

A.F.R.

Order Reserved on 24.05.2023

Order Delivered on 14.07.2023

Case :- CRIMINAL APPEAL No. - 1041 of 2001

Appellant :- Ganga Prasad And Another

Respondent :- State of U.P.

Counsel for Appellant :- M.C.Yadav, Anil Kumar Tiwari

Counsel for Respondent :- Govt. Advocate

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for Appellant No. 2, learned Additional Government Advocate appearing for the State and perused the record.

2. I find from the record that Appellant No.1 has already died and the present appeal in respect of Appellant No.1 has already been dismissed as abated vide order dated 26.02.2020 passed by this Court.

3. Appellant No.2 through present appeal has challenged judgment and order dated 06.11.2001 passed by 9th Additional Sessions Judge, Lucknow in **Session Trial No. 744 of 1996 (State Vs. Ganga Prasad & Anr.)** whereby Appellant No. 2 has been convicted for offence punishable under Section 363 IPC and has been sentenced for rigorous imprisonment of five years with fine of Rs. 5,000/- with rider that in default of payment of fine, he will have to undergo simple imprisonment of one year.

4. Prosecution story of the case in brief is that the complainant, Ram Bharose lodged an F.I.R. on 16.06.1994 at about 15:20 hours in Police Station, Krishna Nagar, Lucknow which was registered as **Case Crime No. 384 of 1994 under Sections 363 and 366 IPC**. Complainant in the

F.I.R. stated that he is the resident of 55 Gha/Chha/138(kha), Naya Sardari Kheda, Police Station, Krishna Nagar, Lucknow and father-in-law of his son, Ganga Prasad and brother of Ganga Prasad, Sohan Lal are residents of village, Paigambar Nagar, Police Station, Mawai, District, Barabanki. Complainant has further stated in F.I.R. that his son, Ranjit Kumar was married to the daughter of Ganga Prasad but due to some dispute, his daughter-in-law is residing at the residence of Ganga Prasad and is not coming to reside with his son and therefore, Ganga Prasad is annoyed with the complainant. Complainant has also stated that almost one month before the date of incident, Ganga Prasad and Sohan Lal came to his residence and extended threat that they will kidnap his daughter, Brahm Kumari, therefore, entire family got scared. It has been further stated in the F.I.R. that on 28.05.1994 at about 7:00 a.m. when daughter of the complainant, Brahm Kumari was going to bring some articles of breakfast in vicinity, aforesaid Ganga Prasad and Sohan Lal came and enticed his daughter and took her away with them. Age of the victim is 11 years and further complainant stated that he searched out his daughter and even enquired from the accused but he could not trace out his daughter, therefore, he is giving information to the police.

5. It is to be noted here that the aforesaid girl, Brahm Kumari after sometime came back to residence of her father.

6. Police after investigation submitted charge-sheet against Ganga Prasad and Sohan Lal under Sections 363 & 366 I.P.C. Since offences were triable by Sessions Court, as such, case was sent to Sessions Court and the trial started.

7. During trial, testimonies of PW-1, Smt. Prema Devi, PW-2, Brahm Kumari, PW-3, Sri Ram Bharose, PW-4, Santosh Kumari, PW-5, Constable Khushi Ram, PW-6. Sri Ram Ji Mishra (Investigating Officer) and PW-7, Sri R.S. Tomar (Investigating Officer) were recorded.

8. Thereafter two Defense Witnesses were produced from the side of appellant i.e. DW-1, Smt. Neelam, DW-2, Sri Sundar Singh.

9. PW-1, Smt. Prema Devi who is mother of the victim girl, in her testimony has deposed that when her daughter Brahm Kumari went to bring some articles of breakfast in the vicinity, Ganga Prasad & Sohan Lal enticed her daughter and took her to their house in District, Barabanki. She further stated that at the time of incident, age of Brahm Kumari was 10-11 years. Smt. Prema Devi in her testimony stated that the girl, Brahm Kumari was recovered after 15-20 days from the date of the incident.

10. P.W. 2, victim, Brahm Kumari in her testimony has deposed that Ganga Prasad and Sohan Lal are fathers-in-law of his brother. She further deposed that on the date of incident, Ganga Prasad and Sohan Lal enticed her by saying that they will give something to her and took her away to their home. Brahm Kumari further stated that when she refused to go with the aforesaid Ganga Prasad and Sohan Lal then they said that we will give you something and then you may go to your house. Brahm Kumari further categorically stated that she remained in the house of Ganga Prasad and Sohan Lal at Barabanki for about 9-10 days and, thereafter they brought her back and left at Alambagh Chauraha at Lucknow and said that now you go to your home and, thereafter she came to her home. P.W. 2 in her testimony has also said that both, Ganga Prasad and Sohan Lal have not done any indecency with her.

11. P.W. 4, Santosh Kumari who is sister of Brahm Kumari in her statement has said that Brahm Kumari came back to her house after 25 days.

12. Learned trial court on the basis of the aforesaid testimonies of prosecution witnesses and other evidence available on record, came to the conclusion that Ganga Prasad and Sohan Lal have committed

offence punishable under Section 363 I.P.C. and thereby vide judgement and order dated 6.11.2001 has sentenced them for rigorous imprisonment of five years with a fine of Rs. 5,000/- each.

13. Learned counsel appearing for the Appellant No. 2 has vehemently argued that the F.I.R. was lodged by the complainant in the Police Station on 16.06.1994 at 15:20 hours and all the prosecution witnesses have said that the incident took place on 28.05.1994 meaning thereby that the F.I.R. was lodged 19 days after the date of incident whereas P.W. 2, Brahm Kumari (victim) in her statement has categorically said that she remained in the house of Ganga Prasad and Sohan Lal only for 9-10 days and, thereafter she came back to house of her father, therefore, it is patently manifest that the entire prosecution story is false, fabricated and is an after-thought. Learned counsel for the appellant has further argued that since complainant and accused are relatives and girl on her own free will went along with Ganga Prasad and Sohan Lal to their house in District Barabanki and when she came back after 9-10 days then the complainant has lodged the F.I.R. on 16.06.1994.

14. Learned counsel appearing for the appellant has also vehemently argued that there is serious contradiction in the testimony of the prosecution witnesses in respect of the fact that after how many days, girl came back to the residence of her parents. P.W. 1, mother in her statement has stated that the girl was recovered after 15-20 days whereas the girl, Brahm Kumari in her statement has stated that she herself came back to her house after 9-10 days. Since there is delay of 19 days in lodging of F.I.R., therefore, the aforesaid contradiction between the testimonies of prosecution witnesses is of prime importance and makes the entire prosecution story suspicious. Learned counsel for the appellant has also invited attention of this Court that there is one more contradiction in the version of mother and the victim i.e. mother has said that the victim has been recovered whereas the girl has said that she herself came back to the house of her parents.

15. Learned counsel for the appellant has also put emphasis on the fact that there is motive for the complainant to falsely implicate Ram Prasad and Sohan Lal in the present case as the prosecution witnesses in their testimonies have categorically admitted that there was some dispute in the matrimonial relationship of the son of the complainant and daughter of Ram Prasad. Learned counsel for the appellant has concluded his arguments by saying that in totality of the circumstances, it is patently manifest that the Appellant No. 2 has been falsely implicated in the present case and further prosecution has not been able to prove its case beyond reasonable doubt and, therefore, judgement and order dated 6.11.2001 passed by learned trial court in Sessions Trial No. 744 of 1996 is liable to be set-aside.

16. On the other hand, learned Additional Government Advocate has argued that there are no contradictions in the testimonies of the prosecution witnesses and prosecution has proved its case beyond reasonable doubt and therefore, judgement and order dated 6.11.2001 passed by the learned trial court is liable to be upheld by this Court.

17. I have considered the rival submissions advanced by learned counsels appearing for the parties. I find that the complainant i.e. father of the victim lodged F.I.R. in Police Station Krishna Nagar on 16.06.1994 at about 15:20 hours and the date and time of incident is 28.05.1994 at 7:00 a.m., therefore, F.I.R. has been lodged after clear 19 days of the incident. I find that P.W. 1, Smt. Prema Devi, who is mother of the victim in her testimony has deposed that the girl was recovered after about 15-20 days from the date of incident whereas P.W. 2, Brahm Kumari (victim) in her testimony has stated that she remained in the house of Ganga Prasad and Sohan Lal only for 9-10 days and, thereafter they took her to Lucknow and she came back to her house.

18. P.W. 2, Brahm Kumari in her testimony has also deposed that when her father lodged F.I.R. with the police only then aforesaid Ganga

Prasad and Sohan Lal have brought her to Lucknow and she could reach the house of her parents. I also find that the P.W. 4, sister of the victim in her testimony has deposed that when Brahm Kumari was not traceable then her father lodged F.I.R. with the police and then after about 25 days from the date of incident, Brahm Kumari came back to the house of her parents.

19. It appears from the testimonies of the prosecution witnesses that the victim, Brahm Kumari stayed in the house of Ganga Prasad and Sohan Lal for 9-10 days and, thereafter she came back to house of her parents and only thereafter complainant lodged the F.I.R. as there is gap of 19 days in the date of incident and the date of lodging of F.I.R. It also appears that there are serious contradictions in the testimonies of prosecution witnesses regarding the prosecution story as mother has said that the girl was recovered after 15-20 days, sister (P.W. 4) Santosh Kumari has said that victim came back to her house after 25 days whereas the victim herself has said that she came back to her house after 9-10 days.

20. The aforesaid contradictions in the testimonies become very vital when there is delay of 19 days in lodging the F.I.R. and further all the prosecution witnesses have said that the girl has come to parents' house only after lodging of F.I.R.

21. I find that the mother of the victim i.e. P.W. 1 has deposed that the girl was recovered whereas all other prosecution witnesses have said that the girl herself came back to her house. This contradiction when seen along with entire facts and circumstances of the case, becomes vital. I also find that there is probability of false implication of Ganga Prasad and Sohan Lal in the present case as admittedly there was some dispute in between complainant family and the family of Ganga Prasad and Sohan Lal. Learned trial court has simply ignored the aforesaid serious contradictions in the testimonies of the prosecution witnesses and probability of the false implication of Ganga Prasad and

Sohan Lal in the present case and has convicted and sentenced Ganga Prasad and Sohan Lal.

22. I am of the view that the prosecution story is under the cloud of suspicion and prosecution has not been able to prove its case against Ganga Prasad and Sohan Lal beyond reasonable doubt, therefore, Appellant No. 2 is liable to get benefit of doubt.

23. In view of the aforesaid reasons, this Criminal Appeal is allowed.

24. Judgement and order dated 6.11.2001 passed by 9th Additional Sessions Judge, Lucknow in Session Trial No. 744 of 1996 thereby convicting and sentencing Sohan Lal under Section 363 I.P.C., is set-aside.

25. Appellant No. 2 is already on bail. Sureties of Appellant No. 2 are, hereby, discharged.

26. Let the copy of this judgement and lower court record be sent back to the court concerned for necessary information and compliance.

Order Date:- 14.07.2023

A. Mandhani