

Judgment reserved on 5.12.2022

Judgment delivered on 25.4.2023.

Court No. - 50

Case :- CRIMINAL APPEAL No. - 1399 of 2010

Appellant :- Raje @ Rajesh @ Santosh Kumar

Respondent :- State of U.P.

Counsel for Appellant :- Dharmendra Pratap Singh, Sushil Tiwari

Counsel for Respondent :- Govt. Advocate

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard Sri Shyam Sundar Mishra, learned counsel for the appellant and Sri Ashish Mani Tripathi, learned A.G.A. assisted by Sri Raj Kumar Mishra, State Law Officer.

2. Instant Crl. Appeal has been preferred by the accused appellant against judgment and order dated 16.1.2010 passed by Additional Sessions Judge, Fatehpur. By the impugned judgment, learned trial court has convicted the accused appellant for charge under Section 376, 342 and 506 IPC in S.T. No. 50 of 2002 (State of U.P. Vs. Chunni Lal Sharma and another) and sentenced him to ten years of rigorous imprisonment for charge under Section 376 IPC and Rs. 5,000/- fine with default stipulation, six months rigorous imprisonment for charge under Section 342 IPC and one year rigorous imprisonment for charge under Section 506 IPC. All the sentences were directed to run concurrently.

3. Co-accused Chunni Lal died during pendency of trial and trial against him abated vide order dated 9.11.2004 by the order of learned trial court.

4. Brief facts of the case relevant for present appeal are that according to prosecution version, informant Keshav Dutt Tiwari R/o Village Fatehpur Tikari, lodged an F.I.R. with P.S. concerned on 2.11.2001 at 6:30 pm, under Section 342, 376, 506 IPC at P.S. Khaga, District Fatehpur, with averment that his minor

sister aged about 15 years had gone to ease herself towards agricultural field on 2.11.2001 at around 6:30 hours in the morning. After ease herself when she was returning to home, accused Raje @ Rajesh @ Santosh Kumar Shukla and Chunni Lal Sharma confronted her and took her in the room lying in nearby tubewell in the field and committed bad act with her. On next day i.e. 3.11.2001, his co-villagers Raghunandan and Ashok Kumar heard cries of his sister from the room of tubewell when they had gone to ease themselves and they opened the lock of the door and brought his sister from the room and stated about this incident to him. The accused had locked his sister in the room in the evening and went elsewhere. The investigating officer took the lower garment (salwar) worn by the victim on the date of incident in his possession in presence of local witnesses Rajjan Tiwari and Ram Saran which is marked as Ext. Ka-5. The medico legal examination of the victim was conducted on 4.11.2001 at District women hospital, Fatehpur by doctor Suriya Jabi, which is marked as Ext. Ka-8. Dr. Suriya Jabi stated that no injury was seen on any part of the body of victim on the date of her examination on 4.11.2001. In internal examination, "vagina dilated and admits two finger easily, hymen old torn with healed edges, bleeding from O.S. present (menstrual bleed). No injury is seen on and around private parts. Vaginal smears taken and sent for examination of alive or dead human spermatozoa and referred to District Hospital, Fatehpur, for X-ray wrist, elbow and knee joint for age. In supplementary report Ext. Ka-9 the doctor stated that according to report of radiologist, radiological age of the girl is about 18 years. No opinion about rape can be given. There is no evidence of any living or dead spermatozoa in the vaginal smear slides. The investigating officer recorded statement of informant and victim under Section 161 Cr.P.C. who stated on 3.11.2001, on the date of lodging of F.I.R, that the victim stated that in the morning of 2.11.2001 she had gone to ease herself towards field lying in the west side of her village and after easing herself when she was returning to her home, accused Raje @ Rajesh @ Santosh Kumar Shukla met her who was hiding in the neighboring *Arhar* field of Jagdish and threatened her by pointing a country-made pistol towards her that if she cried, he would kill her and dragged her towards field of *Jwar* and *Arhar* and took her towards

tubewell and locked her in the room of tubewell from inside and dashed her on a cot and thereafter opened sting of her *Salwar* and committed rape on her by hurling threat of life to her. She lied on cot, thereafter his companion Chunni Lal Sharma appeared in the night and accused Raje @ Rajesh @ Santosh Kumar Shukla called him inside the room who also committed bad act with her against her will and both of them had left her in the room by locking its door. In the morning, she was rescued by Raghvendra and Ashok Kumar, her co-villagers, in the morning when they heard her cries. They opened the door and took her out of the room and took her to her home. Her lower garment (*salwar*) was got stained with blood which was entrusted to police. The investigating officer got the statement of victim recorded before the magistrate under Section 164 Cr.P.C. in which she supported her version recorded under Section 161 Cr.P.C. The investigating officer after completing the investigation, submitted charge sheet against accused persons Raje @ Rajesh @ Santosh Kumar Shukla and Chunni Lal and for their prosecution, learned C.J.M. took cognizance of the offence on charge sheet filed by the investigating officer and committed the case for trial to the court of session on 18.1.2001.

5. Charge sheet was filed against Rajesh @ Raje @ Santosh Kumar Shukla in his abscondence subsequently accused Rajesh @ Raje @ Santosh Kumar Shukla appeared and he was sent to jail. The accused Chunni Lal was enlarged on bail by the order of Hon'ble Court and present appellant faced trial as most of the time as under trial prisoner. Charges were framed against accused persons by learned Additional Sessions Judge, Court No. 4, Fatehpur on 20.7.2002 under Section 342, 506 and 376 IPC against accused Rajesh @ Raje @ Santosh Kumar Shukla and Chunni Lal Sharma. During prosecution evidence, learned trial court recorded statements of PW-1 Prosecutrix, PW-2 Keshav Dutt Tiwari (informant), PW-3 S.I. Dinesh Bajpayee, the then Head Mohrrir and author of chick F.I.R. (Ext. Ka-2) and extracts of G.D. No. 22, time 12:10 hours, dated 3.11.2001 (Ext. Ka-3), PW-4 Subeer Kumar, PW- 5, S.S.I. Madhusudan Singh, investigating officer, who proved the inventory of *salwar* worn by the victim at the time of incident as Ext. Ka-5, site plan of the

place of incident as Ext. Ka-6, charge sheet filed against accused persons as Ext. Ka-7. He also produced *Salwar* of the victim which was taken into possession after the incident by producing before the court as material Ext. 1. and its wrappers as material Exts. 1, 2 and 3. PW-6 Dr. Suriya proved medico examination report of the victim as Ext. Ka-8 and supplementary report as Ext. Ka-9, as the same being prepared and signed by her. PW-7, K.P. Singh, then Senior Radiologist, who proved X-ray report of the victim as Ext. Ka-10 and X-ray plates as material Ext. 4.

6. Statement of accused was recorded under Section 313 Cr.P.C. after conclusion of prosecution evidence in which he has stated that case was filed against him due to enmity, he only admitted the fact that co-accused Chunni Sharma died during pendency of trial. He also stated that victim and informant had given false evidence against him and took the stand that prosecutrix and co-accused Chunni Lal Sharma were having intimate relationship and victim had eloped with him. She was caught near Khaga as Chunni Lal was *bataidar* of his field. She had implicated him also with Chunni Lal due to fear of social ignominee. No defense has been adduced by the accused.

7. Learned trial court after appreciating the evidence on record and hearing statements of learned counsel for the parties observe that on the basis of evidence of PW-1 and PW-2, victim and informant, this fact is proved perfectly that on the date of incident accused Rajesh and co-accused Chunni Lal dragged the victim (PW-1) to the room of tubewell and committed rape on her. He also considered the statements of defense that independent witnesses Raghunandan and Ashok Kumar, who are said to have rescued the victim from the room in which she was detained by accused persons in the next morning of the date of incident, were produced before the court and observed that learned A.D.G.C. (Criminal) had submitted that these witnesses were not ready to appear before the Court and tell the truth and for that reason they were not produced before the court. Learned court below also observed in view of authoritative pronouncement of Hon'ble Apex Court and High Court, the corroboration of statement of prosecutrix by independent witness is not

necessary in every case. It depends on facts and circumstances of the case as to whether corroboration is required or not. The requirement of corroboration is not rule of law but a rule of caution. He cited certain judicial decisions in support of his submissions. Learned court below further observed that there is no occasion to look at the evidence of victim of sexual offence like rape with suspicion. Victim and his brother had no reason to falsely implicate the accused persons for committing the offence like rape. Learned trial court also observed that no adverse inference can be drawn against the version of the prosecutrix only due to reason that no external or internal injury was found on her person in her medico legal examination report. She was unmarried and it cannot be imagined that victim and her brother would falsely implicate the appellant and co-accused only due to certain enmity by keeping their honour and social respect on stake. The victim has given reliable account of sequence of events which cannot be burst aside. This fact also gathers no mass that the victim had chosen agricultural field lying some what distant from her home near Arhar field and her conduct cannot be seen with doubt as she had chosen a field near the tube-well of accused to ease herself. He has also observed that in rural area people shall choose distant agricultural fields to ease themselves in morning hours. Learned court below after giving thoughtful considerations to submission of learned counsel for the parties and evidence on record, recorded verdict of guilt against appellant and sentenced for charge under Section 376, 342, 506 IPC and sentenced him as aforesaid.

8. Feeling aggrieved by the impugned judgment and order, the accused appellant has filed present criminal appeal under Section 374 of Code of Criminal Procedure.

9. Learned counsel for the appellant submitted that learned court below has convicted and sentenced the appellant without considering the evidence adduced during trial in proper perspective and in meticulous manner. The appellant was enlarged on bail by the orders of this Court dated 17.7.2002, however, he became absent and afterwards he was again sent to jail by the orders of trial court on 27.7.2007. F.I.R. in present case was lodged after two days of the incident and there is no explanation of delay in lodging the F.I.R.

in prosecution version. Learned Additional Session Judge ignored the infirmities pointed out by accused side in statement of prosecution witnesses. The independent witnesses of prosecution who are named in the F.I.R. were not produced during trial which creates doubt regarding authenticity of the F.I.R. version. The prosecution version and statement of the victim does not find corroboration from medico legal examination report of the prosecutrix. The doctor who conducted medico legal examination of the prosecutrix has categorically stated in her report that victim was habitual for sexual intercourse and no opinion can be given regarding rape.

10. Per contra, learned A.G.A. submitted that prosecution version introduced in F.I.R. lodged at the instance of brother of the victim (PW-1) is proved by the evidence of witnesses of fact PW-1 (prosecutrix) and PW-2, informant, and finds corroboration by the evidence of formal witnesses. No adverse inference should be drawn against statement of prosecutrix who should be treated as injured witnesses only due to fact that witnesses named in F.I.R. Raghvendra and Ashok Kumar could not be produced by prosecution before the trial court and no fault can be found on the part of the learned trial court while convicting and sentenced the accused-appellant. Appeal deserves dismissal. During course of trial, report was received from C.J.M. concerned dated 18.5.2022 wherein he stated that on conducting the enquiry regarding live status of the accused-appellant it is reported by S.H.O. concerned that he is presently residing at the place of hi in-laws in Kanpur Nagar who drives e-rickshaw.

11. In letter dated 24.6.2022 learned C.J.M., Fatehpur, informed this Court that District Superintendent of Jail, Fatehpur has informed that prisoner Raje @ Rajesh @ Santosh Kumar Shukla, has been released from jail on 5.10.2022 after completing his punishment of imprisonment as well as after the depositing of amount of fine of Rs. 5,000/- in the court and presently he is detained in jail.

12. In present case accused was charged for offence under Section 342, 506 and 376 IPC by learned Trial Judge, on 2.7.2002. In order to prove the charge

prosecution examined PW-1, prosecutrix, and PW-2 (father of prosecutrix) Keshav Dutt Tiwari as witnesses of act.

13. PW-1, prosecutrix, has stated in her sworn testimony before the court that she is acquainted with accused from before the incident. Accused Chunni Lal Sharma has died. The incident occurred seven year two months ago from her evidence (recorded on 16.1.2009). At around 6:30 hours in the morning she had gone to West of her village to ease herself and when she was coming towards home after ease herself, accused Raje @ Rajesh @ Santosh Kumar Shukla who was hiding in Arhar field of Jagadish, emerged from there and brandished a country made pistol towards her and threatened her to shoot her if she cried and dragged her towards room of tubewell and flinged her on cot and forcefully untied her lower garment (salwar) and committed rape on her. She kept crying on the cot throughout the day and accused was also present there and kept on threatening her. In night he also called co-accused Chunni Lal who also committed rape on her and thereafter both of them went outside the room and locked it from outside. She kept on crying and weeping throughout in the night. In the morning, her co-villager Raghunandan and Shiv and Ashok Kumar came there and rescued her by opening the door. She apprised her brother and mother about the incident and thereafter her brother took her to P.S. and lodged report. The doctor conducted her medico legal examination at Government hospital, Fatehpur. Her lower garment worn at the time of incident was taken at P.S. which was blood stained. She was around 15 years of age at the time of incident. The investigating officer recorded her statement. She knows meaning of rape which implies insertion of male organ in the place meant for urinating on person of female.

14. In cross-examination, she stated that she had told her age as 15 years to S.I. as well as in the court. If the S.I. has not stated her age as 15 years in her statement, she cannot divulge its reason. Prior to this incident, her private parts were not interfered. No injury was caused therein. She was virgin. The doctor had inspected her private parts. The field in which she had gone to ease herself is not connected with pathway. The tubewell is lying 5-6 fields away from the pathway. That tubewell is situated in the West side of her village.

Her home is towards North of village. At that time, Arhar was sown in the fields lying in North and East of her home. Accused had dragged her. At the time of incident, she suffered scratches on her thighs in the process and her clothes were also torn. She was wearing Salwar-Suit. She had not taken any food in the day or night on that date. She had not taken even water. The accused left the room of tubewell on next morning at around 4:00 am and he did not come back. She was acquainted with Chuni Lal prior to the incident. Chuni Lal was residing in tubewell of Rajesh. The villagers had rescued her at 8 to 9: 00 hours from the tubewell after hearing her cries. She denied defense suggestion that prior to the incident she eloped with accused Chuni Lal and caught with him.

15. PW-2, Keshav Dutt Tiwari, who is brother of the victim, has supported the F.I.R. version and proved the written report Ext. Ka-1 filed by him at P.S. which found basis of F.I.R.. He also stated that investigating officer has recorded his statement.

16. In cross-examination he clarified that he has not seen the incident. He has also not seen Raghvendra and Ashok Kumar rescuing the victim from tubewell. He has lodged the F.I.R. on being apprised about the incident by these witnesses. The witnesses had brought her sister in the morning at around 9/10:00 hours. He had searched his sister after she went missing but he did not search her towards the tubewell. Accused Rajesh was married and having children prior to the incident. He refused defense suggestion that prior to the incident his sister eloped with son of Shanti Singh, his co-villager.

17. PW-3, S.I., Dinesh Bajpayee, has proved Ext. Ka-3, extracts of G.D. of registration of case Report No. 22, time 12:10 hours, dated 3.11.2001 and chick F.I.R. as Ext. Ka-4.

18. PW-4, Subeer Kumar, has testified that he has examined vaginal smear sliques of victim on 5.11.2001 wherein no live or dead spermatozoa was detected. He proved this report as Ext. Ka-4

19. PW-5, Madhusoodan Singh, the then S.S.I., has proved the inventory of taking in possession the Salwar of the victim as Ext. Ka-5. Site plan of the place of incident as Ext. Ka-6, charge sheet as Ext. Ka-7 and also produced Salwar of the victim before the court on which ME-1, ME-2 and ME-3 were marked.

20. PW-6, Dr. Suriya, proved medico legal examination report and supplementary report of the victim as Ext. Ka-8 and Ka-9 and stated that no external or internal injury was found on person of the victim. Her age was around 18 years. No opinion regarding rape could be given.

21. PW-7, Dr. K.P. Singh, proved X-ray report of victim regarding fusion of her bones for determining her age and stated that according to X-ray, she was around 18 years of age. He also proved X-ray plates as ME-4.

22. The accused did not adduce any defense evidence. His stand is that of denial. He stated that in his statement under Section 313 Cr.P.C. the informant and prosecutrix has given false statement against hi. There was love affair between prosecutrix and co-accused Chunni Lal and she had eloped with him and was recovered farther to Khaga. Chunni Lal was his bataidar.

23. The place of occurrence as stated in statement of PW-1, victim, corresponds with site plan (Ext. Ka-6) prepared by the investing officer in which place of occurrence is shown as room at the tubewell in which the cot is marked where the victim was allegedly raped by accused persons. F.I.R. in present case was lodged on 3.11.2021 at 12:10 hours by Keshav Dutt, brother of the victim, which is found on record as Ext. Ka-2. The delay in lodging the F.I.R. is self explanatory in the F.I.R. itself, therein it is stated that victim got missing on 2.11.2001 and the informant (her brother) was searching for her and on next date, she was rescued by witnesses from the room of tubewell which belonged to accused appellant and thereafter he was apprised of the facts and he lodged the F.I.R. at P.S. concerned by filing written report. The distance between P.S. and the place of incident is 6 km, therefore, in my considered opinion there is no delay in lodging of F.I.R. that too in a case like rape. Although witnesses named in F.I.R. are not produced in evidence due to

fact that according to prosecution they were not willing to speak the truth in the court yet from statement of PW-1 and PW-2, this fact is proved that victim was rescued by Raghvendra and Ashok Kumar. They were not produced by defense to rebut this version of prosecutrix and informant. Even in cross-examination of PW-1 and PW-2, nothing emerged which could make this fact suspicious that victim was not rescued by these witnesses. There is nothing to disbelieve the sequence of events stated by PW-1 and PW-2.

24. In catena of decisions like *Raja Vs. State of Karnataka, (2016) 10 SCC 506*, *State of U.P. Vs. Chhoteylal, AIR 2011 SC 697*, *Moti Lal Vs. State of M.P., 2009 (67) ACC 570 (SC)*, *Wahid Khan Vs. State of M.P., 2009 (7) Supreme 584*, *Om Prakash Vs. State of State of U.P., 2006 (55) ACC 556 (SC)*, Hon'ble Apex Court held that in a case of rape, testimony of prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of prosecutrix inspires confidence and appears to be credible. An accused can be convicted on the basis of sole testimony of prosecutrix without any further corroboration provided the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. Women or girl raped is not accomplice and to insist for corroboration of the testimony amounts to insult to womenhood. The evidence of a victim of sex-offence is entitled to great weight, absence of corroboration notwithstanding, therefore, there is no force in the arguments of learned counsel for the appellant that sole testimony of prosecutrix is not corroborated by any other evidence.

25. In so far as defence argument is concerned, this defence argument that no injury was found by the doctor on the person of the victim is concerned Hon'ble Apex Court in *State of U.P. Vs. Chhotey Lal, AIR 2011 SC 697* and *Madan Gopal Kakkad Vs. Naval Dubey, (1992) 3 SCC 204* and other cases, clarified that even where no external or internal marks of injury on the private part of the victim of rape was found in medical examination, the testimony of the prosecutrix that she was raped by the accused cannot be discarded, therefore in the light of foregoing discussions and authorities cited above, this Court is of considered opinion that learned trial court has convicted no

misappreciation of evidence on record as alleged in present appeal nor there is any legal error in application of law and no factual or legal error is found on the part of the learned trial court while recording conviction of the appellant and or awarding sentence against him as aforesaid.

26. Appeal is devoid of merit and is liable to be dismissed. Appeal stands dismissed with above observations. The judgment of conviction and sentence passed by learned trial court is affirmed. As the fact has already brought on record that appellant has completed full sentence awarded in impugned judgment, he need not surrender to suffer the sentence anymore.

27. Let a copy of this judgment along with lower court record be sent to court concerned for necessary information and compliance.

Order Date: 25.4.2023/A.P. Pandey