
(2004) 01 AHC CK 0220

Allahabad High Court

Case No: Government Appeal No. 1709 of 1998

State of U.P.

APPELLANT

Vs

Ram Asray

RESPONDENT

Date of Decision: Jan. 30, 2004

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Citation: (2004) 2 ACR 1606

Hon'ble Judges: Onkareshwar Bhatt, J; M.C. Jain, J

Bench: Division Bench

Advocate: R.S. Maurya and S.K. Pal, A.G.As, for the Appellant; R.K. Gupta, for the Respondent

Judgement

M.C. Jain, J.

The State is in appeal against the order of acquittal dated 23.1.1998 passed by Sri S. K. Pandey, the then Sessions Judge, Hamirpur in S.T. No. 230 of 1993, acquitting the accused-Respondent Ram Asarey of the charge of Section 376, I.P.C.

2. The relevant facts may be related. The incident took place on 7.2.1993 at about 5.00 p.m. in a field situated within the territory of village Dhanauri, Police Station Rath, District Hamirpur. The victim was Ramshri who herself lodged the F.I.R. at 10.45 p.m. at the concerned police station by oral narration. The distance of the police station from the place of occurrence was about 12 kms. At the relevant time, she was returning from the fields with the load of cattle fodder. When she reached near Jwar/Arhar field of Laxmi, the accused-Respondent Ram Asarey emerged therefrom, caught hold of her and forcibly took her to the field. Her efforts to rescue herself from his clutches resulted in vain. He downed her in the field and committed rape on her. While doing so, he also caused bite injuries on her face and scratches with his nails on the other parts of her body. Her shouts attracted Jai Pal Singh P.W. 2 and Mangi P.W. 3. Seeing them approaching, the accused-Respondent ran away.

3. When she reached home, her husband was not there. At his arrival she narrated the incident to him and then went with him to lodge the F.I.R. On the lodging of the F.I.R. , a case was registered and investigation followed at the hands of the S.I. R. P. Tiwari P.W. 5.

4. She was medically examined at 8.2.1993 at 1.30 a.m. in Government Female Hospital, Rath by Dr. Sandhya Gupta P.W. 4. There were multiple scratch marks in an area of 3 ? 4 cm. over the right lower end of her wrist (lower end of radius) and on left hand in an area of 1-1/2 cm. ? 1 cm. on the head of radius. Besides, there was teeth bite over left side of her face, 3 cm. above middle point of mandible. The vagina admitted two fingers easily. No injury was found on her private parts. Vaginal smear was taken and sent for examination. She was also sent for X-ray for the determination of her age. It was Dr. S. R. Gupta P.W. 6 who had taken her X-ray. On the basis of the same, her age was found to be over 19 years.

5. Petticoat that she was putting on at the time of the incident was taken into possession and sealed by the Investigating Officer. Thereafter, it was sent for chemical examination. The investigation resulted in submission of charge sheet against accused-Respondent. The defence was of denial. According to the accused-Respondent, he was not present in the village on 7.2.1993. Instead, he was in Rath and selling chillies.

6. At the trial, the prosecutrix Ramshri P.W. 1 supported the prosecution case, but Jai Pal Singh P.W. 2 and Mangi P.W. 3 who had allegedly reached the spot and seen the accused-Respondent running away, turned hostile. The chemical examination report was also to the effect that petticoat contained sperms and human semen. The trial court however, recorded acquittal observing that the independent witnesses had turned hostile ; that injuries sustained by the victim were superficial ; that no load of cattle fodder was found at the spot by the Investigating Officer, that she could not even state the area and boundaries of the field in which the incident took place. It was also relied upon as a ground to discard her testimony that according to her the incident had taken place in the field of Laxmi whereas Investigating Officer had found it to be the field of one Ramesh. He also made reference to this aspect of the matter that earlier she was married to one Jasraj and during his lifetime, she married with Man Singh and gave birth to two sons. He also alluded to the defence suggestion (denied by her) that Man Singh had also deserted her and she was at the relevant time living with one Ram Bharosey. The indication probably was that she was a lady of loose character leading an immoral life. Basing on these factors, he acquitted the accused-Respondent.

7. We have heard Sri S. K. Pal, learned A.G.A. and Sri R. K. Gupta learned Counsel for the accused-Respondent. The record has also been summoned before us which we have carefully perused. The submission of the learned A.G.A. is that there was no justification whatsoever for the trial Judge to have thrown away the testimony of the prosecutrix who was the star witness and the victim of the incident. On the other

hand, the learned Counsel for the accused-Respondent attempted to support the reasoning adopted by the trial Judge in exonerating the accused-Respondent.

8. On careful consideration, we are of the firm opinion that without in-depth analysis the trial Judge recorded the acquittal on flimsy and unsustainable grounds. We wish to elucidate our reasons in the discussion that follows.

9. True, the so-called eye-witnesses Jaipal Singh P.W. 2 and Mangi P.W. 3 who had reached the spot on hearing the shouts of the prosecutrix and on spotting whom the accused-Respondent had fled away after committing the crime of rape, turned hostile. But it amounts to adding insult to injury to reject the testimony of the prosecutrix on this premise. She had no animus to falsely implicate the accused-Respondent. The F.I.R. was almost prompt having been lodged the same night at 10.45 p.m. The incident had taken place that day at 5.00 p.m. and the distance of the police station from the place of occurrence was about 12 kms. When she reached home after having been raped by the accused-Respondent, her husband was not there. She waited for him and on his arrival, she narrated the incident to him and went with him to lodge the F.I.R. The F.I.R. was lodged by oral narration which is an indicator of its spontaneity. A suggestion was made to the prosecutrix Ramshri P.W. 1 in her cross-examination that earlier to the incident Veer Singh uncle of the accused-Respondent Ram Asarey had been murdered in which Rama Shanker was the accused. She pleaded ignorance in this regard. It was suggested to her that her husband was the tractor driver of Rama Shanker and she had illicit relations with him, at whose behest, she falsely implicated the accused-Respondent. She emphatically refuted such suggestions. No evidence was adduced from the side of the accused-Respondent to prove that her husband was the tractor driver of Rama Shanker. It does not stand to reason at all that her husband would have made her a tool to falsely implicate the accused-Respondent for the offence of rape at the instance of Rama Shanker (with whom he was not shown having any connection) and that he would have readily agreed for it. Other factors emerging from the evidence on record also completely shatter this unfounded defence version advanced from the side of the accused-Respondent to get away from the clutches of law for the serious offence of rape committed by him. To come to the point, learned trial Judge was wrong in rejecting the trustworthy evidence of prosecutrix on the premise of the independent witnesses having not supported the prosecution case.

10. It was equally inconsequential that she had not been able to disclose the boundaries and the area of the plot in which the rape was committed with her and described the same as belonging to Laxmi whereas, as per the Investigating Officer, the said plot belonged to one Ramesh. She was an illiterate lady of rural background and could not be flawed if she could not describe the boundaries and area of the plot correctly. Further, she knew it to be the field of Laxmi and she described it so to the Investigating Officer. However, on verification the Investigating Officer found it

to be the field of one Ramesh. Laxmi and Ramesh were Brahmins and residents of the same village. The place of the incident could not be doubted simply because it happened to be described as belonging to Laxmi whereas actually it belonged to one Ramesh. She could be wrong in her knowledge or information about the ownership of the plot, but that was wholly irrelevant for the decision of the point in issue which was the commission of rape over her by the accused-Respondent in that field.

11. It is also to be pointed out that the testimony of the prosecutrix found support from medical evidence and chemical examiner's report over her petticoat. She had received multiple scratch marks over her both wrists and teeth biting marks on her face and the same had been caused to her by the accused-Respondent while committing rape on her after downing her on the ground. Her specific statement was there that the accused-Respondent scratched her with his nails and bit her cheeks with his teeth. Indeed, the scratch marks sustained by her on her wrists could be caused by nails and as per her medical report, signs of teeth bites were also found on her face. The injuries found on her person were indicative of the resistance and struggle offered by her and the brute force applied by the accused-Respondent to fulfil his animal desire. To our mind, the trial Judge was also erroneous in his approach in interpreting it against the prosecution that no injuries had been sustained by the prosecutrix from surfacing leftout shots of the plants where she was downed. It was preposterous to presume that such leftout surfacing shots of the plants of "jwar" were throughout the area without any space in between. The accused-Respondent downed the prosecutrix in the space not covered by such shots and committed rape on her. Further, the chemical examiner's report regarding the petticoat of the prosecutrix supports the prosecution case in a great deal. As per the said report Ext. Ka-8, sperms and human semen had been found thereon. The said petticoat was worn by the prosecutrix at the time of incident and the chemical examiner's report is an important piece of evidence in support of the prosecution case.

12. Allusion by the trial Judge to this aspect of the matter that the prosecutrix was earlier married to Jasraj and during his lifetime she married with Man Singh giving birth to two sons was perhaps to indicate that she was a characterless lady of loose morals. It was also seemingly to fortify this impression that he referred to the suggestion made to her in cross-examination that Man Singh also deserted her and she was living with one Ram Bharosey. We should point out that law does not grant licence to any one to commit rape on a lady even if she is of loose morals. In the case at hand, the prosecutrix had given plausible explanation for marrying with Man Singh during lifetime of Jasraj. She stated that Jasraj used to beat her and was not giving food to her. In such compelling circumstances, she had to marry with Man Singh. She denied that Man Singh had deserted her and she was living with one Ram Bharosey. She also denied the suggestion made to her in cross-examination that she was having illicit relations with one Rama Shanker. It appears that

accused-Respondent shamelessly tried to assassinate the character of the prosecutrix and the trial Judge was swayed in forming an impression that she was a lady of loose morals and easy virtues. He was unmindful that this aspect was irrelevant and he was to come to the finding on the basis of the evidence on record and attending circumstances as to whether the accused-Respondent had committed rape on her.

13. The trial Judge also made it a point of the rejection of the testimony of the prosecutrix that load of cattle fodder was not found by the Investigating Officer at the spot when he visited it at the instance of the prosecutrix, though she claimed that she had shown it to him. We do not think that it could be a ground to reject her testimony. As we stated earlier, she was an illiterate lady. The incident had taken place on 7.2.1993 and her testimony was recorded on 8.8.1995. The above slip could be due to lapse of time and consequent failure of memory. It was equally possible that the cattle fodder, having been left by the prosecutrix at the spot in a sad mental state after the incident, could have been eaten away by some cattle or taken away by some one else before the Investigating Officer had visited the spot next day.

14. So, to come to the point, for the discussion made hereinabove, we come to the conclusion that it was proved to the hilt by trustworthy evidence of the prosecutrix coupled by medical evidence and other attending circumstances that the accused-Respondent had committed rape on her on the given date, time and place. The trial Judge has erred in recording acquittal on wholly irrelevant premises. He was not at all justified in disbelieving the prosecutrix whose testimony had the ring of truth and was supported by medical evidence as also by other factors emerging on record dealt with by us in the above discussion.

15. We reverse the finding of acquittal recorded by the trial Judge by allowing this appeal. We find the accused-Respondent Ram Asarey guilty of the offence punishable u/s 376, I.P.C. and convict him therefor. We sentence him to undergo rigorous imprisonment for seven years for the said offence. The accused-Respondent is on bail. Chief Judicial Magistrate, Hamirpur shall send a compliance report within two months after lodging him in jail to serve out the sentence.

16. The judgment be certified to the lower court.