

Neutral Citation No. - 2023:AHC-LKO:82915

RESERVED ON 2.11.2023

DELIVERED ON 16.12.2023

Court No. - 13

Case :- CRIMINAL APPEAL No. - 253 of 1999

Appellant :- Ram Bahadur

Respondent :- State of U.P.

Counsel for Appellant :- V.N.Shukla

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

1. The present Criminal Appeal under Section 374 of the Code of Criminal Procedure, 1973 has been filed by the appellant, Ram Bahadur, against the judgment and order dated 28.5.1999 passed by VI Additional Sessions Judge, Raebareli, in Sessions Trial No. 383 of 1985: State vs. Ram Bhadur, whereby learned VI Additional Sessions Judge, Raebareli has convicted and sentenced the appellant in the manner stated herein-below:-

“(I) under Sections 376, 511 I.P.C. to undergo 3 years' R.I. and a fine of Rs.500/- and in default of payment of fine to undergo 3 months' R.I. ;

(II) under Section 452 I.P.C. to undergo 2 years' R.I. and a fine of Rs.500/- and in default of payment of fine to undergo 3 months' R.I.; and

(III) under Section 323 I.P.C. to undergo 6 months' R.I.

All the sentences were directed to be run concurrently.”

2. Heard Shri V.N. Shukla, learned counsel for the appellant and Shri Arvind Kumar Pandey, learned A.G.A. for the respondent-State.

3. The prosecution case, in brief, is that on 22.11.1994, at 9:10 p.m. in the night, at village Shanti Kheda Mauja, Chahottar, Police Station Sareni, District Raebareli, while the informant was sleeping in her room (kothri) along with her kids, then accused-Ram Bahadur along with his two unknown accomplices jumped from the top of the roof over the courtyard and broke the window of her room and opened the gate of the room and tried to rape the informant Kusuma. When she resisted then accused-Ram Bahadur abused her, threatened to kill her and started assaulting her with the handle of axe and caused injury.

4. The written report was given by the informant, which is Ext. Ka-1 and on that basis, First Information Report (Ext. Ka-2) under Sections 452/376/511/323/504/506/427 Indian Penal Code was registered.

5. The injured Kusuma was examined at Police Station Sareni on 23.11.1994 at 8.20 a.m. in the morning which is Ext. Ka-4. The Investigating Officer has taken into possession the sample of blood stained plain soil and broken bangles and

prepared the recovery memo which is Ext. Ka-6. The incident was reported in general diary as well as in the case diary.

6. The case was investigated by the Investigation Officer. During the investigation, site plan was prepared, which is Ext. Ka-5. The statement of witnesses were taken. Recovery memos of lantern as Ext. Ka-6 and torch as Ext. Ka-8 were prepared.

7. The investigating officer after completing the formalities, filed the charge-sheet against the accused under Sections 376/511 Indian Penal Code.

8. The case was committed to the Court of Sessions and charges were framed against the accused on 9.8.1996. The accused after hearing the charges denied the same and claimed to be tried.

9. The prosecution to prove its case has produced P.W.1 Kusuma, the prosecutrix; P.W. 2 Wali Mohammad; P.W.3 Nankau; P.W.4 Sunder Lal; P.W.5 Constable Moharrir Shiv Shanker Chaudhary; P.W.6 Dr. Ved Prakash Gupta and P.W.7-J.M Rai, the Investigating Officer.

10. After completing the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded in which he has denied the offences. He has also denied the injuries. His defence was that he has been falsely implicated due to enmity. No defence witness has been produced.

11. P.W. 1 Kusuma, in her statement, has said that the incident is of night about 8-9 p.m. His son Ashok Kumar and

daughter Bittan were at home. The appellant came along with two unknown persons and they tried to open the door but she did not open the door. The accused Ram Bahadur and his companion broke the window and entered into the room (kothari). She further said that the accused Ram Bahadur caught hold of her neck and opened the chain of the door of the room. At that time, the lantern was burning in the room. Ram Bahadur disrobed her and threw her on the floor and tried to rape her. She kept on shouting to save her honour, however, the accused was not successful in his attempt to commit rape. Upon raising her alarm, Sadhole, Sunder, Nankau and Babbu etc. came and thereafter accused/appellant ran away.

12. The statement of P.W.1-Kusuma is intact. The accused broke the door; entered her kothari (room); threw her on the floor; and disrobed her saree. Her bangles were also broken, which were recovered by the Investigating Officer and proved by her. The lantern has also been received from the spot. The informant (P.W.1) has proved the recovery of lantern, thus, there is ample evidence on the record for convicting the accused under Sections 376/511 Indian Penal Code read with Section 452 Indian Penal Code.

13. The statement of the informant (P.W.1) is of sterling quality. Although in the cross, she has stated that in the report, she has not mentioned that the accused were firing from courtyard and on her alarm, the neighbour did not come. The

accused Ram Bahadur and his other accomplice accused were firing from front of her house.

14. The fact that the accused were firing has not been mentioned in the First Information Report, will not make any difference as First Information Report is not an encyclopedia.

15. So far as the enmity with accused Ram Bahadur is concerned, informant (P.W.1) has admitted in her cross examination that there were enmity with Ram Bahadur (accused) and for the last four years, she was not talking terms with accused-Ram Bahadur. However, enmity alone cannot be of any help to the accused-Ram Bahadur as the victim's (P.W.1) testimony is corroborated by Sundar Lal P.W.4, who has stated that after the incident, when he reached the spot, he saw that the head of Kusma (P.W.1) was bleeding. Likewise, P.W. 2 Wali Mohammad has stated that when he reached on the spot, he heard the fire shot and due to fear, he did not went at the place of the incident. Thus, statement of P.W.1 Kusuma is corroborated by the statement of other two witnesses of fact i.e. P.W.2 and P.W.4.

16. It has also been corroborated by the injury report that the victim (P.W.1) has sustained three injuries. The injury report is extracted below:-

"Injuries

(1) Lacerated wound 2cm x 0.3cm x skin deep on Rt Side head, 9 cm above Rt ear.

(2) Contusion 7 cm x 2cm on lateral surface of Rt Thigh in middle part.

(3) Contusion 6 cm x 2 cm a front of Rt thigh, 13 cm above Rt Knee joint

All injuries are simple in nature, caused by blunt object duration about 1/2 day old."

17. P.W.6-Dr. Ved Prakash Gupta has stated that on 23.11.1994 while he was posted at Police Station Sareni at 8.20 a.m., he examined the victim P.W.1 Kusuma. The injuries have been caused by blunt object. He has proved the injury report which is Ext. Ka-4.

18. The statement of the Dr. Ved Prakash Gupta (P.W.6) has further corroborated the testimony of the P.W.1-Kusuma, who is the victim and the injured, thus, there is ample corroboration to the testimony of P.W.1.

19. Learned trial Court has acquitted the accused/appellant under Sections 504 and 506 (2) Indian Penal Code on the ground that no specific words of abusing and threatening to kill has been mentioned in the prosecution case.

20. P.W.4-Sundar Lal and P.W.7- SI J. N. Rai are the formal witnesses.

21. Thus, considering the injury of P.W.1 Kusuma; the testimony of P.W.1 Kusuma, P.W.2 Wali Mohammad, P.W.4 Sundar Lal and P.W.6 Dr. Ved Prakash Gupta, offence under

Section 376/511 Indian Penal Code read with Section 323 I.P.C. and 452 I.P.C. has been proved by the prosecution beyond reasonable doubt.

22. Accordingly, I do not find any illegality in the impugned judgement of the trial court dated 28.5.1999. The conviction given by the trial Court is, thus, affirmed.

23. So far as the sentence part is concerned, considering the facts that the alleged incident had taken place in the year 1994 i.e. approximately 29 years ago; a substantive period had already been undergone by the appellant; and he suffered mental agony of criminal trial and conviction during 29 years, ends of justice would be served if the accused/appellant is sentenced with the period of imprisonment already undergone in prison and it would be proper to reduce the sentence to the period of imprisonment already undergone by him and a fine of Rs.30,000/- is imposed, which shall be paid to the injured/victim.

24. In view of the aforesaid, the appeal is partly allowed with the modification of the sentence by the period already undergone and served out by the appellant.

25. The appellant is reported to be on bail. He need not be taken into custody. His bail bonds are discharged.

26. The appellant is directed to deposit a sum of Rs.30,000/- as compensation before the trial Court within six month from the date of communication of this order, failing which, he shall

be taken into custody to serve out the sentence of three months' simple imprisonment.

27. The impugned judgment/order dated 28.05.1999 passed by the trial Court is modified to the above extent only.

28. Office is directed to transmit the lower court record along with the copy of the judgment to the trial Court for information and necessary compliance forthwith.

Order Date:-16.12.2023

Madhu