

Kumudi Lal

Vs

State of U.P.

Criminal Appeal No. 40 of 1998

(G. T. Nanavati, S. P. Kurdukar JJ)

31.03.1999

JUDGMENT

G.T. Nanavati, J.

1. The applicant has been convicted for committing offences punishable under Section 376 and 302 IPC and Section 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. For the offence punishable under Section 302 IPC death sentence has been imposed upon him. The appellant is challenging his conviction and sentence imposed under those Sections.

2. The prosecution case was that on 7.9.95 at about 7.00 a.m. Kumari Marri, aged about 14 years had gone to ease herself in a field near her house and that while she was so doing, the appellant pounced upon her, pinned her down on the ground, committed rape and when she started resisting and raising shouts, strangulated and killed her by tying her Salwar around her neck. It was also the prosecution case that hearing her shouts her father Mihilal (PW-1) and Avadh Ram (PW-2) who had also gone near that field for answering the call nature, rushed to that place, it was also the prosecution case that they had seen the appellant committing rape and on seeing them the appellant got up and ran away. They had also chased the appellant but he was able to escape.

3. In order to prove its case, besides the medical other evidence the prosecution had led the evidence of Mihitan (PW-1), Avadh Ram (PW-2) who were the eye-witnesses. Believing their evidence the trial Court convicted the appellant for the offences punishable under Sections 378 and 302 IPC and also under Section 3(ii)(iv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As the trial Court had imposed death sentence upon the appellant for the offence of murder, it forwarded the record to the High Court for confirmation of that sentence. The appellant also filed an appeal challenging his conviction. The High Court after re-appreciating the evidence, agreed with the findings recorded by the trial Court and confirmed the death sentence by observing as under :-

"It was he who, acting as a beast of prey, pounced upon an unprotected, helpless and physically weak young girl, and just to satisfy his sexual lust defiled her despite the best possible resistance coming from the victim. And still the innate, albeit-depraved, urge for self survival was so strong in him that he would not hesitate a bit in squeezing out the last breath of the poor little duck. His diabolical, vile and wicked deed was the worst form of degraded gender crime, sparing him from the gallows would be nothing short of letting loose a sex maniac on prowl. Succinctly put mercy to the appellant under these circumstances would be quite misplaced. It would not only slight the valiant resistance put up by the deceased in protecting her honour and chastity but also an insult to the entire womanhood. We, therefore, reject the appeal

in its entirety and affirm the reference for confirmation moved by the trial Court."

4. The evidence of both the eye-witnesses discloses that Mihilal (PW-1) was about 150 meters away from the place of the incident. The sight plan also shows that the place where Kumari Marri had gone was in northern corner of the field of chhedu. The father was near the South Western corner of that field. The sight plan shows the distance between the two places as 125 yards. Avadh Ram (PW-2) was at that time near the South East corner of the field of Cheedu at a distance of about 150 sq. yards. Both Mihilal and Avadh Ram had reached the place of incident almost at the same time. They have stated that they had seen the appellant committing rape and that on seeing them he got up and started running away. Both of them had chased the appellant for some distance.

5. Both the Courts below have accepted their evidence as reliable and truthful. Even after close scrutiny we do not find any infirmity in their evidence which would create doubt regarding veracity of what they have stated. The High Court was, therefore, right in confirming the findings recorded by the trial Court that the appellant committed rape on Marri and also killed her.

6. But the evidence on record does not justify the reasons given by the High Court for confirming the death sentence. The evidence does not indicate that Marri was taken by surprise and that the appellant had pounced upon her and had rendered her helpless. She had completely removed her Salwar which possible was not necessary if she had merely gone for easing herself. No human excrete was found from near the place of indecent. If she was assaulted in the manner believed by the High Court then she would have raised cries earlier and not after the appellant had started raping. The post-mortem notes show that she was average built and was thus not a physically weak young girl. Not only she had removed her Salwar but her Kurta was also rolled up to the neck and, therefore, it was stated by P.W.1 and also the Investigation Officer that the body of Marri was nude. The evidence discloses that both P.Ws. 1 and 2 were at a short distance of 120-150 yards and would not have taken much time in reaching the place of occurrence. They would have reached before the appellant could have committed rape on an unwilling girl. The circumstances indicate that probably she was not unwilling initially to allow the appellant to have some liberty with her. The appellant not being able to resist his urge for sex went ahead in spite of her unwillingness for a sexual intercourse offered, some resistance and started raising shouts at that stage. In order to prevent her from raising shouts the appellant tied the Salwar around her neck which resulted in strangulation and her death. We, therefore, do not consider this to be fit case in which the extreme penalty of death deserves to be imposed upon the appellant. In our opinion, the High Court was wrong in confirming the death sentence without considering all these aspects disclosed by the evidence on record.

7. We, therefore, allow this appeal partly. His conviction under Sections 376 and 302 IPC and Section 3 (ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the sentence imposed upon him for the offences punishable under Section 376 IPC and Section 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are confirmed. However, we modify the order imposing death sentence for the offence of murder and alter it to imprisonment for life. All the sentences are ordered to run concurrently.