



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1114 of 1989

Bohoria and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Jitendra Prasad Mishra, Keshari Nath Tripathi, Kumdax Kumar Dwivedi, V.b. Rao
Counsel for Respondent(s)	: A.G.A.

Court No. - 76

HON'BLE SAMIT GOPAL, J.

1. This appeal under Section 374 Cr.P.C. has been preferred by the appellants Bahoria, Natthu and Bhagwandin against the judgment and order dated 02.05.1989 passed by the Ist Additional Sessions Judge / Special Judge (D.A.A.), Banda in Session Trial No. 336 of 1984 (State of U.P. Vs. Bahoria and 3 others) whereby all the accused appellants were convicted and sentenced for offences under Section 394 IPC to five rigorous imprisonment, a fine of Rs. 2,000/- and in default of payment of fine to six months imprisonment, under Section 365 IPC to three years rigorous imprisonment, a fine of Rs. 1,000/- and in default of payment of fine to three months imprisonment, under Section 366 IPC to five years rigorous imprisonment, a fine of Rs. 2,000/- and in default of payment of fine to six months imprisonment. Further the accused appellant Bahoria has been convicted and sentenced under Section 376 IPC to eight years rigorous imprisonment, a fine of Rs. 2,000/- and in default of payment of fine to six months imprisonment. The sentences have been ordered to run concurrently. By the same judgment and order, the accused Din Dayal

who was also tried together has been acquitted of the charges levelled against him under Sections 394, 365, 366, 376 IPC.

2. During the pendency of this appeal, the appellant no.1/Bahoria and the appellant no.3/Bhagwandin died and thus their appeal stood abated vide order dated 06.12.2022. The appeal thus survives only with regards to the appellant no.2/Natthu.

3. The prosecution case as unfolded in an application dated 16.12.1982 given by Budhuwa to the SHO, P.S. Badausa, District Banda of which Ram Pratap is the scribe is that he is a resident of village Lametha, P.S. Badausa, District Banda. In the intervening night he was sleeping in his field beside Baage river and his wife Mahraniya and his daughter were sleeping in the house wherein at about midnight 3-4 miscreants climbed the wall and entered inside the house and threatened his wife and took silver ornaments kept in a mud/clay pot and took away his daughter with them who was aged about 18-19 years of age. His wife opposed it on which the miscreants assaulted her. One of the miscreants was carrying a gun whereas the others were carrying lathi and farsa. On hearing the shouts and shrieks, his brother Kallu, Chhota, Bavra and other people of the village came who saw the incident in the light of torch and can identify the miscreants. The articles can be identified by him and his wife. His daughter is already married whose matrimonial house is in village Telausa, P.S. Kamasin in the house of Chunna. His report be lodged and action be taken. The said tehrir is Exb: Ka-4 to the records.

4. On the basis of the said tehrir a First Information Report was lodged as Case Crime No. 144 of 1982, under Sections 394, 363, 366 IPC, P.S. Badausa, District Banda on 16.12.1982 at 14:30 pm against 3-4 unknown miscreants. While transcribing the chik FIR, the first informant was put a question as to why he has come to give the information late as the incident was of the night on which he replied that he was searching his daughter, ornaments and the miscreants and when he could not know of it then he has come to give the report. The chik FIR is Exb: Ka-1 to

the records. The distance between place of occurrence and the police station is 15 kms as recorded in the chik FIR.

5. The name of the victim is not being disclosed and mentioned in the present judgment in the light of directions of the Apex Court in various judgments and as per Section 228 of the Indian Penal Code. She is thus referred to as victim 'X' in the judgment.

6. The victim 'X' was medically examined on 08.01.1983 at 05:00 pm by Dr. M.C. Mittal, the Medical Officer, District Hospital, Banda. General appearance of the victim 'X' was noted as under:

“Well built, Height 5 feet, wt. 40 kgms, Teeth 14/16, breasts well developed, Axillary and public hairs well developed.

Injuries: *No mark of injury all over body.”*

The examination of private parts was noted as under:

“- No marks of injury on her private parts

- Vagina admits 2 fingers easily old healed tear present on hymen.

- Labia majora-normal, Labia minora normal of vtanvs Fx clear.

- Vaginal smear slide send to pathologist Distt Hospital Banda for the evidence of spermatozoa.”

The doctor did not find any injury all over her body. X-ray of right elbow and right wrist joint for age was advised. The conclusion as drawn by the doctor is as under:

“No definite opinion can be given about rape. She is accustomed for habitual intercourse.”

7. The x-ray report of victim 'X' was conducted on 10.01.1983 and the following report was given for right elbow joint:

“Epiphyses around the right elbow joint bones have fused to their metaphyses in the skiagram”

The following opinion was given for the right wrist joint:

“Epiphyses of Radius ulna bone at lower end have fused partially to their metaphyses in the skiagram of Rt. wrist joint.”

The same is Exb: Ka-3 to the records. The doctor opined the age of victim ‘X’ as approximately 18 years.

8. The site plan of the place of occurrence was prepared on 16.12.1982 which is marked as Exb: Ka-5 to the records.

9. After concluding the investigation, charge sheet no. 17 dated 06.03.1983 was filed under Sections 394, 366 IPC against all the four accused. The same is Exb: Ka-6 to the records.

10. Vide order dated 14.10.1987 passed by the 2nd Additional Sessions Judge / Special Judge, (D.A.A.), Banda the Court concerned framed charges against Bahoria, Din Dayal and Natthu under Sections 394, 365, 366, 376 IPC. The accused were read over and explained the charges to which they pleaded not guilty and claimed to be tried. Further vide order dated 19.04.1988 passed by 2nd Additional Sessions Judge / Special Judge, DAA, Banda charge under Sections 394, 365, 366 and 376 IPC was framed against Bhagwan Deen. He was also read over and explained the charge to which he denied and claimed to be tried.

11. The prosecution in order to prove its case produced and examined Budhuwa the first informant and father of the victim ‘X’ as PW-1, Baura as PW-2, Smt. Maharaniya the mother of victim ‘X’ and wife of PW-1 as PW-3, victim ‘X’ as PW-4, Constable Ghanshyam Sharma who transcribed the chik FIR as PW-5, Dr. M.C. Mittal the Radiologist who conducted the x-ray examination of the victim ‘X’ and proved its plate and report as PW-6 and Krishna Singh Sengar the second Investigating Officer of the matter as PW-7.

12. The accused Din Dayal sought permission of the court and appeared as a defence witness himself.

13. The trial court finding the prosecution evidence to be beyond reasonable doubt convicted and sentenced the accused appellants as above. This appeal has thus been preferred as stated above.

14. Budhuwa PW-1 was initially examined on 15.01.1988 and then was re-examined on 17.12.1988. He states that around five years back dacoity was committed in his house where the dacoits took away his daughter. She was released after 8-10 days. He was not present there. He was at that time at his field. He got the report lodged on the information as described to him. He got his thumb impression affixed on it. He states that he was at the time present in his field besides the river. The miscreants had taken his daughter. When he came home then he came to know about the incident and then he got a report transcribed from Ram Pratap. Whatever was told to him has been written. After its writing he heard the same and then affixed his thumb impression and went to lodge a report. He proves the chik tehrir given at the police station.

In his cross examination, he states that after hearing about the incident in the village he went there. No one had come to call him. At the time of incident, his wife, daughter and younger son were present at the house. When his daughter returned back no one had come with her.

15. PW-2 Baura was examined on 15.01.1988. He states that dacoity was committed at the house of Budhuwa. The miscreants had taken away his daughter. There were 5-6 miscreants and he did not identify them but he had seen them. He was recalled for re-examination on 07.02.1989. He states that dacoity was committed in the house of Budhuwa. On hearing the shout, he reached there. When he reached there the miscreants had taken away his daughter. He did not see the miscreants taking away his daughter but the wife of Budhuwa told him that miscreants have taken away her daughter. He had also seen that at that time girl was not in the house. It is incorrect that he did not see the miscreants and neither did he identify them.

No cross examination was done of the said witness.

16. Smt. Maharaniya PW-3 is the mother of victim 'X' and wife of PW-1 Budhuwa. She states that in the night she was sleeping in the house along with her daughter. Four miscreants entered inside but she could not identify them. They assaulted her and looted the articles. They forcibly took away her daughter. After 5-6 days her daughter returned

back. Her daughter before coming to the house had gone to the police station which was told by her on her return. Firing between miscreants and police had taken place in which she on finding way had run out. On her shout, many people had come. Her husband was guarding the orchard beside the river in the night and on hearing a shout, he came back.

In her cross examination, she states that she was interrogated by the Investigating Officer and whatever she had told was recorded by the police. She was recalled for re-examination on 07.02.1989 on which she states that in the night dacoity was committed in her house. She and her daughter were in the house. Her husband had gone to the orchard to guard the guava trees beside the river and was present there. Three miscreants entered in the house and assaulted her and committed loot. They assaulted her and her daughter. They looted the articles and assaulted her daughter and took her with them. After about 8-10 days her daughter came back. She came back after about 15-16 days. Till such days, she had been in captivity. She was taken to various places. When she came back she told the story to her. She states that she could not recognize the miscreants. They had concealed their faces with clothes. The miscreants were not talking when they were inside the house but were only making gestures. She was interrogated by the Investigating Officer and had told him that the miscreants had concealed their faces. She could not tell in Court about it. One miscreants was carrying a gun, one carrying lathi and one carrying farsa. They did not open their faces inside the house as their faces were covered and it was night, they could not be identified.

17. PW-4 is the victim 'X'. She states that in the night miscreants came to her house and committed a loot and took her away forcibly. Bahoria Lohar, Natthu Kori, Duluva Brahman and Bhagwandin Kewat took her away. They took her and handed her over to other miscreants. Her eyes was closed with a patti. She was kept in the jungle of Markasada for about 5-6 days and all the accused used to commit rape upon her. The accused who had taken her away and the accused to whom she was handed over used to commit rape upon her. They were talking

amongst themselves to sell her. They committed rape upon her daily. In the jungle there was firing on which she found way and ran away from there. She came on a vehicle to Bisanda where she met her fufa and told him about it from where she met a police personnels to whom she told about the incident and then was taken to police station. She was sent for medical examination. The Investigating Officer interrogated her.

In her cross examination, she states that when the miscreants had taken her they were concealing their faces and later on when they opened the cloth then she could identify them. They had opened her eyes in the jungle. Din Dayal Kewat was not standing outside the door. Bahoria Lohar had got the name of Din Dayal Kewat written by her and the miscreants had handed her over outside the village. The miscreants who had taken her included Bahoria Lahore and other persons who had caught her and three other persons had taken her to the jungle. The three other miscreants then did not meet her and did not commit any wrongful act upon her. Bahoria Lohar and the other miscreants to whom she was handed over committed rape upon her. She had told the Investigating Officer that Bahoria Lahor had committed rape upon her but if the same is not written by him she could not tell the reason about it. The other set of miscreants were about 5-6 in number. She had told the Investigating Officer that the other miscreants met outside the village but if the same has not been written by him she cannot tell the reason about it. They met outside the village at about half and one furlong away. Din Dayal Kewat has enclosure in the village where the miscreants met them. The other miscreants were there, it is outside the village. She had told the Investigating Officer that her mouth was gagged and she was taken to the enclosure of Din Dayal Kewat where six miscreants were present. She stayed there for 5-6 days. She did not give such statement earlier that she ran away after 4-5 days and no such wrongful act was done on her but had told him that till 4-5 days ago they committed wrongful act on her. She after running from the miscreants stayed in the night in the house of her fufa where her father came in the day time. She did not go to the police station. She went to the police station with her father but

did not meet anyone and then she went to another police station where she met to the police personnels. She went to the office of Circle Officer where her statement was recorded. When the present incident took place she had gone to her matrimonial house 2-3 times earlier. She had told her father about the incident. It is incorrect that prior to the present incident she had run away with Duluva Brahman out of her own sweet will and her father in order to save their respect lodged the present report. It is incorrect to state that the accused did not commit any wrongful act with her. It is incorrect on the pressure of police she is giving a wrong statement. She was recalled again and her re-examination was done on 07.02.1989. She was at home with her mother. Bahoria Lohar, Bhagwandin Kevat, Duluva Brahman came there with one more person. Din Dayal was also with them. They came and asked for keys and then they were assaulted. She gave keys to them. 4-5 persons caught hold of her and dragged her out. After taking her out from the village some more miscreants met them who were standing there and she was handed over to them and Bahoria Lohar, Natthu Kori, Bhagwandin Kewat were there. Devi Dayal was not with them. They took her to Sanda jungle. In the night they did not go anywhere and Natthu, Bhagwandin along with the other miscreants were in the jungle. Bahoria raped her. For 10-12 days she was kept there, given food and was raped by the accused and then on one night there was firing and finding away out she ran away from the place. Her medical examination was conducted in the hospital and the x-ray was also done.

18. Constable Ghanshyam Sharma was examined as PW-5 who states of transcribing the chik FIR. He proves the same. No cross examination was done of the said witness.

19. Dr. M.C. Mittal PW-6 is Radiologist. He proves the x-ray plate and x-ray report of the victim 'X'. The x-ray report is marked as Exb: Ka-3 and the x-ray plate is material Exb: 1 to the records. He states that as per the said x-ray victim 'X' was aged about 18 years.

20. Krishna Singh Sengar Sub-Inspector PW-7 is the Investigating Officer of the matter. He states that the first Investigating Officer was

Anil Kumar who took up the investigation before him. He states of preparation of the site plan, the recording of the statements of the witnesses and filing of charge sheet against the accused as absconders. The same were proved as Exb: Ka-6.

In his cross-examination, he states that he did not write in the case diary whether statement of victim 'X' was recorded under Section 164 Cr.P.C. or not. He states that he does not remember whether the statement of the victim 'X' was recorded on 25.01.1983 or not. He did not write the statement of any witness himself. He searched for the accused but they were not traceable and then filed a charge sheet against them as absconder. He states that it is incorrect that a false charge sheet filed. He did not record the statements again to corroborate the statements previously recorded by the Investigating Officer in the case diary.

21. The accused in their statements under Section 313 Cr.P.C. have denied the prosecution story and have stated that they have been falsely implicated in the present case due to enmity. They have stated that they have been implicated due to party bandi. The present surviving accused appellant Natthu has stated that there was a fight between him and Budhuwa about 2-3 months before dacoity was committed but no report of it was lodged.

22. The accused Din Dayal sought permission from the trial court to appear as a defence witness in the matter. Vide order dated 29.03.1989 on his application he was permitted to appear. He stated that he had moved an application on 25.08.1982 against Sadhu, Budhuwa and others. The said application was filed by him along with postal receipt. He stated further that he had lodged an FIR against Budhuwa which was marked as Exb: Kha-2 and thus there was enmity between him and the first informant. He stated that dacoity was committed in the house of Budhuwa but he denies involvement. The previous application and the postal receipt were filed by him, the same is marked as Exb: Kha-1.

23. The trial court after finding the prosecution case to be beyond reasonable doubt convicted and sentenced the accused appellants as above.

24. Heard Sri Keshari Nath Tripathi, learned counsel for the appellant no.2/Natthu and Sri Bade Lal Bind, learned A.G.A. for the State and perused the material on record.

25. The trial court records have also been received which have been perused and the paper-book of the matter has already been prepared which has also been perused.

26. Submission of learned counsel for the surviving appellant are as under:-

- (i) The appellant has been falsely implicated in the present case.
- (ii) As per the prosecution case the accused who had come to the house of the first informant had concealed their faces by cloth and thus they could not be identified.
- (iii) No test identification parade has been conducted to substantiate the identity of the accused persons.
- (iv) The first information report has been lodged against 3-4 unknown miscreants and thus no accused including the surviving appellant were named therein.
- (v) The surviving appellant is not even named by P.W.-1 Budhuwa, P.W.-2 Baura and P.W.-3 Maharania. Out of the said three witnesses P.W.-2 Baura is not an eye-witness of the incident.
- (vi) There is no recovery of any incriminating material either from the possession or pointing out of the appellant.
- (vii) Although charge-sheet in the matter was submitted against the appellants as an absconder but the same was without any credible evidence.
- (viii) The surviving appellant Natthu has an enmity with the first informant as he in his statement under Section 313 Cr.P.C. has stated that there was a fight between him and Budhuwa the first informant around 2-3 months back but no report of it was lodged by him.

(ix) It is submitted that looking to the said inconsistencies in the matter further coupled with the fact that the victim 'X' has not levelled allegation of rape upon the appellant but has stated of being raped by Bahoria Lohar and the second set of accused, it is a fit case where appellant deserves to be acquitted by extending the benefit of doubt to him.

27. Per contra, learned counsel for the State opposed the submissions and appeal and submitted as under:-

(i) The prosecution has proved its case beyond reasonable doubt and thus the trial court finding the evidence to be reliable and clinching convicted and sentenced the accused-appellants as above.

(ii) Although the accused were stated to have covered their faces by cloth but after the dacoity and taking away the victim 'X' they had opened their faces and thus they were identified by victim 'X'.

(iii) The victim 'X' remained in custody of the accused-appellants for about 4-5 days and thus she identifies them and came to know of their identity and had disclosed the same by specifically disclosing their names also.

(iv) The surviving appellant is named in the statement of the victim 'X' and thus his presence at the place and participation in the incident cannot be disputed.

28. After having heard learned counsel for the parties and perusing the record, it is evident that the first information report in the matter was lodged by Budhuwa against 3-4 unknown miscreants regarding they raiding his house for dacoity in which they took away the ornaments kept in the house and while going away also took the daughter of the informant aged about 18-19 years with them. They were stated to be armed by firearms and lathi and farsa. The incident is alleged to have taken place in the midnight of 15/16.12.1982. The first information report of the matter was lodged on 16.12.1982 at 2:30 PM which was after about 14.30 hours of the alleged incident. The first informant at the time of lodging of the first information report was asked regarding the delay in approaching the police station for reporting to which he stated

that he was searching for his daughter and when she could not be traced then he has come to lodge a report. The delay in lodging of the first information report is thus not sufficiently and properly explained. The victim 'X' was as per her statement was with the accused who raided the house for dacoity and then outside the village was handed over to a second set of miscreants who then took her to the jungle where she was subjected to rape by co-accused Bahoria Lohar and the second set of accused. In so far as the present surviving appellant is concerned, there is no allegation of rape levelled against him by the victim. The victim 'X' then at some point of time while there was exchange of fire between the miscreants and police got way and stated to have come out from the said place and reached the house of her relative. The surviving appellant is not named even in the statement of the two alleged eye-witnesses namely P.W.-2 Baura and P.W.-3 Maharaniya. His name has been disclosed by the victim 'X' for the first time in the present matter. One of the accused Din Dayal who appeared as an defence witness himself on permission by the trial court has been acquitted of the charges levelled against him for offence under Sections 394, 365, 366, 376 I.P.C. The same is not challenged and has attained finality. In so far as the kidnapping of victim 'X' is concerned, there is nothing on record to show that the same was opposed by the family members present in the house. The names of four accused were disclosed by victim 'X' who states that she identified them when they opened their faces. One of the accused namely Duluwa Brahman who was also named by her has not been charge-sheeted. The date / days of the return of victim 'X' is not consistent in as much as she states to have returned after 5-6 days of the incident whereas P.W.-1 Budhuwa and P.W.-3 Maharaniya state of her returning after about 15 days of the incident. The same thus has a clear and a wide gap and is inconsistent in itself. Looking to the said facts and inconsistencies in the matter, it would be appropriate to extend benefit of doubt to the surviving accused-appellant. Thus he is extended benefit of doubt in the present matter.

29. In view of the same, looking to the facts and circumstances of the case, the appeal is **allowed**. The surviving appellant No.2 Natthu is acquitted of the charges levelled against him. The accused-appellant is on bail. The bail bond is cancelled and sureties discharge. He need not surrender unless wanted in any other case.

30. The non-bailable warrants issued against him were directed to be kept in abeyance vide order dated 10.08.2026. The same are hereby recalled.

31. Office to communicate this judgment to the concerned trial court for compliance and necessary action. The trial court records be also sent back with the said order.

32. Pending application(s), if any, stand disposed of.

(Samit Gopal,J.)

August 13, 2026

M. Arif / Abhishek Rathore