

**Court No. - 9**

**Case :-** APPLICATION U/S 378 No. - 132 of 2024

**Applicant :-** State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.

**Opposite Party :-** Ramakant And 2 Others

**Counsel for Applicant :-** G.A.

**Hon'ble Vivek Chaudhary,J.**

**Hon'ble Narendra Kumar Johari,J.**

1. Present Application under Section 378 (3) Cr.P.C. has been filed along with Government Appeal assailing the judgment and order dated 03.05.2024, passed by the learned Additional District and Sessions Judge (F.T.C. New) Lakhimpur Kheri in Sessions Trial No.620 of 2020 (State of U.P. Vs. Ramakant and others), arising out of Case Crime No.998 of 2009, by which the learned Additional District & Sessions Judge, Lakhimpur Kheri has acquitted the accused person from the charge under Sections 376, 504 & 506 I.P.C.

2. The brief facts of the case are that on 01.08.2009, at about 9.00 pm, the daughter of informant aged about 15 years has gone for defecation in the field, where the accused persons Ramakant and Pinku, who are the resident of same village, closed her mouth by palm and took her inside the field and committed rape with her. On opposition, the accused person abused, beaten and threatened her for life by firearm. After passing of considerable time, when the daughter of informant did not return, the informant went to search his daughter alongwith Sonu- the son of his brother-in-law (Sadu) he saw that his daughter was weeping and coming from the side of field. She narrated all the occurrence with informant. When informant and Sonu went towards the field in search of the accused persons, they were present there and seeing the informant, both the accused run away fastly.

3. On the basis of the FIR, a case against the accused person was registered in Police Station Mohammadi, District Lakhimpur Kheri on 03.08.2009 at 15.30 pm. After completion of investigation the police submitted chargesheet against the accused persons. The accused- Pinku @ Parshuram was found juvenile hence his report has been sent to the concerning Juvenile Justice Board, Lakhimpur Kheri. The case was committed to the session court, who framed the charges under Sections 376, 504 & 506 IPC against accused- Ramakant.

4. During the course of trial, on behalf of the prosecution, as PW-1 informant- Ramsaran, as PW-2 victim of the occurrence, as PW-3 Dr. Minakshi Chaudhary, as PW-4 S.I. Ajay Awasthi and as PW-5 Inspector- Chatrapal Singh deposed as witnesses of fact.

5. The prosecution also submitted documentary evidences in support of the case, which has been exhibited as exhibit Ka-1 to Ka-9. After completion of the prosecution evidence, the statement of accused was recorded under Section 313 Cr.P.C. in which, he has denied the prosecution story.

6. In her oral statement, PW-1 reiterated the contention of FIR in his examination-in-chief. He further submitted that outside the police station he had dictated the FIR to a person which was read over before him and he had put his thumb impression on the same.

7. As PW-2, the victim has stated that the occurrence took place at about 8-9 pm. She had gone for defecation towards north side of his house. On the way, the accused persons covered her mouth by palm and carried her towards Bhusey ke Goonge of Sri Ram and raped her one by one. The accused have also threatened her that if she will narrated the occurrence to anybody they will kill her. After the occurrence, she was weeping and returning to her house, on the way she met her father and cousin brother- Sonu. She narrated the fact to them. Her father and Sonu ran towards the field to catch accused but they ran away in the darkness of night. She further submitted that in the moon light she had properly recognized them, who were Ramakant and Pinku, the residents of her village. Thereafter, the accused persons were threatening for not to lodge FIR and also forced her to enter into compromise. Her father had lodged FIR of the occurrence.

8. As PW-3, Dr. Minakshi Chaudhary, who had examined the prosecutrix has stated that there was no sign of any injury over the private part of victim. Hymen was old torned and healed, two fingers were easily entering into vagina. No live or dead spermatozoa were found in the vaginal fluid. The age of the victim was about 18 years. No definite opinion can be given on the point of rape.

9. PW-4 has proved G.D. and FIR and PW-5 has proved the proceedings of investigation.

10. Learned AGA as argued that offence is related with rape of a minor girl. The prosecution witnesses of fact have successfully proved the occurrence which is corroborated by the

evidence of formal witnesses, but the trial court acquitted the accused person Ramakant from the charges. The impugned judgement is bad in the eye of law. There are fair chances that the prosecution will get success in appeal, therefore, the application of appellant for leave to appeal deserves to be allowed.

11. We have heard the submission of learned AGA and perused the record.

12. Learned trial court has properly scrutinized the oral evidence including the evidence of witnesses of fact i.e. PW-1 & PW-2 and found that in both the statements there are material contradictions. On substantial point, the statement of PW-1 is not corroborating the statement of PW-2. In FIR and in the statement of PW-1 it has been mentioned that on the night of occurrence there was sufficient moon light, whereas, PW-2 has stated that on the date of occurrence night was dark and after the defecation, she has gone back to her house as she reached outside her house, she made a noise, her father met her near the tree of Pakariya, there he has beaten her and took her home. She has not told to anybody regarding the occurrence. In the darkness of night, she has recognized the accused persons. Her father has consulted with lawyer at the Tehsil to write the application for FIR. From Tehsil, they went to police Station alongwith lawyer also. The lawyer has told that he is going to lodge an FIR on a better way. At the time of occurrence she had received injuries also. At the time of occurrence there was no bangle in her hands, whereas, PW-3 in her statement has mentioned that there was no injury on the body of victim. PW-1 has also stated in her cross examination that on the date of occurrence the night was dark and it was raining, on the other hand, victim has recorded her statement that at that time there was no rain. Further, PW-1 has stated that when he went to search his daughter, the accused persons were sit at the field which was four "Farlong" away. Further he has stated that he does not know meaning of Farlong. He can recognize any person within a distance of one field. On the date of occurrence Sonu was not present at his house, rather, he was at his own residence. He lodged the FIR after due consideration. The lawyer has written report first thereafter has been typed. In the occurrence the bangle of daughter were broken but she has not received any scratch injury. He did not collect the broken pieces of bangles of her daughters. He further replied in his cross examination that when he met her daughter her clothe were stained with dust. He has not seen any injury on her body. His daughter told about the occurrence to his wife and his wife narrated him about the occurrence. He further submitted that he had gone to search his daughter alongwith his son It has also

been noted that the occurrence as alleged that the date and time of occurrence was 01.08.2009 but FIR was lodged in police station on 03.08.2009 at 1.30 pm, whereas, distance of police station was only 5 kilometre. The prosecution could not explain the reason of delay in lodging the FIR.

13. Accordingly, after discussing the facts and evidence on record, as produced by the prosecution, learned trial court held that prosecution failed to prove the charges of offence against accused Ramakant and acquitted him from the charges.

14. We have also scrutinized the prosecution evidence in the light of prosecution case. In the prosecution story, it reveals from the evidence of PW-1 that when his daughter reached near his house and made a noise, he took her at home as he had came out from the house to search her. PW-1 got knowledge about the occurrence when his wife told him. Therefore, there is no question that he has gone in search of accused persons and has seen them at the field from a distance of four Farlong. His statement is false that at time of occurrence, the bangles of his daughter were found broken particularly when his daughter has stated in her statement that she did not wear any bangle in her hand at the time of occurrence. In FIR and examination-in-chief of PW-1 & PW-2, it has been mentioned that PW-1 had gone to search his daughter alongwith Sonu but in cross examination PW-1 has stated that Sonu was not present in his house on that day. PW-1 has also stated that in the night of occurrence it was raining but he did not find any mud on the cloth of his daughter. The FIR of the occurrence has been lodged after two days and no explanation has been given by the informant regarding such inordinate delay. The fact also comes into light that the FIR has been lodged by the informant with due consultation and active cooperation of lawyer. In medical examination no injury has been found either on the body or on private part of the victim. Her hymen was found old, torned and healed. Although, only statement of victim is sufficient to convict the accused of rape but it is required that the statement of victim should be supported by the other circumstances as well as documentary evidences. In the present case, the evidence of PW-1 and PW-2 are not corroborating to each other. The evidence of witnesses also not supported by any documentary evidence including the medical examination report. Hence, in our opinion, the judgment of trial court is well discussed and well settled and is properly based on reasoning. No perversity is found in the impugned judgment.

15. Therefore, it can be concluded that the appellate court should not ordinarily interfere with the order of the trial court, unless the approach of the trial court is vitiated by manifest

illegally. The appellate court should not interfere with the order of acquittal merely because on evaluation of the evidence different possible view may arise and the view taken by the trial court is not correct. There is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence and the accused having secured his acquittal the presumption of his innocence is further reinforced and reaffirmed by the trial court.

16. Taking into consideration the submission of learned A.G.A. and also taking into consideration the facts, circumstances of the case in the light of fundamental principle of criminal jurisprudence, we are of the considered view that the trial court is justified in acquitting the accused/respondents. No illegality, irregularity or perversity is found in the judgment of learned trial court.

17. Hence, the prayer for leave to appeal, as made by State/appellant, is hereby rejected. Consequently, the government appeal is also dismissed.

**Order Date :- 21.8.2024**

Reena/-

**(Narendra Kumar Johari, J.) (Vivek Chaudhary, J.)**