

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2023:AHC-LKO:85016-DB

Reserved on :- 06.12.2023
Pronounced on :- 22.12.2023

Court No. - 9

Case :- JAIL APPEAL No. - 48 of 2015

Appellant :- Rambaran Rawat

Respondent :- State of U.P.

Counsel for Appellant :- In Person Jail Apperal, Amar Singh Chuahan, Amresh Kumar, Dinesh Kumar, Rakesh Mishra, S.Malik-E-Ashtar Rizvi, Syed Fazal Abbas Rizvi, Vinay Kumar Verma

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Hon'ble Ajai Kumar Srivastava-I, J.)

1. Heard Sri Amar Singh Chuahan, learned counsel for the appellant, Sri R.S. Dwivedi, learned A.G.A. for the State and perused the entire record.

2. Under challenge in this jail appeal is the impugned judgment and order dated 17.10.2014 passed by the learned Special Judge POCSO Act/ Additional Sessions Judge, Court No.5, Barabanki, in Sessions Trial No.7 of 2014 titled as State of U.P. vs. Rambaran Rawat arising out of Crime No.186 of 2013, under Sections 376, 506 of the Indian Penal Code¹ and Sections 3/4 Protection

¹ hereinafter referred to as "I.P.C."

of Children from Sexual Offences Act, 2012² Police Station Baddupur, District Barabanki whereby the appellant, Rambaran Rawat has been convicted and sentenced to undergo life imprisonment with a fine of Rs.25,000/- for the offence under Section 4 POCSO Act and in default of payment of fine, he has further been directed to undergo one year's imprisonment.

3. The case of the prosecution in nutshell is that a written report was submitted by the first informant, Mahesh at Police Station Baddupur, District Barabanki stating therein that on 12.10.2013 at about 10-11:00 AM, the first informant's daughter/ victim had gone from her house towards the north direction near the bamboo bush in Ram Lakhan's field to attend nature's call. When she was returning to her house, the accused/ appellant, Rambaran Rawat, who is the neighbour of the first informant, called the victim to his house. When the victim reached near the accused, Rambaran Rawat, he caught hold of her, suppressed her voice, took inside his room and committed rape upon her. Thereafter, he ran away from the scene of occurrence threatening the victim that if she would reveal anything about this incident, he would kill her and her family members. The first informant's wife, Sushma Devi along with some other women reached the place of occurrence, who picked up the victim and brought her home. Thereafter, the victim narrated the whole incident to his father, who is the first informant.

² hereinafter referred to as "POCSO Act"

4. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, Mahesh, the first information report, Ex. Ka-6 came to be lodged against the appellant on 14.10.2013 for the offence under Sections 376, 506 I.P.C. and Sections 3/4 POCSO Act.

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 Ex. Ka-3.

6. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-5 against the accused/ appellant for the offences under Sections 376, 506 I.P.C. and Sections 3/4 POCSO Act.

7. Charges for the offences under Sections 376, 506 I.P.C. and Sections 3/4 POCSO Act were framed against the present accused/ appellant, who denied the charges and claimed to be tried.

8. In order to bring home guilt of the appellant, the prosecution has examined the victim as PW-1, Mahesh, who is the first informant, as PW-2, Sushma as PW-3, S.I. Javed Khan as PW-4 and Dr. Naimshree as PW-5.

9. The 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 adduced by the prosecution and by the accused, convicted and sentenced the appellant as stated herein above.

12. In such circumstances referred to above, the accused-appellant is before this Court with the present appeal.

13. Although, learned counsel for the appellant has advanced various submissions in order to demonstrate that the appellant was falsely implicated in this case by the first informant in order to grab appellant's property and also the fact that the conviction of the appellant is based on sole testimony of the victim, therefore, the learned trial court erred in holding the appellant guilty of offence under Section 4 POCSO Act and sentencing him to life imprisonment. However, while concluding his submission, he has very fairly stated that he would confine his argument on the point of sentence only.

14. In this regard, his further submission is that the appellant resides in the same village. The accused/ appellant is a distant relative of the victim also. There is no evidence regarding aggravating factors like extending threat to the victim or his family members post commission of offence.

15. Learned counsel for the appellant has also drawn attention of this Court to the fact that even Section 4 POCSO Act vests wide discretion with the courts to sentence in such matters, which provides for a minimum sentence for twenty years and which may also extend to life imprisonment. The learned trial court, while sentencing the appellant for life imprisonment, has not assigned any reason for imposing the maximum sentence prescribed under Section 4 POCSO Act. It has also failed to assign any cogent reason for not imposing minimum sentence provided for this offence. Therefore, having regard to absence of any aggravating factor and in absence of any prior criminal history of similar nature, the appellant ought to have been awarded minimum sentence provided under Section 4 POCSO Act.

16. Opposing the aforesaid contention of learned counsel for the appellant, learned A.G.A. for the State has submitted that the victim is aged about 11 years only. The offence of rape upon a minor girl is a heinous offence. The victim is of tender age. The offence of rape is not only against the body of the deceased but it also ruins the soul of the victim. It leaves indelible mark on the memory of the victim. Therefore, having regard to all attending facts and circumstances, the learned trial court has rightly awarded the sentence to life imprisonment to the appellant.

17. Having heard learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record,

we find that according to written report, Ex. Ka-1, this incident occurred on 12.10.2013 at about 10-11:00 AM and the first information report, Ex. Ka-6 was lodged on 14.10.2013. The cause of delay has been duly explained in the first information report, Ex. Ka-6. It is mentioned in the written report, Ex. Ka-1 that due to fear, the first informant could not lodge the first information report on the date of occurrence itself. We find the aforesaid explanation sufficient having regard to the fact that it is a case of rape upon a victim of a tender age. The victim has been examined as P.W.-1. In her testimony as P.W.-1, she has stated that rape upon her was committed by the appellant in his house. The house of the appellant is not too far from the house of the victim. It is the appellant's own case that his wife has already died and he has no children, therefore, there was no possibility of presence of any other family member of the appellant in his house on the date of occurrence.

18. Hon'ble the Supreme Court in **Phool Singh vs. State of Madhya Pradesh**³ 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.-1 wholly reliable, therefore, we do not find any 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.-1, the finding of guilt of the appellant cannot be sustained. We also find that the

³ (2022) 2 SCC 74

testimony of victim, P.W.-1 has been duly corroborated by the medical evidence i.e. testimony of Dr. Naimshree, P.W.-5 in the case at hand.

19. In the light of aforesaid judgment rendered by Hon'ble the Surpeme Court in **Phool Singh's case (supra)**, we have carefully scrutinized the testimony of P.W.-1, victim, and we find her testimony to be consistent and cogent. The medical report reveals that the hymen of the victim/ child aged about 11 years was old torn and healed. The date of incident is 12.10.2013 and medical examination of the victim was conducted on 17.10.2013, therefore, we do not find this fact to be such which belies the prosecution story. We do not find this case to be one of a false implication of the accused/ appellant also. Thus, we find the finding of guilt of the appellant for penetrative sexual assault as defined under Section 3 POCSO Act, which is punishable under Section 4 POCSO Act, to be based on proper appreciation of prosecution evidence available on record, which does not suffer from any illegality or infirmity, therefore, the same does not warrant any interference by this Court in exercise of its power under Section 386 Cr.P.C.

20. Now advertng to the issue of quantum of punishment awarded to the appellant, it is pertinent to mention that the age of the appellant is mentioned in his statement recorded under Section 313 Cr.P.C. to be 47 years. There is no evidence available on record to show that there was any aggravating factor such as extending

threat to the victim or her parents for not lodging first information report. There is no evidence to demonstrate that any other physical injury was caused to the victim. Aforesaid facts have not been disputed by the learned A.G.A. for the State also. Therefore, in view of aforesaid facts and circumstances, this Court while upholding the conviction of the accused/ appellant for penetrative sexual assault punishable under Section 4 POCSO Act deems it just and proper to modify the sentence of life imprisonment awarded by the learned trial court to 20 years' imprisonment under Section 4 POCSO Act. The fine of Rs.25,000/- imposed upon the accused/ appellant by the learned trial Court is affirmed. In default of payment of fine, he shall undergo one year's imprisonment as directed by the learned trial court.

21. The accused-appellant is detained in jail. He shall serve out the sentence, which has been awarded by this Court.

22. The upshot of aforesaid discussion is that the present jail appeal is **partly allowed**.

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

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

Order Date :- 22.12.2023

cks/-