Kallu And Others Vs State of U.P.

Court: Allahabad High Court

Date of Decision: May 28, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 164, 344
Juvenile Justice (Care and Protection of Children) Act, 2000 â€" Section 15, 15(1)(a), 16, 6(2)
Penal Code, 1860 (IPC) â€" Section 344, 363, 366, 376

Citation: (2013) 6 ADJ 482 : (2013) 82 ALLCC 637

Hon'ble Judges: Anil Kumar Sharma, J

Bench: Single Bench

Advocate: A.K. Verma and S.R. Verma, for the Appellant;

Final Decision: Disposed Of

Judgement

Anil Kumar Sharma, J.
This appeal challenges the order dated 14.5.2013, passed by Sri R.A. Kaushik, learned Sessions Judge, Mathura

in Criminal Misc. Case No. 163 of 2012, whereby the appellants have been convicted u/s 344 Cr. P.C. and each had been sentenced to undergo

one month"s imprisonment. Heard Sri S.R. Verma and Sri A.K. Verma, Advocates on behalf of the appellants, learned AGA for the State and

perused the impugned order as also the papers filed alongwith the appeal and placed by the counsel for the appellants during the course of hearing.

2. The facts as culled out from the impugned order are that appellant No. 1 submitted a written report against the five named and two unknown

persons for kidnapping his 13-years old daughter (appellant No. 2) on 23.5.2012 at about 8.00 p.m. The victim was recovered on 24.5.2012.

Her statements u/s 161 and 164 Cr. P.C. were recorded, wherein inter alia she levelled allegations of gang rape against the named accused

persons. The investigation ended in charge-sheet against the accused persons and the case was committed to the Court of Session, being S.T. No.

499 of 2012. Learned Sessions Judge framed charges under Sections 363, 366 and 376 IPC against Taib, Shakeel, Badshah and Akbar alias

Anwar. The prosecution in support of its case had examined appellant No. 1 as PW-1, appellant No. 2 as PW-2 and appellant No. 3 as PW-5.

Two other witnesses of fact were also examined in the Court of Session and all of them did not support the prosecution story and were declared

hostile by the State counsel. The learned Sessions Judge vide judgment dated 21.12.2013 has acquitted the accused persons for the charges

levelled against them and has further held that the appellants have fabricated false evidence and have given false evidence, so a case u/s 344 Cr.

P.C. be registered and show-cause notices be given to them.

3. Pursuant to the notice u/s 344 Cr. P.C. the appellants filed their separate reply and learned Sessions Judge after hearing the parties counsel

through the impugned order held that the appellants have given false evidence or have fabricated false evidence, so they are liable to be convicted

and accordingly sentence of one month was imposed on each of them. Aggrieved the appellants have come up in this appeal.

4. It is not disputed that appellant No. 1 has lodged a report scribed by appellant No. 3 and he has levelled the allegations of kidnapping his 13

years" old daughter (appellant No. 2) against five named and two unknown accused persons. The victim was recovered on 24.5.2012. Her

statements u/s 161 and 164 Cr. P.C. were recorded. All the appellants in their deposition before the trial Court have resiled from their previous

police statements and appellant No. 2 denied her statement u/s 164 Cr. P.C. recorded by the Magistrate.

5. Appellant No. 1 in his reply has stated that the report was dictated by the co-villagers. On similar lines is the explanation of appellant No. 3 who

has further admitted that it was not read over to the complainant.

6. The learned trial Court has placed reliance on the case of Mahila Vinod Kumari v. State of M.P. (Criminal Misc. Petition No. 8515-8516 of

2008) decided by the Apex Court on 11.7.2008. The facts of this case are quite similar to the case in hand. The Supreme Court has confirmed the

conviction of victim of gang rape u/s 344 Cr. P.C. who later on denied to have been subjected to gang rape during trial.

7. Section 344 Cr. P.C. inter alia provides that at the time of delivery of any judgment the Court of Session or Magistrate of the first class

expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or willfully given false evidence or had fabricated

false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in

the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognisance of the

offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such

offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred

rupees, or with both.

8. In the above noted case, the Apex Court has laid down guidelines for the Courts as to how a person fabricating or giving false evidence is to be

dealt with in the following words:

For exercising the powers under the section the Court at the time of delivery of judgment or final order must at the first instance express an opinion

to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the

Court must come to the conclusion that in the interests of justice the witness concerned should be punished summarily by it for the offence which

appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment the witness

must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions arc mandatory. [See

Narayanswami Vs. The State of Maharashtra,].

9. In the instant case the learned Sessions Judge while delivering the judgment in S.T. No. 499 of 2012 has observed that the appellants have given

false evidence or fabricated false evidence so they should be tried summarily u/s 344 Cr. P.C. and thereafter show-cause notice was given to

them. The appellants filed their reply and after considering the contention of the appellants and hearing their counsel the impugned order has been

delivered. Thus, there is no illegality in the impugned order as regards conviction of the appellants u/s 344 Cr. P.C. is concerned. The learned

Sessions Judge has taken due care and precaution in proceeding against the appellants.

10. The object of the legislature underlying enactment of the provisions of Section 344 Cr. P.C. is to eradicate the evil of perjury and fabrication of

evidence, which is rising to a great extent, therefore, the Courts are required to deal with such unscrupulous persons with firm hand and the

provisions should be more effectively and frequently used.

11. However, in the instant case, we find that appellant No. 3 is simply an scribe of the report and is not an eye-witness of the incident, therefore,

imprisonment of one month awarded to him seems inappropriate and excessive. The ends of justice would be met if his sentence is substituted by

fine of Rs. 200/- only. As regards Kallu, appellant No. 1 being father of the victim and alleged eye-witness of kidnapping his sentence is justified.

12. The statement of the victim was recorded before the trial Court on 6.11.2012 and she had given her age 14 years. Learned Sessions Judge

has also observed in his judgment dated 21.12.2012 that as per the medical report the age of the victim was between 16-17 years. Thus there is

no doubt that the appellant No. 2 was below the age of 18 years on the date when she gave false evidence, therefore, the provisions of Juvenile

Justice (Care and Protection of Children), Act 2000 are attracted. Section 16 of the Act provides as under:

16. Order that may not be passed against juvenile.-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be

sentenced to death or life imprisonment, or committed to prison on in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence

committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in hi interest or in the interest of other

juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the

Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for

the order of the State Government.

13. Order that can be passed regarding a juvenile in conflict in law have been listed in Section 15 of the Act. u/s 15(1)(a) a juvenile can be allowed

to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile. Section

6(2) of the Act mandates that powers conferred on the Juvenile Justice Board or under the Act may also be exercised by the High Court and the

Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

14. In view of the provisions of the Act, no sentence of imprisonment can be passed against the appellant No. 2, as she was admittedly a "juvenile"

on the date of offence and her case is to be dealt with under the provisions of Section 15 of the Act. Considering the nature of offence, the age of

the appellant No. 2 and other facts and circumstances of the case, the ends of justice would be met, if she is admonished u/s 15(1)(a) of the Act.

15. The net result of the foregoing discussion is that while confirming the conviction of the appellants u/s 344 IPC as recorded by learned Sessions

Judge, the following sentences are passed:

1. Appellant No. 1 - His sentence of one month imprisonment is confirmed;

2. Appellant No. 2-She is admonished under the provisions of Section 15(1)(a) of Juvenile Justice (Care and Protection of Children), Act, 2000.

3. Appellant No. 3 - The sentence awarded by the learned Sessions Judge is substituted by fine of Rs. 200/-. In default of payment of fine, he

would undergo simple imprisonment of five days.

16. With the above directions, the appeal is finally disposed of at the stage of admission and the impugned order is modified accordingly.

17. The appellant Nos. 1 and 3 are directed to surrender in the Court of Sessions Judge, Mathura before expiry of period of interim bail granted to

them. Let certified copy of the order be transmitted to the Court concerned within three days through FAX alongwith usual mode of

communication.