

Court No. - 46

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 164 of 2023

Appellant :- Salma

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Ajay Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

The present appeal has been filed challenging the judgment and order dated 16.02.2023 passed by learned Additional Session Judge/ Fast Track Court (First), Amroha in Session Trial No.39 of 2022 (State of U.P. vs. Naveel and others) arising out of Case Crime No. 265 of 2020, under Sections 452/376/323/427 I.P.C., Police Station- Saidnagali, District- Amroha whereby the accused/opposite party nos.2 to 4 have been acquitted in Case Crime No.265 of 2020.

Informant is the victim in the present case and has given a written report on 26.10.2020 at Police Station- Saidnagali, alleging therein that on 02.10.2020 at about 2'O clock in the afternoon while informant/ victim was alone at home the accused Naveel son of Kadeer came to her house and on the threat of a knife sexually assaulted her. While the incident was taking place, victim's brother Kamran (P.W.-2) came home and on his alarm, various other persons came and caught the accused Naveel. It is thereafter that two other accused Kadir and Suleman are said to have entered the house armed with a baton and then these two persons forcibly secured evacuation of accused Naveel. Various goods and items in the house were also damaged in the fight, which took place between the accused and the victim's brother. It is alleged that on the same day the victim had gone to the police station along with her brother to lodge a report but such report was not lodged and it was only on the intervention of the higher authorities that the report has been registered 24 days after the incident. On the basis of such written report, Case Crime No.265 of 2020 was registered.

Investigation proceeded in which the victim has supported the prosecution case

both in her testimony under Section 161 Cr.P.C. and also under Section 164 Cr.P.C. The victim has also been medically examined but no external or internal injuries have been found on her. Charge-sheet, ultimately, was submitted in the matter.

The concerned Magistrate took cognizance and committed the case to the Court of Session, where it got registered as Session trial No.39 of 2022. Charges were framed against the accused Naveel under Sections 452, 376, 323, 427 I.P.C. while other two accused Suleman and Kadir were charged for offences under Sections 452, 323, 427 I.P.C. All the three accused denied their implication in the case and demanded trial.

During the course of trial, the victim has appeared as P.W.-1 whereas her brother Kamran has appeared as P.W.-2. P.W.-3 is constable Munazir who has proved the chik report etc., while Dr. Pallavi Gangwar has appeared as P.W.-4 and proved the medical examination report of the victim. P.W.-5 is Sub-Inspector Praveen Kumar who is the Investigating Officer.

P.W.-1 has supported the prosecution case and as per which at about 11-12' O clock in the afternoon while she was alone, the accused entered the house armed with a knife and subjected her to sexual assault. The victim tried to resist and in between her brother Kamran came and after seeing her brother, she raised a protest and her brother held the accused. It is, thereafter, that police was informed on helpline no.100 but even before the police could arrive the other two accused entered the house armed with baton and forcibly secured evacuation of Naveel. P.W.-1 has been cross-examined, in which she stated that the accused had earlier also attempted to outrage her modesty and though she lodged a report but the same was not registered. She has proved her written report which is exhibited as Ka-1. She has also proved her statement recorded under Section 164 Cr.P.C. As per the victim, she was previously married to one Waseem but the marriage ended in a divorce. She had lodged a report for demand of dowry etc. which was registered as Case Crime No.176 of 2015. This case ended in a compromise. In Case Crime No.176 of 2015, also her brother Kamran was a witness. She had also lodged Case Crime

No.139 of 2018 against Jahid, Vakeel and two others and in this case also her brother Kamran was a witness. This case also ended in a compromise. Another case was registered by the victim being Case Crime No.167 of 2020, in which all the three respondent accused were implicated. It is, therefore, the fourth report lodged by the victim and two of these reports have ended in a compromise. In the cross-examination, P.W.-1 admitted that no injuries were caused either to her or to her brother. She although alleged that police was called on helpline no.100 but no details in that regard have been furnished during trial either by the victim or by the I.O. In the cross-examination, P.W.-1 has further stated that her brother was called on phone whereafter he actually came. According to P.W.-1, on raising of alarm, various persons came including one Iqbal, who according to defence had died 9 years prior to the incident.

P.W.-2 has also supported the prosecution case. He has stated that none had informed him that his sister was threatened with a knife. He stated that the accused attacked him with knife but no injuries were caused to him. He had also not snatched knife from the accused. There are houses of various other persons around the house of the victim, but none of them have been produced during trial. The independent witnesses, namely, Shoib, Tahir, Sharafat, Veer Singh, Israr and Arshad etc. have been got discharged by the prosecution.

P.W.-4 has proved the medical report, as per which, there were no external or internal injuries on the victim and her hymen was found old torn and healed. Although vaginal smears was prepared but no pathological report in that regard has been produced.

Trial Court has examined the evidence on record and has granted benefit of doubt to the accused persons after noticing inherent contradictions in the version of the victim. The Court below has noticed that the victim had lodged various other complaints and later on, such complaints ended in a compromise between the parties. The argument of defence, based upon such fact is that the victim was in the habit of lodging false complaints, for extraneous reasons, and after her object was

fulfilled, she compromised the matter with the accused. The victim, otherwise, had stated in her report that the incident occurred at around 2'O clock but, has deposed that the incident occurred at around 11-12'O clock in the morning. There is, thus, a contradiction in the testimony of victim regarding the time of incident. The Court below has further noticed that although victim has alleged that the two other accused, who came later armed with batons caused injuries and damaged various belongings of the house but neither any such injury has been caused to the victim or P.W.-2 nor they have been able to show that any of the belongings were damaged. The medical examination of the victim, otherwise, does not support any sexual assault on the victim. No independent witnesses have been produced, although various persons were referred to initially in the testimony of the witnesses. No reasons are disclosed, as to why, any of these independent witnesses have not supported the prosecution case. The statement of the victim that police was informed on helpline no.100, has also not been proved in evidence.

Upon cumulative assessment of the evidence led on record, the trial Court has come to the conclusion that the prosecution has not been able to establish its case beyond reasonable doubt. One of the reasons relied upon by the trial Court is also the fact that P.W.-1 in her cross-examination has admitted that her brother was called later on phone, which virtually dents the entire case set up by the prosecution.

Having given our thoughtful consideration to the materials placed on record before us, including the statement of witnesses, we find that the view taken by the Court below is clearly a permissible view and just because a different view could be taken in the matter cannot be a ground for us to interfere with the judgment of acquittal in the facts of the present case.

The appeal filed by the victim under Section 372 Cr.P.C. is, therefore, summarily **rejected**.

Order Date :- 17.10.2023//SP/-