

(2005) 09 AHC CK 0283

Allahabad High Court

Case No: Jail Appeal No. 2611 of 2001

Surendra Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 21, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 375, 376, 376(2)
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)

Citation: (2006) CriLJ 700

Hon'ble Judges: Amar Saran, J

Bench: Single Bench

Advocate: V.M. Zaidi and Shubhashish Adhichary, for the Appellant; A.G. A., for the Respondent

Final Decision: Partly Allowed

Judgement

Amar Saran, J.

This appeal has been filed against the, conviction of the appellant Surendra Singh u/s 376 I.P.C. to 14 years R.I. and a fine of Rs. 10,000/- and 5 years R.I. and a fine of Rs. 1,000/- under Section 3(2)(v) of the S.C./S.T. Act. In default of payment of fine u/s 376 I PC, three years simple imprisonment was awarded and for non-payment of fine u/s 3(2)(v) of S.C./S.T. Act, one year simple imprisonment was also awarded. The sentences were concurrent.

2. I have heard Sri V.M. Zaidi, learned Amicus Curiae for the appellant and the learned A.G.A. for the State of U.P.

3. The prosecution case as mentioned in the F.I.R. was that on 27.4.1999 at 2 p.m., a person selling carrots and salt was roaming around the village. At that time, the

victim girl (name not disclosed) aged 10 years was tempted with the carrots and the appellant took her towards the field of Brijendra Singh in village Inguri and committed rape on the girl, who was the niece of the informant Bare Lal. On hearing her cries, Ram Asarey resident of his village, who was easing near the culvert ran there and he saw that the hawker (appellant) had opened the girl's salwar and was stuck to her. On his alarm, the appellant ran towards his cycle. The girl was smeared with blood. The appellant was caught on the spot and on the alarm, the villagers Sher Singh, Chhote Lal, Dinesh Singh etc., arrived there. When the appellant was beaten, he disclosed his name to be Surendra Singh. The appellant along with cycle and wares was taken to the police station. The incident took place at 2 p.m. the report was prepared at P.S. Labedi at 4 p.m. by Bade Lal. The CO. investigated the case. He took the custody of the pant of the appellant and the blood soaked clothes of the accused and victim and also prepared fards of the wares and other items recovered from the appellant. The girl was examined at the District Hospital, Etawah by Dr. Veena Gupta P.W. 4 on 27.4.1999 at 10 p.m. She found that there II tears in perineum at central position of about I cm size. Fresh bleeding present, tenderness was present and even little finger was not inserting in the vagina. She stated the injury was 6-8 hours duration and grievous in nature. She also expressed possibility of rape. By a supplementary report Dr. Veena Gupta found the age of the girl to be below 9 years.

4. P.W. I, Ram Asrey, who is an eye witness, P.W. 2, Bade Lal, who was the informant, P.W. 3, the victim (name suppressed for reasons of delicacy), P.W. 4, Dr. Veena Gupta, who conducted medical examination of the victim girl and described the medical condition of the girl as above and P.W. 5, H.M. Rajendra Pal Singh, P.S. Labedi, who prepared the chik FIR, took the accused in custody who was brought by the informant Bade Lal and other witnesses and who proved the charge sheet and other documents and steps taken for investigation by C.O. Bharthana who investigated the case. P.W. 5 even noted the injuries on the accused, but he did not get him medically examined. The girl also had injuries. No other witness was examined by the prosecution. The accused only pleaded denial in his statement u/s 313 Cr.P.C. He led no witness in defence.

5. P.W. 1 Ram Asrey deposed that at the material time he had gone to ease himself. On hearing the cries of a girl he ran in that direction, then he saw the appellant committing rape on the girl. He caught hold of the accused. Then informant Bade Lal and fellow villagers Chhotey doctor and others arrived there. The girl was bleeding as a result of the rape on her, even from her private parts. Then they took the appellant to the Police Station.

6. It was argued that P.W.I, Ram Asrey who is the only eyewitness apart from the victim, is a relation of Bade Lal, hence his evidence could not be relied on. According to this witness he had caught the accused committing rape on the girl and had taken the accused to the police station. The witness also carried the victim girl, to

the police station. Nothing adverse has been elicited from the cross examination of this witness. Simply because he is a relation of the girl will provide no-reason for him to falsely implicate the appellant whilst sparing the real offender.

7. P.W.3 the victim, who was aged about 10 to 11 years at the time of examination, has also corroborated the version of Ram Asrey. She stated that the incident took place 1 1/2 years earlier. The appellant was that very accused, who was selling carrots near her house. He tempted her with the carrots and near the culvert he committed rape. On her cries and shouts, her uncle Ram Asrey came there. He carried her home and also caught hold of the appellant. She was also taken to hospital. Nothing adverse has been elicited from the cross examination of this witness also. There is no reason to disbelieve the statement given by the victim.

8. P.W. 2 Bade Lal, who is the informant and uncle of the girl reaffirmed the version mentioned in the MR, He is not an eye witness but deposes to have lodged the report on the basis of the disclosure by Ram Asrey and the girl. An argument was raised as to why the FIR was lodged by this witness who admittedly was not an eye witness and not by Ram Asrey. He is the real uncle of the victim girl and closest to the girl. There is no mandate in law requiring an FIR to be lodged by an eye witness and not by a close relation of the victim.

9. It was argued by the learned Amicus curiae that no independent witnesses have been examined in this case. Independent, persons are reluctant to come by in these days to give testimony in court, because there is growth in selfishness and other people are disinclined to get embroiled in what they consider problems of another. That indifferent approach has resulted in the growth of crimes in today's world. However in this case the conviction of the appellant can safely be affirmed on the basis of the evidence of Ram Asrey, Bade Lal and the victim girl. There is no reason whatsoever for the witnesses to have named the appellant whilst sparing the real assailant. He was also caught on the spot and handed over to the police and the charge of rape on a 9 year old girl has been corroborated by the medical evidence.

10. Learned counsel for the appellant has contended that there is only evidence of penetration and no evidence of rape because vagina admits only one finger with difficulty and there was no other injury other than the injuries described above or elsewhere and as per the pathologists report dated 28.4.99 there was no spermatozoa, dead or alive in the vaginal smear. I am not impressed by this submission of the learned counsel for the appellant. Dr. Veena Gupta P.W.4 had noted the grievous injuries received by the victim and after examining the girl, she has categorically stated that the girl had been raped and denied the suggestion that she had not been raped. Furthermore, the salwar of the girl was taken in possession. As per the chemical examiner's report dated 9.9.1999 it contained sperm. The girl's salwar and kurta and the appellant's pant and two pieces of stick found at the spot also contained blood according to this report. Also under Explanation to Section 375 I PC clause sixthly, which refers to the rape on a girl

without her consent when she is under sixteen years of age, penetration is sufficient for constituting the sexual intercourse necessary for making out the offence of rape. The charge of rape was also corroborated by the blood of the victim which had stained various items described above as a result of the forcible penetration.

11. In this view of the matter, the prosecution has succeeded in establishing the case against the appellant. There is no error in the judgment of the trial court recording the conviction of the appellant. However, on the point of sentence, I think learned trial judge erred on the side of severity in awarding a sentence of 14 years R.I. and a fine of Rs. 10,000 for the offence and in exceeding the minimum sentence of 10 years prescribed u/s 376(2)(f) I PC, for rape when the victim is a girl under 12 years. The appellant, who was only 19 years in age as per his statement u/s 313 Cr.P.C. which was recorded on 13.2.2001 almost two years after the incident. The youthful appellant appears to have been consumed by lust and to have committed this, dastardly crime with a girl of tender years in the heat of passion when he may not have been fully in control of his senses, In these circumstances I think the sentence awarded to the appellant should be reduced to the legal minimum sentence of 10 years R.I. in such cases,

12. In this view of the matter while upholding the conviction of the appellant u/s 376 IPC, the sentence of the appellant is reduced to 10 years R.I. The fine of Rs. 10,000 is reduced to Rs. 1000. In default of payment of fine the appellant shall undergo 6 months further simple imprisonment. The sentence of 5 years u/s 3(2)(v) S.C./S.T. Act is maintained, but the fine of Rs. 1,000/- awarded against the appellant is set aside. The sentences shall run concurrently.

13. The appeal is partly allowed as above.