
(2009) 10 AHC CK 0224

Allahabad High Court

Case No: None

State of U.P.

APPELLANT

Vs

Babu and Others

RESPONDENT

Date of Decision: Oct. 22, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 342, 376, 506

Hon'ble Judges: Uma Nath Singh, J; S.N.H. Zaidi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This application for leave to appeal arises out of judgment dated 06.07.2009 passed by learned Additional Sessions Judge/FTC-4, Lakhimpur Kheri in Sessions Trial Nos. 1210 of 2003 recording acquittal of accused-respondents in an offence registered under Sections 342 and 376 read with Section 120-B I.P.C.

2. It appears from the prosecution case narrated in the impugned judgment that on 25-07-2003 all the accused persons trespassed into the house of complainant Ram Dayal and forcibly picked up his daughter, aged about 13 years, and then confined her to one closed room and then one of the accused Babu forcibly committed sexual intercourse with her and other three co-accused remained sitting outside the house. The explanation of delay in the lodgment of the report given by complainant was that his complaint was not recorded/registered at Police Station, therefore, he made a separate complaint to the concerned Superintendent of Police on 06.08.2003, and pursuant thereto the F.I.R was lodged on 17.08.2003.

3. After investigation, the police put up a challan under Sections 342, 376 and 506 I.P.C and finally the accused were tried upon only for offences under Sections 342 and 376 read with Section 120-B I.P.C. Prosecution examined seven witnesses apart from placing on record documentary evidence. Accused persons, viz, main accused Babu son of Khushi, Munim son of Kalicharan, Santu son of Hardeo and Malikhe son

of Damodar Lunia in their statements recorded u/s 313 Cr.P.C, before the trial court, denied the prosecution evidence and pleaded false implication on account of past enmity. Accused, Babu explained that the prosecutrix was staying with his maternal uncle, Ram Khelawan one year prior to the date of incident. Further the village pradhan, Gangadhar was also on inimical terms with him as he had refused to work as a labourer, therefore, at his instance he has been framed up in this case. Trial court noticed the delay in the lodgment of F.I.R. It was also noted that there was no mark of external violence to show that there was a tussle during alleged forcible sexual intercourse. Therefore, an inference was drawn that this was a case of consensual sexual intercourse. That apart, the solitary evidence of prosecutrix in the attending circumstances is that accused Badu was found to be related to her. Her age was noticed to be between 17 and 19 years in medical examination, hence the trial court recorded the acquittal.

4. We do not find any serious infirmity in the judgment as it would be highly unsafe to rely on solitary testimony of the prosecutrix which is not supported by any other evidence to show that this was the case of forcible sexual intercourse. The Apex Court in a number of decisions regarding interference with the judgment of acquittal has held that when two views are possible, the view taken in favour of the accused should be accepted as probable and reasonable view.

5. Hence this application for leave to appeal is rejected.