

**(2007) 05 AHC CK 0354**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal A. No. 114 of 2005

Bheem Bahadur alias Kana

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** May 18, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313
- Penal Code, 1860 (IPC) - Section 376

**Citation:** (2007) 3 ACR 3504

**Hon'ble Judges:** Rajiv Sharma, J; K.K. Misra, J

**Bench:** Division Bench

**Advocate:** Anurag Singh Chauhan, for the Appellant; A.G.A., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

K.K. Misra, J.

The instant criminal appeal arises against the judgment and order passed by the Additional Sessions Judge (F.T.C.-II), Lucknow dated September 2, 2004 in Sessions Trial No. 416 of 2004 and in Crime No. 395 of 2003 charged u/s 376, I.P.C., Police Station Talkatora, district Lucknow sentencing the accused-Appellant to undergo life imprisonment with a fine of Rs. 1,000 and in default of payment, he shall undergo 3 months rigorous imprisonment for the offence u/s 376, I.P.C.

2. Prosecution story in brief, is that the complainant Shri Nizamuddin son of Chhotey Khan, resident of Jhopad patti by the side of Nullah in E-Block, Sector-5, Rajajipuram, Lucknow, on 8.10.2003 in the day about 3 p.m. his daughter Km. Shabnam aged about 7-8 years was playing in the vicinity and Bheem Bahadur alias Kana of the mohalla seduced his daughter Shabnam and took her in his lap to the house of Naseem Gaddi and there, he forcibly committed rape on her as a result of which blood was oozing out from her private part and on hearing the cry of the daughter when the wife of the complainant Nizamuddin reached there, the miscreant Bheem

Bahadur fled away from the spot leaving her daughter on the floor and on bringing her daughter home, the prosecutrix became unconscious and after gaining her consciousness, the complainant lodged written report at the police station Tal Katora, Exhibit Ka-1.

3. On the basis of the written report, chik report (Exhibit Ka-12) was prepared and the case was registered and assigned for investigation. After the conclusion of the evidence, finding the evidence sufficient to proceed with the case, the Investigating Officer submitted charge-sheet Exhibit Ka-10 against the accused-Bheem Bahadur alias Kana u/s 376, I.P.C. in the court of Magistrate.

4. The cognizance was taken by the learned Magistrate on 8.12.2003 and the case was committed to the court of Sessions on 5.6.2004.

5. After the appearance of the accused, charge u/s 376, I.P.C. was framed against the accused to which the accused pleaded not guilty and claimed to be tried.

6. Prosecution has examined four witnesses in all.

7. P.W. 1 Smt. Fareeda, who was the mother of the prosecutrix Km. Shabnam has stated that incident took place about eight months prior to her recording of statement in the Court, i.e., on 5.8.2004, when Bheem Bahadur had taken away her daughter, the prosecutrix aged about 7-8 years and committed rape on her on her cry, she alongwith her husband reached the place of occurrence. She further stated that Bheem Bahadur fled away leaving her daughter Km. Shabnam on the floor in unconscious condition. She brought back her daughter at her house where the prosecutrix revealed the whole story of incident to her parents P.W. 1 has further stated that she went to police station where her husband lodged the first information report. Paper No. 5/2 was shown to her to which she identified and stated that this is the same report which bears the signature of her husband, which is proved and marked as Exhibit Ka-1. She further stated that from police station, her daughter was taken to the Hospital and she alongwith her husband also accompanied her daughter where the medical examination of her daughter was done in the presence of Darogaji and the memo was prepared by him on the spot after sealing the clothes. She further stated that she put her thumb impression on the same. Paper No. A-6/1 was shown to her and she identified the same and proved and marked it as Ka-2. She further stated that the clothes taken into possession, were having blood stains.

8. P.W. 2 Km. Shabboo alias Shabnam, is the prosecutrix and she stated that on the day of incident, she was taken away by Bheem Bahadur to the vacant house of Naseem Gaddi where he laid down her on the floor, put off her underwear and also his paint and forcibly committed rape on her. On this she cried and on hearing her cry, parents reached there and miscreant Bheem Bahadur fled away from the spot. The prosecutrix became unconscious and on gaining consciousness, she narrated the whole story to her parents. She further stated that she was medically examined

and her hand prints were obtained. Her statement was also recorded before the Magistrate. She further stated that her clothes frock and underwear were given to Darogaji by her mother, who prepared its memo and sealed the clothes. She further stated that she and her mother put their thumb impression on memo taking into possession the clothes. The said sealed bundles of clothes of the witness (P.W. 2) was opened before the Court. She identified her frock, underwear, the clothe in which these were put and the clothe in which these clothes bundle was sealed, which is marked as Exhibits-1 to IV, respectively.

9. P.W. 3 Dr. Rashmi Gupta has stated that on 8.10.2003, she was posted in Virangana Avanti Bai Hospital, Lucknow and at 8 p.m. she had medically examined prosecution Km. Shabnam daughter of Nizamuddin, who was brought before her by C. P. No. 627, Rahnuma Begum of Police Station, Talkatora and identified. On external examination, she had found no mark of injury on any part of the body of the prosecutrix. She further stated that breast and axillary and pubic hairs were not developed. On internal examination, the doctor found tear of about 2 cm. present at 6 O'clock position. She has further stated that no bleeding was found. Hymen was torn, vagina admits one finger with difficulty. Vaginal smear was taken and sent for testing. She further stated that she advised for admission and for perineal stitching put parents of the prosecutrix refused for admission and perineal stitching. The refusal consent of the parents was taken and their thumb marks were obtained on the medical examination report, which was prepared by the P.W. 3 at the time of medical examination and she proved the same and it is marked as Exhibit Ka-3. She was also of the opinion that no definite opinion regarding rape can be given. Report prove is marked as Exhibit Ka-4. She further stated that Doctor Someshwar Puri was also posted with her and she is well acquainted with his handwriting and signature and proved the X-ray report No. 98/-3 prepared by Doctor Ratan Pandey, pathologist was also posted with her and she is also well-acquainted with her handwriting and signature and proved the pathology report prepared by Dr. Ratan Pandey on the back of reference slip sent by Doctor, which is marked as Exhibit Ka-6. She opined that there is every possibility of torn of hymen and injury on the private part if a rape is committed on such of age as of prosecutrix.

10. Injury report of the prosecutrix Exhibit Ka-3, is reproduced as under:

Certified that I have examined Shabnam D/o Nizamuddin resident of Nullah Ke Kinare, Jhoparpatti, Sector E, Rajajipuram brought and identified by Rehnuma Begum, C. P. No. 627, Police Station Talkatora, Lucknow in V.A.B. Mahila Hospital at 8 p.m. on 8.10.2003.

M.I. (1) A scan mark of about 1 inch on left side of face, 2 cm. away from left interal angle of eye.

(2) A small til present on left side of neck posteriorly.

(3) Full hand impression of Shabnam (both hand).

Wt. 48 lbs Height 47 inch Teeth 6+6/6+6 External Examination: No mark of injury on any part of body breast not developed axillary and pubic hairs not developed.

Internal Examination: A tear of about 2 cm. present posteriorly at 6 O'clock position. No bleeding at present. Hymen torn. Vagina admits one finger with difficulty. Vaginal smear taken and sent for H/P examination. Adv. Admit and perineal stitching. Refused consent taken.

11. P.W. 4, S.I. Syed Hasan Jafar has stated that on 8.12.2003, he was posted at Police Station, Talkatora in the capacity of Sub-Inspector and the investigation of the case was entrusted to him. He recorded the statement of the prosecutrix and her parents. He inspected the place of occurrence with complainant and prepared the site plan which is correct according to the situation and the same is marked as Ka-7. He further stated that he recorded the statement of other witnesses present on the spot. He arrested the accused on 9.10.2003 and recorded his statement. He after obtaining the medical reports of the prosecutrix, produced the prosecutrix before the court of concerned Magistrate where the statement of the prosecutrix was recorded u/s 164, Cr. P.C. After finding sufficient evidence during completion of investigation, the Investigating Officer (P.W.) submitted the charge-sheet against the accused and it is proved and marked as Exhibit Ka-10. The witness also proved the receipt of report Vidhi Vigyan Prayogshala, U.P. Mahanagar, Lucknow, received by Constable Mohd. Zameel with whose handwriting and signature, the witness is well acquainted and it is marked as Ka-11. He also proved chik report prepared by Constable Raja Ram on the basis of written report filed by the complainant and he proved the same.

12. After close of the prosecution evidence, the statement of the accused was recorded u/s 313, Cr. P.C. in which he has stated that it is wrong to say that he has committed rape on Km. Shabnam. He denied the prosecution story and stated that he has been falsely implicated in this case. He also stated that since he is not meeting the house expenses of Fareeda as such he has been implicated in this case.

13. We have heard Shri Anurag Singh Chauhan amicus curiae the learned Counsel for the Appellant and the learned A.G.A.

14. The registry will pay amicus curiae a sum of Rs. 2,000 remuneration, for contesting this case.

15. Shri Anurag Singh Chauhan, learned Counsel for the Appellant has been appointed as amicus curiae and he has argued mainly on the point that the mother of the prosecutrix was working at 2-3 places as maid-servant and could not reach the place of occurrence as alleged by her.

16. In this case, F.I.R. was lodged on 8.10.2003 at 4.50 p.m. where the occurrence has taken place on the same day at 3 p.m. Therefore, in our view, the lodging of F.I.R. is prompt and is not delayed.

17. It has been argued by the learned Counsel for the Appellant that the accused has been falsely implicated in this case. He also stated that since the Appellant was not meeting the house expenses of Fareeda as such he has been implicated in this case.

18. In response to the same, P.W. 1 has stated in her statement that she was knowing the accused-Bheem Bahadur prior to the incident and the accused was not visiting at her residence. He was not to supply food to her who is a waiter by profession. She has also denied that accused has been falsely implicated due to some dispute with the accused.

19. In this regard, it is relevant to mention here that prosecutrix P.W. 2 was also got testified to ascertain her capability for deposing in Court. After her testing, she was found fit to state on oath. In her statement, she has given description of entire incident. She has stated that on the day of the incident, she was playing at some distance from her residence where accused-Bheem Bahadur came and picked up her in his lap and took her away in the house of Naseem Gaddi where he put off her underwear as well as his pant and committed rape on her.

20. It has also been argued by the learned Counsel for the Appellant vehemently that human blood which was recovered from the frock and underwear of the prosecutrix although sent to the medical analysts, was not sent for D.N.A. test. These points are not very material for prosecution u/s 376, I.P.C. when a minor girl has been raped. The doctor has opined that there was no penetration and the underwear were full of blood goes to show that the prosecutrix has been raped by the present Appellant.

21. It has also been argued by Shri Anurag Singh Chauhan that the informant has not been examined and the F.I.R. is not proved. In this regard, we have gone through the record and find that the incident in question was not witnessed by the parents of the victim and as per F.I.R. version and the statement of the witness when the parents of victim reached on the spot, the accused had committed the crime in question and left the victim on the ground hence both mother and father of the victim reached at the scene on hearing the cry of their daughter Shabnam. The entire incident was narrated to them by the victim when she became conscious on sparkling water on her face. Thus, both mother and father of the victim are the witnesses of same fact which could be proved by any one of them. It is submitted by the prosecution side that the complainant belongs to a labour class and is a poor fellow who has gone to some place not known to his family members hence he could not be examined. In these circumstances, if the complainant father of the victim is not examined and mother has been examined to prove the Exhibit Ka-1, it has no adverse impact on the prosecution case as P.W. 1 has proved the contents of the written report as well as the signature of the complainant. Moreover, the purpose of F.I.R. is to bring the law in motion.

22. It has been argued by the learned amicus curiae that no independent witness has been examined by the prosecution to corroborate its version and mother is the related witness whose testimony cannot be believed. In the present case, the corroboration of the testimony of the victim is not required as per the settled law seeking corroboration of the testimony of the victim is just like adding insult to her injury and if the statement of the prosecutrix is found convincing, conviction can be made on her sole testimony.

23. We have carefully examined the statement of the prosecutrix. The question was put by the learned court which goes to show that she was capable of understanding the questions and she knew the difference between what is true and what is false. She has completely supported the prosecution case. So far as the actual act of committing rape is concerned, the cross-examiner has miserably failed to secure a single point in favour of the defence. Only suggestion after suggestion has been given that is because of the relationship between the parties, the Appellant has been falsely implicated.

24. The opinion of the doctor is not conclusive as internal examination shows tear of 2 cm. Hymen was found torn and perinial stitching was advised. Therefore, we are of the firm view that in the present case, rape was committed on a minor girl and her testimony accompanied by the medical examination and Exhibit Ka-11 which goes to show human blood was found on her frock and underwear.

25. As discussed above, we are not inclined to interfere with the finding recorded by the trial court convicting the Appellant-Bheem Bahadur.

26. Accordingly the appeal is dismissed.

27. The judgment and order dated 2.9.2004, passed in Sessions Trial No. 416 of 2004 u/s 376, I.P.C., Police Station, Talkatora, district Lucknow convicting and sentencing the accused-Appellant-Bheem Bahadur alias Kana to undergo life imprisonment, is hereby upheld.

28. Let the judgment be certified to the lower court for reporting compliance within two months. Lower court record be returned.