

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 961 OF 2006

ACHHUTA NAND

.....

APPELLANT

VERSUS

STATE OF U.P.

.....

RESPONDENT

O R D E R

This is an appeal filed by way of special leave is directed against the judgment of the Additional Sessions Judge. Bahraich dated 06/07/1991 in ST No. 133/90 whereby the accused-appellant has been convicted and sentenced to rigorous imprisonment for 10 years and a fine of Rs. 10,000/- for an offence punishable under Section 376 of the Indian Penal Code and the judgment of the High Court of Judicature at Allahabad in Criminal Appeal No. 352 of 1991 dated 13.01.2006 confirming the aforesaid conviction and sentence.

The facts leading to the appeal are as under:-

The prosecutrix P.W. 4, aged 12 years at the time of the incident, was going with some of her friends to see her maternal uncle and as she reached the field of one Hasnu, the appellant caught hold of her, dragged her into the *munjha*(field) and raped her. On an alarm being raised, Bakridi & Jannu reached the place of incident and also saw the occurrence. The prosecutrix, accompanied by her uncle, thereafter made her way to Police Station, Fakharpur and on

her written report, an FIR under Section 376 of the Indian Penal Code [for short 'the IPC'] was registered at 6:20p.m. at the Police Station. The investigation was entrusted to Sub Inspector R.K. Verma who proceeded to the spot and prepared the site plan and completed the other formalities. He also arranged for the medical examination of the prosecutrix and for the recording of her statement under Section 164 of the Code of Criminal Procedure by a competent Magistrate. On the completion of the investigation, the appellant was charged for an offence under Section 376 of the IPC tried and convicted as already mentioned above.

Mr. Vishwajit Singh, the learned counsel for the appellant has argued that from the evidence of P.W. 5 - Dr. (Smt.) Rekha Srivastava, the Medical Officer in charge of P.P.C. Memorial Hospital, Bahraich, who had examined the prosecutrix it was clear that no rape had been committed and the doctor had reiterated her earlier statement after she had been called for re-examination on 15.04.1991 that as the hymen was intact, the question of the prosecutrix having undergone sexual intercourse did not arise. He has accordingly, pleaded that in this background, the statement of the prosecutrix could not be relied upon.

The learned counsel for the State has, however, pointed out that while it is true that statement of P.W. 5 - Dr. Rekha Srivastava did *prima facie* show that rape had not been

committed but there was no reason whatsoever to doubt the statement of the prosecutrix, a young girl of 12 years, more particularly as there was no evidence on record to show that there was any animosity between the families of the prosecutrix and the appellant. He has in the alternative prayed that even assuming that a case under Section 376 of the IPC was not made out an attempt to commit rape had indeed been made as apparent even from the prosecution evidence.

We have heard the learned counsel for the parties and gone through the matter very carefully. We do agree with Mr. Vishwajit Singh when he says that in the light of the testimony of P.W. 5 - Dr. (Smt.) Rekha Srivastava there is no evidence to suggest that rape had been committed. At the same time, we must accept the statement of the prosecutrix that something untoward had happened and that an attempt to commit rape had indeed been made. In her statement, the prosecutrix very clearly and graphically stated that as she was on her way to her maternal uncle's house she had been accosted on the way and pushed into the nearby field whereafter the appellant had opened her salwar, taken off his underwear and forcibly inserted his penis into her vagina causing great pain and had ejaculated as well. This statement, would, to our mind, bring the matter clearly within the mischief of Section 376 read with Section 511 of the IPC as an attempt to commit rape.

Mr. Vishwajit Singh has, however, argued that at the

worst, the matter would fall within Section 354 of the IPC as an attempt to outrage the modesty of the young girl. We beg to differ. We see from the statement of the prosecutrix that what happened was beyond a mere attempt to outrage the modesty of the prosecutrix as several overt acts relating to an attempt to commit rape have been spelt out.

The question that now arises for our consideration is the sentence to be imposed upon the appellant. We are informed by Mr. Vishwajit Singh that the appellant has undergone more than six years of the sentence. In the event that we have absolutely no reason to doubt the statement made by the learned counsel, we convert the offence to one under Section 376/511 of the IPC and reduce the sentence to that already undergone. However, the default sentence shall remain as it is. We further direct that the appellant be set at liberty forthwith if not required in connection with any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[DR. B.S. CHAUHAN]

NEW DELHI
AUGUST 18, 2009.

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We heard the learned counsel for the parties.

Vide our separate reasoned order, we have dismissed this appeal. As per the counsel, the appellant has undergone more than six years of the sentence. We, accordingly, reduce the sentence to that already undergone. However, the default sentence shall remain as it is. The appellant shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[Dr. B.S. CHAUHAN]

NEW DELHI
AUGUST 18, 2009.