

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.511 OF 2007

KRISHAN

VERSUS

....APPELLANT

STATE OF J&K

....RESPONDENT

O R D E R

The appellant along with another accused Sansar Chand was put on trial for offence under section 376 and 458 read with section 34 of the Ranbir Penal Code (for short the 'RPC'). The Sessions Judge, Udhampur, by its judgment and order dated 21.01.1998 passed in Sessions File No.3/91, held both of them guilty under the aforesaid charges and sentenced each of them to undergo rigorous imprisonment for life under section 376 R.P.C. and pay a fine of Rupees twenty thousand with default clause and to undergo rigorous imprisonment for ten years under section 458 RPC and pay a fine of Rupees ten thousand each with default clause. It further directed that both the sentences shall run concurrently. Both of them aggrieved by their conviction and sentence preferred Criminal Appeal No. 6 of 1998 before the High Court of Jammu & Kashmir.

The High court by its judgment and order dated 21.12.2005, while dismissing the appeal, maintained the conviction under section 376 RPC and altered the conviction and sentence of both the accused under section 458 RPC into offence under section 451 RPC and reduced the sentence to rigorous imprisonment for three years. Both the sentences were directed to run concurrently. Aggrieved by the same, both of them preferred special leave petition before this Court and by order dated 26.03.2007, this Court granted leave limited to the appellant herein and the special leave petition filed by the other accused i.e. Sansar Chand, was dismissed.

The prosecution started on the basis of a report given by PW-1 the prosecutrix before the Officer-in-Charge of the Chenani Police Station on 01.04.1991 at 5 P.M. According to the report, in the night between 31.03.1991 and 01.04.1991, the co-accused along with the unknown person forcibly entered into the house of the prosecutrix. She was first subjected to rape by the co-accused. It was further alleged that an unknown person whom she could identify had also committed rape without her consent. After usual investigation, the police submitted the charge-sheet against the appellant and the co-accused and ultimately, they were committed to the Court of Sessions to face the trial. The appellant denied to have committed the offence and claimed to be tried. In order to bring home the charge, the prosecution examined the prosecutrix as also her daughter besides other persons. The trial court on appreciation of evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt and accordingly, convicted and sentenced both of them as above. The appeal preferred by them, as stated earlier, has been dismissed by the High Court.

Mr. Tripurari Ray, learned counsel appearing for the appellant, draws our attention to the First Information Report and submits that according to informant herself, the second person who committed the rape was an unknown person. He points out that during the course of the trial, the prosecutrix has not been able to explain how could she come to know that the unknown person is none other than the appellant. This in the submission of Mr. Ray, learned counsel for the appellant, creates doubt so far as the complicity of this appellant in the crime is concerned.

Mr. Ashok Mathur, learned counsel appearing for the respondent,

however, submits that the appellant was identified in the court and that is sufficient to connect him with the crime. However, from the evidence, he is unable to explain as to how the appellant's complicity in the crime surfaced. In such case, mere identification in the court shall not be sufficient to hold him guilty. This leaves us in doubt and in the state of evidence, we do not feel it safe to sustain the conviction of the appellant.

In the result, we allow this appeal, set aside the impugned judgment of conviction and sentence passed by the High Court in respect of the appellant herein by giving him benefit of doubt. The appellant is in jail. He be set at liberty forthwith, if not required in any other case.

.....J
[CHANDRAMAULI KR. PRASAD]

.....J
[PINAKI CHANDRA GHOSE]

NEW DELHI;
JANUARY 16, 2014.

ITEM NO.101(PH) COURT NO.9 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO.511 OF 2007

KRISHAN Appellant (s)

VERSUS

STATE OF J&K Respondent(s)

(With office report)

Date: 16/01/2014 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s) Mr. Tripurari Ray, Adv.
Mr. B.S. Billowria, Adv.
Mr. Rajinder Singh, Adv.
Mr. Ajay Kumar Aggarwal, Adv.
For Mr. Dinesh Kumar Garg, Adv.

For Respondent(s) Mr. Ashok Mathur, Adv.

UPON hearing counsel the Court made the following
O R D E R

This appeal is allowed in terms of the signed order.

| (Sanjay Kumar) Court Master | (Indu Satija) |

| Assistant Registrar |

(Signed order is placed on the file)