



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.(s) 264 OF 2015**

RAJENDRA & ORS

...APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND

...RESPONDENT(S)

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present Criminal Appeal has been preferred by the Appellants challenging the Judgment and order dated 28.09.2012 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No. 911 of 2001. The appellants had approached the High Court in appeal under Section 374 of Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) challenging the Judgment and order dated 31.03.2000/03.04.2000 passed by the learned Additional Sessions Judge, Dehradun, in Sessions Trial No. 80 of 1999 wherein the appellants were convicted under

Section 376(2)(G) and Section 506 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and were sentenced to undergo rigorous imprisonment for 10 years along with a fine of Rs. 5000/- along with 6 months rigorous imprisonment u/s 506 IPC, running concurrently. The High Court in appeal upheld the conviction awarded by the Trial Court.

Factual Matrix

2. As per the prosecution story, on 31.07.1998, a written report was submitted by the victim to the Senior Superintendent of Police, Dehradun stating that on 07.04.1998 around 7:30pm while she was on her way back home from the market in Sanjay Colony, four people i.e. the appellants Rajendra, Pappu alias Hanuman, Sushil Kumar and Kishan met her. They closed her mouth and shut her eyes with a black handkerchief and raped her turn by turn after taking her to a nearby plot. After the alleged incident, she stated in the complaint, the accused kept threatening her because of which she could not file any complaint earlier. Based on this complaint, FIR/ Crime No. 315 of 1998 was registered at the P.S Dalanwala under Sections 376, 427 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) against all four accused. On receipt of the F.I.R., investigating agency was set in

motion. After the completion of investigation, final report/charge sheet was submitted against accused persons for the charges under Sections 376(2)(g), 427, 506 IPC on 27.10.1999. All the four accused pleaded not guilty and claimed trial wherein after appreciating the oral and documentary evidence recorded, the Additional District Judge, Dehradun in S.T. No. 80 of 1999 vide judgement and order dated 31.03.2000 and 03.04.2000 convicted the accused under Section 376(2)(g) IPC and under Section 506 IPC, and sentenced each one of them to rigorous imprisonment for a period of 10 years, and to six months (concurrent sentences) and directed to pay a fine of Rs. 5000/- (and in default S.I. for 6 months). Aggrieved by the decision of the Trial Court, the appellants preferred Criminal Appeal No 911 of 2001 under Section 374 Cr.P.C before the Hon'ble High Court of Uttarakhand at Nainital wherein the High Court finding no merit in the appeal dismissed the same vide order dated 28.09.2012. In dismissing the appeal, the Hon'ble High Court observed that considering the nature of the crime and the manner in which it had been committed, there could have been no other witness except the victim herself and held that the statement given by the victim was trustworthy and nothing creates any reasonable doubt in it. The

High Court further observed that the delay in registering the FIR was explained by the victim. The accused were known to her and thus she had no difficulty in identifying them.

3. Aggrieved by the High Court order, Accused no. 1 and 2 have challenged the same before us. During the pendency of the present appeal, Accused no. 3 and 4 have passed away.

Submissions

4. At the outset, the learned counsel for the appellants submitted that there are material contradictions in the FIR and in the statement given by the prosecutrix. Firstly, it is submitted that the FIR had been lodged after 3 months and 24 days of the alleged incident and no cogent explanation has been supplied for the delay. The reason mentioned in the FIR is ignorance and embarrassment however in her statement given to PW-2 she stated that she did not lodge the same because of fear. She also did not disclose the incident to anyone in the family due to fear. Only later she told an unknown woman about the same whose identity she was not able to recollect.

5. Secondly, it is submitted that as per the record, the report of the incident was written by one Jagjeewan Jot Singh but according to the evidence of the Prosecutrix the report was written with the

help of an unknown woman. The counsel submitted that the scribe of the FIR was not produced in the court to verify if the same was written by her or not. The site plan produced in the court was not signed or verified by the person who wrote the FIR.

6. Thirdly, it has been submitted that there existed previous enmity of the prosecutrix with the accused on account of a water dispute for which an earlier complaint dated 02.07.1998 lodged with the police was also brought to the notice of the Investigating officer. The counsel submitted that it is because of the same that she has concocted this false story to frame the accused persons. It is submitted that the brother in law of the prosecutrix had also stated in court confirming the enmity of the water dispute and had stated that on the date of the incident, the prosecutrix was at home and that the accused have been falsely implicated.

7. Fourthly, the learned counsel averred that the account of the prosecutrix as recorded in her statement under Section 164 Cr.P.C and in the FIR contain various discrepancies. The prosecutrix deposed in her statement that she was taken to a plot where the incident took place whereas in the FIR it is mentioned that the incident took place in a room. It is also submitted that in her statement the prosecutrix had mentioned that the bulb of her

house was broken by the accused whereas the I.O stated there was no electricity in the house of the prosecutrix and thus there could be no bulb either. Further, it is submitted that in her statement she submitted that her house is 2-3 kms. away from the place of incident whereas as per the I.O the site of incident was hardly 15-20 steps away. Ld. Counsel also submitted that in her statement the prosecutrix mentioned that the investigation was carried out by the I.O at the Police Station and that the place of occurrence was showed to him in the presence of one Rahees Fatima, whereas the I.O stated that the statement of the prosecutrix was recorded on 01.08.1989 in her house and that nobody accompanied when the complainant showed the place of occurrence to the I.O.

8. Fifthly, the learned counsel posited his submission that the alleged incident took place in summer around 7:30 pm in the evening near a densely populated area, and that it is unlikely that there were no bystanders or witnesses who saw the accused persons picking up the prosecutrix and taking her to the site of the incident. He further submitted that it is also unlikely that the prosecutrix did not cry or shout or resist to attract the attention of people around when her mouth was being allegedly shut by the accused persons.

9. The learned counsel for the appellant also submitted that the case of the prosecution has been supported by only two witnesses out of which one is the prosecutrix herself and the other is the I.O, and that no other witnesses have been produced. Further, as per the claim of the prosecutrix she narrated the incident to one Rahees Fatima but her evidence was also never recorded. The learned counsel submitted that the High Court has given undue weightage to the emotional outburst of the prosecutrix in camera proceedings, and that her statements suffering from glaring inconsistencies does not inspire any confidence to be taken as genuine.

10. *Per contra*, the learned counsel for the Respondent State submitted that the necessary ingredients of rape are very well covered in the oral evidence of prosecutrix before the Court. The counsel submitted that the victim stated on oath that after finishing her work as a maid servant, she went to the market and was coming back home from there when the four accused caught hold of her and from behind placed a black handkerchief on her mouth and then took her to a room which belonged to the Pradhan- Sri Kaloo who is the brother of the accused Rajendra. Inside the room, they committed rape on her one by one against

her will and consent. After the incident, they threatened to kill her if she disclosed the incident to anyone. One of the accused Kishan also had a knife with him. It is submitted that the accused also teased her and would threaten her afterwards, and on account of shame and fear, she could not lodge the report immediately. After three months- when the accused broke the bulb of her house, she could gather some courage to submit the complaint/report.

11. It has further been submitted by the learned counsel that during the cross examination, the prosecutrix clarified that accused persons were known to her from before, as they were from the same vicinity and the same village. It is also submitted by the counsel that the plot alleged in the report has one room in it where the crime was committed.

12. The learned counsel contended that the High Court had rightly upheld the conviction of the accused, and as no question of law or fact has been raised by the Petitioner. The appeal is thus liable to be dismissed.

Analysis

13. We have heard the learned counsel for the parties at length and with their assistance, we have also gone through the records of the case. We have also perused the evidence on record. On giving

due consideration to the material on record, we find that the prosecution failed to establish its case against accused persons beyond reasonable doubt.

14. The complaint was submitted after three months of the occurrence of the alleged incident and in the meantime, as per the submissions, the prosecutrix did not disclose the incident to anybody, neither friends nor family and not even her husband out of shame and ignorance as mentioned in the complaint. This version of the prosecutrix is against a natural conduct of the person. It would have been natural for the prosecutrix to disclose the incident to her family members after some time and not to somebody who is unknown to her and as such it is very difficult to accept the version of the prosecutrix. The incident was only disclosed to a woman named Rahees Fatima after three months when the accused persons again allegedly threatened the prosecutrix that they will pick her up. The statement of Rahees Fatima was never recorded before the court even though in the statement of PW-2 I.O. it has been categorically stated that her statement was recorded at the house of the complainant along with the statements of the other two witnesses, Mohd. Salim and Smt. Chandra Sharma were also never produced before the court. We

find it hard to believe that such a grave incident was not disclosed by the complainant even to her husband at any point but was done so to a stranger woman who never deposed in front of the court. It is also to be observed that the whole case is based on the sole testimony of the prosecutrix and no other witnesses or evidence has been produced. We are also of the view that the defence of prior enmity between the parties has also not been properly considered by the courts below and complete weightage has been given to the testimony of the prosecutrix and her emotional outbursts. There also exists material inconsistencies in her statements that further weakens the case of the prosecution.

15. It is the trite in law that the conviction can rest on the solitary version of the prosecutrix, provided it inspires confidence of the Court. In the present case, the version of the prosecutrix utterly fails to inspire confidence of this Court.

16. This court in the case of *Vijayan vs. State of Kerala (2008) 14 SCC 763* dealt with similar facts to the extent that the entire case of the prosecutrix was based on her testimony and there was a delay of 7 months in lodging the FIR, and no other evidence was available on record. The court in the case held that-

“5. The present case wholly depends upon the testimony of the prosecutrix. The incident in the present case took place seven months prior to the date of

lodging the complaint as a realisation dawned upon her that she has been subjected to rape by the appellant-accused. No complaint or grievance was made either to the police or the parents prior thereto. The explanation for delay in lodging the FIR is that the appellant-accused promised her to marry therefore the FIR was not filed. In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused. Therefore, we are of the opinion that the view taken by the trial court and the learned Single Judge of the High Court in convicting the appellant-accused under Section 376 IPC cannot be sustained. Consequently, we set aside the judgment and order of the trial court as also of the High Court and quash the conviction and sentence of the appellant-accused under Section 376 IPC. The accused may be released forthwith from custody if not required in any other case.”

17. It is safe to say that even in the case at hand, there is no medical evidence, or any other evidence on record to prove that the accused persons committed the grave act. The ratio in the case of *Vijayan (supra)* squarely covers the case at hand. We, therefore, do not find any reason whatsoever to hold that the appellants committed the heinous act. The material on record does not clearly establish the guilt of the accused person and the prosecution has not proved its case beyond reasonable doubt. We therefore allow the present appeal and set aside the judgment and order of the High Court.

18. In view of the above, present appeal is disposed of and the conviction of the appellants is thus set aside. The appellants to be released immediately if not convicted under any other offence.

19. Pending application(s), if any, shall be disposed of accordingly.

.....**J.**
[PANKAJ MITHAL]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
MARCH 13, 2026.