
(2009) 10 AHC CK 0243

Allahabad High Court

Case No: None

State of U.P.

APPELLANT

Vs

Dinesh Pasi and
Another

RESPONDENT

Date of Decision: Oct. 23, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164

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 a judgment dated 17.7.2009 passed by learned Additional Sessions Judge, F.T.C. Lucknow in Session Trial Nos. 1130 of 2008 under Sections 363,366 and 376 I.P.C.

2. It appears from the prosecution case as narrated in the trial court judgment that the prosecutrix was forcibly taken away by accused persons Dinesh Pasi and Arvind on 7.3.2008 at 7 p.m. and an F.I.R. was lodged on 9.3.2008 at 9.15 p.m. She was recovered on 10.3.2008 and her statement u/s 164 Cr.P.C. was recorded on 20.3.2008.

3. After usual investigation, the police put up a chalan against the accused respondents and examined seven witnesses. They are Shatrughan Lal P.W.1, Ram Baksh Singh P.W.2, Smt. Shambhu Dai P.W.3, prosecutrix P.W.4, Head Constable Siya Ram P.W.5, Medical Officer, Doctor Manjul Bahar P.W.6, and Sub Inspector, Diwan Singh P.W.7. In their statements accused persons denied the prosecution case and submitted that they are married persons and they have been falsely implicated in the case.

4. During the course of trial, learned Additional Sessions Judge noticed material contradictions in the testimonies of prosecution witnesses, particularly Smt. Shambhu Dei P.W.3 and the prosecutrix P.W.4 regarding allegation of taking away the prosecutrix

forcibly. Trial court also noticed in her statement recorded u/s 164 Cr.P.C that the prosecutrix had voluntarily gone along with accused Dinesh Pasi. Besides, on a careful scrutiny of medical evidence placed on record which relates to determination of age of the prosecutrix, it was noticed that she was 16 or 17 years old and, thus, she was in a position to give her consent.

5. We have heard learned Counsel for the State/appellant.

6. The principal submission of the learned Counsel for appellant is based on the age of prosecutrix who was assessed to be 16 or 17 years as per the radiological examination report and thus she was a minor on the date of incident. And as such, she was not in position to give her consent.

7. Looking to careful analysis of medical evidence placed on record, and the fact that there was no mark of struggle which could show the resistance and further that the testimony of prosecutrix stands contradicted by the testimony of her mother, we are not inclined to interfere with the impugned judgment. That apart, in a catena of decisions rendered by the Apex Court, it has been held that if on appreciation of evidence, two views are possible, the view taken in favour of the accused by lower court in the facts and circumstances of the case should be taken as the probable and reasonable view.

8. Hence, this application for leave to appeal is dismissed.