

Munnaour @ Jhannan

v.

State of U.P

(Supreme Court Of India)

HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE GYAN SUDHA MISRA

Criminal Appeal No. 1045 Of 2005 | 28-02-2012

T.S. Thakur, J.

1. This appeal by special appeal arises out of a judgment and order dated 21.12.2004 passed by the High Court of Allahabad whereby Criminal Appeal No.232 of 1994 filed by the appellant and two others against their conviction for offences punishable under Sections 376 and 366 of the Indian Penal Code (for short 'the IPC') and sentence of rigorous imprisonment for 10 years under the former and 7 years under the latter provision, has been dismissed.

2. Briefly stated the prosecution case is that Km. Kamini (PW-3), aged about 14 years had on 7.10.1988 around 7.30 pm. gone to answer the call of nature, when the appellant allegedly came from behind, gagged her mouth by Angochha, brandished a knife and forced her towards a room besides a hospital in the locality. From there the appellant took her to accused Sudhir's Coal depot, where she was pushed on to a cot and raped by the appellant. Sudhir, Raj Kumar salesman and Raj Kumar Halwai also took turns to ravish the victim. She resisted but in vain and got hurt because of the breaking of her bangles. Next day, she is alleged to have come out of the room on the pretext of answering the call of nature, escaped and reached home to narrate her woeful experience to her parents. PW-1, Amar Chand, father of the prosecutrix then lodged a report with the police, who registered a case for offences punishable under Sections 366 and 376 of the IPC against the accused persons.

3. The accused were committed to Sessions Court at Sultanpur where they pleaded not guilty and claimed a trial. At the trial, the prosecution examined as many as 9 witnesses including the investigating officer. Those examined included PW-1, Amar Chand-father of the prosecutrix, PW-2, Rajkumari-mother of the prosecutrix, PW-3, Km. Kamini-the prosecutrix herself, PW-4, Dr. Talab Jahan, Medical Officer, PW-5, Modh Basheer, PW-6, Dr. Suman Bajpai, Medical Officer, PW-7, Dr. V.K. Verma, Senior Radiologist and PW-8, Dr. Lalitha S Pillai. The Sessions Judge eventually came to the conclusion that the prosecution had proved the case against the accused persons beyond a reasonable doubt and accordingly convicted the appellant for offences mentioned earlier and sentenced him to undergo rigorous imprisonment for a period of 10 years under Section 376 of the IPC and 7 years under Section 366 of the IPC. The sentences were directed to run concurrently. Two other accused

persons who were put on trial along with the appellant were also convicted and sentenced for the offence of rape.

4. Aggrieved by the judgment and order passed by the Sessions Court, the appellant preferred Criminal Appeal No. 232 of 1994 along with the co-accused, which appeal was heard and dismissed by the High Court in terms of its order dated 21.12.2004, under challenge in the present appeal.

5. Special Leave Petition No.6546 of 2005 was then filed against the impugned judgment and order by Raj Kumar Halwai, found guilty by the two courts below which was dismissed by this Court in terms of its order dated 9.12.2005. Special leave to appeal was, however, granted to the appellant by this Court by its order dated 18.8.2005. While doing so the order of dismissal dated 9.12.2005 passed by this Court in the case of Raj Kumar Halwai does not appear to have been brought to the notice of this Court. The prosecution version about the occurrence having been accepted by this Court by reason of the dismissal of the special leave petition filed by the co-accused; there is little room for us to take a different view. Even so, we have heard learned counsel for the appellant at length and gone through the record. The prosecution case as indicated above is entirely based on the version given by the prosecutrix herself, who first narrated the story to her parents leading to the lodging of the report with the police, and later to her medical examination by Dr. Talab Jahan, PW-4.

6. In her deposition before the trial Court Km. Kamini (PW3) gave her age to be 18 years at the time of her statement. The incident in question had taken place nearly four years before the date on which she was examined in the Court meaning thereby that she was a minor on the date of the occurrence. She narrated the incident and specifically accused the appellant and his companions of repeatedly raping her throughout the night. She also narrated how she had escaped in the morning and disclosed the incident to her parents. She was slapped by the accused-Sudhir and had also got injured in her knees in the course of the sexual assault on her. She further stated that after hearing about the incident her mother had called her father from the flour mill who in turn made a proposal to the parents of Sudhir that the latter should marry the witness as the incident had spoiled her life which proposal was rejected by them. She then went to the police station and showed her injuries. The injuries were even shown to the doctor who had examined her medically. The witness stood the cross-examination well as the trial Court and the High Court both came to the conclusion that there was nothing in her cross-examination that rendered her version unworthy of credit.

7. The deposition of Amar Chand (PW1) father of the prosecutrix and Smt. Raj Kumari (PW2) the mother of the prosecutrix fully supports the version given by the prosecutrix regarding her disappearance and return. They also supported the version given by the prosecutrix that she had narrated the incident to them after her return home and shown them the injuries which she had suffered. The fact that Amar Chand (PW1) had gone to the house of Sudhir who belonged to his own community with a proposal that the life of the prosecutrix

having been spoiled on account of the incident of rape, Sudhir should get married to her is also testified by Amar Chand (PW1). Amar Chand (PW1) further stated that the said proposal having been rejected by the parents and grandparents of Sudhir, he was left with no alternative but to report the matter to the police. In cross-examination of Amar Chand (PW1) a suggestion was made to this witness that he had lodged a false complaint against the accused-appellant herein as the witness had earlier tried to commit rape upon the appellant's sister which was resented by the appellant. Sister of the appellant was even examined as a defence witness. The trial Court and the High Court, however, rejected the version given by the defence witness having regard to the fact that the alleged attempt made by Amar Chand to rape the sister of the appellant was not reported to the police nor was any other legal action taken against him. That apart, the trial Court as also the High Court were of the view that Amar Chand (PW1) would not have staked the future of his daughter and spoiled her fair name by making a false accusation of rape against the appellant and three others only to take revenge against one of them.

8. Significantly enough, Amar Chand (PW1) has further stated that on account of the threats which he had received from the appellant that he would commit a similar act with the younger daughter of Amar Chand, he was forced to leave his village and shift to M.P. to save the family from any such humiliation and torture.

9. From the deposition of Amar Chand (PW1) it is further evident that a Medical Board comprising three doctors was constituted only after he had approached the District Magistrate and even threatened to commit suicide if the matter was not handled by the investigating agency properly. The Medical Board had not, despite the efforts of the witness, made a truthful report and tried to screen the accused persons by distorting the true facts.

10. Both the trial Court as also the High Court have, in our opinion, properly appreciated the evidence adduced by the prosecution and rightly concluded that the deposition of the prosecutrix was reliable and so was the version given by her parents, namely, Amar Chand (PW1) and Raj Kumari (PW2) which fully corroborated the prosecution story. Even the medical evidence on record does not shake the truthfulness of the prosecution case. It is true that doctor Talab Jahan (PW4) had reported that the prosecutrix admitted only one finger, but she had gone further to report that she had found redness of the labia majora of the prosecutrix. As against the version given by doctor Talab Jahan the deposition of Dr. Lalita S. Pillai (PW8) who was one of the members of the Medical Board constituted by the District Magistrate certified that the vagina admitted two fingers. The supplementary report Exbt. A4 stated that no definite opinion regarding rape could be given as the girl was used to sexual intercourse. It is not, therefore, as if that the medical evidence completely negated the theory of rape set up by the prosecution. Assuming that the prosecutrix was, even earlier to the incident, used to sexual intercourse, the same could be no reason to disbelieve her version that she was raped by the accused persons in the circumstances narrated by her.

11. We see no perversity in the appreciation of the evidence of the Courts below nor any miscarriage of justice to warrant interference especially when the special leave petition filed against the very same judgment by the accused persons has already been dismissed by this Court. In the result this appeal fails and is hereby dismissed.