

(2013) 05 AHC CK 0362

Allahabad High Court

Case No: Criminal A. No. 2834 of 1982

Qamaruddin @ Qamru

APPELLANT

Vs

State of U.P.

RESPONDENT

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. Ramzano P.W. 2 knew the accused Qamruddin @ 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 lads 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 not 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.