

Court No. - 29

Case :- CRIMINAL REVISION No. - 605 of 2022

Revisionist :- Manoj Verma And 3 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home,
Lucknow And 3 Others

Counsel for Revisionist :- Amar Singh

Counsel for Opposite Party :- G.A.,Dileep Kumar
Pathak,Firoz Ahmad Khan

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

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

This criminal revision under Section 397/401 of Cr.P.C. has been preferred against the judgement and order dated 17.05.2022 passed by the Additional Session Judge/ F.T.C. Court No.1, District Gonda in Session Trial No.671 of 2021, State Chandi alias Vijay, arising out of Case Crime No.162 of 2021, Police Station Chhapia, District Gonda.

By impugned order, the application filed by the opposite party no.2/ the complainant under Section 319 of Cr.P.C. was allowed and all the four revisionists were summoned by the trial court to face trial under Sections 363, 366, 376 D I.P.C. and 5/6 of Protection of Children From Sexual Offences Act.

As per facts of the case, an FIR was lodged by Abdul Kalam, the opposite party no.2 against four revisionists and one Chandi with the version that on 30.03.2021 at 5:30 AM all the four revisionists and Chandi had misbehaved with his 15 years old minor daughter 'A' regarding which he had not reported at police station but had moved applications before the Commission and in the Court. An inquiry in this regard is being done by C.O. Mankapur. In the night of 3/4.6.2021 they had slept after talking with their minor daughter 'A' and when they got up at 6:00 AM their daughter was found missing.

After investigation regarding this FIR, the charge-sheet was filed against Chandi @ Vijay only. In the court after recording the statements of PW1 Abdul Kalam and examination-in-chief of victim 'A' the application under Section 319 of Cr.P.C. was moved by opposite party no.2. This application was allowed by the impugned order.

It is argued by the learned counsel for the revisionists that in his statement under Section 161 Cr.P.C. opposite party no.2 Abdul Kalam expressed his belief that as he had removed his tractor driver from his job and he is also found absconding since the date of the FIR, so he has a strong belief that his minor daughter has eloped with this driver Chandi @ Vijay and was in the clutches of tractor driver Chandi @ Vijay. Because of his enmity of land with Manoj Kumar and others on the basis of suspicion he had lodged the FIR on 04.6.2021.

The attention of the Court is drawn towards the recovery memo dated 06.06.2021, whereby the victim is shown to be recovered by the police alongwith Chandi @ Vijay. The statement of minor victim under Section 161 Cr.P.C. is also on record, wherein she has admitted the enmity regarding land dispute with all the four revisionists and has stated that in the mid night of 3/4.06.2021 at 3:00 AM she herself had eloped with Chandi. All the four revisionists has nothing to do with the incident. About one and a half month back her father was talking of falsely implicating all the four revisionists in a case of rape to get back his land from the revisionists and so her father had falsely implicated these revisionists in the FIR. She wants to solemnize marriage with Chandi and live with him. The medical report of the victim is on record, whereby her age is determined as 16-17 years on the date of incident.

Again the attention of the Court is drawn towards the statement of the victim under Section 164 of Cr.P.C., wherein she has implicated Guddu Verma, Sunil Kumar Verma and Ram Tilak Verma in her kidnapping and has stated that they had raped her. She has further stated that when she tried to cry Sunil and Ram Tilak Verma inserted their lower organ in her mouth and Guddu and Manoj Verma gave threat of life of her family members. In her additional statement, appended at page-78 of the paper book, she has admitted that she had eloped with Chandi in the night of 3/4.6.2021 and was recovered by the police on 06.06.2021 alongwith Chandi and his maternal uncle when they were coming back from the house of the maternal uncle of Chandi. She further stated that when she came back on 04.06.2021 in the morning she met with her elder mother. She again admitted the enmity of property with all the four revisionists and that she was raped by all these four revisionists on 30.03.2021. In the end she has stated that it is her will to give the statement whatever she wants. Chandi had established physical relations with her several times on the pretext of marriage. It is her will to implicate any person to whom she wants to.

Thus, it is argued that the victim is changing her statement at

every step. The victim, who is about 17 years of age, was in love with Chandi that is why her father had expressed his suspicion against Chandi @ Vijay. In his statement under Section 161 Cr.P.C., the opposite party no.2 has admitted the property dispute with the revisionists. The victim also admitted the enmity with the revisionists and her love affairs with Chandi and that she had eloped with Chandi. In her statement under Section 161 Cr.P.C. she has stated that all the four revisionists had nothing to do with the incident. In her statement under Section 164 Cr.P.C., though, she has implicated all the four revisionists in the incident but regarding rape she has stated in her statement under Section 164 Cr.P.C. that rape was committed with her by Guddu Verma, Sunil Kumar Verma and Ram Tilak Verma, while in her additional statement she has stated that on 30.03.2021 also she was raped by all the four revisionists but admittedly in this regard no FIR was lodged by the victim or her father. Admittedly, the victim was recovered alongwith co-accused Chandi @ Vijay and in her additional statement she has clearly stated that it is her will to implicate anyone she wants to, hence, it is submitted that the revisionists have been falsely implicated in the case due to enmity of land.

Again the attention of the Court is drawn towards a plaint of civil suit dated 03.02.2021 filed by Geeta Devi, the mother of revisionists Manoj Verma, Guddu Verma and Sunil Kumar Verma against opposite party no.2 and three others and after this civil suit filed by the mother of three revisionists on 03.02.2021 on 05.02.2021 opposite party no.2 has filed a civil suit against Geeta Devi and another. Further, the attention of the court is drawn towards three pending applications moved by the opposite party no.2/ his wife under Section 156(3) of Cr.P.C. which are dated 15.03.2021, 22.03.2021 and 07.04.2021 respectively, wherein all the four revisionists alongwith other persons have been implicated raising various allegations against them. In application under Section 156(3) Cr.P.C. dated 07.04.2021 moved by Smt. Naziya, the mother of the victim, she has stated that on 30.03.2021 her minor daughter was raped by three revisionists Ram Tilak Verma, Guddu Verma and Manoj Verma. On 17.03.2021 revisionist Manoj Verma is said to have lodged an FIR against the opposite party no.2, Chandi and two others under Sections 427, 504 and 506 of IPC and on 12.04.2022 revisionist Sunil Kumar Verma has lodged an NCR against opposite party no.2 under Sections 323, 504, 427 IPC and in the court as PW1 and PW2 both the opposite party no.2 and his minor daughter 'A' have implicated all the four revisionists alleging false incident of rape against them.

Drawing the attention of the Court towards paragraphs 105 and 106 of judgment of the Apex Court in **Hardeep Singh Vs. State**

of Punjab and others, (2014) 3 Supreme Court Cases 92, it is argued that this power under Section 319 Cr.P.C. is an extraordinary and a discretionary power which must be exercised sparingly only where the circumstances of the case so warrant. It is to be exercised only where strong evidence occurs against the person. Again, it is argued that it requires much stronger evidence than mere probability of complicity of a person and on this basis of judgment Hardeep Singh (supra) the test applied is argued to be one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

Further drawing the attention of the Court towards the judgments in **Sagar v. State of U.P., AIR 2022 Supreme Court 1420** and **Ramesh Chandra Srivastava v. State of U.P., AIR 2021 Supreme Court 5107**, following the finding of the Apex Court in case Hardeep Singh (supra) the prayer is made to set aside the impugned order as the revisionists have been falsely implicated in the case.

The prayer is opposed by the learned counsel for opposite party no.2 and it has been submitted that the incident is true. All the four revisionists alongwith Chandi had committed rape of the minor daughter of the opposite party no.2 in the morning of 03/4.6.2021. Regarding applications under Section 156(3) Cr.P.C. dated 15.03.2021, it is submitted that this application was moved by the opposite party no.2 Abdul Kalam against all the four revisionists and eight other persons regarding attempt to encroach upon his land by the revisionists with the connivance of the police and other persons. Again the application under Section 156(3) Cr.P.C. dated 22.03.2021 is said to have moved by the opposite party no.2 with the allegation that with the intention to dispossess the opposite party no.2 from the land in dispute all the revisionists alongwith seven named and 25 unknown persons tried to encroach upon his land. The police also kept them in illegal detention. The revisionists alongwith other accused persons were allegedly said to give threat of life to the opposite party no.2 and also to implicate him in false cases. Again an application under Section 156(3) Cr.P.C. dated 07.04.2021 is said to have moved by Naziya against the revisionists Ram Tilak Verma, Manoj Kuamr and Guddu Verma that they had committed rape on her 15 year old daughter on 30.01.2021 at 5:30 AM when she had gone for defecation. On 31.03.2021 they had given an application to S.P., Gonda in this regard and the prayer was made to lodge an FIR against the revisionists.

Hence, it is submitted that due to enmity all the revisionists

alongwith Chandi kidnapped her daughter, raped her and the incident is claimed to be true. This allegation is confirmed by the victim in her statement under Section 164 of Cr.P.C. and in her additional statement and in the court also, both PW-1 the opposite party no.2 and PW2 the victim have supported the prosecution version of rape by all the four revisionists also, hence, the prayer is opposed.

If we go through the record and specifically the above documents, it is found that there is clear enmity regarding property between the revisionists and opposite party no.2. Enmity is a double edged weapon, which can lead the revisionists to commit the offence and could also get them falsely implicated.

On the basis of above evidence, the trial court had to look into 'whether more than a prima facie case to be seen at the time of framing of charge' is made out against the revisionists or not.

In application under Section 156 (3) of Cr.P.C. moved by Naziya, the mother of the alleged victim she has stated that her 15 years old daughter was raped by the revisionist Ram Tilak Verma, Manoj Kumar and Guddu Verma on 30.01.2021, while she had gone for defecation and regarding this incident on 31.03.2021 she had moved an application before the S.P., Gonda. In her additional statement, the victim has stated that on 30.03.2021 all the four revisionists had committed rape on her in the garden (bagiya) but in the FIR lodged on 04.06.2021 by the opposite party no.2 he has neither mentioned the incident of rape committed by the revisionists on 30.03.2021 as stated by the victim in her additional statement or regarding rape committed on 30.01.2021 as alleged by the mother of the victim in her application dated 07.04.2021 under Section 156(3) Cr.P.C.

Admittedly, there is absolutely no medical report regarding the gang rape on the victim on 30.01.2021, 30.03.2021 and 3/4.6.2021. The age of the victim is found to be 16-17 years in her medical report. As per her statement under Section 161 Cr.P.C. she was in love with Chandi and had eloped with him on her own volition. In the same statement she has further stated that her father was planning to implicate the revisionists in a false case of rape to get back his land from them. In her additional statement also, the victim has stated that it is her will to implicate any person in a case against her. Regarding recovery of victim also, there is contradiction that as per recovery memo she is said to have recovered by the police on 06.06.2021 alongwith Chandi, while in her additional statement the victim has stated that she had come back on the same day

after the incident dated 3/4.06.2021. In the court the victim is said to be recovered by the police from the house where she was raped by the revisionists on 3/4.6.2021. If as per the version of victim she had returned home on the same day in the morning of 4th June, 2021 why this incident of rape by all the accused persons including the four revisionists had not been mentioned by the opposite party no.2 in the FIR lodged by him in the evening of 04th June, 2021, is not made clear by the opposite party no.2. On the basis of such shaky evidence, the Investigating Officer filed charge-sheet against Chandi @ Vijay only.

In his statement as PW-1 in the court the opposite party no.2 has stated that on 30.03.2021 her daughter was molested by all the accused persons including the four revisionists. PW1 has not stated in his statement regarding rape on her daughter by the revisionists on 30.03.2021. Regarding incident of rape dated 3/4.6.2021 he has stated in the court that his daughter had disclosed this incident of rape by the revisionists when she came back. In her statement as PW2 in the court, the victim has stated that her father wanted to lodge an FIR against all the revisionists of committing rape but the police did not register an FIR regarding rape against all the accused persons including the revisionists. In her statement as PW2 in the court, the victim has stated that on 3/4.6.2021 at 3 o'clock in the night when she was lying in tin shade at her pond all the revisionists and Chandi @ Vijay picked her from there forcibly and all of them raped her. After that they took her in the village and kept her in a house there also she was raped by all these persons. She has also stated that at the time of this incident she sustained injuries on her body. In the house where she was kept, the police reached there and recovered her from there. In her previous statements, she has not mentioned regarding rape with her in a house in a village or her recovery from that house by the police. In the court, she has also stated that the report of her father that she was recovered and she was at the police station was not written by the police and police also gave a threat to them.

The trial court in its order has not discussed these statements of PW1 and PW2 in the light of their previous statements. The enmity between the parties is clear as per the evidence on record. The planning of opposite party no.2 to implicate the revisionists in false rape case is there on record.

After hearing the learned counsel for the parties, this Court is of the view that the matter must be reconsidered and file be sent back to the court to consider the matter afresh in the light of principles, which have been enumerated by this Court.

The revision is, accordingly, **allowed**. The impugned order dated 17.05.2022 is hereby set aside. The court concerned shall apply its mind in the light of principles, which have been laid down by the Constitutional Bench in ***Hardeep Singh (supra)***. The parties will appear before the trial court on 20.12.2023 and thereafter the court concerned after hearing both the parties will pass appropriate orders.

Order Date :- 28.11.2023

Radhika