that she was taken to village Bela and kept inside the house of Bhagelu. She further stated that there both Sita Ram and Bhagelu had committed sexual intercourse with her. She has further stated that Sita Ram had sold her to Bhagelu from where she escaped and came to her husband's house. Before this statement u/s 164 of the Code of Criminal Procedure, she had lodged the F.I.R. on 17.10.1986 in which she has reported the same to the police. In the F.I.R. she has mentioned that both Sita Ram and Bhagwandin, the rickshaw puller both had committed sexual intercourse with her forcibly. She has further mentioned in the F.I.R. that both Sita Ram and Bhagelu committed sexual intercourse with her against her will one by one and after that she was sold to Bhagelu. Before the trial court she has given the same statement that she was enticed away by accused Sita Ram and thereafter, accused Sita Ram and Bhagwandin, the rickshaw puller both committed sexual intercourse on the canal side by force and she has further stated that after that inside the house of Bhagelu both Sita Ram and Bhagelu committed sexual intercourse one by one against her will. There is no reason to the prosecutrix to falsely implicate the accused-persons and also there is no reason to disbelieve her statement. In the absence of any strong reason for implicating the accused falsely, the testimony of the prosecutrix is to be believed. In State of Rajasthan Vs. Shri Narayan, , the Supreme Court was of the view that unless the evidence discloses that the prosecutrix and her husband had strong reasons to falsely implicate the accused, ordinarily the Court should have no hesitation in accepting her version regarding the incident. Accused Sita Ram was the neighbour of the prosecutrix and her relation with Sita Ram was not here so strained to implicate him falsely.

12. The prosecutrix being all alone, amongst the two persons at the time of the incident, was helpless. There is no suggestion in the cross-examination that the prosecutrix was a lady of easy virtue. The consent of the prosecutrix cannot be inferred if, she has submitted her body under fear and after finding her all alone either at canal side or inside the house of Bhagelu where there was a resistance by the prosecutrix depends upon relevant circumstance. Her statement that she was raped and sexual intercourse was committed against her will is sufficient to be believed in this case. In the circumstances of the case, there can be no corroboration. Therefore, the statement of the prosecutrix has been correctly relied upon by the trial court in recording the finding of conviction. The prosecutrix being married woman, there can be no medical evidence of rape after a period of 10 days during which she remained in the custody of the accused-persons. After making scrutiny of the evidence on record, I find that the findings recorded by the learned Sessions Judge are in accordance with the evidence on record. The learned Sessions Judge has found corroboration of the statement of the prosecutrix from the F.I.R. and her statement u/s 164 of the Code of Criminal Procedure. Therefore, there is nothing to be interfered with the finding recorded by the trial court.

13. In view of the above, the appeal is dismissed. The impugned judgment and order of conviction and punishment dated 5.4.1989 so far as accused-Appellants Bhagwandin and Bhagelu is concerned, is confirmed.

14. The appeal filed by Sita Ram, Appellant stands abated because of his death.

Let a copy of this judgment be sent to the Chief Judicial Magistrate concerned within ten days for immediate compliance and report within one month.