
(2012) 08 AHC CK 0166

Allahabad High Court

Case No: Criminal Appeal No. 5451 of 2011

Hukum Singh

APPELLANT

Vs

State of U.P and
Another

RESPONDENT

Date of Decision: Aug. 16, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 149, 308

Hon'ble Judges: Ravindra Singh, J and Anil Kumar Agarwal, J

Final Decision: Allowed

Judgement

Anil Kumar Agarwal, J.

Heard Sri Ashish Chaudhary, learned counsel for the appellant, learned A.G.A. for the State of U.P. and perused the lower court record.

2. This application for granting the leave to appeal has been filed against the judgement and order dated 15.07.2011 passed by learned Additional Sessions Judge/Special Judge, J.P. Nagar in S.T. No. 74 of 2001 whereby the accused respondents have been acquitted for the offence punishable under sections 147, 452, 148, 324/149, 308/149, 506, 504, 376 IPC.

3. From the perusal of the record it appears that in the present case an FIR was lodged at the police station by P.W. 1 Hukum Singh alleging therein that in the night of 27/28.5.2000 at 1.10 P.M. he was not present at his house, eight miscreants entered into his house on account of enmity and caused injuries to his wife and after committing the alleged offence they extended the threat of life, when he came back to his house at about 5.00 A.M. on 28.5.2000 he saw his wife in an injured condition and she was unconscious. In the said incident his daughters had also sustained injuries, they were taken to the police station in a trolley of the tractor with the help of the village chowkidar. It was proved by P.W. 1, it has been marked as Exbt. Ka1. Thereafter on 29.5.2000 he lodged a detailed report mentioning therein that in the night of 27/28.5.2000 at about 2.00 A.M. The

miscreants entered into his house by jumping the wall. The first informant and his brother Ram Kishan was not present at his house. The miscreants did the marpeet with his daughters namely Km. Beena aged about 13 years and Km. Suma @ Sushma aged about 12 years and they were also raped by them, when it was protested by his wife Smt. Suman she was also beaten by the miscreants, thereafter the miscreants have taken away the amount of Rs. 6,000/ and some ornaments from his house and from the house of his brother Ram Kishan the amount of Rs. 18,000/ and some ornaments were taken away by them. All the miscreants were armed with country made pistols, out of which three miscreants namely Kishan Swaroop, his son Kamal and Suresh were identified. The remaining five miscreants can be identified on coming before him. On hue and cry made by the wife and daughters of the first informant Rohtash and Prakash came at the place of the incident, they identified in the light of torch, when the first informant returned from the Moradabad on 28.5.2000, the whole story was narrated by wife, his daughters and the witnesses. On account of the injuries sustained by his wife and due to rape committed by the miscreants his daughters were unconscious, they were not in a position to depose the correct facts. After lodging the report at the police station on 29.5.2000 the prosecutrix Km. Beena and Km. Sushma were taken to the hospital by the police and they were medically examined on 30.5.2000. According to the medical examination report of Km. Beena no mark of injury was seen on her body and her private parts but hymen was torn at 3 O'clock position, it was on having bloody on touch. The vagina was admitting one finger difficulty, vaginal smear was taken and it was sent to the pathology. According to the opinion of the doctor there was a injury caused by blunt object including the human penis. According to the supplementary report no smear was found in vagina but the number of epithelial cells and RBC were found. According to the supplementary report also the injury was caused by blunt object including human penis and the age of the prosecutrix was about 17 years. According to the medical examination report of Km. Sushma no mark of injury was seen on her person including her private parts but hymen was torn at 6 O'clock position having bloody on touch, vagina was admitting one finger with difficulty, vaginal smear was taken and it was sent to pathology. According to the supplementary report no spermatozoa was found but number of epithelial cells and RBC were found. According to the opinion of the doctor the injury was caused by blunt object including human penis. The age of the prosecutrix was about 17 years. According to the medical examination report of Smt. Suman, she had sustained nine injuries in which injuries No. 1 and 2 were lacerated wounds, injuries No. 3, 6 and 8 were traumatic swelling, injuries No. 4 and 5 were punctured wounds, injury No. 7 was incised wound and injury No. 9 was abrasion. Some of the injuries were on vital part of the body.

4. In support of the prosecution version 12 witnesses have been examined, two persons have been examined as court's witnesses, thereafter the statements of the accused persons were recorded under section 313 Cr.P.C. but no witness was examined in the defence. P.W. 1 Hukum Singh was the first informant, he was not eye witness. When he came back from Moradabad and came to know about the said incident by that time his wife was unconscious, he reported the matter to the police station mentioning therein that

eight miscreants committed the alleged offence. It was mentioned by him that all the miscreants were unknown. Thereafter he gave a detailed version on the next day. P.W. 2 Smt. Suman is injured witness, she has supported the prosecution version. Km. Beena P.W. 3 and Km. Sushma P.W. 4 are victims of the alleged incident. In the said incident they were raped, she clearly disclosed the name of the accused respondents. According to the statement of P.W. 3, she was taken into a room at pistol points by the accused respondents Kishan Swaroop and Suresh where she was raped by accused respondent Suresh, her sister was also taken into a room at the pistol point. But the P.W. 2 Smt. Suman clearly stated that Km. Beena was raped by the accused respondent Suresh and Km. Sushma was raped by accused respondent Kamal. Km. Beena was aged about 13 years and Km. Sushma was aged about 12 years. She narrated the whole story as to how the accused respondent caused the injury on her person. Km. Sushma was examined as P.W. 4, she also disclosed the name of accused respondent and she clearly stated that she was raped by accused respondent Kamal and her sister Beena was raped by accused respondents Suresh and Kishan Swaroop. According to the medical examination report both the prosecutrix were raped. According to the statement of P.W. 12 S.I. Virendra Kumar clothes were taken by him at the police station and the same were sealed. The clothes of Km. Beena were having the blood and semen stained. According to the statement of the C.W. 1 Prakash he witnessed the incident and identified three miscreants. He was apprised that some articles of the first informant were taken away by the miscreants. The wife of the first informant was beaten and Km. Beena and Km. Sushma were raped. According to the statement of C.W. 2 Rohtash Singh also he came at the place of the incident after shouting, he identified the accused respondents Kishan Swaroop, Kamal and Suresh. He saw the wife of the first informant in a unconscious condition.

5. According to the medical examination of the P.W. 2 Smt. Suman, medical examination report of P.W. 3 Km. Beena and P.W. 4 Km. Suman show that Smt. Suman was badly beaten, she had sustained injuries caused by different types of the weapons. Km. Beena and Km. Sushma were raped. The trial court has drawn the conclusion that both the prosecutrix were not raped, it is based on simply conjectures and surmises. In fact it was not a case of dacoity, even no chargesheet was submitted in such offence. The alleged offence was committed on account of the enmity but the trial court has recorded the finding of the acquittal treating the case as of dacoity. The finding of the acquittal recorded by the trial court requires reconsideration because it has been fully supported by the injured Smt. Suman, prosecutrix Km. Beena and Km. Sushma. Therefore, the leave to appeal is granted.

6. Accordingly this application is allowed.