

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2711 of 2008

Appellant :- Avadhesh Singh

Respondent :- State of U.P.

Counsel for Appellant :- Amrendra Singh, Aman Kumar Shrivastav

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Aman Kumar Shrivastav, learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.

2. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- **Avadhesh Singh** against the impugned judgment and order of the trial court dated 18.11.2008 passed by Additional Sessions Judge/Fast Track Court-4, Lakhimpur Kheri, in Sessions Trial No. 116 of 2001 (State vs. Avadhesh Singh), arising out of Case Crime No. 76 of 1994, under Section 354 and 506 I.P.C. and Section 3(1)(xi) of the S.C./S.T. (P.A.) Act, Police Station Kheri, District Kheri, whereby the appellant has been convicted for committing offence under Sections 354 I.P.C. and 3(1)(xi) of the S.C./S.T. (P.A.) Act and has been sentenced for a maximum imprisonment of six months for committing offence under Section 3(1)(xi) of the S.C./S.T. (P.A.) Act along with fine and also with default clause.

3. Learned counsel for the appellant while drawing the attention of this Court towards the impugned judgment passed by the trial court, vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record. Only two prosecution witnesses of fact were produced before the trial court and the informant was admittedly not the eye witness of the incident and the evidence of P.W.-2 (victim) is not reliable at all.

4. Elaborating further, it is submitted that it is alleged that the prosecutrix/victim was dragged towards a lonely place and nobody could come to rescue her as nobody was present and the trial court has also believed this that the incident has been committed in isolation. However, no injury, etc. has been sustained by the prosecutrix in the process of struggle, which belies the whole prosecution story.

5. It is further submitted that the offence under Section 3(1)(xi) of the S.C./S.T. (P.A.) Act is akin to Section 354 of the I.P.C. and the punishment for this offence has been enhanced under Section 3(1)(xi) of the S.C./S.T. (P.A.) Act.

6. It is further submitted that there is contradictions with regard to the timing of the incident, as contradictory statements have been given with regard to the timing of the incident by the prosecutrix and her husband and her husband has admitted that on the relevant day he had arrived at his home at about 12:00 in the afternoon and, therefore, the story that he was informed by the prosecutrix after the commission of the incident is not true.

7. It is next submitted that even if all the evidence of the prosecution is taken on its face, it will emerge that the prosecution has failed to prove its case beyond reasonable doubt.

8. Learned A.G.A. on the other hand opposes the submissions made by learned counsel for the appellant on the ground that the instant case is pertaining to the 'sexual assault' committed on a lady and the evidence of a victim of sexual assault is akin to the injury of an injured person and conviction may rest on her sole testimony, as these kind of offences are committed in isolation. Therefore, even if there is no independent witness or no injury report, the statement of the prosecutrix is suffice to convict the appellant and no illegality has been committed by the trial court either in convicting or sentencing the appellant.

9. Having considered the submissions made by learned counsel for the parties, it is reflected that the allegations against the appellant are in terms that, on 20.05.1994 at about 4:00 pm. when the victim had gone out of her house to ease out, she was caught hold by the appellant and when an alarm raised by the victim, the appellant as well as the co-accused fled away from the scene after intimidating her. The trial court has not found the case of the prosecution proved under Section 506 I.P.C. and in support of the case of the prosecution, the husband of the victim was testified as P.W.-1, while the victim was produced before the trial court as P.W.-2. Admittedly no injury, etc. was sustained by the victim in the incident.

The appellant has been convicted for offence committing under Section 3(1)(xi) of the S.C./S.T. (P.A.) Act as well as under Section 354 of the I.P.C. and both these sections for convenience are being reproduced as under:-

"3.(1)(xi) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

Section 354 I.P.C. : Assault of criminal force to woman with intent to outrage her modesty:

"Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

10. Perusal of the above-mentioned penal sections would sufficiently demonstrate that to constitute an offence under Section 354 I.P.C., having intention to outrage the modesty of a women is a condition precedent and the same could only be assessed gathered by the alleged act of the accused likewise in Section 3(1)(xi) of the S.C./S.T. (P.A.) Act (as was existing in the text book), it is necessary that assault or force is used with any women belonging to a scheduled caste or scheduled tribe with the intention to dishonour or outrage her modesty. The admitted

case of the prosecution, as is evident from the evidence of the star witness of this crime, namely, P.W.-2 (victim) recorded before the trial court is that she was caught hold by the accused with an ill intention. The defence of the appellant appears to be that, if any scuffle had taken place, the same should have left any mark on the person of the victim either by way of any scratch, bruise, etc. Admittedly, no injury of any kind has been found on the person of the victim. The appellant in his statement stated that some grocery items were purchased by the victim and her husband and when he demanded the money a false report has been lodged so that they should not repay the same.

11. It appears to be a settled law that the conviction of an accused person(s) may be done even on the evidence of a solitary witness. However, the evidence of that solitary witness must be of impeccable nature and fully reliable and must not contain any embellishments, contradictions and inherent weaknesses. The solitary witness of this crime is victim herself. The statement given by the victim in her in-chief-examination is in terms that, she was dragged by the appellant for a long distance. At the cost of repetition, it may be recalled that no injury of any kind has been sustained by her. As per the own statement of the victim she had remained in the company of the appellant for quite sometime as there was another accused sitting outside the ruins to safeguard and to see that no other person may enter that area. Another incident of the same day has also been stated that when her husband had gone to the house of the appellant and other co-accused persons and they were humiliated. No witness of the second incident has been produced before the trial court for the reasons best known to the prosecution. While contradicting the victim in the manner enshrined under Section 145 of the Indian Evidence Act with regard to the statement given by her to the investigating officer, the victim has replied that if there is no mention in her statement recorded under Section 161 Cr.P.C. pertaining to catching hold of her hand by the appellant, she may not explain the same. Thus, material contradictions emerging in the evidence of the prosecutrix pertaining to catching and hold of her hand by the appellant

as in her statement recorded by the investigating officer, no such allegations have been levelled and when she was contradicted in the cross-examination with the same, she failed to explain. Contrary to the statement of her husband P.W.-1, she in her cross-examination has stated that her mother-in-law had gone to the house of the appellant, who was also intimidated. However, when she was again confronted that this statement was not given by her to the investigating officer, she could not explain the same. Significantly she has admitted in her cross-examination that she had not gone to ease out to the place which was earmarked for that purpose and on that day she had gone to a different place as she has not found any vacant place there.

12. Thus, having regard to the various contradictions and infirmities appearing in the statement of the prosecutrix, her evidence recorded before the trial court may not be termed as 'wholly reliable' especially in absence of any medical evidence.

13. Before parting, this Court would also like to put on record the manner in which the trial court has dealt with this case as a judgment with regard to outraging the modesty of a women has been summed up in five pages and the discussion has only been made in 3-4th of one page, while it was the duty of the trial court to have discussed all the *pros and cons* of the evidence of the prosecution produced before it.

14. It is worthwhile to recall that the duty of the trial court at the time of appreciation of evidence is to sift and appreciate the evidence in a manner that the truth must come out of the evidence of the prosecution witnesses. However, where the truth and falsehood are so intermixed that it is impossible to separate them, the trial court in its discretion may discard such evidence/testimony.

15. Keeping in view all the facts and circumstances of the case, this Court finds that the prosecution has failed to prove its case beyond reasonable doubt against the appellant and, therefore, the impugned judgment and order may not sustain the test of law and for the reasons

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mentioned herein-above, the instant appeal preferred by the appellant-**Avadhesh Singh** is **allowed** and the impugned judgment and order passed by the trial court is, hereby, **set-aside**.

16. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case unless his detention is required with regard to any other criminal case.

17. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellant shall file his personal bond with **two sureties** of **Rs. 25,000/-** before the trial court for the purpose of securing his presence before the Hon'ble Supreme Court if any S.L.P. or to say any criminal appeal is filed against this judgment.

18. A copy of this order be immediately sent to the trial court through the Sessions Judge concerned for information.

Order Date: 19.09.2024

Praveen/-