



2025:AHC:144314

Neutral Citation No. - 2025:AHC:144314

HIGH COURT OF JUDICATURE AT ALLAHABAD

(SL No.240)

Court No. - 78

Case :- CRIMINAL APPEAL No. - 975 of 1986

Appellant :- Vidya Shankar

Respondent :- State of U.P. and Others

Counsel for Appellant :- R. Verma

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta,J.

1. Pursuant to the order dated 29.07.2025, a report has been received from CJM- Jalaun at Orai, dated 20.08.2025, according to which Non-Bailable Warrant could not be executed against the appellant, Rampal.

2. Since the instant appeal is pending from, 1986, an Amicus Curiae has already been appointed on last date, in view thereof, this Court proceeds to hear the appeal finally.

3. Heard Sri Dileep Kumar Shukla, learned Amicus Curiae for the appellant no.2/Rampal and Sri S.K. Ojha, learned A.G.A.-I for the State.

4. The instant appeal has been filed by the appellant, being aggrieved by the judgment and order dated 22.03.1986, passed by the Additional Sessions Judge and Special Judge, EC Act, Orai, District Jalaun in Sessions Trial No. 161 of 1985, whereby Appellant No. 1 was convicted for the offence under Section 376 I.P.C. and was sentenced to undergo five years rigorous imprisonment. The Appellant No. 2, Rampal, was convicted for the offence under Section 376, read with Section 114 I.P.C., and was sentenced to undergo three years' rigorous imprisonment.

5. During the pendency of the instant criminal appeal the main accused namely appellant no.1, Vidya Shankar had died. Thus, appeal on behalf of

the appellant no.1, Vidya Shankar was abated by the previous order. The instant appeal is heard on behalf of the appellant no.2, Ram Pal.

6. The brief facts of the case, as per the prosecution, are that on 22.06.1985, around 5:00 A.M. in the morning, the victim, who was aged about 19 years, went for defecation/easing out, outside the abadi of the village. When she was coming back, both the accused persons met her, and Appellant No. 2, Rampal, threatened her with a country-made pistol to be quiet and both of them have pulled her aside and laid her on the ground. The Appellant No. 2 caught hold the hands of the victim and also pointed the country-made pistol on her body. Appellant No. 1 had committed rape upon the victim. The victim had shouted for help. Then, Sunder and Daya Shankar reached there. When Sunder reached there, the accused person/appellant herein, left her and went away. After the incident, the victim came to her house and informed her husband about the incident. Thereupon, both of them went to Orai and got the report typed at Jalaun Bus Stand, on the dictation of the victim. Thereafter, they went to the bungalow of the Collector. Thereupon, said report was forwarded. Thereupon, they went to the Kotwali where the F.I.R. was registered, and the victim was referred for medical examination. Thereupon, the medical examination of the victim was conducted at District Hospital at Orai.

7. In the medical examination, no visible mark of any injury is found on the body of the victim. The hymen was torn. However, on the pathology report of the victim, sperm were found in the vaginal smear. As per the X-ray report of the victim, she was opined to be aged about 19 years old. As per the medical examination report, no opinion can be given regarding rape as the body is used to sexual intercourse. Signs of recent intercourse were present, which was proved by the presence of sperm. Victim was pregnant about four months. After receipt of the medical examination report and completion of the investigation, charge-sheet was filed against the appellants herein. Thereupon, the case was committed for trial to the Sessions Court.

8. During the trial, charges for the offences under Section 376 I.P.C. were framed against both the accused persons. The appellants herein denied the charges and claimed trial.

9. In support of the prosecution case, the prosecution has examined the victim as PW1, witness Sunder as PW2, and the Investigation Officer as

PW3. No other witness has been examined. After the conclusion of the trial, the trial court has convicted the appellants as aforesaid. Being aggrieved by the same, the instant criminal appeal has been filed.

10. Learned Amicus Curiae for the appellant submits that there is a delay in lodging the F.I.R., of about 13 hours. Learned Amicus Curiae for the appellant further submits that the medical examination report of the victim do not support any injury as has been alleged by PW1. So far as the medical examination report is concerned, that has also not been proved before the trial court.

11. Learned Amicus Curiae for the appellants further submits that the witness Sundar, PW2, who has been examined in the instant case, is the father-in-law of the victim. Thus, he is an interested witness. Learned Amicus Curiae for the appellants further submits that the appellants herein were working as Forest Guards and were residents of the same village. The witnesses, namely Sundar and Daya Shankar, used to cut the trees from the forest, which was objected by the appellants three days before the incident. The instant case has been falsely lodged by the victim, by concocting the story of rape, falsely implicating the appellants. Thus, learned Amicus Curiae for the appellant submits that it is a case of malicious prosecution on the part of the victim and her family members. No offence whatsoever has been committed by the appellants. Otherwise, it is also submitted by learned Amicus Curiae for the appellant that the main accused, namely Vidya Shankar, has already died and no offence of rape is alleged against the surviving appellant Rampal.

12. It is further submitted that in the instant case, it has been alleged by the prosecution that the rape was committed at the gunpoint by use of a country-made pistol by the appellant no. 2 herein. However, no recovery of the said country-made pistol has been made. Thus, learned Amicus Curiae submits that it is the clear case of malicious prosecution, as neither the recovery is proved nor medical examination report is proved. Thus, the appellant herein is entitled for acquittal in the instant case.

13. *Per contra*, learned A.G.A. for the State submits that from the medical examination report, the offence of rape is categorically established with the presence of sperm in the vaginal smear and as per the prosecution story, active role has been assigned to appellant no. 2 herein as well. While the allegation of rape is made against appellant no. 1, he has since died, and the appeal has already been abated, however, since the appellant

no.2 herein was actively involved in the commission of rape on the victim, therefore, he has rightly been convicted by the trial court for the offences under Section 376 read with Section 114 I.P.C.. Therefore, the instant appeal is liable to be dismissed.

14. Having heard the rival submissions so made by learned counsels for the parties, this Court has carefully gone through the record of the case. From the record of the case, so far as the delay in lodging the F.I.R. is concerned, the victim was a resident of village far away from the district headquarters and she reached the district headquarters around 12:00 P.M., and thereupon, she had to wait at the bungalow of the Collector for redressal of her grievance and when the intervention was made by the Collector, thereupon the F.I.R. was registered around 5:30 P.M. on the same date at Kotwali Orai. Therefore, the prosecution has categorically explained the delay in lodging the F.I.R. Therefore, the same cannot be concluded to be adverse to the prosecution case.

15. Since appellant no. 1 has died and the appeal has already been abated, therefore, this Court is confining the judgement only to the allegations made against the appellant no.2, Rampal. The role assigned to the appellant herein that he caught hold of the victim at the gunpoint and in the process, the victim has also sustained some injuries, as has been stated by the victim herself in deposition before the Court. However, no corresponding injury has been found in the medical examination report. It is further apparent from the medical examination report that though sperms were found in the vaginal smear, to whom it belongs has not been explained and no report in this regard has been obtained by the prosecution and placed before the court. Further, the doctor who conducted the medical examination of the victim has also not been produced for cross-examination. Therefore, the story of rape itself is doubtful from the prosecution case, since there are no injuries nor the recovery of any country-made pistol as has been allegedly used by appellant no.2. Therefore, in the considered opinion of this Court, no offence under Section 376 read with Section 114 I.P.C. as alleged to have been made out against appellant no. 2 as well.

16. In view thereof, this Court finds that the conviction of appellant no. 2 herein for the offence under Section 376 read with Section 114 I.P.C. is not sustainable. Accordingly, the instant application is **allowed**, and the conviction and sentence of the appellant no. 2 is hereby **set aside**, and the appellant no. 2 is hereby **acquitted**.

17. The lower court record be sent back to the trial court concerned to be consigned, as no further action is required. The appellant is on bail. His bail bonds are canceled. Sureties are discharged.

18. This court appreciates the able assistance provided by *Sri Dileep Kumar Shukla, learned Amicus Curiae*, appearing for the appellant no.2, who has assisted the Court and for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

Order Date :- 21.8.2025

Shubham Arya

(Anish Kumar Gupta, J.)