

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1108 of 1998@@
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

State of U.P. ..Appellant

Vs.

Munnoo Lal ..Respondent

O R D E R@@
EEEEEEEEEE

A girl aged 10 years was ravished inside her house on the night of 17th April, 1976. Respondent - Munnoo Lal was tried of the offence under Section 376 Indian Penal Code for the said act and the trial court convicted and sentenced him to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs. 500/-. But the High Court on an appeal filed by the convicted person set aside his conviction and sentence and acquitted him. This appeal is at the instance of State of Uttar Pradesh in challenge of the order of acquittal.

The facts lie in a narrow compass:

Kumari Usha (PW1) was the victim of the rape. Her mother Shanti Devi (PW2) was a nurse working in a private hospital situated at a short distance from her house. On the night of 17th April, 1976 the rapist gate crashed into her bed room where she was sleeping with her younger sister, her mouth was gagged and she was violently ravished and the rapist had run away thereafter. Hearing the commotion, PW3 - Lalji Tripathi, a neighbour, and some others rushed to the scene.
..2/-

:2:

PW3 (Lalji Tripathi) saw the respondent running away from the house. When Shanti Devi (PW2) returned to the house around noon the whole matter was disclosed to her. Thereafter the F.I.R. was lodged at the police station, the respondent was arrested and the investigation proceeded with.

There can be no dispute that PW1 (Usha) was subjected to a violent ravishment. When she was examined by Dr. Pushpa Jaiswal (PW5) on the succeeding day all the features of the violent rape were noticed by the doctor on her person and they were recorded in the medical report issued by the doctor. We do not want to reproduce such features in this Order, for, respondent also did not dispute the fact that Usha (PW1) was violently raped during that night.

The only defence adopted by the respondent is that he was not the rapist. The argument advanced in the High Court was that that the identity of the rapist was not properly understood by the victim. What appears to have impressed the learned Single Judge of the High Court was that Usha(PW1) would have identified the rapist only by the voice, that too in the night. Well, if the identification rested entirely on the voice factor, as forcefully argued by the learned counsel for the respondent, we too would have persuaded ourselves not to interfere with the order of acquittal passed by the High

Court. But in this case the identification of the rapist was not on the strength of the voice, though PW1 said in ..3/-

:3:

cross-examination that she heard the voice of the rapist and she could understand from the voice as well as to who was the person involved.

We must bear in mind that respondent was known to Usha(PW1) earlier as respondent was living in the vicinity of her house. Even at the time when the rapist started the molestation after waking her up she realised that it was the respondent. She had reported it to PW3 (Lalji Tripathi) on the occasion when PW3 asked her as to who was the person. She also reported the same thing to her mother around noon when the latter returned home. So, there is no scope for doubt that Usha had identified the respondent as the rapist. The mere fact that she had said in cross-examination that the rapist had uttered some words to her and she could realise that it was the voice of the rapist himself, is not enough for the court to ignore the other broad aspects regarding the evidence of identity of the rapist.

That apart, a very sturdy piece of evidence is the testimony of PW3 (Lalji Tripathi). He said in court that when he rushed to the house after hearing the commotion he saw the respondent running away from this house. There can be no possibility to doubt that PW3 (Lalji Tripathi) would not have correctly identified that person who ran away. Even the defence did not dispute the competence of PW3 (Lalji Tripathi) to identify the accused if the version of PW3 can be accepted as correct.

..4/-

:4:

But the High Court did not place any reliance on the testimony of PW3 (Lalji Tripathi) for the simple reason that PW3 did not venture to catch the rapist. It is too fragile a reasoning. If PW3 would have caught hold of the rapist it was well and good. But if he had not done so, that cannot be regarded as a reason to doubt the truth of testimony of PW3. We must bear in mind that at the time when PW3 saw accused running away he had no reason to think that the said person had ravished the little girl inside the house and was in the process of escaping. Perhaps, PW3 did not think why the respondent was running at that stage. Even that apart, PW3 had to take a decision on the spur of the moment as to the wisdom of catching hold of such a person. If he had failed to take a right decision in a split second it is not a good ground for a court of law to jettison the testimony of such a witness.

Learned counsel for the respondent contended that PW3 had his own reason to speak against the respondent as the relationship between him and the respondent was strained earlier. The story concocted by the defence for making out such a prior enmity was this:

"Respondent had borrowed money from PW3 who was a money lender by business by pledging a transistor and some other goods. The amount borrowed was subsequently repaid to PW3 but he did not return the pledged goods".

..5/-

:5:

It is difficult for us to believe, first, that any such thing would have happened, and second, that even if it had happened it was not a cause for PW3 to entertain enmity towards the respondent. In this context we may point out that PW3 was asked in the cross-examination whether he was a money

lender and he denied the suggestion altogether. The respondent had not done anything wrong to PW3 for the latter to entertain enmity towards the respondent. Hence, the endeavour made was not correct that PW3 had some axe to grind against the respondent.

Learned counsel for the respondent argued a point which he regarded as very strong and fatal to the prosecution. That point is, the investigating officer did not subject the respondent to medical examination. What comes out of that? The worst against the prosecution and the best for the respondent in such a situation is that respondent did not have any injury on his person. But learned counsel was not able to satisfy us that a person of respondent's age and health would necessarily have sustained some injury if he had committed rape on a girl like PW1 (Usha). If that be so, why should we vex our mind on the question of absence of injury on the person of the respondent.

We feel that the High Court has seriously erred in interfering with a well merited conviction passed by the trial court on the respondent. We, therefore, set aside the order
.6/-

:6:

of acquittal passed by the High Court and restore the conviction passed on the respondent by the trial court for the offence under Section 376 of the Indian Penal Code.

Now, we have to decide the quantum of sentence to be passed on the respondent. We must point out, in this context, that the occurrence happened on 17th April, 1976 when there was no legislative compulsion on the court to impose any minimum punishment for the offence of rape. A quarter of century had elapsed since the occurrence and the respondent was in jail for a long period. We, therefore, sentence him to rigorous imprisonment for a period of two years. On completion of the sentence the jail authorities shall release him from jail as he continues to be in jail even now.

The appeal is disposed of accordingly.

.SP1

.....J.@@
BB
(K.T. THOMAS)@@
BB

.....J.@@
BB
(R.P. SETHI)@@
BB

NEW DELHI@@

BBBBBBBBBBBBBBBBBBBB
JANUARY 18, 2001 @@
BBBBBBBBBBBBBBBBBBBB

.PA
.PL58
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1108 of 1998@@
EE

State of U.P.

..Appellant

Vs.

Munnoo Lal

..Respondent

O R D E R@@
EEEEEEEEEE

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

A girl aged 10 years was ravished inside her house on the night of 17th April, 1976. Respondent - Munnoo Lal was tried of the offence under Section 376 Indian Penal Code for the said act and the trial court convicted and sentenced him to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs. 500/-. But the High Court on an appeal filed by the convicted person set aside his conviction and sentence and acquitted him. This appeal is at the instance of State of Uttar Pradesh in challenge of the order of acquittal.

The facts lie in a narrow compass:

Kumari Usha (PW1) was the victim of the rape. Her mother Shanti Devi (PW2) was a nurse working in a private hospital situated at a short distance from her house. On the night of 17th April, 1976 the rapist gate crashed into her bed room where she was sleeping with her younger sister, her mouth was gagged and she was violently ravished and the rapist had run away thereafter. Hearing the commotion, PW3 - Lalji Tripathi, a neighbour, and some others rushed to the scene.
..2/-

:2:

PW3 (Lalji Tripathi) saw the respondent running away from the house. When Shanti Devi (PW2) returned to the house around noon the whole matter was disclosed to her. Thereafter the F.I.R. was lodged at the police station, the respondent was arrested and the investigation proceeded with.

There can be no dispute that PW1 (Usha) was subjected to a violent ravishment. When she was examined by Dr. Pushpa Jaiswal (PW5) on the succeeding day all the features of the violent rape were noticed by the doctor on her person and they were recorded in the medical report issued by the doctor. We do not want to reproduce such features in this Order, for, respondent also did not dispute the fact that Usha (PW1) was violently raped during that night.

The only defence adopted by the respondent is that he was not the rapist. The argument advanced in the High Court was that that the identity of the rapist was not properly understood by the victim. What appears to have impressed the learned Single Judge of the High Court was that Usha(PW1) would have identified the rapist only by the voice, that too in the night. Well, if the identification rested entirely on the voice factor, as forcefully argued by the learned counsel for the respondent, we too would have persuaded ourselves not to interfere with the order of acquittal passed by the High Court. But in this case the identification of the rapist was not on the strength of the voice, though PW1 said in
..3/-

:3:

cross-examination that she heard the voice of the rapist and she could understand from the voice as well as to who was the person involved.

We must bear in mind that respondent was known to

Usha(PW1) earlier as respondent was living in the vicinity of her house. Even at the time when the rapist started the molestation after waking her up she realised that it was the respondent. She had reported it to PW3 (Lalji Tripathi) on the occasion when PW3 asked her as to who was the person. She also reported the same thing to her mother around noon when the latter returned home. So, there is no scope for doubt that Usha had identified the respondent as the rapist. The mere fact that she had said in cross-examination that the rapist had uttered some words to her and she could realise that it was the voice of the rapist himself, is not enough for the court to ignore the other broad aspects regarding the evidence of identity of the rapist.

That apart, a very sturdy piece of evidence is the testimony of PW3 (Lalji Tripathi). He said in court that when he rushed to the house after hearing the commotion he saw the respondent running away from this house. There can be no possibility to doubt that PW3 (Lalji Tripathi) would not have correctly identified that person who ran away. Even the defence did not dispute the competence of PW3 (Lalji Tripathi) to identify the accused if the version of PW3 can be accepted as correct.

..4/-

:4:

But the High Court did not place any reliance on the testimony of PW3 (Lalji Tripathi) for the simple reason that PW3 did not venture to catch the rapist. It is too fragile a reasoning. If PW3 would have caught hold of the rapist it was well and good. But if he had not done so, that cannot be regarded as a reason to doubt the truth of testimony of PW3. We must bear in mind that at the time when PW3 saw accused running away he had no reason to think that the said person had ravished the little girl inside the house and was in the process of escaping. Perhaps, PW3 did not think why the respondent was running at that stage. Even that apart, PW3 had to take a decision on the spur of the moment as to the wisdom of catching hold of such a person. If he had failed to take a right decision in a split second it is not a good ground for a court of law to jettison the testimony of such a witness.

Learned counsel for the respondent contended that PW3 had his own reason to speak against the respondent as the relationship between him and the respondent was strained earlier. The story concocted by the defence for making out such a prior enmity was this:

"Respondent had borrowed money from PW3 who was a money lender by business by pledging a transistor and some other goods. The amount borrowed was subsequently repaid to PW3 but he did not return the pledged goods".

..5/-

:5:

It is difficult for us to believe, first, that any such thing would have happened, and second, that even if it had happened it was not a cause for PW3 to entertain enmity towards the respondent. In this context we may point out that PW3 was asked in the cross-examination whether he was a money lender and he denied the suggestion altogether. The respondent had not done anything wrong to PW3 for the latter to entertain enmity towards the respondent. Hence, the endeavour made was not correct that PW3 had some axe to grind against the respondent.

Learned counsel for the respondent argued a point which he regarded as very strong and fatal to the prosecution. That point is, the investigating officer did not subject the respondent to medical examination. What comes out of that? The worst against the prosecution and the best for the

For Appellant Mr. Praveen Swarup,Adv.
Mr. Prashant Chowdhary,Adv.
Mr. Pramod Swarup,Adv.

For Respondent Mr. R.D. Upadhyay,Adv.
Mr. G.D. Upadhyay,Adv.
Mr. Syed Ali Ahmed,Adv.
Mr. Vikas Bansal,Adv.
Mr. Syed Tanveer Ahmed,Adv.

UPON being mentioned the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
.SP2

Heard learned counsel for the parties for some time.
The matter remained Part-Heard.

.SP1

(N.K. GOEL)
COURT MASTER

(H.K. BHATIA)
COURT MASTER

ITEM NO. 101 COURT NO. 5
PART HEARD

Date : 18.1.2001

CORAM AND APPEARANCE SAME AS ABOVE

UPON hearing the counsel the Court made the following

O R D E R

.SP2
Appeal is disposed of in terms of the signed order.
.SP1

(N.K. GOEL) (H.K. BHATIA)@@
BB
COURT MASTER COURT MASTER@@
BB
(Signed order is placed on the file)

.PA
.PL58
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1108 of 1998@@
EE

State of U.P. ..Appellant

Vs.

Munoo Lal ..Respondent

O R D E R@@

.....L.....I.....T.....T.....T.....T.....T.....T.....T....J
 .SP2

A girl aged 10 years was ravished inside her house on the night of 17th April, 1976. Respondent - Munnoo Lal was tried of the offence under Section 376 Indian Penal Code for the said act and the trial court convicted and sentenced him to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs. 500/-. But the High Court on an appeal filed by the convicted person set aside his conviction and sentence and acquitted him. This appeal is at the instance of State of Uttar Pradesh in challenge of the order of acquittal.

The facts lie in a narrow compass:

Kumari Usha (PW1) was the victim of the rape. Her mother Shanti Devi (PW2) was a nurse working in a private hospital situated at a short distance from her house. On the night of 17th April, 1976 the rapist gate crashed into her bed room where she was sleeping with her younger sister, her mouth was gagged and she was violently ravished and the rapist had run away thereafter. Hearing the commotion, PW3 - Lalji Tripathi, a neighbour, and some others rushed to the scene.

..2/-

:2:

PW3 (Lalji Tripathi) saw the respondent running away from the house. When Shanti Devi (PW2) returned to the house around noon the whole matter was disclosed to her. Thereafter the F.I.R. was lodged at the police station, the respondent was arrested and the investigation proceeded with.

There can be no dispute that PW1 (Usha) was subjected to a violent ravishment. When she was examined by Dr. Pushpa Jaiswal (PW5) on the succeeding day all the features of the violent rape were noticed by the doctor on her person and they were recorded in the medical report issued by the doctor. We do not want to reproduce such features in this Order, for, respondent also did not dispute the fact that Usha (PW1) was violently raped during that night.

The only defence adopted by the respondent is that he was not the rapist. The argument advanced in the High Court was that the identity of the rapist was not properly understood by the victim. What appears to have impressed the learned Single Judge of the High Court was that Usha (PW1) would have identified the rapist only by the voice, that too in the night. Well, if the identification rested entirely on the voice factor, as forcefully argued by the learned counsel for the respondent, we too would have persuaded ourselves not to interfere with the order of acquittal passed by the High Court. But in this case the identification of the rapist was not on the strength of the voice, though PW1 said in

..3/-

:3:

cross-examination that she heard the voice of the rapist and she could understand from the voice as well as to who was the person involved.

We must bear in mind that respondent was known to Usha (PW1) earlier as respondent was living in the vicinity of her house. Even at the time when the rapist started the molestation after waking her up she realised that it was the respondent. She had reported it to PW3 (Lalji Tripathi) on the occasion when PW3 asked her as to who was the person. She also reported the same thing to her mother around noon when the latter returned home. So, there is no scope for doubt that Usha had identified the respondent as the rapist. The mere fact that she had said in cross-examination that the rapist had uttered some words to her and she could realise

that it was the voice of the rapist himself, is not enough for the court to ignore the other broad aspects regarding the evidence of identity of the rapist.

That apart, a very sturdy piece of evidence is the testimony of PW3 (Lalji Tripathi). He said in court that when he rushed to the house after hearing the commotion he saw the respondent running away from this house. There can be no possibility to doubt that PW3 (Lalji Tripathi) would not have correctly identified that person who ran away. Even the defence did not dispute the competence of PW3 (Lalji Tripathi) to identify the accused if the version of PW3 can be accepted as correct.

..4/-

:4:

But the High Court did not place any reliance on the testimony of PW3 (Lalji Tripathi) for the simple reason that PW3 did not venture to catch the rapist. It is too fragile a reasoning. If PW3 would have caught hold of the rapist it was well and good. But if he had not done so, that cannot be regarded as a reason to doubt the truth of testimony of PW3. We must bear in mind that at the time when PW3 saw accused running away he had no reason to think that the said person had ravished the little girl inside the house and was in the process of escaping. Perhaps, PW3 did not think why the respondent was running at that stage. Even that apart, PW3 had to take a decision on the spur of the moment as to the wisdom of catching hold of such a person. If he had failed to take a right decision in a split second it is not a good ground for a court of law to jettison the testimony of such a witness.

Learned counsel for the respondent contended that PW3 had his own reason to speak against the respondent as the relationship between him and the respondent was strained earlier. The story concocted by the defence for making out such a prior enmity was this:

"Respondent had borrowed money from PW3 who was a money lender by business by pledging a transistor and some other goods. The amount borrowed was subsequently repaid to PW3 but he did not return the pledged goods".

..5/-

:5:

It is difficult for us to believe, first, that any such thing would have happened, and second, that even if it had happened it was not a cause for PW3 to entertain enmity towards the respondent. In this context we may point out that PW3 was asked in the cross-examination whether he was a money lender and he denied the suggestion altogether. The respondent had not done anything wrong to PW3 for the latter to entertain enmity towards the respondent. Hence, the endeavour made was not correct that PW3 had some axe to grind against the respondent.

Learned counsel for the respondent argued a point which he regarded as very strong and fatal to the prosecution. That point is, the investigating officer did not subject the respondent to medical examination. What comes out of that? The worst against the prosecution and the best for the respondent in such a situation is that respondent did not have any injury on his person. But learned counsel was not able to satisfy us that a person of respondent's age and health would necessarily have sustained some injury if he had committed rape on a girl like PW1 (Usha). If that be so, why should we vex our mind on the question of absence of injury on the person of the respondent.

We feel that the High Court has seriously erred in interfering with a well merited conviction passed by the trial court on the respondent. We, therefore, set aside the order

:6:

of acquittal passed by the High Court and restore the conviction passed on the respondent by the trial court for the offence under Section 376 of the Indian Penal Code.

Now, we have to decide the quantum of sentence to be passed on the respondent. We must point out, in this context, that the occurrence happened on 17th April, 1976 when there was no legislative compulsion on the court to impose any minimum punishment for the offence of rape. A quarter of century had elapsed since the occurrence and the respondent was in jail for a long period. We, therefore, sentence him to rigorous imprisonment for a period of two years. On completion of the sentence the jail authorities shall release him from jail as he continues to be in jail even now.

The appeal is disposed of accordingly.

.SP1

.....J.@@

BB

(K.T. THOMAS)@@

BB

.....J.@@

BB

(R.P. SETHI)@@

BB

NEW DELHI@@

BBBBBBBBBBBBBBBBBBBB

JANUARY 18, 2001 @@

BBBBBBBBBBBBBBBBBBBB