



2026:AHC:105087

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1350 of 1984

Hetram and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Om Prakash Shukla, Ramanuj Tripathi, S.d.n.singh, Tej Pal
Counsel for Respondent(s)	: A.G.A.

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HON'BLE AVNISH SAXENA, J.

1. Heard Sri Ashwini Tripathi, learned Advocate holding brief appeared for the appellants and Sri Chandra Badan, learned counsel for the State.

THE APPEAL :-

2. The present criminal appeal under Section 374 CrPC has been preferred by the three accused/appellants, namely, Hetram son of Shri Dhar, Shanker son of Shibba and Bhudat son of Chetram in Sessions Trial No. 259 of 1983 (State Vs. Hetram & others), on being aggrieved by judgment of conviction and sentenced dated 08.05.1984, wherein all the three accused/appellants were convicted for offence of rape and sentenced to seven years rigorous imprisonment with a fine of Rs. 500/-, in default thereof further six months rigorous imprisonment.

THE PROSECUTION CASE AND TRIAL :-

3. The prosecution case disclosed in the written information Ex.Ka-1 is such that on 09.05.1983 at about 2:00 p.m., the informant-Baso son of Nathi, r/o Bharna, who belongs to the scheduled caste is the only family of Scheduled Caste in the village, wherein the village is of Haivasi and Brahmins Caste, came to his house along with his nephew (bhanja) Banwari Lal (scribe of the written information) son of Giriraj Prasad and Lajja son of Peeti r/o of village Gajipur. They met him at Saahar Canal, where he was grazing the goat. On reaching the house, he found that the house was bolted from inside, he jumped the boundary wall and opened the door and came inside, He saw Hetram, Shanker and Bhudat ran away after opening the door. His wife (prosecutrix) has informed him while crying that she has been raped. This incident has been witnessed by him and his friends and they have also identified the accused/appellants. He was not let to go out but somehow managed by hiding himself to reach the police station. He is afraid of his life and property.

4. This FIR is lodged on 14.05.1983 at Police Station Barsana, District Mathura in Case Crime No. 32 of 1983. The victim was medically examined on 15.05.1983 at Mahila Chikitsalaya, Mathura at 4:35 p.m., wherein it is disclosed that she is 26-28 weeks pregnant. The vaginal smear was taken for pathological examination. The supplementary report dated 19.05.1983 provides that no sperm seen, the age of lady is about 18 years. The pathological report reveals that she is seven months pregnant but not in labour pain and no definite opinion could be given.

5. The investigation of the case has been carried out by PW-4 Balbeer Singh, who has submitted the charge sheet on 31.05.1983 against the three accused.

6. The charge has been framed on 08.12.1983 against the accused/appellants for committing rape. The prosecution has produced four witnesses, three witnesses of fact, namely, PW-1/Baso (informant); PW-2/prosecutrix; and PW-3/ Banwari Lal (the scribe of written information), who has also witnessed that the accused/applicant have sprinted away from the house. The formal witness/ PW-4 Balbeer Singh

was produced, who is the Investigating Officer and has proved the FIR, G.D., site plan and the charge sheet. The accused/applicants have admitted the medico legal report and supplementary medical report.

7. In the statement under Section 313 CrPC, the accused/appellants denied having committed rape on the prosecutrix. They submits that they are the neighbours of the informant. Hetram and Shanker have stated that the goats of informant had entered into the field of accused/appellants and damaged the crops, due to which the accused/appellant had beaten the informant, who in retaliation has lodged the false and frivolous FIR. Bhudat has submitted that he has been falsely implicated due to the village party bandi. The accused/appellants have not produced any witness in defense.

THE TRIAL COURT JUDGEMENT :-

8. The trial court has recorded the conviction on the basis of testimonies of three witnesses of fact because the documentary evidence is silent.. Learned trial judge has found that the informant, victim and the witnesses are trustworthy. The delay in lodging the FIR is attributed on the point of fear of the informant from the accused/appellants, because the informant was the only scheduled caste family in the village. The trial judge further found substance in the statement of prosecutrix that she has been raped by four persons including the appellants. The fourth person, who is known as driver could not be traced out. The trial judge further found that it is but natural that the victim might have washed her clothes because she was not aware of the procedure. The trial judge further considered that the injuries on the hands of victim could have dried up which she suffered due to broken bangles. The trial judge further considered that the victim is habitual to sex because she is married as such there was no injury on her private parts. The trial judge further considered that the victim has cried for help but her voice could not reach the neighbours because it was summer month and all the persons might be in their houses. Further considers that the victim was subjected to rape on the point of knife.

THE ARGUMENTS :-

9. Learned counsel for the appellants has submitted that the FIR is delayed; there are inconsistencies in the statements of PW-1/Baso and PW-3/Banwari on the point of delay in lodging the FIR. PW-1 has stated in his cross examination that after the incident he used to go out to graze the goat, hence the apprehension of fear from the accused/appellants is incorrect finding. Further submits that there is no external injury suffered by the victim, which would have been suffered by the victim as she was subjected to rape by four persons. The witness Banwari is an interested, related and chance witness. He could not answer the query of the defence that why he came to meet Baso. Though he has stated that he came to purchase goat from Baso but on further questioning he states that Baso has stated to send the goat. This fact is not stated by the witnesses in their examination-in-chief. Further submits that the doctor has not been produced. The victim was already having pregnancy of the seven months. It is not believable that she could not suffer any injury from the incident of gang rape. Further submits that there is no evidence against the accused/appellants other than the statement of the witnesses. There is marked inconsistency in their statements. The victim in her statement has stated that she has been raped by four persons. All the persons exited from the house in presence of PW-1/Baso, who has seen only three persons exiting the house.

10. There is no plausible answer in respect to the fourth persons. Further submits that the accused/appellants are the neighbours of informant, who have been falsely implicated in the case, and the trial judge has not rightly taken into consideration the statements of witnesses and recorded conviction. Hence, submitted that the appeal be allowed and the accused/appellant be acquitted.

11. Per contra, learned AGA submits that the family of the victim was the only family of scheduled caste, they were apprehensive of being beaten and afraid of their life and property, which restricted them to lodge the FIR soon after the incident; they were waiting for the

opportune time to go to the police station to lodge the FIR. The prosecution has proved their cases by producing three witnesses of fact, the informant, the victim, the scribe of written information. The accused have already admitted the medico legal examination carried out on the victim. The trial judge has rightly appreciated the evidence and recorded conviction, which is liable to be affirmed.

THE POINT OF DETERMINATION :-

12. The point of consideration in the present appeal is whether the trial judge has rightly appreciated the ocular and documentary evidences and reached to the conclusion of convicting the accused?

APPRECIATION OF EVIDENCE :-

13. The points that culled out from the FIR dated 14.05.1983 are reiterated underneath:-

13.1. The incident is of 09.05.1983. The FIR is of 14.05.1983 lodged at 10:00 a.m.

13.2. Three persons were named in the FIR, who are the appellants.

13.3. The informant/Baso and PW-3 Banwari Lal have seen three accused (appellants) exiting from the house of informant after opened the door. The informant and witness Banwari have seen the victim crying.

13.4. They have not seen the incident of rape.

13.5. The victim herself has intimated the informant that she has been raped by the accused/appellants, as such, the FIR was lodged for the incident of rape.

13.6. Banwari Lal/PW-3 and Lajja came to meet the informant Baso on 09.05.1983.

13.7. Baso's father met Banwari Lal and Lajja and informed them that the informant Baso went to graze the goat at Saahar Canal. It is not disclosed where the informant's father met Banwari Lal and Lajja.

13.8. Banwari Lal/PW-3 and Lajja went to Saahar Canal to meet Baso, who was in the forest, grazing the goat.

13.9. Baso came home along with Banwari Lal and Lajja and found that door of the house was bolted from inside. He has jumped the boundary wall and came inside.

13.10. He saw Hetram, Shanker and Bhudat leaving the house after opening the door.

14. The contents of the FIR is proved by PW-1/Baso and PW-3/Banwari. The FIR reveals two types of facts; firstly, from the information received by victim that she was subjected to rape by three persons and secondly, that the informant himself saw three persons exiting from his house. The FIR has no reference about four persons. The delay in FIR is attributed on fear factor.

15. The medico legal report reveals two facts; firstly, the victim was seven months pregnant and secondly, that there is no mark of injury on her private part or body of victim and no definite opinion of rape can be given, with no sperm seen in pathological examination test.

16. The site plan was prepared by PW-4/ Balbeer Singh, the Investigating Officer at the instance of informant and victim. The site plan shows that the accused/appellants along with driver had committed gang rape on victim at place 'A', which is 'Kotha' situated at south western corner of the house. The site plan further shows that the accused/appellants had run away from the house after jumping the boundary wall from the western side, whereas the door of the house situated at north. It is not shown in the site plan that from where the informant has jumped the boundary wall to enter the house. These documents have been discussed prior to considering the testimonies of the witnesses, which are important to be discussed first to consider the truthfulness of the testimonies vis-a-vis the documents and inter-se corroboration.

17. PW-2 is the victim. She in her statement has stated that the incident is of 2:00 p.m., she was all alone in the house. Her husband went to graze the goats. Her father-in-law was also out of the house. She stated that in her house Hetram and one driver came from the backside, they have pointed knife on her and threatened her if she will not cooperate, they would kill her. They have dragged her to the Kotha and threw her on the cot. Hetram has asked the driver to go first. The driver has raped her, then Hetram has raped her. Thereafter, Bhudat and Shanker also came. Then Bhudat has raped her and lastly Shanker has raped her. She further stated that no one else came for her rescue. When she was being raped the other persons used to stand in the Chhapper. She was seven months pregnant and she was wailing in pain. She further stated that Bhudat, Shanker and Hetram are her neighbour, she knew the accused/appellants before the incident. She cried a lot but none came for help. Further stated that the door was closed from inside, her husband, Banwari and Lajja entered the house by jumping boundary wall and the accused had ran away. She did not know the driver. She has intimated entire incident to her husband. During her cross examination she has stated that she has been raped for one hour. Her bangles were broken and blood was oozing out from her hand. She further stated that she did not suffer injuries but was wailing in pain. She stated that she had washed her clothes with soap.

18. This witness has stated that she has intimated the incident to her husband. The husband of victim is the author of FIR. If the name of fourth accused has been intimated by the victim to the informant then why the FIR contained the name of only three accused persons. The matter is of gang rape. The three accused are the neighbours of the victim. In not naming the fourth accused in the FIR, who has raped the victim, creates doubts as to truthfulness of the prosecution case. The victim further stated that there was bleeding from her hand, but blood from the hand of the victim is neither reflected from the statement of PW-1/Baso nor from the statement of PW-3/ Banwari. It is not even disclosed that what first-aid she has taken. No broken bangles have been

handed over to the Investigating Officer. Even the mark of injuries are not reflected from the medico legal examination report, which was carried out five days after the incident, even dried up injuries require notice. These points required further appreciation of the statement of other witnesses of fact.

19. PW-1/Baso has stated that on 09.05.1983, he went to Saahar Canal to graze the goats. At 2:00 p.m. his nephew Banwari Lal and Lajja came from Gowardhan to meet him. They initially met his father at the Bus Station who has intimated them that this witness/Baso is grazing goats. Hence, they right away reached to the Saahar Canal. PW-1 on meeting them has left his goats grazing, taken them to his home. He found that the door was closed from inside. Hence, he had jumped the wall and opened the door on which he saw Hetram, Shanker and Bhudat running away from the door. His father was not at home. He found his wife weeping, who has intimated him that Hetram, Driver, Shanker and Bhudat had committed rape on her. If she had specifically stated that driver has also committed rape on her then why the FIR did not contain the name of driver. He specifically stated that he got the written information dictated to Banwari who has written report in his hand writing. The report was then read over to him and he put his thumb impression.

20. PW-3/Banwari Lal has specifically stated in his statement that he was intimated that driver has not committed rape on the victim. He further stated that all the three accused have pointed out the knife on the victim and committed rape, whereas the pointing out of knife was attributed on driver.

21. As the medico legal examination report does not show the signs of gang rape and the entire case lies on the ocular testimonies on the witnesses then it would be expedient to scrutinize the statement of witnesses with utmost caution. There is marked inconsistency in the statements of PW-1 and PW-3 about the role of driver and the role of pointing out the knife on the victim.

22. During the course of examination PW-1 has stated that as the three witnesses including PW-1 and PW-3 entered the house after jumping the boundary wall, they have seen the accused/appellants moving out from the house. On cross examination, PW-1 has stated that he did not try to chase them or to catch them. On further questioning, he stated that all the accused/appellants were wearing their clothes and he also found his wife in full clothes. During further examination PW-1 has stated that the accused have threatened him. On continuous threatening he mustered courage to lodge the FIR. He further stated that he has never seen these accused coming in his house or meeting his wife. He has stated that he has not seen any injury on the person of his wife. She was wearing bangles and has not seen that bangles were broken. This shows that there is discrepancy pertaining to the injuries suffered by the victim in her hands by broken bangles. The accusation is heinous in nature. The informant has not promptly lodged the FIR or took the victim to hospital, though she was seven months pregnant and purportedly raped by four persons. This sounds unnatural. Moreover, the informant mustered courage by threatening of accused, but he remained timid, though his wife being raped. Hence, there is no plausible explanation of delay in lodging the FIR.

23. In the case of **Lalliram Vs. State of M.P.** reported in [(2008) 10 SCC 69], Hon'ble the Supreme Court has held that it is true that the injury is not sine qua non for deciding whether rape has been committed, but it has to be decided on the factual matrix of each case. This observation was made in a matter of Gang rape. The relevant paragraphs 10-12 of the judgment are reiterated underneath :-

“10. The trial court noted that though the prosecutrix claimed that she was raped by several persons at several times there was no injury noticed and doctor has categorically stated that there was no sign of rape and in fact there was no injury.

11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in *Pratap Misra v. State of Orissa* where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration. (See *Aman Kumar v. State of Haryana* .)

12. As rightly contended by learned counsel for the appellants, a decision has to be considered in the background of the factual scenario. In criminal cases the question of a precedent particularly relating to appreciation of evidence is really of no consequence. In *Aman Kumar case* it was observed that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than the injured witness. In the latter case there is injury in the physical form while in the former both physical as well as psychological and emotional. However, if the court finds it difficult to accept the version of a prosecutrix on the face value, it may search for evidence direct or circumstantial.”

24. The Investigating Officer/PW-4 Balbeer Singh was not cross examined but in his examination-in-chief, he has stated that he has prepared the site plan at the instance of informant and his wife. He has proved that the FIR and GD is in hand writing of Constable Shiv Dan Singh and proved the same.

CONCLUSION :-

25. If the statement of three witnesses, namely, the informant/husband of victim, the victim and the independent witness Banwari/PW-3 is taken into consideration as to the veracity of the prosecution case, it is found that the accused/appellants are the neighbours of informant. They have never been in the house of informant prior to the date of incident. There was altercation between the accused/appellants and Baso regarding the grazing of his goat in the field of accused, though it is denied by the informant but it could be plausible reason for lodging the FIR. If the incident of was rape committed by four persons with a pregnant lady having pregnancy of seven months, the rape might have caused grave medical exigency, which was not reflected in the medico legal report. On the contrary, the pregnancy was stated to be normal. There is no mark of injury, even in the hands of the victim. The vagueness of the FIR is also reflected when only three persons were named in the FIR, though the victim was purportedly raped by four persons. The delay attributed in the FIR also shows that it is not attributed to any fear factor, as the informant was continuously going out even after the incident, then what stops him from lodging the FIR in such a heinous crime. It would also not be out of place to mention that according to the prosecution case every act is done at 2:00 p.m.; the victim was raped, informant entered

the house and accused left the house, whereas, victim was raped for one hour. The delay and the prosecution case creates a doubt in the prosecution story. Hence, the accused/appellants are entitled for the benefit of doubt because the prosecution evidence is not creating confidence that the accused/appellants have committed rape. Hence, they shall be acquitted from the charges as the ocular and documentary evidences does not evinces the involvement of accused appellant in the offence of rape in view of the evidences adduced by the prosecution.

26. In the case of **Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh** reported in **(2024) 2 SCC 666**, Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

27. Thus, the judgment of conviction and sentence dated 08.05.1984 passed by IInd Additional Sessions Judge, Mathura in Session Trial No. 259 of 1983 (State Vs. Hetram & others), under Section 376 IPC, is hereby **set aside**.

28. The **appellants- Hetram, Shanker and Bhudat** are acquitted for offence under Section 376 IPC.

29. Accordingly, the criminal appeal is **allowed**.

30. The accused appellants are on bail. Their sureties and executed bail bonds stands discharged.

31. The record be remitted, forthwith, as per law, with the copy of the judgement.

(Avnish Saxena,J.)

May 07, 2026

Abhishek Sri