

Neeraj and Another Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : May-02-2013

Judge : Prafulla C. Pant

Appeal No. : Criminal Appeal Nos. 13 of 2009 & 26 of 2009

Appellant : Neeraj and Another

Respondent : State of Uttarakhand

Judgement :

Prafulla C. Pant, J.

Both these appeals are directed against the judgment and order 05.02.2009, passed by III Fast Track Court/ Additional Sessions Judge, Haridwar, in Sessions Trial No. 186 of 2001, Sessions Trial No. 81 of 2002 and Sessions Trial No. 289 of 2002, whereby said court has convicted accused Neeraj (appellant) under section 363, 366 and 376 IPC, and one punishable under section 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, and sentenced him to rigorous imprisonment for a period of seven years and directed to pay fine of Rs.5,000/under section 363 IPC, rigorous imprisonment for a period of seven years and directed to pay fine of Rs.5,000/under section 366 IPC, and rigorous imprisonment for a period of ten years and directed to pay fine of Rs.6,000/under section 376 IPC and rigorous imprisonment for a period of two years and directed to pay fine of Rs. 2,000/under section under section 3(1)(xii) of Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Act 1989. By the same judgment and order the trial court has convicted coaccused/appellant Munshi Mewa Lal under section 368 IPC and sentenced him to rigorous imprisonment for a period of seven years and directed to pay fine of Rs.5,000/-. He (Munshi Mewa Lal) has been further convicted and sentenced to rigorous imprisonment for a period of two years and directed to pay fine of Rs.3,000/under section 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (for short S.C and S.T. (P.A.) Act).

2. Heard learned counsel for the parties and perused the lower court record.

3. Prosecution story, in brief is that on 02.12.2000 P.W.4 Tarachand gave a report at Police Station Pathri stating that since preceding night his minor daughter Sangeeta (P.W.1) was missing. On 07.12.2000 P.W.4 Tarachand gave another report (Ex. A6) at the Police Station complaining that his minor daughter was enticed away by accused/appellant Neeraj of his village. Treating said report dated 07.12.2000 as FIR, Crime No. 128 of 2000 was registered at Police Station Pathri relating to offences punishable under section 363, 366, 376 IPC and one punishable under section 3(1)(x) of S.C.and S.T. (P.A.) Act. The investigation was taken up by P.W.5 Shiv Charan Singh (Circle Officer City) who recovered the girl and interrogated the witnesses. Further investigation was taken up by P.W.9 Roshan Lal Sharma the then Circle Officer, Laksar. During investigation section 376 IPC was added to the crime. The girl was medically examined. Her statement was recorded under section 164 Cr. P.C. by the Chief Judicial Magistrate, Haridwar. On completion of investigation one charge sheet (Ex. A10) was filed against accused Neeraj (appellant) for his trial in respect of offences punishable under section 363, 366, 376 IPC and one punishable under section 3(1)(x) of S.C./S.T. Act, 1989. Another charge sheet (Ex. A18) was filed against accused Lalu (brother of Neeraj) and accused Kadam Singh (father of the Neeraj) for their trial in respect of above offences. The third charge sheet (Ex. A19) was also filed by the Circle Officer (Investigating Officer) against accused Munshi Mewa Lal for his trial in respect of offence punishable under section 368 IPC, and one punishable under section 3(1)(x) of S.C.and S.T. (P.A.) Act, 1989. Sessions Trial No. 186 of 2001 arose out of charge sheet Ex. A10, Sessions Trial No. 81 of 2002

arose out of charge sheet Ex. A19 and Sessions Trial No. 289 of 2002 arose out of charge sheet Ex. A18 after cases were committed to the court of sessions.

4. On 15.05.2001, the trial court after hearing the parties framed charge of offences punishable under section 363, 366, 376 IPC against accused Neeraj who pleaded not guilty and claimed to be tried. A separate charge was framed on 24.07.2001 by the trial court against accused Neeraj in respect of offence punishable under section 3(1)(xii) of S.C.and S.T. (P.A.) Act, 1989 to which also he pleaded not guilty and claimed to be tried. In the connected Sessions Trial No. 289 of 2002 on 11.11.2002 charge of offences punishable under section 363/34, 366/34, 376/34 and 368/34 IPC, and one punishable under section 3(1)(xii) of S.C.and S.T. (P.A.) Act, 1989 framed against coaccused Lalu and Kadam Singh to which they pleaded not guilty and claimed to be tried. In Sessions Trial No. 81 of 2002 on 25.06.2002 charge of offence punishable under section 368 IPC and one punishable under section 3(1)(xii) of S.C./S.T. Act, 1989, was framed against the coaccused Munshi Mewa Lal to which he also pleaded not guilty and claimed to be tried. All the three sessions trials were consolidated and the evidence was recorded in Sessions Trial No. 186 of 2001.

5. Prosecution got examined P.W.1 Km. Sangeeta (victim), P.W.2 Dr. R.K. Pandey (Radiologist), P.W.3 Dr. Meenakshi Agarwal (who medically examined the girl), P.W.4 Tarachand (informant), P.W.5 Shiv Charan Singh Bisht, Circle Officer City (who started investigation), P.W.6 Constable Laxmi Chand (who made entry in the General Diary), P.W.7 Narendra Kumar (Head Master of Primary School, Ibrahimpur), P.W.8 Senior Sub Inspector Yogendra Pal Singh and P.W.9 Roshan Lal Sharma, the then Circle Officer, Laksar (who completed the investigation). Oral and documentary evidence was put to the accused under section 313 Cr. P.C., in reply to which all the accused pleaded that the evidence adduced against them was false. They further stated that the girl (Sangeeta) was major. It is further stated by the accused that Sangeeta on her own volition went and got married to accused Neeraj. In defence D.W.1 Ajay Sharma (another Head Master of Primary School Ibrahimpur) and D.W.2 Dharmendra Singh (Village Pradhan of village Naktanpur Aabidpur) were got examined.

6. The trial court, after hearing the parties found that no charge of offences punishable under section 363/34, 366/34, 376/34 and 368/34 IPC and one punishable under section 3(1)(xii) of S.C./S.T. Act, 1989 is proved either against accused Lalu (brother of Neeraj) or against Kadam Singh (father of Neeraj). Both of them were acquitted by the trial court of the charges framed against them. But the charge was found proved by the trial court against accused Neeraj (appellant) under section 363, 366, 376 IPC and one punishable under section 3(1)(xii) of S.C. and S.T. (P.A.) Act, 1989 and he was convicted accordingly. The trial court further convicted accused Munshi Mewa Lal in respect of offence punishable under section 368 IPC and under section 3(1)(xii) of S.C. and S.T. (P.A.) Act, 1989. After hearing on sentence accused Neeraj was sentenced to various terms of imprisonment and directed to pay fine as mentioned above in para 1 of this judgment. Accused Munshi Mewa Lal was sentenced to rigorous imprisonment for a period of four years and directed to pay fine of Rs.5,000/under section 368 IPC and rigorous imprisonment for a period of two years and directed to pay fine of Rs.2,000/under section 3(1)(xii) of S.C. and S.T. (P.A.) Act, 1989. Aggrieved by said judgment and order dated 05.02.2009 passed by III Fast Track Court/ Additional Sessions Judge, Haridwar, in Sessions Trial No. 186 of 2001 and Sessions Trial No. 81 of 2002, these two appeals are filed by the convicts separately which were taken up together and are being disposed of by this common judgment.

7. Before further discussion, this Court thinks it just and proper to mention the observations made by P.W.3 Dr. Meenakshi Agarwal who medically examined the victim after her recovery. Medical report dated 09.12.2000 (Ex. A3) prepared by P.W.3 Dr. Meenakshi Agarwal shows that there was no external injury anywhere all over the body. The said medical officer further observed that axillary and pubic hair of the girl well developed. Breast was well developed. Hymen was torn. P.W.3 Dr. Meenakshi Agarwal has stated before the trial court that after receiving pathological report it was revealed that no live or dead spermatozoa were seen on the slides of smear, and on xray report radiological age of the girl was found between 16-18 years. In her supplementary report (Ex. A4) P.W.3 Dr. Meenakshi Agarwal has observed that there was no evidence of intercourse.

8. P.W.2 Dr. R.K. Pandey, the Radiologist who took xray films of right and left elbow AP and right and left wrist joints AP of the girl and prepared radiological reports Ex. A1 and Ex. A2 has stated that on the basis of radiological examination he found age of girl (Sangeeta) above seventeen years.

9. It is also relevant to mention here from the copy of voters list of 1999 (paper no. 23A/2) age of Sangeeta daughter of Tarachand is mentioned as eighteen years. Though P.W.7 Narendra Kumar Head Master of Primary School Ibrahimpur stated that date of birth of the girl (Sangeeta) is recorded 3.10.1986 in the school register where she studied till class five. D.W.1 Ajay Sharma In-charge Head Master of the same school has stated date of birth of Km. Sangeeta daughter of Tarachand is mentioned in the register as 01.07.1984. He produced before the court original record and filed copy of it (Ex. B1) in the court. He also stated that as per entry no. 317 and entry no. 1102 in the register there are two girls named Sangeeta daughter of Tarachand and one had date of birth 03.10.1986 and another had 01.07.1984.

10. From the above discussion on evidence relating to radiological examination reports, voters list and other evidence this Court is of the view that it is not proved on the record that the girl was minor. In other words it cannot be ruled out that the major girl (Sangeeta) had gone with accused Neeraj on her own volition and might had undergone sexual intercourse with her consent no.

11. No doubt in her statement recorded under section 164 Cr. P.C., and again in her examination in chief P.W.1 Sangeeta has stated that on 01.12.2000 after watching T.V. till midnight, due to sudden pain in her abdomen she went out in the field to ease out herself where accused Neeraj alongwith someone else kidnapped her where-after she was subjected to rape by accused Neeraj, but disclosures made by her in her crossexamination reveals that the allegations of kidnapping and rape are highly doubtful. This Court thinks it relevant to mention certain statements made by P.W.1 Sangeeta in her crossexamination which reads as under:

HINDI

(I did not know my date of birth. My court marriage with Neeraj was forcible. [The witness after seeing paper no. 22A/1 on the record stated that photo affixed there on was her and that of Neeraj.] There are my signatures on it. It is our marriage contract deed.)

12. P.W.1 Sangeeta further disclosed that HINDI (56 days before the marriage was registered in the court premises, marriage between her and Neeraj was solemnized in a temple where photographs were also taken).

13. She (P.W.1) further told that HINDI

[The witness after seeing paper no. 24B told that] it is my photograph taken at the time of her marriage in the temple. Paper no. 24B/2 is also my photograph in which we are garlanding each other. Paper no. 24B/3 is the photograph in which Neeraj (accused) is applying vermilion in the parting of hair of her head and we are feeding sweet to each other).

14. Apart from the above facts there are many other more revelations made by P.W.1 Sangeeta in her crossexamination which demolishes the story of kidnapping and rape. The relevant portion of her crossexamination is being reproduced below:

HINDI

(We lived in house for four days. We went to market to purchase clothes. At the time of marriage a new suit was purchased. Suit was selected by Neeraj (accused). Shawl, bangles, feet finger rings, vermilion, BINDI and other goods were also purchased by Neeraj. I was with him).

15. There is yet another piece of evidence in the crossexamination of P.W.1 Sangeeta which also throws light as to her consent in the entire episode. The relevant portion from her crossexamination is being reproduced below:

HINDI

(It took 10 to 15 minutes in reaching Kutchery (court) from Dehradun bus stand. We met munshi in Kutchery. Advocates and policemen were also there in

Kutchery. I did not complain to any policemen or advocates nor raised any alarm).

16. In the above circumstances, having carefully gone through the evidence on record, this Court finds that none of the charges are proved either against accused Neeraj or against accused Munshi Mewa Lal. Therefore, this Court is of the view that the trial court has erred in law in convicting accused Neeraj under section 363, 366 and 376 IPC and one punishable under section 3(1)(xii) of S.C.and S.T.(P.A.) Act, 1989, and Munshi Mewa Lal under section 368 IPC and under section 3(1)(xii) of S.C.and S.T. (P.A.) Act, 1989.

17. Therefore, both the appeals deserve to be allowed. Accordingly, both the appeals are allowed. Impugned judgment and order dated 05.02.2009, passed by III Fast Track Court/ Additional Sessions Judge, Haridwar, in Sessions Trial No. 186 of 2001, Sessions Trial No. 81 of 2002 convicting accused/ appellant Neeraj and Munshi Mewa Lal and sentencing them on the charge framed against them is hereby set aside. Accused Neeraj is acquitted of the charge of offences punishable under section 363, 366 and 376 IPC and one punishable under section 3(1)(xii) of S.C. and S.T. (P.A.)Act, 1989. Accused Munshi Mewa Lal is acquitted from the charge of offence punishable under section 368 IPC and one under section 3(1)(xii) of S.C.and S.T. (P.A.) Act, 1989. They are on bail. They need not surrender. Lower court record be sent back.

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