SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Raj Nath Vs. State of U.P.

Raj Nath Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/490532

Court : Allahabad

Decided On : Aug-26-2002

Reported in : 2003CriLJ2056

Judge : M.A. Khan, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 376

Appeal No. : Criminal Appeal No. 213 of 1987

Appellant : Raj Nath

Respondent : State of U.P.

Advocate for Pet/Ap. : Anil Srivastava, Adv.

Disposition : Appeal dismissed

Judgement :

M.A. Khan, J.

1. This is an appeal against the judgment and order dated 11-3-1987 passed by the learned Sessions Judge, Barabanki, in S. T. No. 306 of 1985, thereby convicting the appellant of the offence punishable under Section 376, I.P.C. and sentencing him for six years R. I.

2. The facts leading to the prosecution of the appellant are that Smt. Manjula Misra, wife of Sri Vishwanath Misra, had lodged a report at the Police Station, Fatehpur at 8.35 p.m. on 9-5-1985 that her husband Vishwanath Misra was posted as Sub-Inspector at Police Station, Fatehpur and some time before the present-occurrence, he was transferred to Police Station, Patranga in the same district. Since the examination of his children were to take place shortly he had left his family at the Police Station, Fatehpur. The family of Vishwanath Misra was living in a quarter in the premises of the Police Station, Fatehpur. At the relevant time P.W. 2 Desh Raj was working as a servant with the Misra family for the last 7-8 months prior to the present occurrence.

3. The appellant was posted as Constable at the Police Station, Fatehpur. It is said that on 9-5-1985 at about 7.30 p.m. while the informant Smt. Manjula Misra was busy in cooking food, she handed over her infant daughter Km. Rani to Deshraj. It is said that the appellant had sent Deshraj for purchasing Biris for him. It is further said that Deshraj returned back with Biris and found that Raj Nath's quarter was bolted from inside and Raj Nath was not traceable nor was there any trace of Km. Rani. Then Deshraj reported the matter to Smt. Misra who went outside to take water from water-tap during the course of which she saw that the appellant after opening the door of the window had thrown the infant girl outside. Smt. Misra flashed torchlight and saw that the appellant was running away. She raised an alarm whereupon the witnesses came there and tried to chase the appellant who ran away. The first informant took up the daughter and found that she was unconscious and there was bleeding from her private part. She went to the Police Station where a report (Ext. Ka-1) was registered. Thereafter Km. Rani was medically examined in the Hospital and was provided with the first-aid. A case was registered against the appellant and after investigation charge-sheet was submitted against him.

4. The learned trial Court recorded the evidence in the case, believed the prosecution story, convicted the appellant and sentenced him as above. Feeling aggrieved against the said judgment and order, the present appeal has been filed.

5. The first point which has been argued by the learned Counsel for the appellant is that the appellant was a Constable posted at the Police Station, Fatehpur where the Police Inspector of that Police Station was on inimical term with the appellant and it is at his instance that the appellant has been falsely implicated in this case. There is, however, absolutely, no reliable evidence at all on record to show that the appellant being a Constable at the Police Station posted at Police Station, Fatehpur was at all on inimical terms with the Inspector of that Police Station. In absence of such evidence on record it cannot be believed that the relations between the Constable-appellant and the Inspector of that Police Station were strained. Even if it is believed that the relations were strained, it cannot be believed that the Inspector shall involve the appellant, a Constable of that very Police, Station in such a heinous offence, particularly when the dignity of a police official was, involved because the infant girl was also a daughter of a Police Sub-Inspector who was recently posted at another Police Station which is far from there. Therefore, the defence plea that the appellant has been falsely implicated in this case at the instance of the Police Inspector of the Police Station is totally false.

6. It is no doubt true that no direct evidence is available and nobody saw the appellant committing rape. However, the circumstantial evidence on record is of such nature that it clearly points out towards the guilt of the appellant. P.W. 2 Deshraj is an important witness in this case who was a private servant of Vishwanath Misra, Sub-Inspector who was transferred from that Police Station and was living with the children of Vishwanath Misra, Sub-Inspector. He has stated that on the fateful day, the baby of Sri Misra was with him and when he came out of the house, the appellant, a Constable asked him for purchasing Biris for him; he handed over baby Km. Rani to the Constable-appellant and when he came back after purchasing the Biris, he found the appellant missing. He reported the matter to Smt. Manjula Misra, P.W. 3 and everybody came out in search of the baby. He also stated that house of the appellant was bolted from inside. Smt. Misra came out of the house and thereafter she found appellant throwing the baby out of the window and he was running away.

7. P.W. 2 Deshraj is a totally independent witness and has absolutely no enmity, ill will or grudge against the appellant. There is no reason to disbelieve the statement of P.W. 3 Smt. Manjula Misra, the mother of the infant girl Km. Rani. She has also narrated the same story. The injuries of Km. Rani were medically examined in the Hospital and the medical examination report is Ext. Ka-3 on record shows that there were multiple abraded contusions over the vertebral column (back) from lower dorsal to sacral region in an area of 10 Cms. (Vertical) x 3 Cm. varying from 0.5 cm. to 1 cm. x 0.3 cm. to 1 cm. Spots were tender and red. The Doctor also found abraded contusion over post superior iliac spine (right) 2 cm. x 1 cm., red and tender. The Medical Officer further found that the hymen was torn 1/2 cm. at 7 O'clock position; posterior commisure and it was bleeding on touch. There was also tenderness. The injury was fresh caused with blunt object and friction.

8. This injury report is on record. The statement of Medical Officer proves beyond doubt that the girl who was less than one year, was subjected to rape by the appellant. There is absolutely no reason to discard the prosecution case and the learned Court below was fully justified in believing the prosecution case, convicting the appellant and I find no illegality or impropriety in the said order passed by the learned Court below.

9. The appeal is dismissed. The appellant is on bail. His bail bonds are cancelled and sureties are discharged. The Chief Judicial Magistrate, Barabanki is directed to ensure arrest of the appellant to serve out the sentence as imposed on him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com