

(1998) 02 AHC CK 0134

Allahabad High Court

Case No: Criminal A. No. 48 of 1998

Imran

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Feb. 7, 1998**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 376

**Citation:** (1998) CriLJ 2888 : (1998) 3 RCR(Criminal) 413**Hon'ble Judges:** G.S.N. Tripathi, J**Bench:** Single Bench**Advocate:** B.N. Sharma and S.A. Sharma, for the Appellant; A.G.A., for the Respondent**Final Decision:** Allowed

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**Judgement**

G.S.N. Tripathi, J.

This appeal arises out of judgment and order dated 19-12-97 passed by IIIrd Addl. Sessions Judge, Ghaziabad in S. T. No. 730/96, State v. Imran, u/s 376, I.P.C, P.S. Modinagar, Dist. Ghaziabad, whereby the learned trial Judge has held the accused Imran guilty of the charge u/s 376, I.P.C. and sentenced him to undergo 10 years" R. I.

2. Initially the matter was posted for deciding the bail application of the accused, but on the request of the learned counsel for the parties, the appeal itself was heard on merits and is being decided herewith.

3. The prosecution case started on the basis of a F.I.R. dated 2-5-96 lodged by Abdul Malik. He has alleged that on 2-5-97, his minor daughter Km. Reshma, aged about 4 years was looking after the cattle outside the house. At about 6 p.m. when the complainant noticed, she was not visible. Dilshad and Jamil Ahmad, resident of the Mohalla of the complainant search for the child. When they went a little closure in

the fields, they heard the cries of Km. Reshma. They rushed towards her in the Sugarcane field. They found that Km. Reshma was lying naked and the accused Imran was riding upon her and having sex with her. Seeing the complainant and the witnesses, the accused tried to run away but he was arrested on the spot. The girl was bleeding from her private parts and was not in a good state. The complainant had taken her also to the police station and lodged the report, Exhibit Ka 3 there on the same day at 10.30 p.m. After that, usual investigation followed and the charge sheet was laid before the court.

4. Meanwhile the girl was medically examined on 2-5-96 on the same day at 11 p.m. The following report was available :-

Ext. Exam. : - Teeth 12/12.

Hight, Weight could not be taken

There is no mark of injury found over the body

Pulse - 100/ml.

Resp - 24/ ml.

Injury over private parts :-

Hymen torn and lacerated.

Catheterization done. Clear blood 10 cc. obtained.

Vaginal injury : - a lacerated wound of approx 4" x 1/4" on ant. wall extending into peritoneum deep and a loop of soft tissue coming out in vagina through injury.

Post. Wall - a lacerated wound on post wall into muscle deep extending up to hymen at 6.0 clock position.

Vagina 2f loose.

First Aid given by local application of Haemostatic fluids and sedation given.

The injury appears to have been caused by some blunt object.

Vaginal smear taken for histopathological exam.

Case referred to Higlue Institute (Medical College, Meerut) for further investigation, management and age determination as advised by C. M.S.

5. The prosecution examined the following evidence in support of its case.

6. P. W. 1 is the complainant Abdul Malik. In the Examination-in-Chief, he supported the prosecution version as contained in the F.I.R. But in the cross-examination, he turned hostile and stated that, in fact, he did not see the accused committing any crime with her nor he saw him anywhere near the place of occurrence. He did not see his daughter being raped by the accused. Under pressure of the public, he

lodged a false report. In the cross-examination by the learned prosecutor, he stuck to his version and did not support the prosecution case.

7. P.W. 2, Jamil Ahmad, is the witness cited in the F.I.R. He has also turned hostile and has resiled from the statement given by him u/s 161, Cr.P.C.

8. P.W. 3 Km. Reshma, aged about 6-7 years on 2-5-97 i.e. on the date of her examination said that no such incident took place with her. She had fallen down in the field and, thereafter, started bleeding from her private parts. She did not know the accused even and has categorically stated that he did not rape her. But she admitted that her kachcha had been blood soaked.

9. Other documents on the record were admitted by the learned counsel for the accused, therefore, formal evidence was not lodged.

10. The accused in his statement u/s 313, Cr.P.C. has denied the allegations and said that on account of enmity, he has been falsely implicated.

11. The learned trial Judge, after evaluation of all the evidence on the record, concluded that charge against the accused was proved beyond a shadow of reasonable doubt and passed the order of conviction as noted above.

12. Feeling aggrieved, this appeal has been filed by the accused.

13. I have heard the learned counsel for the parties and gone through the record. I find that there is much force in this appeal and it deserves to be allowed.

14. There is no evidence on the record to connect the accused with the crime, so much so that the real father of the victim and the maker of the F.I.R., Abdul Malik, P.W. 1 has disowned the F.I.R. and stated that he did not see anything with his own eyes. He did not see the accused committing the crime but under public pressure, he lodged the false F.I.R. In the cross-examination, by the prosecution also, nothing was found which could be helpful in supporting the prosecution case. He stated that due to fear of police, he had given a false statement before the Court as well as u/s 161, Cr.P.C.

15. P.W. 2 Jamil Ahmad is said to be a person who accompanied the complainant and saw the accused committing the crime with Km. Reshma. He has totally disowned the statement u/s 161, Cr.P.C. and stated before the trial court that he did not see anything with his own eyes. Not only this, even the victim Km. Reshma has also totally exonerated the accused. Therefore, there remains no evidence on the record to connect the accused with this crime.

16. It is really strange that after viewing the prosecution witnesses and noting that all the witnesses had turned hostile to the prosecution, the learned trial court tried to convict the accused on the basis of surmises and conjunctures. At page 9 of the judgment, towards the bottom, he says that the accused was arrested on the spot but he did not read this statement with the other statements of the P.Ws., who

totally exonerated the accused. So, it was not proper for the learned trial Court to accept the prosecution story that the accused was arrested on the spot. Unfortunately, this type of approach of the learned trial court is not correct. He has surmised at page 10 that the witnesses have turned hostile due to pressure of the accused. This is merely an imaginary approach not having anything to do with the prosecution case.

17. When the very start of the prosecution case is disbelieved and the F.I.R. is ignored, it cannot be said that the prosecution was launched correctly. Further, after perusal of evidence on the record, there not even a word of legal evidence connecting the accused with the crime. Hence I do not find any force in the contention of the learned prosecutor that circumstantial evidence may be believed. Unfortunately, there is no circumstantial evidence on the record except the earlier version of the prosecution, which stands totally discarded by itself.

18. Father is the best person to safeguard the interest of the child and the child also knows as to whether any illicit sexual act has been done upon him or her or not, by the accused. Even she has disowned the prosecution version. Therefore, there remains no evidence on the record to bring the charge home against the accused.

19. The appeal is, accordingly, allowed. The judgment and order dated 19-12-97 passed by the learned trial Court is set aside. The accused shall be released from the jail forthwith unless required in some other case. The bail application is also allowed.