

Reserved on-09.11.2023

Delivered on-22.11.2023

Court No. - 46

Case:- CRIMINAL APPEAL No. - 4735 of 2013

Appellant:- Maudhu

Respondent:- State of U.P.

Counsel for Appellant:- Jag Narayan, Sanjeev Mishra Gana, T.C.Shama, Rajiv Lochan Shukla

Counsel for Respondent:- Govt. Advocate, Prashant Saxena

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Delivered by Hon'ble S.A.H. Rizvi J.

1. The present appeal has been filed on behalf of the accused-appellant-Maudhu, who has been convicted by judgment and order dated 10.10.2013 passed by Sessions Judge, Farrukhabad in Session Trial No.153 of 2010 (State of U.P. vs. Maudhu) arising out of Case Crime No.374 of 2009, under Sections 376 I.P.C., Police Station- Amritpur, District- Farrukhabad and sentenced the appellant to life imprisonment & fine of Rs.20,000/-.

2. The informant presented a written report dated 10.09.2009 scribed by Tilakram Awasthi at P.S.- Amritpur, District- Farrukhabad, alleging therein that today on 09.09.2009 her 15-year-old daughter had gone outside the village to ease herself. When she sat down in the *curvy* field of Maniram, Maudhu Jatav of the village came there and with ill intention pulled her down on the ground. His daughter resisted and made a noise then the accused ran away from the spot. His daughter came to the house and narrated the entire incident, to the informant and other family members, who consulted and thereafter informant came with the victim to lodge the report. On the aforesaid written information, Case Crime No.374 of 2009 under Section 376/511 I.P.C. was registered and investigation was entrusted to S.I. Shiv Singh. The victim was sent for medical examination, the Investigating Officer recorded the statement of Chik and GD Writer. Further investigation was conducted by S.I. Chhatrasal Shivhare. He arrested the accused on

10.09.2009 and recorded his statement. He collected the medical examination report and supplementary report of the victim and on its basis amended the case under Section 376 I.P.C. Thereafter, he recorded the statement of the victim, the informant, and other witnesses, collected the pot (*lota*), and prepared its memo. The statement of the victim was also got recorded under Section 164 Cr.P.C. The Investigating Officer inspected the place of occurrence and prepared the site plan at the pointing out of the informant and the victim. Based on evidence collected during the investigation, a charge-sheet was submitted against the accused for offence under Section 376 I.P.C. The learned Magistrate took cognizance and committed the case to the Court of Sessions.

3. The learned trial Court framed a charge under Section 376 I.P.C. against the accused, who pleaded not guilty and claimed for trial.

4. Prosecution produced informant as P.W.-1, victim as P.W.-2 and three formal witnesses, Dr. Achala, P.W.-3, S.I. Chatrashal Shiv Hare P.W.-4, the Investigating Officer, constable clerk Ram Saran Chaudhary P.W.-5, the chik and GD writer. The prosecution witnesses have proved nine documents Ext. Ka-1 to ka-9.

5. The statement of the accused under Section 313 Cr.P.C. was recorded. The accused has denied the allegations made against him by the prosecution witnesses. He has also stated that a false report has been lodged against him and he has been falsely implicated as he refused to do the *begar*. Two witnesses Chetram D.W.-1 and Smt. Neelam D.W.-2 have been produced by the defence. The learned trial Court after hearing the arguments of both the parties by the impugned judgment and order has held the appellant-accused guilty of offence under Section 376 I.P.C. and sentenced him as above.

6. The medical examination of the victim was conducted on 10.09.2009 at 3:15 P.M. by Dr. Achala P.W.-3. There was no fresh external injury. In the internal examination, the hymen was torn, redness around the vagina, and the vagina admits two fingers with complaint of pain. The victim was menstruating from 09.09.2009. Vagina swab slide was prepared and sent to a

pathologist. For determination of age, the victim was referred to a radiologist.

7. Based on the pathology report and X-ray report, a supplementary report Ext. Ka-4 was also prepared by Dr. Achala P.W.-3. According to this report, no spermatozoa were seen in the vaginal smear, and no definite opinion regarding rape can be given, doctor has also opined that the injury present may be due to a blunt object (male sex organ). The age of the girl was about 15 to 16 years.

8. The informant P.W.-1 in his examination-in-chief has stated that at the time of the incident, the age of his daughter was about 14-15 years. She had gone to ease herself at about 4 P.M., on the date of the incident. She sat down in the *curvy* field of Maniram, the accused put her down on the ground and while putting a countrymade pistol on her chest, committed sexual assault on her. His daughter made a noise then the accused ran away towards the south. When his daughter returned home, she narrated the entire incident to him then he got the report scribed by Tilakram Awasthi of village Amritpur and put his thumb impression on it. The witness has proved written report Ext. Ka-1. The witness further stated that his daughter was medically examined. On the date of the incident, he came late to his house, when he came to the house her daughter and daughter-in-law told him about the incident. Due to fear, he could not go to the police station to lodge the report.

9. In his cross-examination, the witness admitted that he had not seen the occurrence, he got the report scribed by Tilakram, as per the narration of the incident made by his daughter. Whatever is written in the report is correct, the place of occurrence was 100 meters away from his house and Maize Crop was standing in the field at the time of the incident. The Investigating Officer recorded his statement 4-5 days after the incident. The witness has further stated that the incident as mentioned in the report has occurred and no other incident has occurred. The witness further stated that on the date of the incident, he returned to his house at about 5 P.M. and his daughter told him about the incident, as soon as he came to the house. He did not make any complaint either to the family members or to any elder of the village. He

stayed in the night at his house and after 4-5 days, he lodged the report. He got the report scribed by Tilakram Awasthi, who lives in the village Amritpur, 4 to 5 days after the incident at the gate of the police station. However, Tilakram did not accompany him to the police station at the time of lodging of F.I.R. The witness has further stated that his sons Raju and Raghuveer came from Delhi. He informed them by phone then they arrived next morning, thereafter all of them consulted. The witness has further deposed about the topography of the place of the incident. The witness has further stated that the steel pot was not lying at the place of occurrence, it was taken by him to the police station. The witness has denied the suggestion that he has falsely implicated the accused on his refusal to do *begar* and no such incident had taken place.

10. The victim P.W.-2 in her examination-in-chief has stated that on the date of the incident, she had gone to ease herself in the maze field carrying a pot (*lota*), as soon as she sat down Maudhu Jatav of her village came there, and gagged her mouth, pulled her down on earth, and committed sexual assault. When the grip of Maudhu loosened, she made a noise, then the accused ran away, leaving her naked. She came back to her house and narrated the incident to her sister-in-law (*bhabhi*). Her father and brothers were not present at that time. The incident occurred at about 4 P.M. When her father came to the house, her sister-in-law told him about the incident. Her sister-in-law has also told about the incident to her brother. On account of fear, they could not go to the police station at night. On the next day, she went to the police station with her father to lodge the report. Her age was 14-15 years at the time of incident. Maudhu Jatav was carrying a countrymade pistol. Her statement was also got recorded under Section 164 Cr.P.C., before the Court. The witness has corroborated her statement recorded under Section 164 Cr.P.C. (Ext. Ka-2) and verified her signature on it.

11. In her cross-examination, the witness has denied that her mother is alive. The witness further stated that when the report was lodged, her brothers Raju and Raghuveer had arrived from Delhi. The witness has deposed about the topography of her house. The witness further stated that

she had narrated the incident to her sister-in-law and not to her father. She has further stated that the place of occurrence is the field of Maniram and at the time of the incident, there was maize crop in it. Her father had returned at about 6-7 P.M. on the date of the incident, and her sister-in-law told him about the incident. They did not go to lodge the report on that day. The witness has denied that the Investigating Officer has recorded her statement, he has also stated that she has not accompanied the Investigating Officer to the place of occurrence. The witness further stated that she did not know the names of the owners of the adjoining field. Her medical examination was conducted on the next day of the incident. The witness has feigned ignorance that at the time of the incident, she was menstruating. She further stated that bleeding took place and her clothes were stained with blood but it was not handed over to the Sub-Inspector, neither the Sub-Inspector demanded it. She did not suffer any injury on her body. Maudhu had not physically assaulted her at the time of the incident. The witness has also stated that the place of occurrence is adjacent to the village. At the time of the incident, she did not make any noise, but at another place, the witness stated that she made a noise after Maudhu fled away from the spot. The witness has denied the suggestions put up by the defence.

12. Constable Ram Sharan Chaudhary P.W.-5 is the chik and GD writer. The witness has proved the chik report and copy of GD as Ext. Ka-8 and Ext. Ka-9.

13. S.I. Chhatrasal Shivhare P.W.-4 is the Investigating Officer, the witness has stated that on 13.09.2009, he was posted at P.S.- Amritpur and took the investigation of this case which was previously being conducted by S.I. Shiv Singh. He arrested the accused, recorded his statement, collected the medical report & supplementary report of the victim and on its basis amended the case, and removed Section 511 I.P.C. He recorded the statement of the victim and the informant, made the inspection of the place of occurrence, prepared a memo of the pot (*lota*) and gave it in the custody of the informant, recorded the statements of other witnesses, and after concluding the investigations submitted the charge-sheet. The witness has

proved the site plan Ext. Ka-5, the memo of pot Ext. Ka-6 and the charge-sheet Ext. Ka-7.

14. Chetram D.W.-1 in his examination-in-chief has stated that Maudhu lives in his village. He has moved an application 57A today, containing his signature and the signatures of other villagers. The wife of the informant is alive and lives in the village. The informant belongs to the Kachi Community while the accused is a poor labour belonging to the Jatav Community. The informant used to get labour work done from the poor Jatavas and did not pay them. Maudhu has refused to do the *begar* for the informant, following him other villagers also refused to do the *begar*. Due to this, the informant made a plan to falsely implicate Maudhu. No incident on 9.9.2009, as alleged has occurred. A false case was lodged under a conspiracy. There is no field of Maniram near the field of Mewalal. The field in which the false incident alleged to have occurred, belongs to Ghanshyam Pandey and Radheyshyam Pandey, it was vacant on the date of the incident and no crop was standing on it. The accused is innocent.

15. Smt. Neelam D.W.-2, in her examination-in-chief, has stated that house of the informant is situated near her house, Maudhu Jatav is a poor person while the informant used to get the *begar* from Jatavs of the village. Maudhu refused to do the *begar* and due to this a plan was made to falsely implicate him and when this plan was made, she was inside the house of the informant. The wife of the informant has prevented to lodge the F.I.R. In furtherance of the conspiracy to falsely implicate the accused, the sister-in-law of the victim caused her internal injury, whereafter Tilakram was called from his house and a false report was scribed and the case was registered. The accused is innocent.

16. The learned counsel for the appellant submitted that the sole testimony of the victim is not inspiring and trustworthy. The medical examination report confirms that the victim was menstruating at the time of the medical examination, so the bleeding and redness were natural. These symptoms are not conclusive to establish that the victim was subjected to Sexual assault. Further no spermatozoa has been found in the slide of the vaginal smear. So

the medical evidence is not corroborative. The learned counsel further submitted that there are serious discrepancies and major contradictions in the prosecution evidence. The alleged incident occurred on 9.9.2016 at about 4 PM, the first information report has been lodged on the next day at 11a.m., while the distance of the police station is only 2 km. The witnesses in their testimony have given implausible and contradictory explanation of the delay. The informant P.W.1 in his examination in chief has stated that he came late to the house, due to fear he could not go in the night to lodge the first information report, while in his cross-examination the witness has stated that he stayed at the house in the night, after 4-5 days he lodged the report. The witness further reiterated this and stated that he got the report scribed by Tilak Ram 4 to 5 days after the incident. It is next contended that the report has been lodged after due deliberation and consultation and this fact has been admitted by the prosecution witnesses. The learned counsel further contended that according to the investigating officer the pot was collected from the spot while the prosecution witnesses have stated that they had carried it to the police station. Lastly, it is contended that the appellant-accused has been falsely implicated as he refused to do the begar. The informant is an influential person belonging to the upper caste while the accused is a poor labour belonging to the Jatav community. The defence witnesses have corroborated the aforesaid defence version. The trial court did not consider the defence evidence. In the facts and circumstances of the case, there is a strong probability of false implication for ulterior motive. The learned trial court has failed to properly appreciate the evidence on record and has committed manifest error by relying on the sole testimony of the victim. The finding recorded by the trial court suffers from perversity and illegality.

17. Per contra the learned A.G.A. submitted that the first information report has been lodged on the next morning. The incident occurred in the evening and it came to the notice of the informant, the father of the victim after 2-3 hours when he came back to his house, so there is no inordinate delay in lodging the first information report. It is further submitted that the appellant-accused is named in the first information report. He is known to

the victim as he lives in the village. The victim in her testimony has implicated him and categorically assigned the act of sexual assault to him. The medical evidence corroborates the oral testimony, torn hymen, and redness around vagina confirms the prosecution case of sexual assault. It is next contended that some discrepancies and contradictions are natural, it will not affect the value of the evidence which is otherwise inspiring and trustworthy, the greater value should be attached to the testimony of a rape victim and it cannot be discarded on trivial grounds. From the evidence on record, the prosecution case is fully established and the finding of guilt recorded by the trial court is just and proper. There is no illegality or perversity in the finding.

18. The victim P.W.2 has supported the prosecution case and has implicated the appellant-accused. The accused was well-known to the victim as he lived in the village, so the identity of the accused is not in question. The appellant-accused is also named in the first information report which has been lodged on the next morning of the incident. In her examination-in-chief, the victim stated that she was sexually assaulted by the accused when she had gone to ease herself in the maize field, the accused gagging her mouth pulled her down on the earth and committed sexual assault on her. When the grip of the hand loosened, she made a noise, the accused fled from the spot. The witness further stated that she came back to her house and disclosed the incident to her sister-in-law. The witness has also corroborated her statement under Section 164 Cr.P.C. and has verified her signature on it. The statement of the victim recorded under section 164 Cr.P.C. also supports the prosecution case.

19. The medical examination of the victim was conducted on the date of lodging of the first information report i.e. on 10.9.2009 at 3.15 p.m. According to the medicolegal report Exhibit Ka 3, in the internal examination hymen was torn, redness was around the vagina. It admits two fingers with pain. In the supplementary report exhibit Ka 4 the doctor has given the opinion that this injury may be due to a blunt object (male sex organ). Dr Achala P.W.3 has also supported it in her deposition. It is correct

that no external injury has been found on the body of the victim but it is not necessary in all the cases of sexual assault that the victim should have suffered external marks of injuries also. It is pertinent to mention that it is not the prosecution's case that the accused also physically assaulted the victim. It is also correct that the doctor has not given any definite opinion about rape but the internal injury and torn hymen establishes that the victim was subjected to sexual assault. So the medical evidence further corroborates the oral testimony of the victim.

20. The victim P.W. 2 has been cross-examined at length by the defence, but for some minor discrepancies the testimony of the victim is intact in respect of material facts. It is correct that the witness in her deposition stated that the accused was holding a country-made pistol, while it is neither mentioned in the first information report nor previous statements of the victim recorded under sections 161 and 164 Cr.P.C. So it is only an improvement liable to be ignored. The witness has stated that she disclosed the incident to her sister-in-law while informant P.W.1 has stated that the incident was disclosed to him by the victim herself. It appears to be a contradiction but if the statements of both the witnesses are read as a whole then it is clear that there is no contradiction and both the statements can be reconciled. It is established from the testimony that when the victim returned home her father was not present and the victim told her sister-in-law about the incident. When the informant returned home in the evening family members informed him about the incident. It is also very natural that a girl will narrate such an incident to a female family member and not to her father. The testimony of the victim P.W.2 is, otherwise, inspiring. There is no serious discrepancy or major contradiction which makes her testimony unreliable.

21. The informant P.W.-1 is not an eye-witness of the incident. He has lodged the report on the narration of the incident made by the family members. The witness has proved the written report Ext. Ka-1. So the testimony of the witness is of formal in nature. There is some discrepancy in his deposition about the lodging of the F.I.R. In his examination-in-chief, the

witness has stated that on the date of the incident, he came late to the house, then the incident was narrated to him by his daughter and daughter-in-law, he could not go to police station in the night due to fear. According to chik report Ext. Ka-9, the report has been lodged on 10.09.2009 at 11 A.M. However, in the cross-examination of this witness, it has come that the report was scribed by Tilakram and lodged at police station after 4-5 days of the incident. The witness has also stated in his cross-examination that the medical examination of the victim was conducted 2-3 days after the incident. All the above statements are against the record and it appears to be a loss of memory, as the witness has been examined before the Court after about two years of the incident. This discrepancy is not of such a nature, which adversely affects the prosecution case. The incident has occurred at about 4 P.M. and the F.I.R. has been lodged on the next day at 11 A.M. So, there is no inordinate delay in lodging the F.I.R. keeping in mind the nature of the offence.

22. Accused has taken the defence that he has been falsely implicated as he refused to do the *begar*. Two witnesses Chetram D.W.-1 and Smt. Neelam D.W.-2, have been examined by the accused to support his version. The testimony of Smt. Neelam D.W.-2 is wholly unreliable. No prudent man will believe the facts stated by the witness in her deposition. Chetram D.W.-1 also appears to be a tutored witness and has deposed as per legal advice of the defence counsel. The application 57A has been presented before the Court for the first time. No complaint has been made to higher police authorities about unfair investigation. So, the defence version is not appealing.

23. The sole testimony of the victim P.W.-2 is inspiring and trustworthy. It also got support from the medical evidence. It cannot be discarded merely on the basis of some minor discrepancies or contradictions, as it is consistent on material facts.

24. It is a settled legal position that the evidence of a rape victim stands at par with the evidence of an injured witness. In **State of Punjab Vs. Gurmit Singh**, (1996) 2 SCC 384, the Apex Court has held that in cases involving

sexual harassment, molestation, etc. the court is dutybound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. It has been further observed that the court should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

25. The learned trial Court has correctly appreciated the evidence on record and finding of guilt recorded by the trial Court is just and proper. It is neither perverse nor illegal. So, the finding of the guilt is liable to be upheld.

26. The trial Court has sentenced the accused with imprisonment for life and fine of Rs.20,000/- for offence under Section 376 I.P.C. The learned counsel for the appellant submitted that the incident is of September, 2009. The provision of Section 376 I.P.C. applicable at the relevant time reads as follows:-

“376. Punishment for rape:- *Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment*

of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever—

(a) being a police officer, commits rape,

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age; or

(j) commits rape on a woman incapable of giving consent; or

(K) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”

27. The learned counsel further submitted that according to prosecution, the victim was aged about 15 years at the time of incident. In medical

examination, the age of the victim has been found to be 15-16 years. Two years variation on either side is possible in the medical age, determined on the basis of ossification test. Taking the view which is beneficial to the accused, the age of the victim will be treated as more than 16 years. According to the relevant provision, the minimum sentence will be seven years, the learned trial Court has awarded maximum sentence of life imprisonment without assigning any reason and considering the relevant penal provision, applicable at the time of the incident. The learned counsel submitted that the appellant-accused has already served more than 14 years of incarceration, so sentence of period already undergone will be appropriate.

28. It is not disputed that the appellant-accused has served more than 14 years of actual sentence. Considering the submissions made by the learned counsel for the appellant and the sentence prescribed at the relevant time for the offence under Section 376 I.P.C., which has been extracted above in our view, the period of sentence already undergone with fine imposed by the trial Court will be appropriate and serve the ends of justice.

29. The appeal is partly **allowed**. The conviction of the appellant-accused under Section 376 I.P.C. is sustained. However, the sentence is modified to the extent indicated below. The sentence for imprisonment for life imposed by the trial Court is modified and reduced to the period of imprisonment already undergone. However, the fine and the default sentence imposed by the trial Court is maintained.

30. The appellant is in jail, he shall be released subject to deposit of fine, if not wanted in any other case. Half of the fine if deposited, shall be paid to the victim. Order to be communicated to all the concerned for necessary compliance.

31. Copy of the judgment and order along with Lower Court Records be transmitted to the trial Court immediately for necessary compliance.

32. We appreciate the assistance provided by Sri Rajiv Lochan Shukla, learned Amicus Curiae.

Order Date:- 22.11.2023//SP-