

**SUPREME COURT OF INDIA**

Amar Bahadur Singh

Vs.

State of U.P.

AIR 2011 SC 1352

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

25.01.2011

**ORDER**

1. The respondents have been served but they are not represented before us.
2. As per the prosecution story on the 2nd April, 1989 at about 11.45 p.m. the prosecutrix, the daughter in law of Santu, was sleeping in her in laws' house along with her daughter and other family members. Her husband was however away to the Punjab in connection with his employment. On an alarm raised by the prosecutrix all those at home woke up and saw that the appellant was committing rape on the prosecutrix. The appellant was accordingly apprehended on the spot with the help of a police party which was passing close by. It was also noticed that the prosecutrix was bleeding from her private parts. The appellant was accordingly brought to the police station where a report was lodged and a case under Section 376 of the IPC was registered.
3. The Trial Court relying on the evidence of PW.1 the prosecutrix, PW.2 Santu, her father-in-law, and PW.6, her sister-in-law, held that the case against the accused was made out and accordingly sentenced him to undergo R.I. for seven years. The matter was thereafter taken in appeal to the High Court and the High Court while observing that the facts of the case indicated that the prosecutrix was a consenting party thought that in the circumstance it was a fit case where the sentence ought to be reduced from seven to five years. The appeal was nevertheless dismissed with the reduction in the quantum of sentence. This appeal by way of special leave is now before us.
4. We have heard the learned counsel for the appellant. He has raised only one argument before us. He has pointed out that the prosecutrix was 26 years of age as on the date of the incident and was the mother of seven children and the very fact that the rape had been allegedly committed in her house not only in the presence of her children and other family members, the story itself appeared to be unacceptable. It has also been highlighted that in the background of the fact that the High Court had observed that the prosecutrix was a consenting party the accused ought to have been acquitted on that basis alone. We find merit in this plea. We find that under the circumstance the possibility that rape could have been

committed on her in the presence of so many members in a small house is difficult to believe. On the contrary the findings of the High Court that the prosecutrix was a consenting party appear to be correct and it was perhaps when the accused and the prosecutrix had been caught red-handed that the story of rape had been cooked up, to salvage some of the family honour. This is often the tendency in such matters. The High Court has therefore gone completely wrong in dismissing the appeal even after its categorical observations. We accordingly allow the appeal, set aside the conviction of the appellant and order his acquittal. The appellant is on bail; his bail bonds are discharged.