

Neutral Citation No. - 2023:AHC-LKO:68884-DB

**High Court of Judicature at Allahabad
(Lucknow)**

Judgment Reserved on 25.08.2023

Judgment Delivered on 19.10.2023

Court No. - 9

Case :- CRIMINAL APPEAL No. - 1119 of 2015

Appellant :- Chhottan @ Rahmat Ali @ Rahmat Ullah

Respondent :- State of U.P.

Counsel for Appellant :- Syed Ajaz Haider Rizvi, Piyush

Kumar Singh, Rakesh Kumar Saini, S.H. Ibrahim

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Ajai Kumar Srivastava-I, J.)

1. Heard Sri Piyush Kumar Singh, learned counsel for the appellant, Sri Pawan Kumar Mishra, learned A.G.A. for the State and perused the material available on record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 03.09.2015 passed by the learned Additional Sessions Judge/F.T.C., Balrampur in Sessions Trial No.97 of 2011 titled as State vs. Chhottan alias Rahmat Ali alias Rahmat Ullah arising out of Crime No.571 of 2010, under Sections 376 (2) (cha) of the Indian Penal Code¹, Police Station Kotwali

1 hereinafter referred to as "I.P.C."

Utraula, District Balrampur whereby the appellant, Chhottan alias Rahmat Ali alias Rahmat Ullah has been convicted and sentenced to undergo life imprisonment with a fine of Rs.20,000/- for the offence under Section 376 (2) (cha) I.P.C. and in default of payment of fine, he has further been directed to undergo six months' rigorous imprisonment. He has also been directed to pay Rs.1,50,000/- as compensation to the victim and in default of payment of fine, the same has been directed to be recovered from his assets.

3. The case of the prosecution in nutshell is that a written report was submitted by the first informant, Smt. Shobhawati at Police Station Kotwali Utraula, District Barlampur stating therein that her minor daughter, the victim, aged about 10 years was raped by the appellant, Chhottan alias Rahmat Ali alias Rahmat Ullah in the sugarcane field when the first informant had gone to do some agricultural work. When the first informant returned her home, the victim told her about the said incident. According to written report, the private part of the victim was bleeding.

4. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, Smt. Shobhawati, the first information report, Ext. Ka-4 came to be lodged against the appellant on 31.10.2010 under Section 376 I.P.C.

5. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C.

He visited the place of occurrence and prepared a site plan thereof Ext. Ka-9.

6. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-11 against the accused, namely, Chhottan @ Rahmat Ali @ Rahmat Ullah.

7. Charge for the offence under Section 376 I.P.C. was framed against the present accused/appellant, who denied the charge and claimed to be tried.

8. In order to bring home guilt of the accused/appellant, the prosecution has examined Smt. Shobhawati, complainant as PW-1, victim as PW-2, Kanhaiya Lal as PW-3, Constable, Uma Prasad Singh as PW-4, Dr. Lalita as PW-5, Dr. Ram Gopal as P.W.-6, Anil Kumar Singh, Pathologist as P.W.-7 and Investigating Officer, Vansh Raj as PW-8.

9. The accused/appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case and he claimed to be innocent.

10. No evidence in defence was adduced by the accused/appellant before the learned trial court.

11. The learned trial court, after appreciating the evidence available on record, rendered the impugned

judgment and order dated 03.09.2015 whereby the appellant came to be convicted as aforesaid.

12. Aggrieved by the aforesaid impugned judgment and order dated 03.09.2015, the appellant has preferred the instant criminal appeal.

13. Learned counsel for the accused/ appellant has submitted that the accused/ appellant is innocent, who has been falsely implicated in this case. The finding of guilt of the accused/ appellant recorded by the learned trial court is against the weight of evidence, therefore, the same cannot be sustained.

14. His further submission is that the prosecution story is unbelievable and the accused/ appellant has been falsely implicated on the basis of false and fabricated facts. The prosecution witnesses did not prove and corroborate the prosecution case. Therefore, the learned trial court was wrong in drawing adverse inference against the accused/ appellant. The statements of witnesses of fact have not been considered in their right perspective and, therefore, the appellant wrongly came to be convicted by the impugned judgment and order dated 03.09.2015, which is not based on due analysis of evidence available before the learned trial court. He has also submitted that unduly harsh sentence has been awarded to the appellant.

15. Learned counsel for the accused/ appellant has, thus, prayed to set aside the impugned judgment and order dated 03.09.2015 and to acquit the appellant accordingly.

16. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 03.09.2015, which is well discussed and reasoned. The appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimony of prosecution witnesses. Therefore, interference by this Court is neither warranted nor is justified. He, accordingly, prays for dismissal of the instant criminal appeal.

17. Having heard the learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record, it transpires that the alleged incident is stated to have occurred on 31.10.2010 at about 12:30 noon regarding which, a first information report, Ext. Ka-4 came to be lodged on 31.10.2010 at 16:45 P.M. According to written report, Ext. Ka-1 which has been duly proved by the first informant, Smt. Shobhawati, P.W.-1, the age of victim, on the date of incident, was about 10 years. However, the victim, P.W.-2, in her testimony, has stated her age to be about 9 years. She has supported the prosecution case. She is a child, whose statement has been recorded by the learned trial

Court after ascertaining that she is capable of understanding the things. According to the victim, P.W.-2, on the date of occurrence, she had gone to collect the dried lotus beads (Kamal Gatta) from nearby pond where the accused/ appellant enticed her to accompany him in the sugarcane field. Once the victim, P.W.-2 reached the sugarcane field, she was disrobed by the appellant and the appellant committed rape upon her. The appellant thereafter threw the victim, P.W.-2 in the pond, however, subsequently the accused/ appellant dropped the victim near her house. According to the victim, P.W.-2, her undergarment was soaked with the blood.

18. In an elaborate cross-examination of the victim, P.W.-2, we have been unable to find any such discrepancy which makes her testimony doubtful. Her statement regarding she having been raped by the appellant is consistent. Dr. Lalita, who had examined the victim, has been examined as P.W.-5. Dr. Lalita has also proved the injury report of the victim as Ext. Ka-6 and the X-ray report, Ext. Ka-7. The age of the victim has been ascertained to be about 7 years by Dr. Lalita, P.W.-5. The injury report, Ext.-Ka-6 reveals that there was one abrasion of 0.5 cm x 0.5 cm on the right labia majora of the victim and there was also lacerated wound 1 cm x 1 cm in the vagina. The hymen was reported to be freshly torn and was found to be bleeding also. Thus, the prosecution case as contained in written report, Ext. Ka-1 stands proved in the light of consistent and reliable

testimony of a young victim, aged about 7 years particularly keeping in view the fact that there were several injuries on her private part which were reported to be fresh in nature which also corroborates the time of commission of the offence.

19. Hon'ble the Supreme Court in **Phool Singh vs. State of Madhya Pradesh**² has held that in case of rape, conviction can be recorded on the basis of sole testimony of victim provided the same is reliable. In the case at hand as discussed above, we find the testimony of victim, P.W.-2 wholly reliable, therefore, we do not find substance in the submissions advanced by learned counsel for the appellant to the effect that in want of corroboration of testimony of victim, P.W.-2, the finding of guilt of the appellant cannot be sustained. We also notice that the testimony of victim, P.W.-2 has been duly corroborated by the medical evidence i.e. testimony of Dr. Lalita, P.W.-5 in the case at hand.

20. Learned counsel for the appellant has also contended that this incident occurred on 31.10.2010. The accused/ appellant has been held guilty of offence of rape and has been accordingly sentenced to life imprisonment for offence under Section 376 (2) (f) I.P.C.. His submission is that having regard to the date of incident i.e. 31.10.2010, the punishment which could have been inflicted upon the accused/ appellant was rigorous imprisonment for a term which shall not not be

² (2022) 2 SCC 74

less than 10 years, but, which may be for life and shall also be liable to fine.

21. He submits that learned trial Court failed to appreciate the fact that though the application claiming the accused/ appellant to be juvenile came to be rejected by the learned trial Court, the accused/ appellant is of tender age, who is the sole bread earner of his family. His parents are old and aging and the accused/ appellant had no prior criminal antecedent. Therefore, the accused/ appellant deserved to be extended benefit of proviso to Section 376 (2)(f) I.P.C. as it existed on the date of commission of offence i.e. 31.10.2010.

22. Opposing the aforesaid contention of learned counsel for the appellant, learned A.G.A. submits that the accused/ appellant has been convicted for the offence under Section 376 (2) (f) I.P.C. Having regard to the tender age of the victim, the accused/ appellant has been sentenced to life imprisonment by learned trial Court which cannot be termed to be inappropriate or excessive.

23. We have given our thoughtful consideration to the aforesaid rival submissions advanced by learned counsel for the appellant and learned A.G.A for the State. Needless to mention that the nature of offence is such that it is not only an offence against the victim's person and soul, rather, it is an offence against society also. Though the prosecution case in respect of offence

under Section 376 (2) (f) I.P.C. has been duly proved beyond reasonable doubt, however, we have been able to notice that no other physical harm was done to the victim, P.W.-2. There is no evidence indicating that any threat was extended either to the victim or to her mother, the first informant by the accused/ appellant for not lodging a prompt first information report.

24. We also notice that the accused/ appellant has disclosed his age to be 23 years in his statement recorded under Section 313 Cr.P.C. which was recorded on 16.06.2015. Reckoned accordingly, he would be aged about 31 years now. He has no criminal history. According to prosecution's own story, after the incident, the accused/ appellant dropped the victim near her home. There is nothing on record to suggest that he extended any threat either to the first informant or to the victim for not lodging the first information report. Therefore, in aforesaid view of the matter, we are of the considered view that while upholding conviction of the accused/ appellant under Section 376 (2) (f) I.P.C., the sentence awarded to the appellant deserves to be modified from life imprisonment to the sentence of 14 years' rigorous imprisonment.

25. In view of aforesaid discussion, this Court while upholding the conviction of the accused/ appellant under Section 376 (2) (f) I.P.C. modifies the sentence of the accused/ appellant to 14 years' rigorous imprisonment under Section 376 (2) (f) I.P.C. However,

the fine imposed upon the accused/ appellant by the learned trial Court shall remain intact, in default of payment of fine, he shall undergo six months' rigorous imprisonment. The compensation of Rs.1,50,000/- awarded by the learned trial Court to the victim shall also be paid by the appellant within a period of six months from the date of his release.

26. This appeal is **partly allowed** in aforesaid terms.

27. In compliance with the provisions contained in Section 437-A Cr.P.C. the accused/ appellant is directed to furnish personal bond and sureties to the satisfaction of the court concerned within a period of six weeks from today.

28. Let the lower Court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

(Ajai Kumar Srivastava-I, J.) (Rajan Roy, J.)

Order Date :- 19.10.2023
Mahesh