
Qamaruddin @ Qamru Vs State of U.P.

Criminal A. No. 2834 of 1982

Court: Allahabad High Court

Date of Decision: May 22, 2013

Citation: (2013) 2 ACR 2219 : (2013) 82 ALLCC 558

Hon'ble Judges: Surendra Kumar, J

Bench: Single Bench

Advocate: A.B.L. Gaur, Sunil Kumar, Satyam Singh, A.C. and Sanjay Singh, A.C, for the Appellant;

Final Decision: Allowed

Judgement

Surendra Kumar, J.

Heard Sri Satyam Singh, learned amicus curiae for the appellant Qamaruddin @ Qamru, learned A.G.A. for the State

and perused the evidence available on record. The appellant Qamaruddin @ Qamru, son of Sayeed, resident of Village Bagsara, Police Station,

Anupshahar, presently residing in Mohalla Saraidhari, Police Station appeal challenging his conviction and sentence against the judgment and order

dated 8.11.1982 passed by the Vth Additional Sessions Judge, Bulandshahr in Sessions Trial No. 256 of 1981, State v. Qamaruddin @ Qamru,

under Sections 366 and 376, I.P.C., Police Station Kotwali, District Bulandshahr whereby the appellant was convicted u/s 366, I.P.C. and

sentenced to five years Rigorous Imprisonment with fine of Rs. 2,000 and in default of payment of fine, further Rigorous Imprisonment for two

years. The appellant was also convicted u/s 376, I.P.C. and sentenced to six years Rigorous Imprisonment with fine of Rs. 2,000 and in default of

payment of fine, further rigorous imprisonment for two years. Both the sentences were directed to run concurrently. Thus, by way of filing this

appeal, the accused appellant Qamaruddin @ Qamru challenged the validity/legality of the impugned judgment.

2. The prosecution case, in brief, is that the prosecutrix Smt. Ramzani P.W. 2 knew the accused Qamaruddin @ Qamru prior to the incident of

rape. The accused Qamruddin @ Qamru was residing with his brother-in-law Abdul Gaffar in same mohalla as that of the prosecutrix, namely,

Saraidhari, Police Station Kotwali. District Bulandshahr and was working in the flour mill of his brother-in-law Abdul Gaffar and as such, he was

also known to the complainant Abdul Rasheed and his daughter Smt. Ramza no. It is further alleged that 10-12 days prior to the alleged

occurrence, Smt. Ramzano was married to one Mohd. Haneef, resident of town Hapur and after 3-4 days prior to this occurrence, Smt. Ramzano

came back to the house of her father. On 19.3.1979, the complainant Abdul Rasheed had gone to town Sikandrabad, District Bulandshahr for

some work and prosecutrix was in her house alongwith her mother. On 19.3.1979 at about 1.00 p.m., the prosecutrix went alone to see exhibition

in the exhibition ground and while she was coming back from exhibition, the accused Qamruddin @ Qamru met her in the way near Meerut Bus

Stand, Bulandshahr at about 3.00 p.m. and took her in a Bus by terrorising her with a knife. She was taken by the said bus about two miles away

from town Gulaothi in the jungle, where she was kept in the intervening night of 19/20.3.1979 and he committed rape on her in the jungle. In the

afternoon of 21.3.1979, she was taken to village Moonda Kalan, Police Station Dhaulana. District Ghaziabad where she stayed with the accused

in the courtyard of house of Islam, brother-in-law of the accused Qamruddin @ Qamru, as his house was found locked. The first informant

returned to his house on 19.3.1979 from Sikandrabad and enquired about his daughter Ramzano from his wife, who told him that Smt. Ramzano

had gone to see exhibition and had not come back. The first informant made search for his daughter and on 20.3.1979 he was informed by Bhoop

Singh (P.W. 3) and Babu Khan (P.W. 4) that they had seen Smt. Ramzano in the company of accused Qamruddin @ Qamru on 19.3.1979 at

about 3.00 p.m. near Meerut Bus Stand, Bulandshahr, then the first informant got scribed a written report (Ext. Ka-1) from one Shafi and handed

it over at the police station Kotwali, Bulandshahr on 20.3.1979 at about 7.30 p.m. On its basis, a case against the accused Qamruddin @ Qamru

was registered.

3. The investigation was entrusted to S.I. Sri R.P. Sharma P.W. 5. On 20.3.1979, he recorded the statement of first informant Abdul Rasheed at

the time of registration of the case and tried to search out the prosecutrix but she could not be traced out. On 21.3.1979, the Investigating Officer

P.W. 5 recorded the statements of other witnesses, inspected the place of occurrence, prepared site plan (Ext. Ka-6) and on 21.3.1979 he went

to the Police Station Babugarh, District Ghaziabad alongwith complainant Abdul Rasheed for search of the victim lady. Then on 21.3.1979 at

about 6.30 p.m., the Investigating Officer P.W. 5 recovered Smt. Ramzano from the company of the accused from the house of Islam, brother-in-

law (Bahnoi) of the accused-appellant. Recovery memo. of Smt. Ramzano was prepared as Ext. Ka-2 and site plan of the place of recovery of the

victim as Ext. Ka-6 was also prepared by the Investigating Officer P.W. 5. The prosecutrix Smt. Ramzano was medically examined by Dr. Smt.

Usha Akhori (P.W. 6) on 22.3.1979 at 11.15 a.m. who prepared her medico legal report (Ext. Ka-10) and did not find any mark of injury on her

body or on her private parts. She was found to be habitual to sexual Intercourse. Dr. did not find any sign of rape and age of the prosecutrix was

found between 19-20 years. Radiological report (Ext. Ka-11) was prepared by Dr. H.U.K. Zuberi and smear test report (Ext. Ka-12) was also

prepared by Dr. P.C. Agarwal.

4. After medical examination of the prosecutrix, she was given in the supurdagi/custody of her father vide memo. of Supurdginama Ext. Ka-3.

After investigation, S.I. Sri R.P. Sharma P.W. 5 submitted charge-sheet against the accused appellant Qamruddin @ Qamru, which is Ext. Ka-9.

P.W. 5 in his evidence proved the chik report (Ext. Ka-4), copy of the general diary report (Ext. Ka-5), site plans (Ext. Ka-6 and Ka-7) and also

copy of the General Diary report (Ext. Ka-8), recovery memo. of Smt. Ramzano (Ext. Ka-2), memo. of Supurdginama of Smt. Ramzano (Ext.

Ka-3) and charge-sheet (Ext. Ka-9) at the trial.

5. The charges under Sections 366 and 376, I.P.C. were levelled against the accused-appellant who pleaded not guilty and claimed to be tried.

6. In support of the case, the prosecution examined first informant Rasheed P.W. 1 and father of the prosecutrix Ramza no. P.W. 1 supported the

prosecution Version and proved written report Ext. Ka-1, recovery memo. of Smt. Ramzano (Ext. Ka-2) and memo. of supurdginama of Smt.

Ramzano (Ext. Ka-3). The prosecution also examined P.W. 2 Smt. Ramzano, the prosecutrix herself. According to her evidence, the accused

Qamruddin @ Qamru took her away forcibly on 19.3.1979 at about 3.00 p.m. from Meerut Bus Stand, Bulandshahr and committed rape on her

between 19.3.1979 and 21.3.1979 in the jungle near the town and Police Station Gulaothi. She was recovered by the police in presence of her

father on 21.3.1979 at about 6.30 p.m. from the house of Islam, brother-in-law of the accused-appellant. Bhoop Singh P.W. 3 was also examined

by the prosecution. According to the evidence of P.W. 3, he was resident of the same Mohalla Saraidhari, Bulandshahr, on 19.3.1979, he

alongwith Babu Khan P.W. 4 was going to see the exhibition and at about 3.00 p.m. when they reached near Hapur Bus Stand Kala Aam,

Bulandshahr, they witnessed that Smt. Ramzano was standing by the side of accused Qamruddin and the next day they informed Abdul Rasheed

when they met him about the said facts.

7. The prosecution also examined Babu Khan P.W. 4, resident of mohalla Maniharan, Upper Kote, Bulandshahr. According to his evidence,

accused Qamruddin @ Qamru, the prosecutrix Smt. Ramzano and her father Rasheed were known to him prior to the alleged incident and on

19.3.1979 he went to see the exhibition along Bhoop Singh and when they reached near the Meerut Bus Stand, Bulandshahr, Smt. Ramzano was

standing near the bus stand, but nobody was present by her side. P.W. 4 clearly deposed that he did not see the accused Qamruddin @ Qamru

standing by the side of Smt. Ramzano, P.W. 4 on being declared hostile by the prosecution. In his cross-examination denied his statement having

been recorded u/s 161, Cr.P.C. by S.I. Sri R.P. Sharma P.W. 5.

8. The accused-appellant while examined u/s 313, Cr.P.C. denied the prosecution case and stated his false implication due to enmity. He further

stated that Smt. Ramzano was known to him since childhood, as he was working at the flour mill of his brother-in-law situated in the same mohalla

as that of the prosecutrix. He also stated that mother of the prosecutrix had settled his marriage with the prosecutrix and her mother had never

prevented him when he used to go out with the prosecutrix Smt. Ramza no. According to his statement, the prosecutrix Ramzano was sent by her

mother on the day of the alleged incident with him. The appellant did not adduce any evidence in defence.

9. Before discussing and analysing the evidence led by the prosecution. It is necessary to have a look on the prosecution evidence. As stated

earlier. P.W. 1 Abdul Rasheed, first informant and father of the prosecutrix and the prosecutrix Smt. Ramzano P.W. 2, Bhoop Singh P.W. 3 and

Babu Khan P.W. 4 were examined by the prosecution to prove the charges levelled against the accused-appellant Qamruddin @ Qamru.

10. It emerges from the testimony of P.W. 1 Abdul Rasheed that the prosecutrix is his daughter, 10-12 days prior to the instant incident, the

prosecutrix was married to one Mohd. Hanif of Hapur and 3-4 days prior to the incident, she came back to his house. The witness knew Abdul

Gaffar, bahnoi as well as accused Qamruddin as the latter used to work in flour mill of his bahnoi since childhood. On the day of the incident, the

witness had gone to Sikandrabad for some work and when he came back from there to his house, he came to know that his daughter Smt.

Ramzano had gone to see the exhibition in Bulandshahr and these facts were told to him by his wife. When his daughter left the house for going to

see the exhibition on 19.3.1979 at 1.00 p.m. she was wearing her ornaments also. When his daughter did not come back till the evening, he made

a hectic search for her when he was told by Babu Khan P.W. 4 that Babu Khan had seen his daughter Smt. Ramzano near Meerut Bus Stand

Kala Aam Chauraha, Bulandshahr on 19.3.1979 at 3.00 p.m. The same facts were told by Bhoop Singh P.W. 3. Thus, the P.W. 1 was informed

on the same day in the evening by Bhoop Singh P.W. 3 and Babu Khan P.W. 4 that they had seen the girl in the company of the accused

Qamruddin @ Qamru on the day of the incident itself at 3.00 p.m. while the duo were standing at the said bus stand. In spite of knowledge of this

fact, P.W. 1 did not lodge the F.I.R. of the incident on the same day namely, 19.3.1979 but he lodged the F.I.R. by handing over the written

report (Ext. Ka-1) next day namely, on 20.3.1979 at 7.30 p.m. P.W. 1 further deposed that on third day of the incident namely, on 21.3.1979 at

7.00 p.m., his daughter Smt. Ramzano was recovered in village Modhi Kala, District Ghaziabad from the possession of the accused Qamruddin @

Qamru from the house of Islam, Bahnoi of the accused appellant. The witness proved the recovery memo. of his daughter as Ext. Ka-2 and

subsequently she was given in Supurdagi of the witness vide memo. Ext. Ka-3.

11. P.W. 1 Abdul Rasheed was cross-examined at trial by learned counsel for the accused Qamruddin when the relevant facts came to light.

According to his evidence, he had got two sons and four daughters and his eldest son was 40-45 years old and Smt. Ramzano was younger to his

three children and three children were born after two years gap each. According to his evidence, age of Smt. Ramzano comes to 34 years. What

emerges from the cross-examination of P.W. 1 is that the marriage of Smt. Ramzano was settled in the same family where her elder sister was

married 8-10 years ago. The accused Qamruddin @ Qamru prior to the incident was working on the flour mill of his Bahnoi Abdul Gaffar in the

vicinity of the house of the prosecutrix where the prosecutrix also happened to go at the said flour mill for the purpose of grinding/pulverizing grains.

The witness was not told by his wife or anybody else whether his daughter Smt. Ramzano had gone alone to see the exhibition or had

accompanied with some other children. But on the recovery of his daughter, he was told by her daughter that she had gone alone to see the

exhibition. According to P.W. 1, he was told by Bhoop Singh P.W. 3 and Babu Khan P.W. 4 on 20.3.1979 about the fact of seeing his daughter

Smt. Ramzano with the accused Qamruddin @ Qamru at the said bus stand then only he suspected that accused Qamruddin @ Qamru had

enticed away his daughter Smt. Ramza no. The said bus stand where the prosecutrix and the accused Qamruddin @ Qamru were seen standing on

19.3.1979 at 3.00 p.m. was over crowded by other passengers due to the exhibition.

12. The prosecutrix Smt. Ramzano P.W. 2 in her deposition stated that there was exhibition in Bulandshahr in the days of the occurrence and she

had come from her sasural to see the exhibition. On 19.3.1979 around 1.00 p.m. she alone left her house to see the exhibition and after seeing the

same, when she was coming back to her house, around 3.00 p.m. near Meerut Bus Stand, Bulandshahr the accused Qamruddin @ Qamru met

and threatened to kill her warning to accompany him and accordingly, she accompanied. When out of fear she started going with the accused

Qamruddin @ Qamru, he pulled her Nakab/vell over her face. Thereafter the accused Qamruddin @ Qamru made her sit in the bus and during

her journey in the bus, she alleged that he tried to terrorise her by showing knife and after travelling for about five miles in the bus, the accused

Qamruddin @ Qamru alongwith her got down from the bus at Gulaothi and took her from there towards jungle of Gulaothi. She repeated the

show of knife by the accused Qamruddin @ Qamru at every point. After taking her in the jungle, the accused Qamruddin @ Qamru kept her for

two nights and one day in the jungle where he is alleged to have raped her. Third day the accused Qamruddin @ Qamru had taken her to the

house of his bahnoi in village Modhi Kala. The house of his bahnoi was locked, hence they sat on a cot in front of the house. After a few hours of

the arrival of the prosecutrix and the accused Qamruddin @ Qamru, her father P.W. 1 Abdul Rasheed alongwith police reached there before sun

set and police arrested both of them. The police took them to Bulandshahr where the prosecutrix was medically examined at Bulandshahr.

According to the evidence of the prosecutrix, she knew the accused Qamruddin @ Qamru prior to the incident as he used to work in the flour mill

of his bahnoi in her neighbourhood.

13. The prosecutrix was extensively cross-examined by defence. The prosecutrix had frequently seen the accused Qamruddin @ Qamru at the

flour mill of his bahnoi while passing through the said flour mill and she had seen the accused Qamruddin @ Qamru Just after her Nikah and not

before that. She knew the accused Qamruddin @ Qamru prior to the incident and was well familiar with him. She deposed that she had spotted

Qamruddin at the exhibition place 4-5 days prior to the incident and on the day when she was going to see the exhibition, she was suffering from

fever and in spite of suffering from fever, she went to the exhibition place to see the exhibition in Bulandshahr Town. When she left her parental

house for going to see the exhibition on 19.3.1979 at 1.00 p.m., her parents were not at her house and on the day of the incident, her mother had

already gone to Faridabad at the house of some relative. The mother of the prosecutrix P.W. 2 came back to the house only after arrival of the

prosecutrix P.W. 2 at her house. The prosecutrix P.W. 2 could not tell the number of days after which her mother returned to her house when

P.W. 2 left her father's house for going to see the exhibition. According to the evidence of P.W. 2, when she left her father's house on the day of

the Incident, her father had already gone to Faridabad at the house of some relative. P.W. 2 further clarified that her father and mother had

together left the house for Faridabad and when P.W. 2 left her father's house, her brother had gone to his shop and only her younger sisters were

present in the house at that point of time. She could not tell the age of two younger sisters, who were present alongwith her on the day of the

incident and leaving her two younger sisters at her house, the prosecutrix P.W. 2 left the house for going to see the exhibition. She left her two

younger sisters for keeping watch of the house in her absence. She went on foot to the exhibition place and she alone was coming back from

exhibition at 3.00 p.m. The prosecutrix was cross-examined about the time she reached the exhibition place and about the time she left the

exhibition place but she could not tell clearly about the time. According to her evidence, the accused Qamruddin @ Qamru was having a knife of

ten inches blade with which he created fear in her mind and she did as per his wishes. According to her evidence, she was taken by the accused

towards Meerut Bus Stand, Bulandshahr, she was shown knife and at the bus stand, the accused Qamruddin @ Qamru took out the knife from his

bag and showed it to her. Inside the bus, the said knife was shown to her to create fear in her mind and during her journey in bus, some passengers

were alighting from the bus and some were boarding the bus and after five miles from Gulaothi, she was alighted from the bus when sun was to set.

While cross-examined on the point of jungle, she could not tell the distance inside jungle which was travelled by her with the accused. During her

stay with the accused Qamruddin @ Qamru for two nights and one day in the Jungle, five miles away from Gulaothi Town, the accused was having

roasted grams which were eaten by both of them. Both of them spent two nights and one day in the Jungle by eating the said grams and they drank

water from the nearby drainage. The height of the sugar cane field where they were staying, was around 4-5 feet. According to her evidence, the

Investigating Officer did not inspect the place in the jungle where the accused Qamruddin @ Qamru had kept her for two nights and one day and

no map of the said place was prepared by him. According to the evidence of P.W. 2, she and the accused Qamruddin @ Qamru reached the

house of Islam, bahnoi of the accused Qamruddin @ Qamru around 2.00 p.m. and when they found the house locked, they preferred to sit on the

cot lying in front of the house over some chabutara. The house of Islam was situated in dense residential area where several persons were residing

in their houses and both of them were sitting in the open place on the cot and same was visible from the neighbouring places. Both of them had to

sit for 4-5 hours and thereafter the police alongwith her father reached there. At page 11 of her testimony at the trial, P.W. 2 deposed that during

her 4-5 hours stay at the house of Islam in village Modhi, several women from the nearby houses collected there and talked to her but she did not

complain about the behaviour or conduct of the accused Qamruddin @ Qamru to them. More than ten women were present who talked to her but

she did not tell anything against the accused Qamruddin @ Qamru. The reason for not disclosing about the incident to the women was terror

caused by knife to her. According to her evidence, when the police came at the house of bahnoi of the accused Qamruddin @ Qamru in the

evening of 21.3.1979, the accused Qamruddin threw that knife at a distance of 10-15 steps. The witness did not tell about the knife or throwing of

knife to the police though the same was allegedly thrown a few minute before. She did not tell about the knife even to her father that the accused

Qamruddin @ Qamru had thrown the knife. Had she told the police or her father that the accused had thrown the knife to the nearby place, the

same could be recovered and would have strengthened in her evidence. The prosecutrix P.W. 2 in paragraph 15 of her evidence at the trial clearly

deposed that she was aged about 18 years on the date of the incident and on the date namely 26.5.1982 when her statement was recorded, her

age was 21 years. The prosecutrix P.W. 2 was suggested by defence side that she was on visiting terms with the accused Qamruddin @ Qamru

for past 7-8 years and her nikah (marriage ceremony) was settled with the accused Qamruddin @ Qamru by her mother and she on her own

volition and free will left her house with the accused Qamruddin @ Qamru to see the exhibition and her father was not ready to perform her nikah

with the accused Qamruddin @ Qamru and her mother sent her with the accused Qamruddin @ Qamru in accordance with prosecutrix's consent

and desire. All these suggestions were denied by the prosecutrix P.W. 2.

14. It is evident from the evidence of Bhoop Singh P.W. 3 that he had seen the accused Qamruddin @ Qamru standing with the prosecutrix at the

Hapur Bus Stand Kala Aam Chauraha, Bulandshahr. P.W. 3 after seeing the exhibition came back around 6.30 p.m. when he told the said fact to

Abdul Rasheed P.W. 1 after coming to his house. When P.W. 3 saw them at the bus stand, there was crowd due to exhibition. The witness did

not have any talk with Smt. Ramzano and the accused Qamruddin @ Qamru. P.W. 3 at page 3 of his evidence clearly deposed that when he saw

Smt. Ramzano and the accused Qamruddin @ Qamru at the bus stand, he recognized her by her face and she was standing silently but there was

no sign of any kind of fear and terror over her face.

15. P.W. 4 Babu Khan did not support the prosecution version of seeing the prosecutrix with the accused Qamruddin @ Qamru on 19.3.1979 at

3.00 p.m. at the said bus stand and deposed that while passing through the place for going to see the exhibition, he saw Smt. Ramzano alone

standing at the bus stand and the accused Qamruddin @ Qamru was not there with her at that time. Since there was no sign of any kind of fear or

terror on the face of the prosecutrix, he did not ask anything from her.

16. After analysing the evidence of the prosecution, it is proved that the prosecutrix was aged about 18 years of age at the time of the incident. Dr.

Smt. Usha Akhori P.W. 6 stated that the prosecutrix might be 25 years old at the time of her medical examination. The prosecutrix herself stated

that she was aged about 18 years at the time of the occurrence. The evidence of her father Abdul Rasheed P.W. 1 is of great importance regarding

age of the prosecutrix at the time of the occurrence. According to calculation given by P.W. 1 at the trial, the age of the prosecutrix comes to 34

years. Thus, the prosecutrix was major and grown up lady at the time of the occurrence and this fact is fully proved from the evidence on record.

The same finding that the prosecutrix Smt. Ramzano was major and grown up lady at the time of the occurrence has been recorded by the learned

trial Judge in paragraph 7 of the impugned judgment.

17. It is proved from the testimony of Bhoop Singh P.W. 3 and Babu Khan P.W. 4 that they had seen the prosecutrix when she was standing at

the said bus stand on 19.3.1979 at about 3.00 p.m. and there were no signs of fear or gestures or tension on her face. If she had any such signs of

fear or terror or other consternation then they would have certainly enquired from her the reason therefore. According to testimony of Bhoop Singh

P.W. 3, the prosecutrix and the accused were standing side by side at the bus stand at that time whereas to the contrary, Babu Khan P.W. 4

stated that at the relevant time, only prosecutrix was standing at the said bus stand and the accused-appellant was not seen around her at that time.

It is further established and proved from the evidence of the prosecutrix Smt. Ramzano P.W. 2 that she leaving her younger sisters alone at the

house and particularly when her parents had already gone to the house of some relative at Faridabad on 19.3.1979, she around 1.00 p.m. left her

father's house to go to see the exhibition in town Bulandshahr and she went there on foot. After seeing the exhibition, while coming back to her

house, all of a sudden, the accused-appellant Qamruddin @ Qamru appeared at the bus stand at 3.00 p.m. and she due to fear became ready to

go with him and both of them travelled in a bus for about five miles away and they alighted from the bus at Gulaothi and went in the jungle where

both of them stayed for two nights and one day and they used to eat the roasted grams, which were kept in the bag by the accused during that

period and drank water from the nearby drainage in the jungle. When she left her father's house in the noon, she was suffering from fever even then

she left her father's house to see the exhibition wearing ornaments, which a common woman does not wear while going to a crowded place, like

exhibition for fear of the same being stolen at such place. After staying for such a period in the jungle with the accused, the prosecutrix went with

him to the house of bahnoi of the accused appellant in village Modhi Kala where they both reached on 21.3.1979 at about 2.00 p.m. and since the

house of bahnoi of the accused-appellant was locked, they sat on a cot over some raised structure (Chabutara), where several ladies from the

neighbourhood came to meet her and talked to her but she did not complain about the incident or conduct and behaviour of the accused-appellant

and without telling anything, she remained present there for several hours. According to the prosecution story, on 21.3.1979 around 7.00 p.m.

both of them were arrested by the police when the police reached at the house of the bahnoi of the accused-appellant with the father of the

prosecutrix. All these factors go to show and presume that the prosecutrix went away with the accused appellant with her own free will and

consent and stayed with him till they were simultaneously arrested by the police on the third day of her alleged enticing away. It cannot be

presumed from the close scrutiny of the evidence of the prosecutrix that the accused-appellant was taking her by force or by playing fraud on her.

If the accused-appellant was really having a knife with him while in the company of the prosecutrix and if he threw the knife in nearby place just a

few minutes before arrival of the police at the house of his bahnoi, she did not tell about that fact to her father or to the police and recovery of such

knife could have further strengthened the veracity or truthfulness of her testimony. The facts and circumstances of the case coupled with the

evidence of the prosecutrix and other witnesses indicate that the prosecutrix eloped with the accused appellant Qamruddin @ Qamru with her own

free will and consent and without any compulsion. The prosecutrix appears to be a consenting party to the whole affairs. The prosecutrix knew the

accused-appellant 7-8 years prior to the incident and she was well aware of him and strong possibility is that because she was going to be married

by her father in the same family where her elder sister had already been married and after marriage, she went in her sasural and came back to her

father's house 3-4 days prior to the instant incident and finding a proper opportunity, she eloped with the accused-appellant with her own consent

leaving her younger sisters alone at the house. The story of terrorising her with a knife by the accused-appellant is feigned one and the same is not

reliable. She concocted a false story of terrorising her with a knife by the accused appellant in order to make a false case against the accused

appellant Qamruddin @ Qamru, possibly under pressure of her father or police. The testimony of the prosecutrix Smt. Ramzano P.W. 2 in the

facts and circumstances of the case is uncreditworthy, untruthful and unreliable and it is not safe to uphold the conviction of the accused-appellant

on her evidence. It appears that she was not happy after marriage with her husband and only after staying at the house of her husband just a week,

she came back to her parental house and her mother was initially in favour of marrying the prosecutrix to the accused-appellant Qamruddin @

Qamru but the father of the prosecutrix was against her marriage with the accused-appellant Qamruddin @ Qamru. Her testimony is also not

corroborated by medical evidence. The father of the prosecutrix on the day of the incident itself came to know in the evening from P.W. 3 and

P.W. 4 that the accused-appellant had enticed away his daughter and even then he did not lodge the F.I.R. promptly but preferred to wait till the

evening of the next day. The charges levelled under Sections 366 and 376, I.P.C. against the accused-appellant Qamruddin @ Qamru are not

proved beyond shadow of reasonable doubt and the prosecution has miserably failed to prove the said charges. The findings recorded by the

learned trial Judge in the impugned judgment and order are contrary to the evidence on record and the impugned judgment and order is perverse

and based on incorrect appreciation of the evidence on record. When the trial court recorded a finding that the prosecutrix was major, then the

learned trial Judge was supposed to appreciate the evidence on record in correct and proper perspective which he failed to do.

18. The Hon'ble Apex Court in Sunil Vs. State of Haryana, , in paragraph 33 thereof has observed that--""....In a criminal case, the conviction of

the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe for conviction on an

approximate date.

19. Thus, in the case in hand, the trial Judge in spite of recording a finding that the prosecutrix was major on the date of the incident, has recorded

the conviction of the accused appellant under Sections 366 and 376, I.P.C. even though there were many infirmities, holes and lacunas in the

prosecution version. The prosecution appears to have deliberately withheld and suppressed the material fact and true genesis of the case.

20. In *Alamelu and Another Vs. State* represented by Inspector of Police, , the Hon"ble Apex Court in paragraph 45 thereof has observed as

under:

..... The girl, according to the prosecution, was recovered from the aforesaid premises. Therefore, for six days, this girl was staying with Sekar

(A-1). She did not raise any protest. She did not even complain to this witness or any other residents in the locality. Her behaviour of not

complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural. Earlier also, she had many opportunities to

complain or to run away, but she made no such effort. It is noteworthy that she made no protest on seeing some known persons near the car, after

her alleged abduction. She did not make any complaint at the residence of Selvi, sister of Sekar (A-1) at Pudupatti. Again, there was no complaint

on seeing her relatives allegedly assembled at the temple. Her relatives apparently took no steps at the time when mangalsutra was forcibly tied

around her neck by Sekar (A-1). No one sent for police help even though a car was available. She made no complaint when she was taken to the

house of P.W. 5, Thiru Thirunavukarasu and stayed at his place. Again, there was no protest when Sekar (A-1) took her to the police station on

5th day of the alleged abduction and told at the Tiruchi Police Station that they had already been married. The above behaviour would not be

natural for a girl who had been compelled to marry and subjected to illicit sexual intercourse.

21. In view of the above discussions, the present appeal is allowed and the impugned judgment and order dated 8.11.1982 passed by the Vth

Additional Sessions Judge, Bulandshahr in Sessions Trial No. 256 of 1981, *State v. Qamruddin @ Qamru*, recording conviction of the accused-

appellant Qamruddin @ Qamru under Sections 366 and 376, I.P.C., Police Station Kotwali, District Bulandshahr and the said sentences awarded

to him, is hereby set aside, as it appears that the entire prosecution story has been concocted for the reasons best known to the prosecution. The

appellant is entitled to the benefit of doubt and he is acquitted of the said charges. The accused-appellant Qamruddin @ Qamru is on bail, he need

riot surrender. His bail bonds and surety bonds are discharged. Let a copy of this judgment be certified to the trial court for intimation and

compliance.