

Court No. - 69

Case :- JAIL APPEAL No. - 716 of 1991

Appellant :- Ram Autar Alias Chhedi Lal

Respondent :- State of U.P.

Counsel for Appellant :- Sandeep Mishra (Amicus Curiae)

Counsel for Respondent :- Ajay Singh, AGA-I

Hon'ble Samit Gopal, J.

1. The present appeal from jail has been preferred by the appellant- **Ram Autar Alias Chhedi Lal** against conviction & sentence vide judgement and order dated 29.10.1987 passed by the Assistant Sessions Judge, Banda in Sessions Trial no. 108 of 1987 (State of U.P. vs. Ram Autar and Nanda) whereby he and co-accused have been convicted and sentenced under Section 363 I.P.C. to 03 years rigorous imprisonment and under Section 366 I.P.C. to 03 years rigorous imprisonment. The sentences have been ordered to run concurrently.
2. Co-accused Nanda Kishore had also preferred an appeal from jail which was numbered as Jail Appeal No. 717 of 1991 but due to his death the same stood abated vide order dated 30.08.2023.
3. The name of the prosecutrix is not being disclosed and mentioned in the present judgement in the light of directions of the Apex Court in various judgements. She is, thus, referred to as 'X' in the judgement.
4. The present case started on an application given by Jwala Prasad son of Ayodhya Prasad resident of Gular Naka, District Banda addressed to the Inspector Police Station Kotwali, District Banda alleging therein that his daughter aged about 09 years has gone missing from 14.02.1987 since 4 p.m. from Sankat Mochan Mandir, Kutchery. She was searched a lot but could not be traced. He prays that a report be lodged and appropriate action be taken. The said report was registered as missing report in G.D. No. 6 at Police Station Kotwali, District Banda on 15.02.1987. The same is Exb: Ka-2 to the records.
5. Subsequently on 21.02.1987 at about 11.45 a.m., the victim girl along with the accused Ram Autar @ Chhedi Lal and Nanda @ Nand Kishore was recovered from Attara Chungi Tiraha, District Banda. A recovery memo and arrest memo of the accused persons was prepared on 21.02.1987 by R.L. Agnihotri, S.I. The same is Exb: Ka-3 to the records. It is stated therein that the victim girl is related to Case Crime No.

205/1987, under Sections 363, 366 I.P.C., Police Station Kotwali, District Banda.

6. The victim was sent for medical examination with a letter dated 21.02.1987 of the police on which she was medically examined on 21.02.1987 at 2.10 p.m. by the Medical Officer, Women Hospital, Banda wherein on examination of private parts the doctor noted as follows:-

“Labia Majora and Minora not well developed, Hymen intact. No injury over the private parts seen.”

The doctor with regard to external injury noted as follows:-

“No external injury over the body seen.”

She was referred to the radiologist for X-Ray. The opinion as derived by the doctor is as follows:-

“No definite opinion can be given about the rape.”

7. The X-Ray of the victim was conducted on 23.02.1987 and the report was regarding the condition of bones & joints. There was no opinion regarding age therein. The X-Ray report is Exb: Ka-4 to the records.

8. During investigation, the site plan of place of occurrence was prepared on 18.02.1987 which is Exb: Ka-7 to the records. Subsequent to the recovery of the victim and arrest of the accused persons a site plan of place of occurrence and arrest was prepared on 22.02.1987 which is Exb: Ka-8 to the records.

9. The victim under the orders of the Court was given in supurdgi to her father Jwala Prasad through a supurdgi memo dated 24.02.1987. The same is Exb: Ka-9 to the records.

10. The investigation concluded and a charge-sheet No. 70 of 1987 dated 28.02.1987 was filed against Ram Autar @ Chhedi Lal and Nanda @ Nand Kishore, under Sections 363, 366 I.P.C., Police Station Kotwali, District Banda. The same is Exb: Ka-10 to the records.

11. The trial court vide order dated 03.07.1987 passed by the Assistant Sessions Judge, Banda has framed charges against the accused Ram Autar @ Chhedi Lal and Nanda @ Nand Kishore for offences under Sections 363, 366 I.P.C. The accused persons denied the charges and claimed to be tried.

12. In the trial Subhash Chandra an alleged eye-witness was examined as P.W.-1, Smt. Ram Shri was examined as P.W.-2, the victim 'X' was examined as P.W.-3, Dr. Prabha Upadhyay, lady Doctor, District Hospital Banda was examined as P.W.-4, Jwala Prasad was examined as P.W.-5, Bafati was examined as P.W.-6, Dr. O.P. Mittal, Radiologist was examined as P.W.-7 and R.L. Agnihotri, S.I. / I.O. was examined as P.W.-8.

13. The accused in their statement under Section 313 Cr.P.C. denied the prosecution version and stated of false implication due to enmity. No defence evidence was led.

14. The trial court then vide the impugned judgement & order dated 29.10.1987 convicted and sentenced the appellant and co-accused Nanda as stated above.

15. The present appeal has thus been filed through Jail by the accused - appellant Ram Autar @ Chhedi Lal.

16. Heard Sri Sandeep Mishra, Advocate learned Amicus Curiae representing the accused-appellant who was appointed by this Court vide order dated 29.09.2023 to argue the matter and Sri Ajay Singh, learned Additional Government Advocate-I for the State of U.P. and perused the records of the appeal and also the trial court records.

17. Learned counsel for the appellant argued that the appellant has been falsely implicated in the present case. It is argued that Subhash Chandra P.W.-1 was the person who is stated to have informed Jwala Prasad the first informant & father of the victim that the appellant and co-accused Nanda took away his daughter on 14.02.1987 but even thereafter a missing report which was not naming any accused person and describing any such incident was got registered by Jwala Prasad on 15.02.1987. It is argued that the victim was subjected to medical examination wherein the doctor did not find any injury either on her body or on her private parts and there was no opinion regarding any sexual assault on her. It is then argued that the victim has stated that she went from Banda to Jhansi by bus and then to Gwalior by train and thus in between there was ample opportunity for her to raise an alarm or resist her going since travelling was through public modes and from public modes but there is no disclosure by the victim that she ever tried to raise any alarm or resist the appellant and co-accused taking her. It is argued that the same would go to show that the victim went without any complaint and out of her own sweet-will. It is further argued that the appellant was a previously known

person to the victim as he used to visit the shop of her father and used to spend time there. It is argued that the prosecution case thus is not truthful and is without *malafide* intentions just to falsely implicate and harass the appellant. It is argued that the conviction and sentence of the appellant is without any credible evidence and is only *malafide*. The judgement & order impugned be set-aside and the appellant be acquitted of the charges levelled against him.

18. Per contra, learned Additional Government Advocate-I opposed the prayer and argument of learned counsel for the appellant and argued that in so far as age of the victim is concerned, she was stated to be of about 09 years, the same is not under challenge. It is argued that she is a minor girl. It is further argued that in so far as the recovery of the victim and the arrest of the accused persons is concerned, the same also is not under challenge and as such that part of the prosecution story is also fully truthful. It is argued that the statement of the victim recorded during investigation and also before the court would go show that the accused persons took her, kept her in a room for five days and the appellant used to tell her that he would marry her after which while going somewhere she was recovered and the accused persons were apprehended together. It is argued that in the statement of the victim there is nothing which would go to show that the prosecution story is not believable. It is argued that the prosecution has proved its case beyond reasonable doubt and the judgement & order of the trial court is just and proper. The appeal be thus dismissed.

19. P.W.-1 Subhash Chandra is the person who states that he at about 5-5.30 p.m. saw the victim along with the accused at the railway station when he had gone for some work with Ram Babu. He knows the accused persons. He states that he did not know as to why the victim was standing with him. Later on when he came to know that the daughter of Jwala Prasad has got missing he then informed him about it.

20. P.W.-2 Smt. Ram Shri is the mother of the victim and wife of the informant Jwala Prasad. She states that she, her daughter and Raju have a tea stall besides the Sankat Mochan Temple in Kutchery. The victim is aged about 09 years. On the day of incident her husband had gone for work. She and her son Raju were at the shop where they had come around 10 a.m. Her daughter had gone to the temple to take prasad but did not return back after which Raju searched her but she could not be traced. They searched for her till 5 p.m. but even then her daughter did not return

and then information was given to her husband. Later on her husband gave a report at the police station. She states that her daughter was recovered along with the accused persons. She was then given in custody of her husband.

21. The victim 'X' was examined as P.W.-3. She states that on the date of the incident she was present at the shop with her mother and brother from where she went to Sankat Mochan Temple to take prasad where she met Ram Autar. She knew Ram Autar since before as he used to come to her shop. When she took prasad, both the accused persons met her and told her that she may accompany them and they would give more prasad to which she went with them. The accused persons then gagged her mouth and by a train took her to Gwalior where she was detained in the house of a lady. The accused persons used to get their legs massaged by her and used to threaten her of murdering her. Ram Autar used to say that he would marry her and made her sleep with him. She then stated that she was recovered by the police and the accused were arrested after her medical examination was done. Her statement under Section 164 Cr.P.C. was recorded which was Paper No.-12 Kha to the records.

22. P.W.-4 Dr. Prabha Upadhyay conducted the medical examination of the victim on 21.02.1987 where she was brought by a lady constable. The details of the medical examination have already been stated above and as such are not being mentioned being repetitive.

23. P.W.-5 Jwala Prasad is the informant and father of the victim. He states that he is a carpenter and knows both the accused persons from before since they used to come to the shop of his wife for tea. He states that his daughter was aged about 08 years at the time of the incident. He further states that his daughter was present at the shop wherein at about 3-3.30 p.m. she went to the temple to take prasad but did not return back. When he returned back at about 5.30 p.m. the mother of the victim told him about the incident. He then searched her but could not trace her. When he returned back to the village on the next day at about 8.30 p.m. Subhash Jain told him that he saw his daughter and the accused persons standing at the railway station. He then on the information of Subhash gave a report at the police station. The said report is Exb: Ka-2 to the records. He states that after 6-7 days his daughter was recovered and the accused persons were arrested. The recovery memo is Exb: Ka-3 to the records.

24. P.W.-6 Bafati is a witness of recovery of the victim and arrest of the accused. He states of signing of the said recovery memo which is Exb: Ka-3 to the records.

25. P.W.-7 Dr. M.C. Mittal is the Radiologist who gave report of the X-Ray of the victim. He proves the same which is Exb: Ka-4 to the records. He states that as per X-Ray the victim was less than 15 years of age.

26. P.W.-8 R.L. Agnihotri is the Investigating Officer of the matter. He did the investigation and then submitted a charge-sheet against the accused persons. He proves the GD of the police station regarding the report lodged for the girl going missing and the site plan which is Exb: Ka-7 to the records.

27. The trial court thus convicted the appellant and co-accused Nanda as stated above.

28. The appellant Ram Autar @ Chhedi Lal was arrested on 21.02.1987. He remained in jail throughout the period of trial and was subsequently convicted and sentenced vide order dated 29.10.1987 against which he preferred the present appeal from jail. As per the report dated 13.06.1991 of the Superintendent of Police, District Jail- Banda the appellant has been released from jail on 15.07.1989 after serving out the entire sentence as awarded to him. Since he was not traceable despite notice to him, an Amicus Curiae was appointed to represent him.

29. The case of the prosecution is of the victim missing from a temple. She was then recovered along with the appellant and another accused. She states of the appellant and co-accused taking her to a distant place initially by luring her for giving her extra prasad and then took her and confined her in a room for 06 days. P.W.-1 is the person who had seen the victim and the accused persons at the railway station but at that point of time there was nothing suspicious about it in his opinion. Subsequently after coming to know of the victim getting missing, he informed it to the informant P.W.-5 who then proceeded to initiate action in the matter. In so far as testimony of the victim 'X' P.W.-3 is concerned, the same is consistent and unblemished. There is nothing in it which would dislodge the prosecution case. The trial court has given detailed & cogent finding and reason while convicting and sentencing the appellant.

30. In view of the above, the appeal fails. The judgement & order of the trial court is affirmed. Since the accused-appellant has already undergone

the entire period of sentence awarded to him, no separate orders are needed to be passed.

31. A copy of this judgment be communicated to the concerned District & Sessions Judge within 45 days from today by the Registrar (Compliance) for information and necessary action alongwith the trial court records.

32. Sri Sandeep Mishra, Advocate learned Amicus Curiae argued the matter on behalf of the appellant. He be paid his fees by the High Court Legal Services Committee as per rules within 45 days.

Order Date :- 1.11.2023

AS Rathore

(Samit Gopal, J.)