

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8208 of 2023

Appellant :- Jay Prakash And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Girish Tiwari

Counsel for Respondent :- G.A., Rakesh Chandra

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Heard learned counsel for the appellants, learned counsel for the opposite party no. 2 and perused the record.

Learned counsel for the opposite party no. 2 refused to file any counter affidavit.

This is an appeal against the order dated 25.08.2022 passed by the Special Judge (SC/ST Act), Sonbhadra in Final Report No. 37 of 2022 (Gita Devi Vs. State).

Vide order dated 25.08.2022 the final report dated 24.06.2021 was rejected and the appellants were summoned by the trial court to face trial under Sections 376D, 323, 504, 506 IPC and 3(2)(V), 3(1)Dha of SC/ST Act.

As per facts of the case an application under Section 156(3) Cr.P.C. dated 19.02.2021 was filed by the opposite party no. 2 against both the appellants with the version that on 14.02.2021 in the evening when she had gone to bring fodder for her cows, both the appellants caught her. Jay Prakash dragged her into field of 'arhar'. Both the appellants hurled wild abuses, gave threat of life and thrashed her with blows. Appellant Jay Prakash committed rape on her in the 'arhar' field. Appellant - Budhiram was exhorting co-accused Jay Prakash to commit rape on the victim. As Bajrangi Chero and some other villagers were seen coming, appellant Jay Prakash left her in the field, called Budhiram, gave threat of life and both the accused persons made good their escape at about 5.30 p.m. The victim went to her house and narrated the incident to her husband. Due to night they went to the police station next morning. She also got herself medically examined on 15.02.2021 but as there was no lady doctor in the hospital so the medical examination of the injuries on her private parts could not be done. Her report was not lodged in the police station.

Applications were moved before various authorities but her report was not lodged.

On the basis of application under Section 156(3) Cr.P.C. above dated 19.02.2021 on the direction of the court FIR was lodged on 16.03.2021 and after investigation final report was submitted against the appellants. By the impugned order the trial court rejected the final report and on the basis of statement of the victim summoned the appellants to face trial under above mentioned sections.

The attention of the court is drawn towards the version of the FIR and has been submitted that in the FIR itself there is allegation of rape against appellant Jay Prakash only but both the appellants have been summoned by the trial court to face trial under Section 376D IPC along with other sections of IPC and SC/ST Act. In the statement of Dr. Manju Bala, no injury was found on the private parts of the victim. Hence, it is claimed that as per report of the doctor no sign of rape was found on the person of the lady victim so offence under section 376D IPC cannot be said to be made out against the appellants.

The attention of the court is further drawn towards complaint dated 20.01.2020 lodged by Sumitra w/o Jay Prakash- appellant against Ram Janam, the husband of opposite party no. 2 and two others wherein the allegation of attempt of rape was made against Bal Chand, Babuli and Ram Janam (husband of opposite party no. 2) and it is claimed that as regarding incident dated 19.12.2020 an application under Section 190 (1)(ka) Cr.P.C. was moved by Sumitra s/o Jay Prakash against Ram Janam and two others under Sections 354B, 376/511, 504 IPC. In counterblast of this report only present FIR has been lodged on totally false grounds. On the basis of this application Ram Janam, husband of opposite party no. 2, was summoned by the court vide order dated 26.03.2021 to face trial. As per report of CDR also on the date of incident the presence of the appellant Jay Prakash was found in Varanasi while the incident is of district Sonbhadra. Regarding incident dated 19.12.2020 Sumitra w/o Jay Prakash had gone to lodge an FIR on the instructions of Superintendent of Police concerned on 09.01.2021 against Ram Janam and two others. These three persons Ram Janam, Babuli and Bal Chand were challaned by the police under Sections 107, 116, 151 Cr.P.C. Thus, it is claimed that in counterblast of application dated 20.01.2021 above by Sumitra the present FIR was lodged on the basis of false version.

It is also argued that except the statement of the victim there is

nothing on record against the appellants. There is no criminal history to their credit. Hence, prayer is made accordingly.

Learned counsel for the opposite party no. 2 opposed the prayer and submitted that there is statement of the victim since very beginning reiterating the facts mentioned in the application under Section 156(3) Cr.P.C. on the basis of which later on FIR was lodged. Bajrangi Chero and Malti Devi, who were shown as witnesses in the application, were never examined by the Investigating Officer. It is argued that for summoning of the appellants, only statement of the victim is sufficient. Hence, prayer was made to dismiss the appeal.

From perusal of the record, it is found that admittedly regarding incident dated 19.12.2020 the application was moved by Sumitra w/o Jay Prakash under Section 190(1)(ka) Cr.P.C. on 20.01.2021 against Ram Janam, the husband of the opposite party no. 2 and two other co-accused persons. This application was registered as a complaint and Ram Janam along with two others was summoned to face the trial by the trial court on 26.03.2021. It is also admitted fact that when on 09.01.2021 Sumitra w/o Jay Prakash went to the police station to lodge an FIR against Ram Janam, husband of opposite party no. 2 and two others, the alleged accused persons were challaned under Sections 107, 116, 151 Cr.P.C. and only it was after this challan on 09.01.2021 and on the basis of complaint registered on the basis of application under Section 190(1)(ka) Cr.P.C. moved by Sumitra w/o Jay Prakash that Ram Janam and two others were summoned vide order dated 26.03.2021 to face trial under Sections 354B, 376/511, 504 IPC. Though, it is claimed that when on 20.01.2021 the application under Section 156(3) Cr.P.C. was moved by Sumitra against Ram Janam regarding attempt of rape and other allegations the opposite party no. 2 or her husband had no knowledge of this complaint. Hence, the application moved under Section 156(3) Cr.P.C. on 19.02.2021, cannot be said to be a counterblast of the application moved by Sumitra w/o Jay Prakash. Admittedly, regarding same incident dated 19.12.2020 on 09.01.2021 when Sumitra went to the police station to lodge an FIR regarding incident in question, Ram Janam, husband of opposite party no. 2 and two other co-accused persons were challaned by the police under Sections 107, 116, 151 Cr.P.C., which clearly shows that the opposite party no. 2 and her husband had full knowledge of the allegation raised against Ram Janam and two others by Sumitra w/o Jay Prakash.

It is true that for the offence under Section 376 IPC the statement of the victim is enough. In this regard, the FIR and the statement of

victim under Section 164 Cr.P.C. are before the court, wherein the allegation against Jay Prakash for committing rape is made by Gita Devi w/o Ram Janam.

In the opinion of the court, in the present scenario the court has to judge the truthfulness of the allegations on the basis of evidence on record.

If we go through the application under Section 156(3) Cr.P.C. dated 19.02.2021 on the basis of which FIR against the appellants was registered on 16.03.2021, in that FIR there is allegation of rape by Jay Prakash only with opposite party no. 2. Even then the trial court has summoned both the appellants to face trial under Sections 376D IPC along with other sections of IPC. As there is no allegation of committing rape by Budhiram, he could not have been summoned for the allegation of gang rape under Section 376D IPC. The trial court has not given any finding as to on what basis appellant Budhi Ram has been summoned by the trial court to face allegation of gang rape against him.

So far as the question of this FIR being counterblast of the complaint filed by Sumitra is concerned, the challan of Ram Janam, husband of opposite party no. 2 on 09.01.2021 under Sections 107, 116, 151 Cr.P.C. clearly shows that Ram Janam and his wife opposite party no. 2 had full knowledge on 19.01.2021 regarding allegation raised by Sumitra Devi w/o Jay Prakash against Ram Janam along with two others. So the argument of learned counsel for the complainant that they could know about the complaint dated 20.01.2021 on the basis of which Ram Janam, husband of opposite party no. 2, was summoned only on 26.03.2021 becomes wrong. Otherwise also, if the version of the FIR and the statement of the victim under Section 164 Cr.P.C. are considered as per facts mentioned in the FIR, the victim opposite party no. 2 was medically examined by the doctor and as per medical report appended at page-35A of the paper book only contusions were found on the right ear pinna, shoulder, wrist and knee of the victim. All the injuries were found to be simple and about one day old. This medical report is dated 17.02.2021, while the alleged incident is shown to be dated 14.02.2021. So as per medical report the injuries could relate back to date 16.02.2021 only. These injuries cannot be connected with the incident dated 14.02.2021. Otherwise also, in this injury report there is no signature of any doctor and no stamp of hospital making the report suspicious.

Again if we go through the statement of the Dr. Manju Bala, who

is said to have examined the victim on 19.03.2021 regarding allegation of rape, no injury is said to have been found on the private part of the victim. In the various statements under Section 161 Cr.P.C. placed before the court, none of the witnesses has supported the version of the victim. So far as the oral version of the victim herself is concerned, it is not supported by any medical report (medical which is placed before the court is not signed by any doctor or stamped any way) Thus, the version of the alleged victim - opposite party no. 2 that as there was no lady doctor in the hospital on the date of examination 17.02.2021 so she could not be examined regarding her allegation under Section 376 IPC, cannot be said to be supported any way.

Thus, on the basis of medical report of the victim herself neither she was examined for the offence of rape nor any injury was found on her private part by the doctor. But the comparative study of the report filed by Sumitra w/o Jay Prakash and the present FIR lodged by the opposite party no. 2 clearly show that the present FIR regarding allegations raised therein is a clear misuse of law. As the main allegation of rape is suspicious, other allegations in the FIR are also not sustainable finding it to be the malicious prosecution. The Investigating Officer had rightly filed the final report, which is rejected by the trial court by passing the impugned order.

In the opinion of the court, it is true that the statement of the victim is enough for summoning the accused under Section 376 IPC but at the same time the allegations of the victim must be strong enough to prove the offence committed against her.

Going through the facts of the above case, as mentioned above, I find that the impugned order dated 25.08.2022 rejecting the final report is against the evidence on record. In the opinion of the court the proceeding being malicious the appeal deserves to be allowed.

The appeal is **allowed**. The impugned order dated 25.08.2022 is hereby set aside and the final report is accepted.

Order Date :- 20.11.2023

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