
(2009) 04 UK CK 0029

Uttarakhand High Court

Case No: Criminal Jail Appeal No. 227 of 2003

Sohan @ Sonu

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: April 2, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 207, 313, 374
- Penal Code, 1860 (IPC) - Section 376, 376(2), 411

Citation: (2009) 2 UC 944

Hon'ble Judges: Prafulla C. Pant, J; B.S. Verma, J

Bench: Division Bench

Advocate: L.K. Tiwari, Amicus Curiae, for the Appellant; Amit Bhatt, Additional Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Prafulla C. Pant, J.

This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973 (hereinafter referred as Code of Criminal Procedure), is directed against the judgment and order dated 05-07-2003, passed by learned Sessions Judge, Dehradun, in Sessions Trial No. 60 of 2001, whereby accused/Appellant Sohan @ Sonu has been convicted u/s 376(2) of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.). The convict (Appellant) is sentenced to undergo imprisonment for life and also directed to pay fine of Rs. 5,000/-, in default of payment of which he is further directed to undergo rigorous imprisonment for a period of six months.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story, in brief is that on 02-01-2001, Alkama Bano (P.W.2), a ten year old minor daughter of complainant Gulam Haidar (P.W.1) had gone to jungle to collect the woods along with her younger brother Raja and younger sister Kahkashan (P.W.3). Manija (P.W.4), aunt of the victim Alkama Bano (a minor girl) had

also gone there. After sometime, accused/Appellant Sohan @ Sonu came there and told Alkama Bano, Kahkashan and Raja that he too would like to play with them. Meanwhile, Manija (P.W.4) left the jungle. Thereafter, accused/Appellant Sohan @ Sonu asked Kahkashan to go to take the fire wood and taking benefit of Alkama Bano being all alone he made her to lie down on the ground, removed her garments and started raping her. As soon as Alkama Bano's younger brother and sister came back, he left the victim. Alkama Bano (P.W.2) told about the incident to her mother. Gulam Haidar (P.W.1), father of Alkama Bano, reached home at 03:00-03:30 P.M., and came to know that accused Sohan @ Sonu has committed rape on her daughter. He went to police station Raipur and lodged first information report on the very day i.e. 02-01-2001, at about 04:00 P.M. Immediately, the police started investigation, took the victim Alkama Bano to Medical Officer Dr. Asha Gupta (P.W.5), who medically examined the victim at 04:30 P.M. on the very day (02-01-2001). At the time of examination, the Medical Officer found that the victim was bleeding from her vagina. Hymen of the victim was found ruptured. Tear about 3/4 cm in the midline of vaginal fourchette was found. The aforesaid Medical Officer got the surgery done with the help of Dr. Jain and the tear was repaired. After the X-ray reports were received, of knee, ankle, wrist and elbow joint, in her supplementary report P.W.5 Dr. Asha Gupta opined that the age of the girl was 10 years. After interrogating the witnesses and arrest of the accused, and on completion of the investigation, the Investigating Officer P.W.7 Sub Inspector R.B. Singh submitted charge sheet (Ext.A-11) against the accused Sohan @ Sonu, for his trial in respect of offence punishable u/s 376 read with Section 411 of I.P.C.

4. The Magistrate, on receipt of charge sheet, after giving necessary copies to the accused, as required u/s 207 of Code of Criminal Procedure, appears to have committed the case to the court of Sessions, for trial. Learned Sessions Judge, after hearing on 19-05-2001, framed charge of offence punishable u/s 376(2) of I.P.C. against the accused Sohan @ Sonu, to which he pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W.1 Gulam Haidar (complainant and father of the victim); P.W.2 Alkama Babo (a minor girl, who is the victim in this case); P.W.3 Kahkashan (younger sister of the victim); P.W.4 Manija (aunt of the victim); P.W.5 Dr. Asha Gupta (who medically examined the girl); P.W. 6 Head Constable Ram Kumar (who prepared the check report of the F.I.R. lodged by the complainant) and P.W.7 Sub Inspector R.B. Singh (who investigated the case). The oral and documentary evidence was put to the accused u/s 313 of Code of Criminal Procedure, in reply to which he alleged the same to be false. However, no evidence in defence was adduced. After hearing the parties, learned Sessions Judge, Dehradun, vide impugned judgment and order dated 05-07-2003, found the accused/Appellant Sohan @ Sonu guilty of charge of offence punishable u/s 376(2) of I.P.C. After hearing the parties on sentence, the convict was sentenced to undergo imprisonment for life and also directed to pay fine of Rs. 5,000/- in default of payment of which he was further directed to undergo rigorous imprisonment for

a period of six months. Aggrieved by said judgment and order, this appeal is preferred by the convict from the District Jail, Dehradun.

5. P.W.1 Gulam Haidar, father of the victim, has stated that on the day of incident when he came back to his house he was told that his daughter Alkama Bano was raped in the jungle. The witness has stated that he immediately got report (Ext. A-1) written and gave it at the police station on the very day i.e. 02-01-2001. This witness is not cross-examined on behalf of the accused, even after opportunity been given.

6. P.W.2 Alkama Bano, victim and a minor girl, has stated that on the day of incident she along with her younger sister Kahkashan and younger brother Raja had gone to collect the woods in the jungle. This witness has further stated that they were playing in the jungle, at about noon, when accused/Appellant came there and expressed his willingness to play with them. While playing the boy (accused/Appellant) introduced himself. After sometime, according to this witness he got sent her younger brother and sister to collect fire-wood and took her (the victim) towards the bush. He gagged her mouth and got her lie down on the ground. Thereafter, he removed her garments and raped her. P.W.2 Alkama Bano has further stated that the accused threatened her to dire consequences if the incident is disclosed to anyone. The victim has further stated that she started bleeding from the vagina. Lastly, she has stated that she was medically examined by the Medical Officer.

7. P.W.3 Kahkashan, a girl aged 8 years, has corroborated the testimony of her sister Alkama Bano, as stated above. We do not think it necessary to repeat the entire story again.

8. P.W.4 Manija, aunt of the victim, has also corroborated the fact that the three children namely Alkama Bano, Kahkashan and Raja had gone to jungle and she left them all alone. This witness has further told that accused/Appellant came in the jungle and when she wanted to take the children with her he told her that he would bring back the children to their home and they may be permitted to play.

9. The commission of rape on Alkama Bano gets corroboration not only from the testimony of Kahkashan (P.W.3), but also from the statement of P.W.5 Dr. Asha Gupta, who has stated that on 02-01-2001, while she was posted as a Medical Officer in the Doon Hospital, at 04:30 P.M., she medically examined the victim Alkama Bano daughter of Gulam Haidar. She has stated that the vagina of the victim was bleeding. Her hymen was ruptured. There was tear of 3/4 cm on the midline of vagina. P.W.5 Dr. Asha Gupta has further stated that she got the surgery done with the help of Dr. Jain to repair the tear found on the vagina of the victim on the very day. The Medical Officer has also stated that she found following injuries on the person of the victim:

I) Scratch mark on left side, 1 inch away from the lip about 1  cm in size,

- ii) Scratch on right side cheek about 2 cm in size.
- iii) 2 marks about 3-4 cm in right side of middle of neck,
- iv) 1 scratch mark on the medio flexor aspect of knee about 4 fingers below the right knee joint.
- v) Scratch mark about 3 cm on medio flexor aspect of left knee.

The duration of injury was about 4-5 hours. She advised X-ray of knee ankle, wrist and elbow joint of the victim, for determination of her age. P.W.5 Dr. Asha Gupta has proved her report (Ext. A-2) prepared on 02-1-2001, at about 04:30 P.M. On receipt of the X-ray report, she submitted supplementary report dated 14-02-2001, which is Ext. A-3 on the record. In said report she had opined that the age of the girl was 10 years. Though, she has mentioned that no definite opinion about rape can be given, but the injuries mentioned in Ext. A-2 by her on 02-01-2001, read with the statement of P.W.2 Alkama Bano, clearly prove the prosecution story beyond doubt that accused/Appellant Sohan @ Sonu committed rape on her in the jungle on 02-01-2001. The age of the accused/Appellant appears to be of 20 years (as mentioned in his statement recorded u/s 313 of Code of Criminal Procedure.) The age of the girl is 10 years, as stated by her and gets corroboration from the supplementary medical report (Ext. A -3). That being so, the offence committed by the accused/Appellant is covered under Clause (f) of Sub-section (2) of Section 376 of I.P.O.

10. On behalf of the Appellant it is argued that the accused was not known to the victim, and as such, the Investigating Officer should have got conducted the test identification parade, and without getting identified in the parade, it cannot be said that the accused/Appellant Sohan @ Sonu is the same person, who committed rape on the victim. We are unable to accept the argument advanced on behalf of the accused/Appellant for the reason that it is clearly stated by the victim (P.W.2) in her statement that while playing in the jungle, the accused/Appellant disclosed his name. Once he has disclosed his name and identity is clear, it is not necessary to get conducted the test identification parade, after the arrest of the accuse. Apart from this, in [Raman Bhai Naran Bhai Patel and Others Vs. State of Gujarat](#), the Apex court has held that where a test identification parade is required and not done, the prosecution evidence of eyewitnesses cannot be thrown out. What is required in such case is that the testimony of the eyewitnesses should be read with caution. In the present case, the minor girl has no reason to falsely implicate the accused/Appellant Sohan @ Sonu. There appears no enmity of the victim against the accused.

11. The next point which is argued by learned Amicus Curiae appearing on behalf of the accused/Appellant is that in the first information report the accused Sohan @ Sonu is shown to be resident of Shivpuri Colony, while in the memorandum of arrest (Ext. A-10), accused/Appellant Sohan @ Sonu has been shown to be resident of

Puran Basti. No doubt, there is some inconsistency as to the residence of the accused, but the victim as well as her sister have identified the accused/Appellant in the court and as to his identity there remains no confusion.

12. Lastly, Mr. L.K. Tiwari, learned Amicus Curiae appearing on behalf of the accused/Appellant submitted that the trial court has given the extreme/maximum penalty provided under the law. We have reassessed the evidence on record. Keeping in view the fact that the accused/Appellant has no criminal history and he is young, we think it just and proper that a sentence of ten years rigorous imprisonment would meet the ends of the justice in this case.

13. For the reasons as discussed above, this appeal is liable to be dismissed as far as the conviction of the accused/Appellant u/s 376(2) of I.P.C., is concerned. However, on the point of sentence, we think it just and proper to partly allow the appeal and to reduce the sentence to rigorous imprisonment for a period of ten years. Accordingly, the appeal is partly allowed. The conviction recorded by the trial court against accused/Appellant Sohan @ Sonu in respect of offence punishable u/s 376(2) of I.P.C., is upheld. However, the sentence awarded by the trial court is, set aside. Instead, the accused/Appellant Sohan @ Sonu is sentenced to rigorous imprisonment for a period of ten years, out of which the period already undergone during the trial and during the pendency of this appeal shall be set off. The Registry is directed to send back the lower court record. The Registry is directed also to send a copy of this judgment to the Superintendent of jail concerned where the Appellant is serving out the sentence.