

Chandrika Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-14-2001

Reported in : 2002CriLJ603

Judge : G.P. Mathur and ;U.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 363, 366 and 376; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1422 of 1996

Appellant : Chandrika

Respondent : State of U.P.

Advocate for Def. : R.K. Singh, A.G.A.

Advocate for Pet/Ap. : Kamal Krishna, Adv.

Disposition : Appeal dismissed

Judgement :

G.P. Mathur, J.

1. Chandrika has preferred this appeal against his conviction under Sections 323/363/366 and 376, I.P.C. and sentence of 8 months R.I., 4 years R.I. 6 years R.I. and imprisonment for life imposed by Additional Sessions Judge, Gyanpur,

district Varanasi by the judgment and order dated 14-6-1991 in S.T. No. 2 of 1990. All the sentences imposed upon the appellant were ordered to run concurrently.

2. The case of the prosecution, in brief, is that at the relevant time PW 6 Smt. Prema Devi was working as Lady Warder in Gyanpur Jail. PW 2 Smt. Adesh Devi is her daughter, Smt. Adesh Devi had three daughters of which two are the victims of this unfortunate incident viz., PW 7 Km. Suman, aged about 6 years and Km. Deepmala, aged about 2 years. Km. Deepmala used to remain constantly ill. Mishri Lal who was the brother of the appellant Chandrika was confined in the Gyanpur Jail. One Indra Devi, resident of village Chhibiya P.S. Koirauna was also confined in Gyanpur Jail. The appellant Chandrika used to come to Gyanpur Jail to meet his brother Mishri Lal, Indra Devi told PW 6 Smt. Prema Devi that the appellant Chandrika is a very good Ojha (exorcist) and he can cure Deepmala of her illness. Indra Devi also introduced the appellant Chandrika to PW 6 Smt. Prema Devi, who asked him to examine Deepmala. The case of the prosecution further came to the house of Smt. Adesh Devi, examined her ailing daughter Km. Deepmala and recited some prayers, etc., After three days he again came to the house of Smt. Adesh Devi at about 11.00 a.m. At that time Smt. Prema Devi was not present in the house. The appellant told Smt. Adesh Devi that as certain necessary object (brahma-ka-chaurya) was not present, the girl was not recovering. He suggested that he will take the girl to his own house and after performing the necessary prayers, etc., would come back the next day. He further told Smt. Adesh Devi that her mother (Smt. Prema Devi) had also asked him to take the girl to his own house. Smt. Adesh Devi believed the appellant and handed over the girl Km. Deepmala to him. The girl started weeping on which she asked her elder daughter Km. Suman to accompany them and after they were seated on the bus she should come back. Thereafter, the appellant along with Km. Deepmala and Km. Suman boarded the bus. Km. Suman had been directed by her mother to get down at Durgaganj crossing. However, when Km. Suman tried to get down at Durgaganj crossing, the appellant put a handkerchief near her nose due to which she became unconscious. The appellant then got down from the bus at some distant place along with the girls walked on foot for some time and then he took the girls to a Nala. There he gave some beating to Km. Suman and raped her. He also caused injuries to her younger sister Km. Deepmala and thereafter ran away

leaving the girls in the Nala. The following morning i.e. on 23-11-1988 at about 7.00 a.m. some people of village Baripur saw the girls in the Nala. The information was conveyed to PW 1 Bailey Ram, Chowkidar, who also came there. On enquiry, Km. Suman told the names of her parents and also her address. She also narrated as to how she and her sister had been brought to the Nala by an Ojha (exorcist) and also the fact about commission of rape upon her. PW 1 Bailey Ram, Chowkidar then brought the girls on a jeep to P.S. Koirauna. From there he along with some police personnel came to Gyanpur and then after finding out the address of the parents of the girls reached their house. The mother and grand mother of the girls met them there. Thereafter, Ballay Ram lodged the FIR of the occurrence at 10.30 a.m. on 23-11-1998 at P.S. Koiorauna. The victims namely, Km. Suman and Km. Deepmala were subsequently sent to Varanasi for expert treatment. The case was initially investigated by PW 3 J.R. Tripathi and subsequently by PW 10 Kailash Pati Pandey. After investigation, charge sheet was submitted against the appellant.

3. After the cognizance had been taken, the learned C.J.M. committed the case to the Court of Sessions. The learned Sessions Judge framed charges under Sections 323/363/366 and 376, I.P.C. against the appellant, who pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 10 witnesses. The accused in his statement under Section 313, Cr.P.C. denied the case of the prosecution. He stated that there was some dispute regarding money with Nanki, Munnu and Ram Iqbal, who turned him out of the village and then he started doing puja in a temple. When his brother Mishri Lal was detained in jail, he used to do his parivi. The rival party had good relations with Smt. Prema Devi and they got him falsely implicated in the case. The girl who was victim of rape used to go to jail along with her grand mother and he was shown to her in jail. He farther stated that the case against him was entirely false. However, he did not lead any evidence in his defence. The learned Sessions Judge believed the case of the prosecution and convicted and sentenced the appellant as stated above.

4. We have heard Sri Kamal Krishna who has appeared as amicus curiae for the appellant. Sri R.K. Singh, learned A.G.A. and have examined the entire record.

5. P.W. 6 Smt. Prema Devi has deposed that at the time when the incident took place, she was working as Lady Warder in Gyanpur Jail. She has a daughter Smt. Adesh Devi, who had three daughters namely, Km. Suman, Km. Deepu and Km. Maya, Km. Deepu used to remain ill and in spite of treatment, she had not recovered. Some people suggested that she should be shown and got treated by an exorcist. She has further deposed that at the time of the incident, the appellant's brother Mishri Lai was also confined in jail and the appellant used to come and meet him. A lady prisoner Smt. Indra Devi informed her that the appellant Chandrika was a very good exorcist and Km. Deepu should be shown to him. She then asked the appellant to examine Km. Deepu, who came to her house and offered some prayers, etc. The appellant then said that he would come again after three days. She has further stated that when she returned home from duty in the evening on the date of the incident (which was three days after the first visit of the appellant), she was informed by Smt. Adesh Devi that the appellant had taken Km. Deepmala along with him with a promise to bring her back on the next day and that Km. Suman had also gone along with him.

6. P.W. 2 Smt. Adesh Devi is the mother of the victim Km. Suman. In her statement she has given the details of the prosecution case as to how the appellant was introduced to her mother PW 6 Smt. Prema Devi in jail by Smt. Indra Devi. She has further deposed that her daughter Deepmala was ailing and the appellant came to her house and offered some prayers, etc. and had said that he would come again after three days . She has further deposed that on the date of the incident, he came at about 11.00 a.m. and said that a necessary item (brahma-ka-chaura) was not there, the prayers offered by him were not giving any relief to the girl. He further said that he would take the girl to his own house and after doing the prayers etc. would bring back the girl on the next day. He further said that her mother (Smt. Prema Devi) had said that he should take the girl to his own house. Believing the statement of the appellant she handed over Km. Deepmala to him. The girl started weeping and then she asked Km. Suman to accompany her and after they had boarded the bus she should come back. Thereafter, she has deposed about the incident as was narrated to her by Km. Suman, bringing of the girls to his house by the police personnel and then taking them to a hospital at Varanasi for treatment.

7. P.W. 7 Km. Suman is the victim of the incident. At the time of her statement in Court on 21-3-1991, she gave her age as 7 years. The learned Sessions Judge put several questions to her before administering oath to her. The answers given by the witness showed that she was a very intelligent girl, who was studying in class III at the time of her statement and she understood the sanctity of oath. Thereafter, oath was administered to her. She has deposed that Km. Deepmala alias Deepu used to remain ill and the appellant had come to her house to treat her. On the date of the incident when the appellant took Deepmala along with him, she started weeping. The appellant then asked her to accompany him up to Durgaganj crossing and then to come back. She has further stated that the appellant forcibly made her sit in the bus at Durgaganj crossing and he put a handkerchief on her nose and after breathing through it she virtually became unconscious and did not remember anything further. When she recovered senses she found herself and her sister in a Nala. The appellant made her drink some liquid from a bottle which was sour in taste. Thereafter, the appellant asked her to remove her panties and when she declined to do so he assaulted her. Thereafter, he forcibly committed rape upon her. She started bleeding both from her mouth and also from her private parts. Her younger sister Deepmala was also assaulted by the appellant. Thereafter, she became unconscious. On the following morning some persons came and took her and her sister to the police station.

8. P.W. 8 Dr. Kailash Singh, M.O., Shiv Prasad Gupta Hospital, Varanasi examined Km. Suman at 2.35 pm. on 24-11-1988 and found the following injuries on her body :

1. A braided contusion of 4 cm. x 3 cm round on right cheek, black scab on it.
2. Abraided contusion of 5 cm x 4 cm on left cheek with hard black scab on it.
3. Abraided contusion of 5 cm x 2 cm on right knee.
4. 4 cm x 2 cm on right lateral malleolous of ankle joint.
5. Abraided contusion of 15 cm x 6 cm on back of chest above sacral bone in midline.

6. C/o pain & injury on genitals.

Referred to Female Hospital for examination and opinion.

9. In the opinion of the doctor, the injuries were about 2 days old and had been caused by blunt object. The same doctor examined Km. Deepmala alias Deepu at 2.30 pm. on 24-11-1988 and found the following injuries on her person:

1. Abraided contusions of 2 cm x 2 cm with Abrasion cm x cm on right fore head.
2. 3 cm x 2 cm with Abrasion 1 cm x cm on right chin of face.
3. 6 cm x 2 cm on right Glutial region. Black in colour with Hard scab on it.

In the opinion of the doctor, the injuries were about 2 days old.

10. P.W. 9 Dr. Usha Jaiswal, M.O. Kabirchaura Hospital, Varanasi examined Km. Suman at 4.30 pm. on 24-11-1988 and found the following injuries on her person :

On internal exam. there is tear from vagina up to the rectum. It is septic and pus discharge coming out through it. Patient is admitted in hospital for further management. Veg smear sent to pathologist SSPG.

11. The doctor stated that in her opinion rape had been committed upon Km. Suman and the injuries found on her private parts had been caused on account of the said reason. She further opined that at the time of her medical examination, she would be about 7-8 years old.

12. P.W. 1 Bailey Ram is the chowkidar of the village Baripur. The two girls had been found lying in the Nala of the village Baripur in the early morning of 23-11-1988. The witnesses had taken the girls to P.S. Koirauna and then to their home. The F.I.R of the incident was lodged by him and he has proved the same, which is Exhibit Ka 3 on the record. PW 4 Awadesh Singh was Head Constable at P.S. Koirauna. He deposed that Bailey Ram lodged a report at 10.30 a.m. on 23-11-1988 on the basis of which he registered a case in the General Diary under Sections 323/363/366A and 376, I.P.C. and prepared chick F.I.R. PW 5 Vishwanath. Head Constable of P.S. Gyanpur has deposed that on the basis of

the chick F.I.R. lodged at P.S. Koirana, he registered a case in the General Diary of P.S. Gyanpur. P.W 3 J.P. Tripathi was S I. of P.S. Koirana. He had commenced investigation of the case, had gone to the spot where the girls were found and had prepared a site plan. Thereafter, the investigation was taken by PW 10 Kailash Pati Pandey, Inspector Incharge of P.S. Gyanpur. He recorded the statement of the witnesses and thereafter charge sheet against the appellant as an absconder .

13. The testimony of PW 6 Prema Devi and PW 2 Adesh Devi shows that Km. Deepmala was keeping ill and the treatment given to her had not made any improvement in her condition. PW 6 Smt. Prema Devi, (mother of Smt. Adesh Devi) was working as Lady Warder in Gyanpur Jail and she came in contact with a lady prisoner Smt. Indra Devi. Mishri Lal, brother of the appellant was confined in Gyanpur Jail and the appellant used to come and meet him. Smt. Indra Devi suggested to Smt. Prema Devi that the appellant was a good exorcist and he could treat Deepmala. The appellant was then asked to come to the house of Smt. Adesh Devi where he came three days before the incident and did some prayers. etc. PW 2 Smt. Adesh Devi and PW 6 Smt. Prema Devi have absolutely no enmity of any kind with the appellant nor they knew him from before. There is absolutely no reason why they would falsely depose against him.

14. The testimony of PW 2 Smt. Adesh Devi further shows that the appellant came to the house again after three days and told her that as the necessary object (brahma-ka-chaura) was not there, the prayers made by him were not proving to be fruitful and he will take the girl to his own house. He falsely told that PW 6 Smt. Prema Devi had said that he should take the girl to his own house. Believing his representation Smt. Adesh Devi handed over the girl Deepmala to him. However, as the girl started weeping, her elder sister Km. Suman was asked to accompany her to the bus stand. The testimony of PW 7 Km. Suman shows she was forcibly made to sit in the bus at Durgaganj crossing and the appellant put a handkerchief on her nose which made her almost unconscious. Thereafter, the appellant took the girls to a Nala where he gave some liquid from a bottle to Km. Suman to drink, which was sour in taste. The testimony of PW 7 further shows that the appellant forcibly removed her panties and committed rape upon her after giving her

beating. He also gave some beating to Km. Deepmala. After leaving the girls in the Nala, the appellant disappeared.

15. The testimony of PW 7 Km. Suman finds complete corroboration from the medical evidence on record. Both the girls were examined initially by PW 8 Dr. Kailash Singh, who found abrasions and contusions on their bodies. The lady doctor found three serious injuries in the vagina of Km. Suman. She has categorically stated that rape had been committed on Km. Suman. There is absolutely no reason why Km. Suman would falsely implicate the appellant. Thus, the case of the prosecution is fully established. 16. Sri Kamal Krishna has contended that the name of the appellant was not mentioned in the F.I.R. and in absence of prior test identification parade having been held, the testimony of PW 7 Km. Suman could not be relied upon. In our opinion, the contention raised has no substance. The F.I.R. was lodged by a total stranger namely, Bailey Ram, Chowkidar of the village Baripur, where the girls were found in the morning. It is written in the F.I.R. that the victim Km. Suman had told the people who rescued her that a person known as 'Ojha' had brought her and had committed rape upon her. The testimony of PW 2 Smt. Adesh Devi and PW 6 Smt. Prema Devi show that the appellant is an 'Ojha' and he had come to their house only in his capacity as 'Ojha' and had done some prayers, etc. PW 7 Km. Suman, therefore, came to know about the appellant as an 'Ojha' and when she stated about the manner in which she was brought to the village Baripur where she was found by Bailey Ram, Chowkidar, she clearly attributed and imputed the entire role of bringing her to the said village and commission of rape upon her by the 'Ojha'. In order to fix the identity of a person it is not always necessary to give his full name. A person coming to a house may be identified and marked out by the nature of the work being performed by him. If a doctor's compounder comes to the house often for administering an injection, his identity can be established by describing him as 'compounder', even if his name is not mentioned. The position may be different if more than one such person is known or comes in contact of the witness. In such a case some more evidence may be required to fix the identity of the person. The victim namely. Km. Suman had neither any occasion nor in fact knew any other 'Ojha' (exorcist). She had come to know only of one 'Ojha' who was none else but the appellant. Therefore, when she said that the 'Ojha' had brought her and left her

at the Nala after committing rape upon her, the identity of the appellant was completely fixed and it was not necessary to hold any test identification parade for him. We have gone through the statement of all the witnesses and the documentary evidence of the case and we have not slightest doubt that the entire incident happened in the manner suggested by the prosecution and it was the appellant who took both the girls with him, caused injuries to them and also committed rape upon Km. Suman. Thus, the charges under Sections 323/363/366 and 376, I.P.C. levelled against the appellant are fully established.

17. In the facts and circumstances of the case, we do not think that there is any scope for reducing the sentences imposed upon the appellant.

18. In the result, the appeal preferred by the appellant is dismissed. The conviction of the appellant as well as sentences imposed upon him by the learned Sessions Judge are affirmed. The appellant is in jail, he shall undergo the sentences awarded to him.

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