

Court No. - 45

Case :- CRIMINAL APPEAL No. - 3578 of 2006

Appellant :- Hari Pal Singh Alias Baij Nath

Respondent :- State of U.P.

Counsel for Appellant :- V.P. Singh Verma, Arindam Singh, J.N. Singh, Prashant Kumar Srivastava

Counsel for Respondent :- Govt. Advocate, A.K. Dubey

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Sandeep Jain, J.

1. Heard Sri Saurabh Sachan, learned counsel for the appellant and Sri Virendra Kumar Pal, learned A.G.A. for the State.

2. The present appeal arises from the judgement and order dated 08.06.2006 passed by Sri Ramesh Chandra, Additional District Judge, F.T.C., Court No.2, Kannauj in Sessions Trial No. 9 of 1995 (State vs. Hari Pal Singh @ Baij Nath son of Jiwa Lal), arising out of Case Crime No. 3/95, under Sections 376, 392, 326 I.P.C., whereby the present appellant has been convicted and sentenced to undergo life imprisonment and fine of Rs.10,000/- for offence under Sections 376 I.P.C., to undergo ten years rigorous imprisonment and fine of Rs.10,000/-, for the offence under Section 392 I.P.C and in default of payment of fine to further undergo rigorous imprisonment of two years and to undergo rigorous imprisonment of ten years and fine of Rs.30,000/- for the offence under Section 326 I.P.C and in default of payment of fine to further undergo rigorous imprisonment of two years. All the sentences were directed to run concurrently. Against that sentence awarded, the appellant has remained confined till date. Thus, he may have remained confined for more that 18 years and 11 months.

3. The F.I.R. giving rise to the present criminal prosecution was lodged at the instance of 'V' (PW-1 at the trial), through Written Report

dated 14.01.1995 (Ex.Ka-1 at the trial). Based on that the F.I.R. was registered at P.S. Talgram, Farrukhabad on 14.01.1995 at about 19:35 p.m. disclosing that on that date at about 5:00 p.m., the sister of the first informant namely 'S', who was aged about 20 years had been assaulted by the present appellant near an agricultural field. There he had molested 'S'. On cries for help given by her, other villagers had reached the place of occurrence. The appellant fled. The F.I.R. is Ex.Ka-6 at the trial.

4. On 30.01.1995 i.e. 15 days after the occurrence, statement of 'S' was recorded under Section 164 Cr.P.C. In that she narrated, she was rendered blind in the assault caused by the appellant wherein he had hurt both her eyes, at about 5:00 p.m. on 14.01.1995. She further stated that the appellant had dragged her to the agricultural field, holding her by her neck. There he committed rape on her. She cried for help but no one could reach to help her. The appellant further snatched her jewellery. Because of the injuries suffered to her eyes, she could not see and she continued to lay at the place of occurrence. After some time, Ram Kishan, Suresh and father of 'S' arrived and took her home. They also took her to the Police Station and lodged the F.I.R. She added, being ashamed to make public, she did not disclose the occurrence of rape, at that time. Thereafter, she disclosed that she was admitted to Chhibramau hospital in the night and from there she was taken to Aligarh (wrongly marked as Ex.Ka-2). She returned thereafter.

5. On 15.01.1995 'S' was medically examined by Dr. R. Singh (PW-3 at the trial). In that the following injuries were noted:-

"1. Interrupted abrasions in an area of 4.5 x 2 c.m. lateral side of neck pinkish colour.

2. Eye lids of both eyes swollen, chemosis present. Both eye congestion conjunctival present. B/L movement of left side (a) cornea & pupillary area right normal (b) cornea appear hazy on

left side, complained of pain in both eyes. Vision both eye impaired mild both eye fresh bleeding present.

Remark:- injuries are caused by hard and blunt object. Duration fresh. Injury No.1 is simple in nature. Injury No.2 is kept under observation. Refer to eye surgeon for expert opinion. Patient hospitalized.”

6. Also on 02.02.1995 Supplementary Medical examination was conducted by R. Singh (PW-3 at the trial). In that it was noted as below:-

“Ocular injury- both eyes with vitreous haemorrhage. On the basis of above report Injury No.2 of patient is grievous in nature.”

7. Upon Internal Examination of ‘S’ conducted by Dr. Saroj Bala Singh (PW-4 at the trial), a Medico Legal Report was prepared on 30.01.1995. It is noted as below:

“Physical Examination:- There is no mark of any injury on any part of body, breast, axillary & pubic hairs are well developed.

Internal examination :- There is no mark of any injury on her private – parts. Hymen absent. Vagina admits two fingers easily. Uterus about 8 (eight) week size.

Advice :- Vaginal smear for spermatozoa.”

8. Further Supplementary Report was prepared by said Dr. Saroj Bala Singh (PW-4 at the trial) on 09.02.1995. In that the following opinion was expressed by the said PW-4:

“Opinion:- From above findings & reports, I came to conclusion that no definite opinion about rape can be given. She is used to sexual intercourse.”

It is Ex.Ka-5.

9. Upon completion of investigation, the Investigating Officer Anant Bahadur Singh (PW-6 at the trial) submitted the charge sheet.

10. Upon the case being committed for trial, following charges were framed by the court below:-

“प्रथम: यह कि दिनांक 14.01.95 को शाम के करीब 5 बजे वादी 'V' की बहन 'S' आयु लगभग 20 वर्ष अपने खेत बहद जंगल ग्राम कलकत्तापुर्वा थाना क्षेत्र तालग्राम तत्कालीन जनपद फर्रुखाबाद हाल जनपद कन्नौज से चारा लेने के लिए गयी हुई थी तो आप अभियुक्त ने उसके साथ बलात्कार करने के आशय से उसे लाही के खेत में घसीट लिये तथा उसकी इच्छा के विपरीत उसके साथ संभोग किया जो बलात्कार की श्रेणी में आता है तथा भारतीय दण्ड संहिता की धारा 376 के अन्तर्गत दण्डनीय हैं तथा इस न्यायालय के प्रसंज्ञान में है।

द्वितीय: यह कि उपरोक्त दिनांक समय व स्थान पर आप अभियुक्त ने वादी 'V' की 20 वर्षीय बहन 'S' के साथ बलात्कार करते समय उसके कानों के कुन्डल जबरन लूट लिये तथा इस प्रकार आप अभियुक्त ने भारतीय दण्ड संहिता की धारा 392 के अंतर्गत दण्डनीय अपराध कारित किया जो इस न्यायालय के प्रसंज्ञान में है।

तृतीय: यह कि उपरोक्त दिनांक समय व स्थान पर जब आप 'V' की 20 वर्षीय बहन 'S' के साथ उसकी इच्छा व सहमति के बिना जबरन बलात्कार कर रहे थे और वह आपके इस कृत्य का विरोध कर रही थी तो आपने 'S' की चाकू से आंख फोड़कर उसे गम्भीर उपहति कारित की। इस प्रकार आप अभियुक्त ने भारतीय दण्ड संहिता की धारा 326 के अंतर्गत दण्डनीय अपराध कारित किया जो इस न्यायालय के प्रसंज्ञान में है।”

11. At the trial, besides the above documentary evidence, the prosecution examined six witnesses, namely 'V' (PW-1 at the trial), who is real brother of 'S'. He proved the submission of the Written Report by him. However, he is not an eye witness of the occurrence.

12. 'S' was examined as PW-2. She tried to prove the occurrence giving rise to the charges. In that she led evidence both as to physical assault suffered by her in which she described that she has been assaulted with sharp edged knife leading to both her eyes being grievously hurt resulting in her eye balls bulging out of the eye sockets. She further tried to prove the fact that the appellant had snatched her jewellery worn by her. Also she described rape suffered by her.

13. Dr. R. Singh (PW-3 at the trial) proved the Injury Report dated 15.01.1995 and 02.02.1995 with respect to external injuries suffered by 'S' as also injury suffered to her eyes. During cross-examination, it was specifically admitted to the said doctor, the eye injury suffered by 'S' may not have been caused by a sharp edged weapon/knife.

14. Dr. Saroj Bala Singh was examined as PW-4. She proved the Internal Examination Report of 'S' dated 30.01.1995 and the

Supplementary Report dated 09.02.1995. During her examination-in-chief itself she stated that no definite opinion (about rape) could be expressed by her, 'S' being a married lady.

15. However, during her cross-examination, she stated that at the time of examination, offered by her, she did not note anything wrong with the ocular and hearing faculties of 'S'.

16. Thereafter, Moharrir Chhatrapal Singh was examined to prove the registration of the F.I.R. Last the Investigating Officer Anant Bahadur Singh, was examined as PW-6. He proved the investigation.

17. Thereafter, the statement of the appellant was recorded under Section 313 Cr.P.C.

18. Upon hearing the parties, learned Court below has passed the impugned order. It is submitted that the appellant has been convicted for offence under Section 376, 392 and 326 I.P.C. Accordingly, he has been sentenced for life. Against that he has remained confined for more than close to 19 years.

19. Submission of learned counsel for the appellant is, in the first place, the statement of the victim is not worthy of reliance. Though, the F.I.R. was lodged promptly-within a few hours from the alleged occurrence wherein the witness described herself as the injured witness (she having been assaulted on her eyes as also having suffered sexual assault by the appellant), in that occurrence. Further, she claimed that her jewellery was snatched by the appellant in that occurrence, caused by first dragging her by her neck to an agricultural field and assaulted as described above, yet, no such description of jewellery snatched or rape committed or of serious injuries caused to her eyes was narrated in that F.I.R. The F.I.R.

allegations are most generic of a petty physical assault wherein 'S' may have been beaten with bare hands.

20. In any case, upon medical examination dated 15.01.1995 i.e. on the next day of the occurrence, minor injuries were noted on her neck. Though, she described to have suffered injury to her eyes, that may have been of concern, yet it is not the prosecution story that the victim suffered permanent privation to either eye. Similarly, her further examination by the eye surgeon on 15.01.1995 also did not establish that nature of such injury suffered. Though, Dr. R. Singh described the nature of injury as 'grievous', during his deposition made before the learned court below, he did not establish loss of eye sight suffered by 'S', as a result of such injury.

21. On the contrary, Dr. Saroj Bala Singh (PW-4 at the trial) established that on 30.01.1995 when she examined 'S', her eye sight and hearing appeared normal, to her. Thus, the learned court below has completely erred in holding the appellant guilty of the alleged offence under Section 326 I.P.C.

22. As to offence alleged under Section 392 I.P.C., besides the vague and general allegation, no evidence exists to hold the appellant guilty of that occurrence. Neither there exists proper/credible description of the stolen property nor there is any recovery of such property. No injury corroboration exists as may have been suffered by 'S' if the jewellery worn by her had actually been snatched in any occurrence.

23. As to offence alleged under Section 376 I.P.C., it has been stated that the prosecution story is wholly incredible and unbelievable. In the first place, as noted above, huge improvements have been made inasmuch as the F.I.R. did not contain any allegation

of rape committed on 'S'. Fifteen days after the occurrence, statement of 'S' was recorded under Section 164 Cr.P.C. In that statement she first made allegation of rape committed on her. However, that is not reliable as it is not explained why it would have taken the victim 15 days to first make such allegation when she remained in the safety of her home with her family. Besides, lack of corroborative medical evidence as may indicate any injuries suffered by 'S', if at all, she had suffered the occurrence as described by her, it is equally unbelievable that her three brothers who were working at the adjoining agricultural field-namely 'R', 'S-2' and 'V' would not have rushed to the place of occurrence and intervened. In that she further admitted that the appellant dragged her for about 17 feet i.e. some distance, into the field. She never made any disclosure of her being gagged etc., as may have prevented her from calling for help, especially since she knew that her three brothers were working at a nearby agricultural field. Besides, 'V' (PW-1 i.e. the first informant), the other two brothers of 'S' namely 'R' and 'S-2' were not examined at the trial. 'V' in his testimony clearly stated that he did not hear any cry for help and that he reached the place after the occurrence and further he never saw the appellant at that place.

24. Second, it has been submitted that 'S' is a wholly unreliable witness inasmuch as she has made further improvements at the trial making allegation that she had been assaulted on her eyes by sharp edged knife causing her eye balls to bulge out of the eye sockets.

25. Thus, no conviction order may ever have been passed on the strength of testimony of such an unreliable witness specially when the prosecution allegation as to rape is wholly uncorroborated by any other evidence.

26. On the other hand, learned A.G.A. would submit, the statement of the victim 'S' a rape survivor stands on equal footing to that of an injured witness. For obvious reason of underlying societal prejudices, such rape survivors may not promptly report the occurrence of rape. After lodging the prompt F.I.R., time was spent in making arrangements for treatment of 'S', for her eyes. Only thereafter, she became available to record her statement under Section 164 Cr.P.C. At this stage, the allegation of rape emerged. Therefore, that charge was duly proven at the trial through the singular evidence of the victim herself.

27. Lack of medical evidence may not be relevant inasmuch as it is admitted to the defence that 'S' was a married lady. Her credible testimony is enough to sustain the conviction order.

28. As to conviction under Section 392 I.P.C., it has been submitted that the defence was not able to doubt the prosecution story. Recoveries may not be necessary to prove that charge.

29. Third, it has been submitted, grievous injury was suffered by 'S' to both her eyes. That fact has been duly proven by Dr. R. Singh (PW-3 at the trial). Therefore, the conviction under Section 326 I.P.C. also does not merit any interference.

30. Thus in the entirety of the facts, no interference is warranted, in this appeal.

31. Having heard learned counsel for the parties and having perused the record, first as to offence alleged under Section 326 I.P.C., it may be noted that Section 320 I.P.C. defines 'grievous hurt'. Relevant to the facts of the present case, it reads as below:-

“Grievous hurt- *The following kinds of hurt are designated as grievous;-*

(Secondly) - Permanent privation of the sight of either eye.”

32. At the trial, no effort whatsoever was made by the prosecution to establish loss of sight to either eye, by ‘S’. Merely because Dr. R. Singh may have described the injury as ‘grievous’ in the Supplementary Report dated 02.02.1995 (Ex.Ka-3 at the trial), may be of no avail. It is not the subjective opinion of the doctor as to the nature of injury that may govern the framing of charge and the conviction with respect to such injury but it is the strict language of the penal statute that alone may be examined by the Court. To the extent loss of sight of at-least one eye is *sine qua non* to establish the offence of ‘grievous hurt’, with reference to an injury caused to eye sight of a human being, it needs no elaboration that the prosecution did not prove occurrence of any offence under Section 326 I.P.C.

33. Second, in view of the clear medical opinion expressed by Dr. R. Singh (PW-3) that the injuries suffered by ‘S’ to her eyes had not been caused by sharp edged knife and to the extent it was never proven that the eye balls of ‘S’ had bulged out of their sockets and further to the extent there is nothing to doubt the statement of Dr. Saroj Bala Singh (PW-4 at the trial), that during examination of ‘S’ on 30.01.1995, she has not noticed anything abnormal related to the hearing and eye sight of ‘S’, we are of the clear opinion that the learned court below completely erred in convicting the appellant under Section 326 I.P.C.

34. At the most, such occurrence may have fallen within the description of offence under Section 321 I.P.C., namely, voluntarily causing hurt. To that extent, there is nothing to doubt that basic occurrence. In that the appellant is described to have caused hurt to the eyes of ‘S’. She suffered temporary, partial loss of full/normal eye sight. However that was restored to her, upon medical attention.

35. Coming to the offence under Section 392 I.P.C., though serious allegation exists by the nature of such occurrence, at the same time, we cannot lose sight of fact that there is absolutely no disclosure of such occurrence in the FIR lodged promptly on 14.01.1995 itself. Then, no description of the jewellery that may have been subjected to such robbery was ever given by the prosecution. Barely, by describing the nature of item as 'Kundal and Baser', the burden that lay on the prosecution to establish the exact nature of stolen property, was not discharged. Then, there is absolutely no corroborative evidence to establish that such an occurrence had been caused inasmuch as if such jewellery worn by 'S' at the time of occurrence was forcibly snatched by the appellant, it is most likely that such occurrence could have caused some-maybe simple injuries to 'S'. The medical examination that was promptly conducted on the next day i.e. 15.01.1995 does not reveal any such injuries. It does not corroborate that occurrence alleged.

36. We recognize the rule of evidence to be applied at criminal trial involving occurrence of rape that single testimony of rape survivor may be sufficient to uphold the conviction beyond reasonable doubt. At the same time, in applying that rule, singular evidence of rape survivor must inspire wholesome confidence with the Court as to its completeness and truthfulness. If the Court remains in doubt whether such a witness has spoken the truth, the prosecution case may not stand the test of occurrence proven beyond reasonable doubt. A reasonable doubt arising on material improvements made by that singular witness may be enough to let the accused be acquitted on a benefit of doubt.

37. In *Tameezuddin Vs State (NCT of Delhi)*, (2009) 15 SCC 566, the Supreme Court observed as below:

"9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable."

Also, in ***Narendra Kumar Vs. State (NCT of Delhi), (2012) 7 SCC 171*** testimony of the rape victim was found suffering from serious infirmities and inconsistencies with other material. Also, it was noted that the victim may have made deliberate improvements on a material point. Thus, it was observed as below:

"22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide Suresh N. Bhusare v. State of Maharashtra [(1999) 1 SCC 220: 1998 SCC (Cri) 1595].)"

38. Seen in the light, the FIR is completely silent as to occurrence of rape. There is absolutely no mention of “penetrative sexual assault” committed by the appellant on ‘S’, in that occurrence. No statement came to be recorded before the doctors, the next day, disclosing any such occurrence. The prosecution has not led such evidence. No recovery whatsoever was made by the Investigating Officer as may corroborate the allegation of rape. Neither the personal clothing of ‘S’ were recovered by the police nor there is any other corroboration of that nature of occurrence. The first informant, namely, ‘V’ (P.W.-1) submitted the Written Report but did not make any allegation of rape. At the trial, he claimed that on rape being committed on ‘S’, she cried for help. On that, other villagers reached the place and the appellant ran away. In the same breath, he further stated that on reaching the place of occurrence, he asked ‘S’ about the occurrence. On that, she revealed that the appellant had snatched her jewellery and committed rape upon her and hurt her eyes. During his

cross-examination, he specifically stated that the appellant was not present when he reached the place of occurrence.

39. Then, P.W.-2 made an incredulous statement before the learned court below. In that, she described both that her jewellery had been snatched by the appellant and also that she had been assaulted with a knife on her neck and face. She disclosed that entire occurrence to her father and her brothers. Yet, it remained unexplained by the prosecution why such vital narration remained excluded from the FIR. While, the Court may give some margin to the prosecution for non-disclosure of allegation of rape promptly as in our society survivors of rape are often stand exposed to social pressures and ill consequences especially initially upon their disclosure of suffering rape, however, absolutely no margin may ever be given to the prosecution for not disclosing the allegation of jewellery being snatched. Once 'S' clearly claimed to have disclosed to her father and her brothers, including 'V' (P.W.-1), the first informant, that not only she had been assaulted on her eyes but that her jewellery had been snatched, if that fact were true, it would necessarily have found reflection in the FIR.

40. Thus, it cannot be doubted that the prosecution story has been vastly and constantly improved after days from the occurrence. In that the allegation of rape emerged about 15 days after the occurrence and FIR being lodged. Once the prosecution story is not worthy of trust with respect to improved allegation of jewellery being snatched, we may continue to look with suspicion at the further allegation of rape that also emerged subsequently. In absence of any corroboration whatsoever either through medical evidence or through ocular testimony, further doubt exists.

41. The balance tilts in favour of the defence on reasonable doubt arising by virtue of the self disclosed case of 'S' that neither she was ever gagged by the appellant as may have prevented her from calling for help and her further statement that she was dragged for some distance before being put to the ground by the appellant, in an agricultural field. Since, 'S', aged about 20 years, was aware that her three brothers, namely, 'V' (P.W.-1), 'R' and 'S-2' were working at a nearby agricultural field, the fact that no cry for help came to be made by her before or at the time of occurrence being caused when she had not being gagged is the failed 'litmus' test in the prosecution story.

42. It wholly belies confidence with the Court, and it is highly improbable that a married lady aged about 20 years would have acted in the manner that the prosecution would like the court to believe. If such a person is over powered, it would be another thing. Here 'S' has described, the appellant dragged her with his bare hands, and that he had not gagged her mouth. However, that is not the case of prosecution. Absence of medical injuries, absence of corroborative material, absence of any ocular evidence and doubts emerging from the material improvements made by 'S' as the case progressed leads us to entertain reasons to doubt the occurrence of alleged rape.

43. Therefore, as noted above, the real occurrence may only amount to voluntarily hurt caused to 'S' by the appellant with an element of Section 354 I.P.C. involving attempt to outrage the modesty of a woman-to the extent she has described that in causing the assault, the appellant may have put her to the ground.

44. Therefore, we find that the offence alleged under Section 392 I.P.C. is not made out. There is absolutely no element of that offence made out. The appellant is acquitted as that occurrence has not been

proven beyond reasonable doubt. As to offence under Section 376 I.P.C. the appellant is acquitted as the prosecution has not led evidence beyond reasonable doubt. However, for the reasons and discussion noted above, we find that the appellant had committed an offence under Section 323 I.P.C. and had attempted to commit offence under Section 354 I.P.C.

45 Whatever sentence may have been awarded to the appellant for those offences, he has remained confined for much more than that. Inasmuch as, as noted above, he has remained confined for close to 19 years whereas, upon guilt of offence under Section 323 I.P.C. the appellant may have been confined for one year with fine and for the offence under Section 354 I.P.C. read with Section 511 I.P.C., he may have been awarded imprisonment of one year. Those sentences have been more than served out. The appellant is in Jail. Accordingly the appellant be released forthwith, unless he is not wanted in any other case and subject to compliance of Section 437A Cr.P.C.

46. Accordingly, this criminal appeal is **partly allowed**, in the above terms.

47. Let the trial court record along with a copy of this order be transmitted to the court concerned through Registrar (Compliance) forthwith and a copy of this order may also be sent to the jail authorities concerned.

Order Date :- 13.5.2025

Jitendra

(Sandeep Jain,J.) (S. D. Singh,J.)