

State of Uttarakhand Vs. Constable Sashi Shankar Rai

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Court : Uttaranchal

Decided On : Apr-05-2013

Judge : Prafulla C. Pant & Servesh Kumar Gupta

Appeal No. : Government Appeal No. 22 of 2011

Appellant : State of Uttarakhand

Respondent : Constable Sashi Shankar Rai

Judgement :

Prafulla C. Pant, J. (Oral)

This appeal, preferred under section 378 of the Code of Criminal Procedure, 1973 (for short Cr PC), is directed against the judgment and order dated 18.12.2010, passed by the Special Sessions Judge, Champawat in Special Sessions Trial No. 17/2007, whereby the said Court has acquitted the accused/respondent Constable Sashi Shankar Rai of the charge of offence punishable under Section 376 IPC and one punishable under Section 3(II) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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

3. Prosecution story, in brief, is that informant Darshan Prasad (PW1), a constable with Railway Protection Force (for short, RPF), at the time of alleged incident, was posted in Tanakpur, where he used to live with his family in a Government

accommodation. Accused Sashi Shankar Rai, also a constable with RPF, was posted at the same station and he was living there in the neighbourhood. It was alleged that in the intervening night of 18th and 19th of September 2006, when PW1 Constable Darshan Prasad was coming back to his quarter after his duty hours, he saw accused Sashi Shankar Rai committing rape on his daughter Km. Kiran (PW3), on which he shouted. On hearing the noise his wife PW2 Radhika Devi also came out, and both parents of the victim attempted to apprehend the accused, but he succeeded in fleeing from the spot by jumping the wall. As per the prosecution case, PW4 Birendra Bahadur Singh, who was accompanying the informant, also saw the accused running away. FIR (Ex. A-1) was lodged by PW1 Darshan Prasad (father of the girl) on 20.9.2006 at PS Tanakpur, on the basis of which Crime No. 749/2006 was registered against the accused Constable Sashi Shankar Rai in respect of offence punishable under Section 376 IPC and one punishable under Section 3(II) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Investigation of the crime was taken up by PW11 SI Dhirendra Kumar. Victim (PW3) was taken to the District Hospital, Champawat, where she was medically examined by PW6 Dr. Sweta Bhandari on 20.9.2006. However, the medical officer did not find any external or internal injury on the private parts of the victim. Her hymen was found missing. There was no internal or external injury on any part of the body. She found that the vagina of the victim admitted two fingers easily. The victim was found habitual to sexual intercourse. For determination of her age, PW6 Dr. Sweta Bhandari advised radiological examination. She also preserved and sent the slides of vaginal smears for pathological examination. PW7 Dr. Usha Bhatt, on pathological examination of the slides of vaginal smear, opined that there was no living or dead spermatozoa in that vaginal smear. PW8 Dr. JP Bhatt (Radiologist), after radiological examination of the victim, opined that the age of the girl was between 16 to 18 years.

5. Subsequently, the investigation was taken up by the Circle Officer Harish Chandra Sati (PW12), who, on completion of investigation, submitted the chargesheet (Ex. A-12) against the accused Constable Sashi Shankar Rai for his trial in respect of the offence punishable under Section 376 IPC and one

punishable under Section 3(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Trial court, on receipt of the chargesheet gave necessary copies of the documents to the accused, as required under Section 207 Cr PC and, after hearing the parties, framed the charge of offence punishable under Section 376 IPC and one punishable under Section 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused Sashi Shankar Rai pleaded not guilty and claimed to be tried.

7. The prosecution got examined PW1 Darshan Prasad (informant), PW2 Radhika Devi (mother of the victim), PW3 Km. Kiran (victim), PW4 Birendra Bahadur Singh, PW5 Head Constable Mohan Singh Rawat, PW6 Dr. Sweta Bhandari, who medically examined the victim, PW7 Dr. Usha Bhatt (pathologist), PW8 Dr. JP Bhatt (radiologist), PW9 Constable Prema Pant, PW10 DL Verma, the then Station Officer of PS Tanakpur, PW11 SI Dharendra Kumar, to whom the investigation was entrusted and PW12 Circle Officer Harish Chandra Sati, who completed the investigation.

8. Oral and documentary evidence was put to the accused under Section 313 Cr PC, in reply to which he pleaded that he has been falsely implicated as the informant Constable Darshan Prasad harbours enmity with him. In defence, DW1 RK Meena, Assistant Security Commissioner, RPF, was got examined; who has stated that informant Darshan Prasad had also been in jail in connection with a rape case.

9. The trial court, after hearing the parties and having assessed the evidence on record, found that prosecution failed to prove the charge of offence punishable under Section 376 IPC and one punishable under Section 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the accused Constable Sashi Shankar Rai and, accordingly, acquitted him vide impugned judgment and order dated 18.12.2010.

10. Aggrieved by the said judgment and order dated 18.12.2010, passed by the Special Sessions Judge, Champawat in Special Sessions Trial No. 17/2007, the

State has filed this appeal after seeking leave to appeal.

11. PW1 Darshan Prasad has stated that on 18.9.2006, he was on duty with RPF at Tanakpur. He further told that he belonged to Scheduled Caste and was living with his family in the railway colony. He further stated that his family consisted of himself, his wife and their four children, namely, Kiran (victim), Pankaj, Pooja and Niharika. PW1 Constable Darshan Prasad, narrating the incident, has stated that in the intervening night of 18th and 19th of September 2006, he was coming back from his duty along with Constable Birendra Bahadur Singh (PW4). When he reached near his quarter, he saw the accused Sashi Shankar Rai committing rape on his daughter. The witness further stated that he shouted, on which his wife also came out from the quarter. Witness further told that he attempted to apprehend the accused, but the accused succeeded in fleeing from the spot by jumping the wall. PW1 Darshan Prasad has proved the FIR (Ex. A-1) lodged by him against the accused Sashi Shankar Rai in PS Tanakpur. PW2 Radhika Devi, wife of the informant, has also corroborated the story narrated by her husband Darshan Prasad.

12. PW3 Km. Kiran stated that in the fateful night, she was studying when the accused Sashi Shankar Rai came in her room and committed rape on her after closing her mouth. She further stated that on hearing her shrieks, her father and Constable Birendra Bahadur Singh came there and attempted to apprehend the accused, but he ran away.

13. PW5 Dr. Sweta Bhandari, who medically examined the girl (Km. Kiran) on 20.9.2006, has observed in her report Ex. A-5 that no external injury was found on her breast, cheek, lips or thighs. The said medical officer further observed in her report that on genital examination of the girl, her public hairs were found non-matted, no injury was found either on the vulva or vagina, and hymen was not seen. PW6 Dr. Sweta Bhandari further stated that for determination of age of the girl, radiological examination was advised. Her vaginal smear was sent for pathological examination. PW6 Dr. Sweta Bhandari stated that the girl was habitual to sexual intercourse.

14. PW7 Dr. Usha Bhatt, Pathologist, told that she examined the slides of vaginal smear sent to her and on examination she did not find any living or dead spermatozoa therein.

15. PW8 Dr. JP Bhatt, Radiologist, told that on radiological examination of the girl (Km. Kiran), all the epiphyses of her right elbow joint were found fused. However, epiphyses below right radius and ulna were not found fused. Dr. Bhatt opined that the girl was aged between 16 to 18 years.

16. On looking at the site plan (Ex. A-13), this Court finds that the alleged incident of rape has taken place in a quarter adjoining to the quarter of the informant Constable Darshan Prasad. It has come on the record that the said quarter was vacant. Learned Counsel for the accused respondent submitted that consensual sex in the present case cannot be ruled out as in the odd hours, the girl was not in her house, but she was in the adjacent vacant quarter. It is further contended that as the law existed on the day of incident, a girl aged more than 16 years, could have given her consent for sexual intercourse. It is pointed out that had the girl raised alarm, the said fact would have been mentioned in the FIR itself, but there is no mention in the FIR that on hearing the cries of the girl, PW1 Constable Darshan Prasad went there.

17. It is pertinent to mention here that though PW1 Constable Darshan Prasad has stated that PW4 Birendra Bahadur Singh was with him, when he was returning from his duty, but PW4 Birendra Bahadur Singh has stated that he did not see Sashi Shankar Rai at the place of incident.

18. For the reasons as discussed above, this Court is of the view that it cannot be said that the trial court has erred in law in coming to the conclusion that the charge against the accused Sashi Shankar Rai is not proved. The impugned judgment and order, recording the finding that the charge is not proved, cannot be said to be perverse or against the evidence on record. Assuming for a moment that two views were possible in this case, since one view has been taken by the trial court, which is based on evidence on record and is not perverse, as such, it is not desirable, on the part of appellate Court, to interfere with the same in the appeal against acquittal. Hence, the same is not interfered with.

19. Consequently, the appeal is dismissed. Let the lower court record be sent back.

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