

Neutral Citation No. - 2024:AHC-LKO:73567-DB

Reserved

Court No. - 1

Case :- GOVERNMENT APPEAL No. - 218 of 2001

Appellant :- State of U.P.

Respondent :- Rajesh And Another.

Counsel for Appellant :- Govt.Advocate

Counsel for Respondent :- Vijai,B.R. Singh,Kapil Misra,S.C. Tewari

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

[Per Attau Rahman Masoodi, J.]

- (1) Heard Shri R. S. Dwivedi, learned Additional Government Advocate for the State-appellant and Sri Kapil Mishra, learned amicus for the surviving respondent.
- (2) During the course of hearing of this appeal, respondent No.1 Rajesh died and a Co-ordinate Bench of this Court vide its order dated 19.03.2024 abated the appeal in respect of respondent No.1.
- (3) Now, the appeal survives only in respect of the respondent No. 2.
- (4) This Government Appeal has been filed by the State against the judgment and order dated 5.12.2005 passed by the learned 5th Additional Sessions Judge, Lucknow in Sessions Trial No. 760 of 1999 arising out of Case Crime No. 41 of 1999 whereby the Trial Court has acquitted the respondents of the offence under Sections 386, 468, 506, 504, 501, 342, 363, 366 and 376 I.P.C.
- (5) As per prosecution case, the complainant Satyendra Singh lodged an F.I.R. on 13.2.1999 at Police Station-Cantt, district

Lucknow alleging therein that the accused-Rajesh, his father Ram Chandra and his friends, namely, Rakesh Tewari and Raj @ Bhoj Raj used to threaten her sister and force to marry with the accused-Rajesh Singh. It is also alleged that while his sister was going to school on 4.12.1998, the accused persons forcibly took her to the Court and obtained her signature on the forged and fictitious Marriage Agreement. Accused persons also threatened that if she told this thing to her family members, her brother and other family members shall be killed. For this reason, the complainant's sister did not tell anything to her family members. When all the accused came to the house of the complainant on 13.02.1999 at 04.00 p.m. and threatened his sister to accompany with them, this matter came to the notice of the complainant and his family, then she revealed the incident happened to her.

- (6) The F.I.R. registered by the complainant was marked as Ext. Ka-1 and on the basis of this F.I.R., chik report Ext. Ka-4 was prepared and the entries were made in the G.D. marked as Ext. Ka 5. The Investigating Officer recorded the statements of the complainant, victim and other witnesses. The medical examination of the prosecutrix was also conducted and the Medical Legal Report and X-Ray Report are marked as Ext. Ka-2 and Ext. Ka-3 respectively.
- (7) After completing the investigation, the charge-sheet was submitted against all the accused persons/Rajesh, Ram

Chandra, Rakesh alias Shesh Narain and Raj alias Bhojran Pandey under Sections 386, 468, 506, 504, 501, 342, 363, 366 and 376 I.P.C. which is marked as Ext. Ka-7.

(8) At this stage, it is relevant to mention that during trial, the accused-Ram Chandra died, therefore, his case was abated, whereas on account of absconding of the accused-Raj alias Bhojran Pandey, his case was separated. Hence the Trial Court proceeded with the trial of accused-Rajesh and Rakesh alias Shesh Narain. The statement of the accused persons was recorded under Section 313 Cr.P.C. wherein they have denied the allegations and claimed to be tried.

(9) The prosecution in support of its case has examined six witnesses as follows:-

1.	Satyendra Singh, complainant	P.W. 1
2.	Prosecutrix	P.W. 2
3.	Dr. Pratima Srivastava	P.W. 3
4.	Dr. Someshwar Puri	P.W. 4
5.	Head Constable Rahtashwa Kumar	P.W. 5
6.	S.I. Ram Sen Singh	P.W. 6

(10) P.W. 1 who is complainant in this case in his cross- examination has stated that he and his father had knowledge about the Marriage Agreement before lodging the F.I.R. and his father had got it cancelled. On coming to know the marriage of the prosecutrix with the accused Rajesh, his brother went to the house of the accused and complained to the father of the accused.

- (11) P.W. 2 in her examination-in-chief has stated that accused persons had always forced and threatened her to marry with the accused Rajesh. The accused persons compelled to get 7-8 letters written by her in a day. The accused persons put her in the fear of death. On 4.12.1998, accused Rajesh Singh, his father Ram Chandra, Rakesh and Raj @ Bhoj Raj Pandey who are stated to be armed with country-made pistol threatened her and brought her to the Court to marry and got her signature on the stamp paper. Accused Rajesh managed her photograph in the company of the accused Rajesh. Thereafter, accused Rajesh brought the prosecutrix in Kothari, which was taken by accused Rakesh on rent. This Kothari is stated to be situated near Nilmatha. Accused Rakesh, Rajesh and Raj committed sexual intercourse with her. The prosecutrix resisted but accused persons did not pay any heed. The prosecutrix became faint and after one and a half hour she gained consciousness and saw that none was present there. Thereafter, father of the accused Rajesh Singh came and also committed rape on her. She was kept confined in the Kothari for about 13-14 hours. The prosecutrix found that Kothari was bolted from outside. The prosecutrix anyhow managed to open the door and came to her house. On being inquired by her mother, she replied that she had stayed with one of her female friend. Accused persons had been threatening the prosecutrix for two months and when on

13.2.1999 the accused persons came to her house, she told everything happened with her to the family.

- (12) P.W. 3, Dr. Pratima Srivastava has conducted the medical examination of the prosecutrix and opined that no mark of injury was present either on the private part or any part of the body.
- (13) P.W. 4, Dr. Someshwar Puri, who was a Radiologist has submitted his report, marked as Ext. Ka-3 wherein the age of the prosecutrix at the time of incident is stated to be between 17-18 years.
- (14) P.W. 5, Head Constable Rahtashwa Kumar who was the Head Constable prepared the chik report marked as Ext. Ka-4 and also made entries in the G.D. marked as Ext. Ka-5 on the basis of written report Ext. Ka-1.
- (15) P.W. 6 who was the Investigating Officer in this case has submitted the charge-sheet against the accused appellants under Sections 386, 468, 506, 504, 501, 342, 363, 366 and 376 I.P.C. marked as Ext. Ka-7.
- (16) Learned A.G.A. for the State has submitted that the Trial Court has erred in appreciating the evidence on record and has wrongly acquitted the respondents. Learned A.G.A. has submitted that though the version of the prosecution is fully supported by the evidence of the prosecution witnesses and the

medical evidence also corroborates with the prosecution case, the Trial Court has discarded the entire evidence and acquitted both the respondents. Even the Trial Court has not taken into consideration that the prosecutrix was minor at the time of incident.

- (17) On the other hand, learned counsel for the surviving respondent has submitted that the accused respondent is innocent and has falsely been implicated in this case. Since the statement of the prosecutrix is not trustworthy and reliable, the Trial Court after appreciating the evidence available on record acquitted the accused.
- (18) In the cross-examination, the P.W.1-complainant has stated that he had knowledge about the Marriage Agreement before lodging the F.I.R. and his father got it cancelled. He has also stated that on coming to know about the forcible marriage he went to the house of the accused and complained about the marriage. From the statement recorded during the cross-examination, it appears that the complainant and his family had complete knowledge about the marriage but this fact has not been stated in the F.I.R. lodged by the complainant himself.
- (19) The incident is stated to have occurred on 4.12.1998 and the F.I.R. was lodged on 13.2.1999 i.e. after the delay of two months. The ground taken by the prosecution that due to fear of death the prosecutrix could not inform her family does not

stand to appeal as in the cross-examination P.W. 1 has stated that he had knowledge about the marriage before lodging of the F.I.R. and his father had got the Marriage Agreement cancelled and as such the delay in lodging the F.I.R. does not inspire confidence on the prosecution story.

- (20) In the cross-examination, the prosecutrix has changed her version by stating that she was brought by the accused persons to Nilmatha and from there she brought to the Court on a rickshaw and from the Court to Nilmatha on cycle whereas in the statement recorded under Section 161 Cr.P.C. she has stated that she was brought forcibly from her house to the Court from Kothari. The prosecutrix has stated that the accused got signature of the prosecutrix on the Marriage Agreement forcibly which was sworn in the presence of the witnesses and notarized by the Advocate but she has not told anybody that she was kidnapped by the accused persons.
- (21) The statement of the prosecutrix that the accused Rajesh Singh, his father and Rakesh and Raj @ Bhoj Raj Pandey committed rape on the prosecutrix is highly improbable, particularly the allegation that the son and father both committed rape of a girl. The P.W. 1 in his cross-examination has stated that after coming to know about the marriage of the prosecutrix with the accused Rajesh Singh he went to the house of the accused where he complained to the father of the accused.

- (22) The ground taken by the prosecution that the prosecutrix was minor at the time of incident is not made out because as per the radiological examination, the prosecutrix was 17-18 years and according to medical jurisprudence, there could be variation of two years in age on either side, as such, the benefit of age should be given to the accused respondent. The medical evidence also does not corroborate with the prosecution case because as per the medical report, there was no injury on the body or on private parts of the prosecutrix.
- (23) Considering all the aspects of the case, the Trial Court came to the conclusion that the prosecution has utterly failed to prove its case beyond reasonable doubt and, therefore, has acquitted the accused persons.
- (24) Considering the above legal position and factual aspects of the case, we are of the view that the Trial Court was justified in acquitting the accused respondents.
- (25) For the reasons stated above, the Government Appeal fails and is accordingly **dismissed**.
- (26) The surviving respondent No.2 is on bail. His bail bond is cancelled. Sureties are charged. He need not surrender.
- (27) In compliance with the provisions contained in Section 437-A Cr.P.C. the surviving respondent No.2 is directed to furnish

personal bond and two sureties to the satisfaction of the Court concerned within a period of six weeks from today.

- (28) Let the Trial Court Record alongwith a copy of this judgment be transmitted forthwith to the Court concerned for information and necessary compliance.

[Ajai Kumar Srivastava-I,J.] [Attai Rahman Masoodi, J.]

Order Date :- 07.11.2024
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