

## Sushila Vs State of Uttar Pradesh and Others

**Court:** ALLAHABAD HIGH COURT

**Date of Decision:** Nov. 26, 2014

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) - Section 161, 164 & Penal Code, 1860 (IPC) - Section 323, 342, 376, 504, 506

**Citation:** (2015) 3 ALJ 320 : (2015) 89 ALLCC 389

**Hon'ble Judges:** Rakesh Tiwari, J; Vijay Lakshmi, J.

**Bench:** Division Bench

**Advocate:** Hamendra Pratap Singh and Sujeet Kumar, for the Appellant

**Final Decision:** Dismissed

### Judgement

Vijay Lakshmi, J.

1. The instant criminal appeal has been filed against the judgment dated 26.8.2014 passed by the learned Additional Sessions Judge, Court No. 2,

Ghaziabad in Sessions Trial No. 361 of 2008, State v. Hariram Sharma, relating to Case Crime No. 1408 of 2007, Police Station Sahibabad,

district Ghaziabad whereby learned trial Judge has acquitted the opposite party No. 2 Hariram Sharma from the charges under Sections 376, 323,

504 and 506 I.P.C. We have heard learned counsel for the appellant and learned A.G.A. appearing for the State on the point of admission and

perused the records.

2. Some background facts giving rise to this appeal are that the prosecutrix Sushila wife of Suresh Chand Sharma lodged a written report at Police

Station Sahibabad, district Ghaziabad to the effect that she has an ancestral house consisting 9 rooms. Five tenants were residing in that house.

Some days prior to the occurrence, her brother-in-law (Nandoi) Hariram Sharma came to live in that house. He was rented a room by the

prosecutrix. Hariram Sharma, who was a widower, had an evil eye on the prosecutrix. When the prosecutrix made complaint about this fact to her

husband and her husband forbade Hariram Sharma to do so, Hariram Sharma with the help of some unsocial elements assaulted her husband and

threatened to kill him. One day when husband of the prosecutrix was out of the home due to fear of Hariram Sharma, he entered into the room of

the prosecutrix with a knife in his hand and on the point of knife, committed rape with her. After that he threatened the prosecutrix that if she dared

to inform this episode to any one, he would cut her into pieces and would pour acid on her. Thereafter, Hariram Sharma continued to rape her

forcibly several times. He used to lock the prosecutrix inside a room at the day time and in the night made forcible physical relation with her. On

17.12.2007 she, some how managed to make a phone call to her son. When her son reached at the house, Hariram Sharma committed

MAARPIT with him. The prosecutrix some how managed to run away from the house and went to Surendra Mohan Hospital where she got

herself admitted in ICU due to her serious physical condition.

3. On the basis of above written report, a criminal case was registered at Crime No. 1408 of 2007, under Sections 376, 342, 323, 504 and 506

I.P.C., Police Station Sahibabad, district Ghaziabad against Hariram Sharma and the matter was investigated. After investigation the police

submitted charge-sheet before the Magistrate. The case being triable by the Court of Sessions, it was committed to such court where charges were

framed against the accused who denied from all allegations and claimed his trial.

4. The prosecution in order to prove its case produced 5 witnesses in all, out of which only two witnesses i.e. the prosecutrix herself and her son

were of fact and the rest were formal in nature. The son of the prosecutrix Satish Chandra, aged about 30 years has been produced as P.W. 1

who has stated that the accused is his real Phoopha who used to keep an evil eye on her mother. When her father was ill, he committed rape with

his mother and detained her illegally in a room for several days. Her mother informed about all these facts to him on phone then he came and got

his mother admitted in ICU of Narendra Mohan Hospital and gave a written report in his hand writing on the dictation of her mother at the police

Station Sahibabad. After that her mother was sent for medical examination with a lady constable.

5. The prosecutrix herself has been produced as P.W. 4 and she has also supported the prosecution story as depicted in the F.I.R. in his

examination-in-chief.

6. However, a close scrutiny of the statements of both these witnesses recorded during their cross-examination, reveals that the statements of both

these witnesses suffer from material contradictions; several infirmities, embellishments, omissions and improvements making their testimony wholly

unreliable. The medical examination report does not support the story of rape as no external or internal injury has been found on her body.

7. The statement of P.W. 1 appears wholly unbelievable when he says that despite the fact that her mother was kept confined in a room by the

accused, neither he nor his father made any attempt to rescue her and they continued to perform their usual duties in a routine way. P.W. 1 has

admitted the fact that his mother had gone to the hospital all alone. This fact also puts a question mark on the trustworthiness of prosecution story

that an injured woman kept confined in a room without proper food or medical help reached the hospital all alone and got herself admitted, that too

directly in the ICU. There is no documentary evidence in support of this fact that the prosecutrix was ever admitted in the ICU or even in general

ward of the hospital. There appears material contradictions between the statements of the prosecutrix recorded under Sections 161, 164 Cr.P.C.

and the statement in court. The learned trial court also noted all these facts and found the prosecution case and the prosecution witness wholly

unreliable and unworthy of credence.

8. After hearing the averments advanced by learned counsel for the parties and after going through the impugned judgment, we are of the

considered view that the findings recorded by the trial Court are correct. It cannot be said that the trial Court has not properly appreciated the

evidence or there is any perversity in the findings so recorded by the trial Court. There appears no illegality or infirmity in the judgment impugned.

On the evidence available, no other view is possible except that of the acquittal. The appeal has no substance and it is liable to be dismissed at

admission stage itself. Accordingly, the appeal is dismissed.