

AFRCourt No. - 76

Case :- CRIMINAL APPEAL No. - 138 of 2001

Appellant :- Narain

Respondent :- State Of U.P.

Counsel for Appellant :- R.A. Mishra, Anand Mani Tripathi

Counsel for Respondent :- Govt. Advocate

Hon'ble Aniruddha Singh, J.

1. Heard Sri Anand Mani Tripathi, learned counsel for the appellant as well as Sri H.P. Gupta, learned AGA and perused the record.
2. This criminal appeal under Section 374(2) Cr.P.C. has been preferred by Narain challenging judgment and order dated 20.12.2000 passed by Additional Sessions Judge, Court No.18, Allahabad in Session Trial No.493 of 1996(State vs. Narain), Police Station Lalapur, District Allahabad convicting and sentencing appellant to undergo seven years' rigorous imprisonment with fine of Rs.5,000/- under Section 366 IPC and in case of default in payment of fine to further undergo additional imprisonment for three months. He has been acquitted under sections 363 & 376 IPC.
3. According to prosecution case, FIR was lodged against the appellant alleging that on 9.10.1989 at 8 A.M. he kidnapped the daughter of complainant and she was found in the field of 'Bajra' of Lal Bahadur. The appellant attempted to flee the scene but he was caught hold by the public.
4. Relevant documents were prepared. According to medical report, the age of victim girl was found about 17 years.

5. After investigation, charge sheet was submitted and cognizance was taken by the competent Court. The case was committed to Sessions for trial. Charges under section 363, 366 & 376 IPC were framed on 24.8.1998. The appellant pleaded not guilty

6. In order to prove the charges, prosecution examined P.W.1 Suggi Lal(father of prosecutrix), P.W.2 Suraj Pal (so-called eye-witness).

7. Formality to prove other documents of prosecution is dispensed with by the learned counsel for accused appellant. Other related documents were exhibited.

8. After closure of prosecution evidence, statements of accused-person under Section 313 Cr.P.C were recorded. He denied charges and stated that he has been falsely implicated due to enmity. In defence, no evidence was produced.

9. Trial Court after hearing learned counsel for the accused appellant and Assistant District Government Counsel(Criminal), vide impugned judgment and order dated 20.12.2000, convicted accused appellant for the offence under Section 366 IPC. Hence this appeal.

10. Learned counsel for the appellant submitted that appellant was acquitted under section 363 and 376 IPC by same judgment dated 20.12.2000. Trial Court found that prosecutrix was major and no rape was committed by the appellant. Hence, appellant cannot be convicted under section 366 IPC only on this ground. Appeal is liable to be allowed. Moreover, only two witnesses, one father of prosecutrix and another so-called eye-witness have been examined and they stated nothing against the appellant. Even not a single word has been stated/spoken before the

Court by both the witnesses. Even then, if there is any documentary evidence against the appellant, that is not corroborated by the ocular evidence adduced by P.W.1 and P.W.2. Hence, conviction and sentence awarded by lower Court is not sustainable. This is the case of no evidence. Although both witnesses are interested witnesses, even then because they stated nothing against the appellant, therefore conviction is based only on the ground of surmises and conjectures, and judgment is based on the basis of sentiments only. There is no legal evidence against the appellant. Therefore, the appellant is liable to be acquitted.

11. Learned A.G.A submitted that there is sufficient evidence against the appellant to convict him.

12. This Court considered rival submissions made by the learned counsel for the appellant and learned A.G.A. for the State and gone through entire record.

13. This Court after scanning the evidence on record, has to adjudicate whether the prosecution has proved charges levelled against accused appellant beyond reasonable doubt or not. Word 'proved' is defined under Section 3 of Evidence Act as under:-

"Proved".-A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

14. The question is whether a prudent man under these circumstances can believe that the facts deposed by the witnesses do exist beyond reasonable doubt.

15. In this case, prosecutrix was not examined before the trial Court and P.W.1(father of prosecutrix) stated that at that time, prosecutrix was no more. Hence there was no question to summon the prosecutrix and in support of the prosecution case, only two witnesses were examined. Therefore, evidence of prosecutrix as well as injured witness is not available.

16. On this issue, it is also pertinent to mention here that even the statements given by the prosecutrix under section 161 Cr.P.C. or 164 Cr.P.C. are also not proved by any witness and that are not available on record. I have seen the original record but statements under Section 161 and 164 Cr.P.C. are not available. Even case diary of the case is not annexed with the record. However, statements under section 161 and 164 Cr.P.C. are for the purposes to examine contradictions or omissions.

17. So far as previous statement of prosecutrix is concerned, according to section 32 of Evidence Act, that statement itself is not admissible in evidence because statements under sections 161 & 164 Cr.P.C. do not cover the purview of section 32 Clause 1,3,4,5,6,7 & 8 of Evidence Act. So far as clause 2 of section 32 of Evidence Act is concerned, as stated above, statements are not available on record and nobody has come forward to say that the statement of prosecutrix was recorded by him in ordinary course of business.

18. It is also pertinent to mention here that statements of P.W.1 and P.W.2 were given before the trial Court. P.W.1 (father of prosecutrix) stated that this fact has come to his knowledge that her daughter was weeping in the field of Raj Bahadur. He and his brother-in-law(Sala) Ram Sajiwan

went on the spot and had seen his daughter coming from the field, and at some distance appellant was made to sit with villagers. He informed the police and lodged FIR but in his cross-examination he clearly stated that on information given by the villagers, name of the appellant was written in the FIR. Hence, it is very clear that P.W.1 is neither eye-witness nor his daughter stated to him anything relating to offence. Hence, the evidence of P.W.1 is useless and baseless for levelling charge and holding the appellant guilty.

19. P.W.2 Sooraj Pal stated in his examination-in-chief that prosecutrix was weeping and appellant was sitting with villagers. This fact was informed to the father of prosecutrix. Nothing was done by the appellant with the prosecutrix in his presence. So far as offence under section 366 IPC is concerned, P.W.2 has stated nothing against the appellant even in examination-in-chief.

20. Perusal of statements of P.W.1 and P.W.2 show that both are not eye-witnesses and statements given by both witnesses come in the purview of hearsay evidence. In criminal case, hearsay evidence has no value. Therefore, on this very ground, charge of offence under section 366 IPC is not proved against the appellant beyond reasonable doubt and conviction and sentence passed by the Court concerned is liable to be set aside and quashed.

21. To constitute an offence under section 366 IPC, these facts must be proved beyond reasonable doubt that a woman must be kidnapped, abducted or compelled to marry any person or she is forced or seduced to illicit intercourse by means of criminal intimidation or of abuse of authority or any other method of compulsion, induced or

forced or seduced to illicit intercourse with another person. Mere abduction does not bring an accused under the ambit of this penal section so far as section 366 IPC is concerned.

22. In the case of **Gabbu vs.State of M.P., AIR 2006 SC 2461** the Apex Court has held that mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.

23. In the case of **Vinod Chaturvedi vs. State of M.P., AIR 1984 SC 911** Apex Court has held that when the victim went inside his house came properly dressed to accompany the group to a village. Subsequently the victim was murdered. But the act of picking up of this victim was unconnected with what happened to the victim later. It was held that the accused is not guilty under section 366 IPC.

24. It is also pertinent to mention here that this incident is of year 1989, thirty years has elapsed and several times appellant was sent to jail, at the time of conviction and during appeal from 28.2.2019 to 28.3.2019 when warrant was issued, and no minimum sentence of punishment is prescribed in this section.

25. In above backdrop and in view of foregoing discussions, the appeal is liable to be allowed.

26. The appeal is **allowed**. Impugned judgment and order dated 20.12.2000 is hereby set aside and quashed. Charges framed against appellant Narain are hereby quashed. Appellant Narain is hereby acquitted. If he is in jail, he be released immediately. His bail bonds and surety bonds are hereby discharged. He is directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

27. Copy of this judgment alongwith original record of Court below be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

Order Date :- 8.8.2019

P.P.