

**Basdeo and Another Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Oct-10-2011

**Judge :** Vinod Prasad

**Appeal No. :** Criminal Appeal No. 2677 of 1980

**Appellant :** Basdeo and Another

**Respondent :** State of U.P.

**Judgement :**

Vinod Prasad, J.

Two appellants, real sibling brothers, Basdeo and Chhotey Lal have questioned the sustainability of their conviction recorded by Vth Additional Sessions Judge, Agra, in S.T. No. 87/80, State Vs. Basdeo and another, by which both the appellants have been convicted u/s 363 IPC with implanted sentence of five years Rigorous Imprisonment and additionally appellant Basdeo has been further convicted u/s 376 IPC and sentenced to five years R.I., by the trial Judge.

In short, prosecution allegations against the appellant as is contained in the written report Ex. Ka 1, coupled with chick FIR Ex. Ka 10 were that two appellants along with third accused Bare Lal enticed away and kidnapped a young damsel Chandrawati P.W. 4 aged about 13 or 14 years d/o informant Raghunandan P.W. 1 in the night of 5.5.1979 at 12 a.m. Victim was searched but remained untraced. Neighbours and villagers were also informed regarding aforesaid kidnapping. After

a month on 6.6.1979, Veerpal, Ram Prakash, Rangveer Singh, all resident of village Nagla Karan Singh, were returning from a marriage ceremony in a jeep and when they were travelling in between village Ghiror and Sukhabad, at 4 p.m., they located abducted victim Chandrawati flanked by three accused Basdeo, Chhotey Lal and Bare Lal sitting under a tree. No sooner the three witnesses got their jeep stopped all the accused sprinted away to evade their arrest. Victim, after witnessing three witnesses Veerpal, Ram Prakash and Rangveer Singh started shrieking to rescue her. Aforesaid witnesses however, succeeded in apprehending two of the accused Chhotey Lal and Bare Lal after some grappling with them in a field. Third accused Basdeo however, made his escaped good. From the same jeep two apprehended accused along with victim were brought to the informant's house where in the presence of co-villagers victim narrated that she was taken to various places and was also subjected to rape.

With the aforesaid allegations informant Raghunandan scribed Ex. Ka 1, carried apprehended accused and the victim to the Police Station, Firozabad North, district Firozabad and got his FIR registered on 7.6.1979, at 10 a.m. ,vide Crime No. 212/79, u/s 363, 366, 368, 376 IPC against three named accused persons.

Head constable Udal Singh prepared chick FIR Ex. Ka 10 and relevant G.D. entry Ex. Ka 11. Cartel (petticoat) of the victim was also seized by the head constable and its seizer memo was prepared. Cartel was sent for serologist examination on 21.6.1979 through constable Gulab Singh, which was received back on 29.9.1979 along with the chemical examination report Ex. Ka 12.

Investigation into the crime was commenced by Sub Inspector R.S. Punia P.W. 4, who after registration of crime recorded investigatory statements of Head Constable Udal Singh, informant Raghunandan, victim Chandrawati and of accused Bare Lal and Chhotey Lal. P.W. 4 further recorded 161 Cr. P.C. statements of Veerpal, Om Prakash, Raghubir and other witnesses and subsequent thereto has dispatched the victim Chandrawati for her medical examination through constable Dharmveer Singh. On 8.6.1979, Investigating Officer apprehended accused Basdeo and copied recovery memo of the cartel Ex. Ka 3 prepared by Udal Singh. On 9.6.1979, P.W. 4 conducted spot inspection and

prepared site plan Ex. Ka 4 of place of abduction. He also prepared site plans of places where victim was kept and raped as Ex. Ka 5, (of village Jaunpai), Ex. Ka 6 (of village Nagla), and Ext. Ka 7 (village Khadoi). On 24.6.1979 proceedings u/s 82 Cr. P.C. against the accused Basdeo were taken. Concluding investigation, on 27.6.1979, P.W. 4 R.S. Punia, I.O., charge sheeted accused vide Ex. Ka 9.

On the basis of charge sheet Ex. Ka 9 accused persons were summoned by the Magistrate, who found their case triable by court of Sessions, committed it for trial. In the Sessions Court case was received on 20.2.1980 and was transferred to the court of Vth Additional Sessions Judge Agra for trial.

On 13.9.1980 trial Judge charged two accused-appellants Basdeo and Chhotey Lal for offences u/s 366 and 376 IPC. Since these charges were abjured by accused appellants, to establish their guilt and bring home the charge, trial procedure commenced.

To substantiate the charges against the appellants, prosecution relied upon in all four witnesses, out of whom victim P.W. 1 Chandrawati, his father informant P.W. 2 Raghunandan were fact witnesses. Other two formal witnesses were Dr. Anju Goel P.W. 3 and I.O. Sub Inspector R.S. Punia P.W. 4.

In their statements u/s 313 Cr. P.C., accused persons denied incriminating circumstances appearing against them in prosecution evidence and pleaded their false implication. The defence of the accused- appellant were that they were masons and had worked at the house of the informant regarding which they were not paid their labour charges. On demand being made by them, they were falsely implicated in the present case. Accused appellant Chhotey Lal took further defence that he was arrested at 8 a.m. from his house in village Nagla, district Firozabad and was falsely implicated in the case because of aforementioned defence. To lend credence to their defence story, accused persons examined two defence witnesses D.W. 1 Har Prasad and D.W. 2 Rajendra.

Vth Additional Sessions Judge, Agra, after critically appreciating prosecution and defence evidences and looking into the Exhibits, filed by both the sides, came to the conclusion that prosecution had successfully established the guilt of the

appellant Basdeo on both the charges u/s 363 and 376 IPC, and therefore, convicted him for those offences and imposed sentences as has already been recorded herein above.

Accused Chhotey Lal however, was not found guilty of the charge of rape and therefore, he was convicted only for the offence of kidnapping u/s 363 IPC and was sentenced as mentioned above. Challenge in this appeal is to the aforesaid conviction and sentence by the two appellants.

Appeal was admitted by this court on 25.11.1980 and both the appellants were allowed bail. During the pendency of their appeal one of the appellant Basdeo expired and his appeal was abated vide order dated 6.1.2006. Now only the appeal of appellant Chhotey Lal is left to be decided by this court.

When this appeal was called out for hearing, no body appeared to argue the appeal on behalf of sole appellant Chhotey Lal and consequently Sri D.K. Singh advocate was appointed as Amicus Curiae to assist the court in disposal of appeal after a gap of more than three decades.

I have heard Sri D.K. Singh, learned Amicus Curiae in support of the appeal of Chhotey Lal and Sri Sangam Lal Kesarwani learned AGA for respondent State.

Sri D.K. Singh, Amicus Curiae contended before the court that it is difficult to castigate the conviction of the appellant recorded by the trial judge on the basis of evidence tendered by the prosecution. It is submitted that victim Chandrawati was found to be a minor aged about 15 years, which allegation could not be shattered by the defence counsel, and therefore, her enticing away by the accused stands proved. He further submitted that surviving appellant Chhotey Lal has not molested the chastity of the girl, and therefore, he was convicted only for the offence u/s 363 IPC with the imposed sentence of five years. Learned counsel further submitted that at the time of the incident appellant Chhotey Lal was aged about 35 years and since more than three decades have passed by interregnum, his sentence of five years be reduced. Thus, learned Amicus Curiae argued only on the question of sentence and did not challenge the conviction recorded through the impugned judgement.

Learned AGA on the question of sentence submitted that sentence is not excessive and do not require any interference by this court.

I have considered the arguments by both the sides.

Looking to the evidence of P.W. 1 victim Chandrawati and informant Raghunandan P.W. 2 coupled with evidence of Dr. Anju Goel P.W. 3, there remain no doubt that victim Chandrawati was kidnapped by the appellant and his associates. Defence has failed to illicit any damaging evidence in cross-examination, and therefore, so far as conviction of the appellant for the charge u/s 363 IPC is concerned, it stands proved and in this respect submission of learned Amicus Curiae is fair and just and is acceptable.

Turning towards sentence part of it, it is to be noted that incident was alleged to have occurred in year 1979. Thirty two years have gone by. Surviving appellant Chhotey Lal after adding period passed interregnum, as of now, will be about 65 years of age. From his statement u/s 313 Cr. P.C., which is not in dispute, he was a poor manson earning his livelihood on daily basis. No criminal history or criminal proclivity of the appellant could have been brought forth by the prosecution to take a stringent view while sentencing him. Said appellant has got no conviction to his credit and over and above, he did not seems to have enticed away the victim because of his lustrous overtures. So far as charge u/s 376 IPC is concerned, he stands acquitted. Crime seems to have been committed by him because of his friendship with co-associates Basdeo, whose appeal had been abated. In such a view, to send accused-appellant Chhotey Lal back to prison to serve out remaining part of his sentence will not be in the interest of justice.

In such a view, I am of the opinion that period of imprisonment, already under gone by appellant Chhotey Lal, which comes out to be for about one and half years of jail term, with a fine of Rs.25,000/-, out of which compensation of Rs.20,000/- to the victim Chandrawati, who is now a married wife will serve the ends of justice.

In the result, appeal is allowed in part. Conviction of appellant Chhotey Lal for the charge u/s 363 IPC is hereby maintained but his sentence is altered from five

years R.I., to the period of imprisonment already undergone by him with fine of Rs. 25,000/-, out of which a compensation of Rs.20,000/- is awarded to the victim Chandrawati P.W. 1. Appellant Chhotey Lal is permitted to deposit the fine of Rs. 25,000/- within a period of two months from today, for which trial judge will issue notice to the appellant. In the event of failure, the trial judge is directed to get realized the amount of fine from the said appellant as an arrears of land revenue within a period of one month, after expiry of two months' period already permitted to him to deposit the fine. After the fine is deposited and /or realized from the appellant, trial judge will notice the victim Chandrawati and will hand over the compensation of Rs.20,000/- to her or her legal heirs entitled for the same.

Appeal is allowed in part as above.

Let a copy of this judgement be certified to the trial court.

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