
(2013) 12 AHC CK 0021

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 399 of 2013

Smt. Vira Devi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2013) 12 AHC CK 0021

Hon'ble Judges : Pankaj Naqvi, J; Dharnidhar Jha, J

Bench : Division Bench

Advocate : Ashutosh Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Pankaj Naqvi, J.—We have heard Sri Sanjay Dwivedi, holding brief of Sri Ashutosh Pandey, learned counsel for the appellant in support of the admission of appeal preferred by informant u/s 372 Cr.P.C., which questions the correctness of the judgment of acquittal dated 26.10.2013 passed by Special Judge (SC/ST Act), Bareilly in Sessions Trial No. 588 of 2013 acquitting the solitary respondent for charges under sections 452, 323, 376 of IPC read with section 2(V) of the SC/ST Act. The informant alleged that while his daughter (victim) was alone in the house at about 10:00 P.M., the solitary respondent forcibly entered the room, locked her inside and sexually assaulted her. On cries for help made by victim, the elder sister of the informant/PW-2 Sushila arrived at the scene and saw that the victim was closeted inside the room. Meanwhile, her another sister, namely, Santosh (not examined) also arrived and requested her to open the door, but as the door was not opened, the co-villagers arrived. The door was opened and the respondent-accused slipped away from the scene of occurrence.

2. On the age of the victim, the trial court was taking a view that the prosecution could not lead any evidence as to the age of the victim. PW-6 Dr. Poonam Agrawal, who examined the victim, referred to the radiologist, but no radiological report was brought on record, from which the age of the victim could be inferred.

PW-3, the mother of the victim, also could not disclose the age of the victim. PW-6 the doctor reported that the victim had fully developed secondary sexual characters. Thus the Court below was taking a view that the victim had attained the age of consent. The trial court was further taking a view that the case of the victim was that she was gagged with clothes in her mouth, yet she shouted for help was a material contradiction as with clothes gagged in her mouth, the victim could not be expected to shout. Moreover, it was also the case of the victim that while the accused entered the room, she was asleep. However, she was also stating that the respondent started beating once he made entry inside the room. The trial court was taking a view that once again sleeping and inflicting beating to the victim is not possible simultaneously as the intention of the accused was to commit rape.

3. The Trial Court also found from the evidence on record that upon the cries for help made by her, only two of her Chachis had arrived at the scene of occurrence in spite of the fact that five uncles, who were living in the adjoining houses and the prosecution could not explain as to why they did not arrive at the scene of occurrence upon hearing the cries for help made by the victim. Finally the trial court also held that no doubt F.S.L. report indicated the presence of stains of semen and blood in the undergarments of the victim and the accused yet, that by itself would not be an evidence for the commission of the crime, as it was not further established as to which blood group it belonged, or whether the semen was that of respondent-accused or not.

4. Thus in view of the aforesaid vital lacunae in the case of the prosecution, the court below was drawing two probabilities, i.e., (i) either the occurrence had not taken place or (ii) it was consensual, entitling the accused for an acquittal.

5. We, after hearing learned counsel for the informant and after perusing impugned judgment, are of the considered opinion that the view taken by the court below was a reasonable and a probable view, which cannot be faulted as being perverse. We decline to grant leave to appeal and dismiss the appeal.