

Court No. - 83

Case :- CRIMINAL APPEAL No. - 4421 of 2022

Appellant :- Golu

Respondent :- State of U.P.

Counsel for Appellant :- Bharat Bhushan Dubey, Noor Mohammad

Counsel for Respondent :- G.A., Ram Ashish Pandey

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Noor Mohammad, learned counsel for appellant and learned AGA for the State-respondent.
2. Despite time has already been given to Sri Ram Ashish Pandey, learned counsel for informant to file counter affidavit/objection but neither he filed the same till today nor he appeared even in the revised call.
3. This criminal appeal has been filed by appellant Golu challenging the legality and validity of the impugned judgment and order dated 26.05.2022, passed by learned Additional District and Sessions Judge/FTC-1, Etawah in S.T. No. 110 of 2019 (State Vs. Golu), arising out of Complaint Case No. 320 of 2016, by which the appellant has been convicted and sentenced to rigorous imprisonment for ten years under Section 376 IPC and a fine of Rs.50,000/- and in default of payment of fine, one year additional imprisonment.
4. The prosecutrix aged 25 years r/o-Village Mohabbatpur, P.S. Jaswantnagar, District-Etawah instituted an application u/s 156(3) Cr.P.C. in the court of Chief Judicial Magistrate, Etawah alleging that on 17.11.2015, the accused aged 27 years r/o-Bengali Colony, P.S. Friends Colony, District-Etawah, nephew of the prosecutrix, gainfully employed at a sweet shop in Delhi, descended on her matrimonial abode and told her that her husband has asked him telephonically to bring her to Delhi with him so that she may reside with him in Delhi. Her husband was working in Delhi as a Cook. The prosecutrix believed the accused as he was her

husband's nephew and agreed to accompany him to Delhi with her three year old son. The prosecutrix took some gold and silver jewellery and cash of rupees 25,000/- with her and departed around 1.00 p.m. with the accused. Her parents, sisters, sister-in-law, brother-in-law and mother-in-law were present at home at the time and had consented to her to go with the accused to Delhi. After reaching Delhi, accused kept her in his room in Sant Nagar with an assurance that he would take her to her husband's house next day but accused instead of taking her to her husband, he confined her in his room and forcefully performed coitus with her. The prosecutrix pleaded him to take her and the child to her husband but he did not pay any heed to it. Despite vehement resistance by the prosecutrix, the accused continued to ravage her and threatened to kill her and her son. This ordeal continued till 21.01.2016, when the accused received telephonic communication from his *Bua* that the police is troubling his family and is looking for him and he will fall into tentacles of the police if he does not return with the prosecutrix, her child and her jewellery and cash of Rs. 25,000/-.

5. Consequently, the accused brought the prosecutrix and her child back and dropped her at the residence of his uncle Sarvesh (chacha of the accused) in Mohalla Gandhinagar, Etawah around 10 am in the morning on 26.01.2016. Thereafter, on being informed by Jagdish (father of the accused) that the prosecutrix had reached the house of Sarvesh, her husband Pravesk Kumar, (jeth/brothers of the husband) Lotan and Sunder, mother of the husband and sister-in-law (bhabhi) Narayani Devi went to the house of Sarvesh and brought her back with them. Prosecutrix narrated the entire incident to her family and told them that the accused had wrongfully confined her. Her husband told her that in her absence, a complaint had been lodged by him (husband) in P.S. Jaswantnagar, Etawah and by her father Prahalad in P.S. Ajitmal, District Auraiya in connection with the incident. She has further stated in the complaint that the accused and his parents have been constantly threatening of falsely

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implicating her in various criminal cases and of killing her in order to pressurise her for a compromise. On 16.02.2016, the accused made a telephonic call to her husband Pravesh and threatened him with dire consequences. The prosecutrix along with her husband went to the P.S. Jaswantnagar to lodge an FIR but the police did not register their case. Thereafter she sent a complaint to SSP, Etawah vide a registered post on 29.01.2016, when her complaint failed to elicit any response from the upper echelon of the police, she knocked the doors of the court with an application under Section 156(3) Cr.P.C. on 05.03.2016.

6. After registration of the the said application as a complaint case, the learned Magistrate recorded statements of prosecutrix and her witnesses Narayani Devi and Sunder Lal u/s 200 and 202 of Cr.P.C. and took cognizance of the offence under Section 376 IPC against the accused Golu vide order dated 03.09.2016. The accused challenged the order of cognizance under Section 482 Cr.P.C. but the same was dismissed by this Court. Thereafter, the case was committed for sessions trial vide order of learned Magistrate dated 27.05.2021.

7. The Sessions Court charged the accused under Section 376 IPC to which he pleaded not guilty and claimed trial.

8. Prosecution examined the prosecutrix as PW-1, Narayani Devi as PW-2 and Sunderlal as PW-3 in support of its case and proved the application under Section 156(3) Cr.P.C. dated 05.03.2016 as Exh-ka-1 in documentary evidence. The defense produced 2 witnesses, Lotan Singh as DW-1 and Sarvesh as Dw-2 in support of its case.

9. The accused-appellant in his statement recorded under Section 313 Cr.P.C. denied the prosecution case and further stated that the prosecutrix is his aunt (chachi), he is innocent and has been falsely implicated by the prosecutrix on account of a land dispute between them.

10. Learned Additional District and Sessions Judge/FTC-1, Etawah, after considering the submissions advanced before him by learned counsel

for the parties and scrutinizing the evidence on record, both oral as well as documentary, convicted the appellant under Section 376 I.P.C. and awarded the aforesaid sentence to him.

11. Hence, this appeal.

12. Learned counsel appearing for appellant submitted that the absence of any evidence on record to show that father of the prosecutrix and her husband lodged any complaint against the accused with the police when she went missing, indicates that the prosecution story is false and fabricated and the prosecution has failed to prove its case by producing any reliable and legally admissible evidence indicating that the appellant was perpetrator of the crime. The next argument advanced by learned counsel for appellant is that the prosecutrix in her evidence, has admitted that when she went to Delhi, she used her mobile phone and used to keep it with her, but surprisingly, she did not inform her husband about her arrival in Delhi and her subsequent ordeal. Learned counsel for appellant further submitted that the prosecutrix during her confinement in the room of the accused, did not make any effort to escape from the captivity as in her evidence she has stated that the accused used to go out to fetch milk for her son. It has been further argued that the prosecutrix did not raise any alarm while she was returning to Etawah from Delhi. The last argument raised by learned counsel for appellant is that the prosecutrix was not ever subjected to medical examination and also her statement under Section 164 Cr.P.C. was not recorded.

13. Learned counsel for the appellant has lastly submitted that neither the recorded conviction of the appellant nor the sentence of imprisonment for life awarded to the appellant can be sustained and is liable to be set aside.

14. Per contra, learned A.G.A. appearing for the State has vehemently argued that the prosecution fully succeeded in proving the charge framed against the appellant by leading cogent and reliable evidence. Therefore,

no interference with the impugned judgment and order is required and as such, this appeal, which lacks merit, is liable to be dismissed.

15. I have heard the rival submissions raised by learned counsel for appellant and learned AGA and perused the entire records available before this Court.

16. The prosecution case as already narrated hereinabove is that on 17.11.2015, the accused aged 27 years r/o-Bengali Colony, P.S. Friends Colony, District-Etawah, nephew of the prosecutrix, gainfully employed at a sweet shop in Delhi, descended on her matrimonial abode and told her that her husband has asked him telephonically to bring her to Delhi with him so that she may reside with him in Delhi. Her husband was working in Delhi as a Cook. The prosecutrix believed the accused as he was her husband's nephew and agreed to accompany him to Delhi with her three year old son. The prosecutrix took some gold and silver jewellery and cash of rupees 25,000/- with her and departed around 1.00 p.m. with the accused. Her parents, sisters, sister-in-law, brother-in-law and mother-in-law were present at home at the time and had consented to her accompaniment with the accused to Delhi. After reaching Delhi the accused kept her in his room in Sant Nagar with an assurance that he would take her to her husband's house next day. But the accused did not take her to her husband and instead, confined her in his room and forcefully performed coitus with her.

17. In order to establish the guilt of appellant, the prosecution had examined prosecutrix as PW-1, Narayani Devi as PW-2 and Sunderlal as PW-3 as the witnesses of fact. All the prosecution witnesses more or less supported the alleged incident but the prosecutrix has never been put to examine medically and also her statement under Section 164 Cr.P.C. has not been recorded.

18. While passing the judgment and order dated 25.02.2022, reliance of a judgment passed in the case of **State of Punjab Vs. Gurmit Singh and**

others [1996 SC 1393] rendered by Hon'ble the Apex Court, has been made wherein it has been held that conviction can be based on the sole testimony of the prosecutrix without any corroboration even in the absence of medical evidence but at the same time, considering the factum of the matter wherein the complaint itself has been lodged after delay of near about one year, the statement of prosecutrix must be corroborated with the evidence along with medical report, in the instant matter, in absence of any specific medical report and the statement under Section 164 Cr.P.C, prosecution loses its credibility considerably.

19. In this circumstances, when there is no medical report with regard to the alleged allegation of serious sexual offense against prosecutrix by the accused, goes unsubstantiated in the absence of medical examination report.

20. One dispute persisting between the parties, has been apprised by the defense while examining as D.W.-1 and the same has been mentioned at the time of recording statement under Section 313 Cr.P.C.

21. In the event as mentioned above, the strong footing for implicating the appellant relating to property dispute, has to be testified on the basis of strict proof of evidence in shape of statement recorded by the prosecutrix under Section 164 Cr.P.C. and there must be a litmus test on the perusal of medical report.

22. When there is no medical report available and as such, the same has not been proved during trial, learned court concerned cannot shut its eyes from either aspect of matter by way of relying only the statement recorded by the prosecutrix, although there is specific statement with regard to preferring missing report/information before the police concerned, no as such related documents were discussed and the effect of the same culminated into delay in lodging FIR by near about one year. Learned trial court failed to discuss the vital issue that the incident if relied only on the

statement recorded by prosecutrix, the same has to be well within limited gap after the incident which attracted offence under Section 376 IPC.

23. Thus, upon a wholesome consideration of the facts of the case and a thorough analysis and scrutiny of the evidence available on record, I do not find that the prosecution has been able to prove its case against the appellant beyond all reasonable doubts.

24. For the aforesaid reasons, neither the recorded conviction of the appellant nor the sentence of ten years alongwith fine awarded to the appellant, can be sustained.

25. This appeal succeeds and is **allowed**.

26. The accused-appellant Golu is acquitted of the charge framed against him. He is in jail. He shall be released forthwith unless he is wanted in some other case subject to his complying with the provision of Section 437-A of Cr.P.C.

Order Date :- 05.08.2024

Vivek Kr.

(Saurabh Srivastava,J.)