

Devendra Agarwal and Another Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Apr-17-2013

Judge : U.C. Dhyani

Appeal No. : Criminal Appeal No. 41 of 2005

Appellant : Devendra Agarwal and Another

Respondent : State of Uttarakhand

Judgement :

U.C. Dhyani, J.

One Sarla Thapa, with whom victim Rita used to reside since her childhood, wrote a missing report to Police Chowki Dakpathar, Dehradun mentioning therein that Rita (victim) left her house on 14.02.1999, at 7.00 P.M. to an unknown destination without informing her (Sarala Thapa). The said missing report (Ex. Ka3) was given on 25.02.1999.

2) The victim was recovered on 22.12.1999, from the house of one Sunil Mamgain. A recovery memo (Ex-Ka1) regarding the same was prepared by the police. She was produced before the Additional Judicial Magistrate, Dehradun and her statement was recorded under Section 164 Cr. P.C. on 1.04.2000. She was medically examined by the Medical officer on 23.12.1999. No mark of injury was seen over her private parts. Vaginal smear was taken for histopathological examination. There was an old operation mark on her right side of abdomen. She

was sent for X-ray, for determination of her age (Ex. Ka6). In the supplementary report (Ex.Ka7), the Medical Officer opined that the girl was above 18 years of age. No definite opinion about the rape could be given.

3) The Investigation Officer conducted investigation and also prepared site plan (Ex-Ka9). On finally being satisfied that the accused persons committed the offences, the I.O. submitted the charge-sheet (Ex.Ka11) against Devendra Agarwal, Phool Chand, Sushil Kumar and Smt. Mamta, in respect of offences punishable under Sections 366/376 of I.P.C., and submitted another charge-sheet (Ex K13) against the accused Jitendra Agarwal and Sangeeta Agarwal in respect of offences punishable under Sections 366/376 of I.P.C.. The case was committed to the Court of Sessions. When the trial commenced before the trial court and prosecution opened its case, charge in respect of offence punishable under Section 366 of I.P.C, was framed against the accused Devendra Agarwal, Phool Chand, Sushil Kumar, Jitendra Agarwal, Smt. Mamta and Smt. Sangeeta. The additional charge against the accused Devendra Agarwal and Jitendra Agarwal was framed in respect of offence punishable under Section 376 (g) of I.P.C., who pleaded not guilty and claimed to be tried.

4) Six witnesses, viz., PW1 Rita (in camera), PW2 Sarla Thapa (informant), PW3 Sushi Mamgain (from whose custody the victim was recovered), PW4 Constable Bijendra Kumar (formal witness), PW5 Dr. Asha Gupta (who medically examined the victim), and PW6 Dinesh Kumar Tyagi (investigating officer) were examined on behalf of prosecution. Incriminating evidence was put to the accused persons under Section 313 Cr. P.C., in reply to which they said that they were falsely implicated in the case. After evaluating the evidence and hearing both the sides, learned court below acquitted the accused Phool Chand, Sushil Kumar, Smt. Sangeeta and Smt. Mamta of the charges framed against them. Accused Devendra Agarwal and Jitendra Agarwal were found guilty of the offences punishable under Sections 366/376 (g) of I.P.C., and were convicted of the same. They were sentenced to undergo rigorous imprisonment for a period of ten years in respect of offence punishable under Section 376 (g) of I.P.C. . They were also sentenced to undergo rigorous imprisonment for a period of seven years in respect of offence punishable under Section 366 of I.P.C. . Both the sentences were

directed to run concurrently. Aggrieved against the said conviction and sentences, the present criminal appeal was preferred.

5) Prosecutrix PW1 Kumari Rita was an orphan. In her examination-in-chief, she said that she did not know the name of her father. She was brought up by one Sarla Thapa since she was three years old. She had been residing with Sarla Thapa at her residence. Sangeeta Agarwal resided in Vikasnagar. Devendra Agarwal lived in Dehradun. On 14.02.1999, PW1 went to a beetle shop of Sushil Kumar and Mamta. The said shop was situated opposite to the house of Sarla Thapa. Sushil, Mamta, Sangeeta, Devendra and Phool Chand were present there. Mamta told PW1 to have a cup of tea. She took tea. She felt drowsy. Mamta told PW1 to sleep there. PW1 did not know as to where she was taken by Devendra, Phool Chand, Mamta and Sangeeta thereafter. When she regained her consciousness, she found herself in an Ambassador Car. Devendra's brother Jitendra was also present in the car. When PW1 (victim) inquired from them as to where she was being taken, Sangeeta and Devendra told PW1 that PW1 was to go to Modinagar with Jitendra. She started weeping. They (accused) told her to stop weeping. Devendra Agarwal had a knife to threaten her. She had never been to Modinagar earlier. She was kept at Modinagar for four months. Thereafter, Jitendra came to Modinagar and Devendra went back to Vikasnagar. Jitendra told PW1 that she will have to go to Bombay along with Devendra. When PW1 said that she was not inclined to go to Bombay, she was taken to Modinagar, where she was kept in the house of a woman by Devendra. Devendra took her to Bombay, where Devendra sexually assaulted her and said that she was brought to Bombay only for this purpose. From next day onwards Devendra used to give her sleeping pills. She used to feel unconscious. Whenever she regained her consciousness, she felt pain in her body. She was undressed by Devendra everyday and he continued the same crime for two months. Other people also came to Devendra who also sexually assaulted her. Devendra forced her to take tea which contained intoxicant. Devendra took her to Delhi, informed his brother Jitendra and then he took her to Ghaziabad. Jitendra and Devendra kept her at Ghaziabad for about a month. Both Jitendra and Devendra sexually assaulted her. Sometimes they sexually assaulted her one by one and some times the one raped her in the absence of other. PW1 (victim) told Jitendra and Devendra that she was

unwell. She was taken to the hospital at Meerut, where she was operated upon. She remained in hospital for about a week. Then they brought her to Modinagar at the residence of his sister-in-law (Sangeeta) in which house she was kept for a month. Sangeeta, Jitendra and Devendra then brought her to Dehradun. When PW1 complained to Sangeeta that her husband sexually assaulted her (victim), Sangeeta scolded PW1. Sangeeta's Sister Tina came to Sangeeta's house where she was bolted inside a room. Sangeeta and Devendra were having conversation between them saying that they incurred loss in this business. Then Sangeeta and Devendra sold her (PW1) to one Sushil Mamgain, who took domestic help from her. When she felt ill, Sushil Mamgain and his wife told her that they paid money to Devendra for procuring her. Police recovered PW1 from the house of Sushil Mamgain after two-three months. The girl was rescued from Sushil's house on 22.12.1999. Her own statement under Section 164 Cr. P.C was recorded. She also proved her statement under Section 164 Cr.P.C. . Her statement reveals that the circumstances were beyond her control. She could not protect herself. She was an orphan, illiterate woman.

6) In her (victim's) cross-examination, she said that she was subsequently married to one Pappu, who was resident of Kanda (Chakrata). When she was married to Pappu, she was 17 years old. Pappu abandoned her after two months of marriage. She was got married to Pappu by Sarita Thapa. Her age was disclosed by one person who claimed himself to be a friend of her father, who was dead. She did not disclose the name of Sushil, Sangeeta, Devendra and Phool Chand in her statement under Section 164 Cr. P.C. The explanation offered for the same was that the police personnel told her not to disclose the names of all in her statement. Because of that reason, she did not disclose the name of Jitendra in her statement, which was recorded under Section 164 Cr.P.C. In her cross-examination she also said that when she came to Modinagar in a bus, she was accompanied by Jitendra and Devendra. She also said that she did not give the statement to the Magistrate that Devendra sexually assaulted her everyday in Bombay. She disclosed to the Magistrate that Devendra used to give her intoxicating pills at Bombay. She was not aware of the purpose of her operation at Meerut. Many other insignificant and irrelevant questions were asked in the cross-examination of PW1, but nothing was brought on record to show that PW1 was

telling a lie.

7) This Court is not inclined to discuss other evidence, in as much as, the same was peripheral in nature. Minor variations in the statement of the investigating officer were highlighted by learned counsel for the appellants but those infirmities do not go to the root of the prosecution story. It is one such case in which the evidence tendered by the victim is worth accepting. There appears to be no reasons to disbelieve her testimony. There is nothing on record to suggest that she was telling a lie. Prosecution story cannot be discarded on the face of such cogent evidence of the prosecutrix/victim. Learned court below has precisely dealt with every aspect of the prosecution story in its own way.

8) Orphan girl was sexually assaulted/raped by Devendra and Jitendra continuously for months together. The poor and helpless woman was a tool in the hands of accused persons (appellants). There was no one to help her. Everybody exploited her. It appears that she was even used for the prostitution by the woman who brought her up, probably with the ulterior motive of misusing her for pecuniary gains. There was no reason to disbelieve the evidence of the victim. The Court below has highlighted the reasons for accepting the prosecution version, for no unjust reasons.

9) Prosecution was able to prove the case against present appellants beyond reasonable doubt, minor infirmities notwithstanding. There appears to be no reason to take a view contrary to what was taken by the Court below. The Criminal appeal fails and liable to be dismissed.

10) The criminal appeal is dismissed. The judgment and order, as also the conviction and sentence under appeal, are upheld and affirmed. Accused/convicts Devendra and Jitendra are on bail. Their bail is cancelled. The appellants are directed to surrender before the Court below to serve out the sentence as was awarded by the trial court and thus affirmed by this Court.

11) Let a copy of this judgment along with Lower Court Record be sent back to the Court below for causing surrender of the convicts Devendra and Jitendra and for sending them to prison for serving out the sentence awarded to them.

