



2026:AHC:171804

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### CRIMINAL APPEAL No. - 666 of 1983

Bindra

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|-------------------------------------------------------------------------------|
| Counsel for Appellant(s)  | : A/P0031/2012, Pankaj Kumar Mishra,<br>Sanjeev Kumar Singh, Siddharth Shukla |
| Counsel for Respondent(s) | : A.G.A.                                                                      |

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#### Court No. - 90

#### HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellant and learned A.G.A. for the State.
2. The present criminal appeal has been filed against the judgment and order dated 08.03.1983 passed by the learned VII Additional Sessions Judge, Gorakhpur, in Sessions Trial No. 67 of 1981, convicting and sentencing the appellant under Section 376/511 I.P.C. to undergo rigorous imprisonment for a period of two years and six months.
3. Learned counsel for the appellant submitted that the incident allegedly took place on 19.02.1980, and the F.I.R. was lodged on the same day. As per the prosecution case, the victim was thrown to the ground by the accused, Bindra, who thereafter attempted to commit rape on her; however, before he could do so, witnesses Chandrika arrived at the spot. The accused was thus unable to do the act. The witness, who is the real uncle of the victim, allegedly hit the accused on the head with a *lathi*. However, there is no injury report of either the victim or the accused on record.
4. Learned counsel for the appellant further submitted that the place of occurrence is alleged to be an agricultural field where, as per the statement of the victim herself, the standing wheat crop was as high as her chest. On hearing her screams, her uncle reached the spot. It is contended that there are no eye witnesses, as it was impossible to see the victim being thrown to the ground given the height of the crop. He further submitted that the victim claimed she was married at the time of the incident but her *gauna* had not been performed. However, during her deposition before the learned trial court, she stated that she was around 20 years of age and had resided for several months at her *sasural* (matrimonial home). The defence raised by the appellant is that she was a woman of bad character who was expelled from

her matrimonial home, and she falsely implicated the appellant. It is argued that no such incident ever occurred and the statements of the witnesses are contradictory to the version of the victim herself. Therefore, the impugned judgment and order dated 08.03.1983 is liable to be set aside and the appellant is entitled to be acquitted.

5. Learned A.G.A. opposed the appeal and submitted that the judgment and order passed by the learned trial court is in accordance with law; hence, the criminal appeal is liable to be dismissed.

6. As per the contents of the written complaint (Ext. Ka-1) submitted by the victim's uncle (P.W.-2) on 19.02.1980, his niece (the victim) was cutting grass on the *med* (boundary) of Bhagelu's field, surrounded by wheat crops on all sides. With the intent to outrage her modesty, the co-villager accused, Bindra, forcibly threw the victim to the ground, caught her chest, and tried to commit an indecent act. Upon her raising an alarm, the complainant, along with Gorakh and Sunnar, reached the spot. The accused ran away, leaving the victim. The complainant tried to catch the accused and hit him on the head with a *lathi*, but the accused fled while threatening to kill them with a country-made pistol. All the aforementioned persons allegedly witnessed the incident. Further, in the written complaint, it was alleged in the last few lines that one Naresh had conspired in the incident, requesting that a report be registered and legal proceedings initiated.

7. However, after completing the investigation, no charge-sheet was filed against the alleged conspirator, Naresh. As per the Check F.I.R. (Ext. Ka-2), the incident occurred on 19.02.1980 at 10:00 A.M., and the F.I.R. was lodged on the same day at 14:15 hours. Charges were framed solely against the appellant under Section 376/511 I.P.C.

8. The victim is the primary witness of the incident. Her statement was recorded on 08.10.1982, whereas the alleged incident took place on 19.02.1980. She stated her age to be 20 years, indicating that at the time of the incident she was a major, aged about 18 years. In her deposition, she stated that the incident took place at 10:30 A.M., about two and a half years prior. However, according to the written complaint and the Check F.I.R., the incident occurred at 10:00 A.M., showing a discrepancy regarding the time of occurrence. She also failed to specify the exact date of the incident. She stated that while she was cutting grass in Bhagelu's field, the accused arrived, caught her hand, threw her down, grabbed her chest, and attempted to remove her saree. She screamed, whereupon her uncle and the witnesses, Gorakh and Sunnar, arrived. Her uncle hit Bindra with a *lathi*, thereafter Bindra fled away, threatening to kill them with a country-made pistol if

followed. She further stated that when Bindra threw her down, his associate was also standing at some distance. However, during investigation, no role of Naresh was established and he was not charge-sheeted.

9. The victim further stated in her examination-in-chief that the field where she was cutting grass was surrounded on all sides by a wheat crop that reached up to her chest. She also stated that at the time of the incident, she was married, but her *gauna* had not been performed.

10. However, during her cross-examination, she stated that she was married 3 to 4 years ago and had been residing at her parental home for the last year. She further stated that when the appellant reached the spot, she was removing jakadi. She admitted that she did not know directions (east and west). She testified that when the accused arrived, her uncle was at a distance of 3–4 *bighas* and was not visible from where she was sitting, as there was an *arhar* field in between. She could not state whether Bhagelu's field was to her right or left, nor could she distinguish between her right and left hands.

11. In cross-examination, she deposed that when Bindra caught her hand, she fell down; whereas in the F.I.R. and in her examination-in-chief, it was alleged that she was forcibly thrown down by the appellant. She further stated that the accused placed his hand on her chest and tried to remove her saree, after which she screamed and her uncle arrived. She also deposed in cross-examination that she had a child, even though her *gauna* had not taken place and she had never visited her *sasural*.

12. It is strange that while she initially claimed in her examination-in-chief that her *gauna* had not been performed, she subsequently stated in cross-examination that she had a child without ever visiting her *sasural*.

13. She further stated that she previously knew Bindra as he was a co-villager, though her family maintained no relationship with his family. She stated that Naresh was at a distance of one *bigha*, but she could not clarify whether Naresh and her uncle were in the same direction or different directions. Her testimony is thus contradictory and uncorroborated. Reversing her earlier statement about never visiting her *sasural*, she then claimed to have visited her *sasural* twice and resided there once for a year and another time for six months and she returned at her parental home for the past year.

14. She further deposed that when her uncle hit the accused twice with a *lathi*, she did not raise any alarm. This undermines the core of the

prosecution story namely that her uncle (P.W.-2) rushed to the spot upon hearing her screams and hit the accused on the head. Thus, a clear contradiction exists between the statements of the victim and P.W.-2 (her real uncle, an interested witness and the scribe of the complaint). She also stated that the accused was sitting beside her when he was struck with the *lathi*. This completely contradicts the allegation that the accused forcibly caught her hand, threw her down, touched her chest, and attempted to commit rape. Since the victim was a major aged about 18 years and admitted that the accused was merely sitting beside her when her uncle struck him, the possibility that she was a consenting party cannot be ruled out. She deposed that the Investigating Officer recorded her statement at her house after 3–4 days and that she had informed him about her uncle hitting the accused with a *lathi*. If this fact has not been recorded in my statement then I am not able to give any reasonable explanation.

15. The statement of the victim is itself self-contradictory. The testimony of P.W.-2 (the real uncle of the victim and an interested witness) is materially contradictory to that of the victim and fails to corroborate the prosecution story. Similarly, the testimony of P.W.-3, who was alleged to be an eye witness, contradicts the victim's account and fails to support the prosecution case. Furthermore, no medical examination of the victim or the alleged injured was conducted.

16. The Investigating Officer, examined as P.W.-4, verified the F.I.R., General Diary (G.D.), and charge-sheet. He stated in cross-examination that while the incident occurred on 19.02.1980, he inspected the spot on 20.02.1980. He recorded the statements of the complainant and the victim in the village. He admitted that no other witness was found at the spot, which directly contradicts the written complaint. He also found no involvement of Naresh, the alleged conspirator.

17. In light of the material contradictions and lack of corroboration among the testimonies of the victim, the alleged eye witnesses, and the prosecution version, the prosecution has failed to prove its case beyond reasonable doubt against the appellant. Consequently, the appellant is entitled to acquittal.

18. The impugned judgment and order dated 08.03.1983 passed by the learned VII Additional Sessions Judge, Gorakhpur, in Sessions Trial No. 67 of 1981, is hereby set aside. The appellant is acquitted of all charges.

19. Accordingly, the present criminal appeal is allowed. The appellant is on bail; his bail bonds are cancelled, and his sureties are discharged. He need not surrender.

20. Let the original record, alongwith a copy of this order, be transmitted immediately to the trial court for necessary compliance.

**August 14, 2026**  
K.K. Maurya

**(Abdul Shahid,J.)**