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Cr1.A.No. 370 OF 1996

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ITEM No.110 Court No. 7 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.370 of 1996@@
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STATE OF UTTAR PRADESH

Appellant (s)

VERSUS

PREM & ANR.

Respondent (s)

Date : 21/11/2002 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s) Mr. Pramod Swarup, Adv.
Mr. Praveen Swarup, Adv.
Mr. Prashant Choudhary, Adv.

For Respondent (s) Mr. Vinai Singh, Adv.
Mr. Bharat Sangal, Adv.
Ms. Mala Kapoor, Adv.

UPON hearing counsel the Court made the following

O R D E R

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.SP2

The appeal fails and the same is dismissed.

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(Pawan Kumar)
Court Master

(Shelly Sen Gupta)
Court Master

(signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 370 OF 1996@@
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State of UTTAR PRADESH

..Appellant

Vs.

PREM & ANR.

..Respondents

O R D E R@@
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.SP2

The respondents in this appeal were convicted by the IV Additional Sessions Judge, Aligarh in Sessions Trial No. 361/1992 under Section 302 read with 34 IPC and Section 376 IPC and were sentenced to undergo R.I. for life. On appeal the High Court of Judicature at Allahabad by its judgment dated 19th April, 1994 has allowed the appeal and set aside the judgment and conviction. It is against this judgment of the High Court the State of Uttar Pradesh is before us in this appeal.

On 21st January, 1992 at about 1 p.m. PW.1 who is the father of the deceased along with PW.2 cousin of the deceased and two other persons, Mahendra and Panna Lal had gone to Aligarh market for making purchases. After completing the purchase they decided to visit their daughter, Sarvesh who was residing in Sahibabad a nearabout place to Aligarh. It is the further case of the prosecution that when they reached the house of the deceased, they found the house locked and on
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knocking at the door they found the respondents herein coming out with blood stained clothes and a sickle. On entering the house they found the deceased dead with incised wound on her throat they also noticed that she was raped. On seeing the respondents, it is stated that the above said witnesses caught the accused persons and on being questioned the accused persons confessed to them that they had killed Sarvesh after raping her. It is the further case of the prosecution that these respondents were brought to the police station and a FIR was lodged around 2 p.m. When they were arrested by the police. The prosecution in support of its case has examined the father -PW.1, cousin PW.2 who was present at the time when the respondents were arrested. It has also relied upon certain injuries suffered by the respondents to show that they were the persons who had committed the rape and the murder of the deceased. The trial court on consideration of the evidence came to the conclusion that the prosecution has proved the case against the respondents and accordingly convicted them as stated above.

The High Court on reappraisal of the evidence came to the conclusion that the prosecution evidence is full of contradictions and it is not safe to rely upon the same. It
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also came to the conclusion that the medical evidence does not in fact support the prosecution case. It also found that the fact of PW.1 and PW.3 supposed to have been presented at the house of deceased at 1 p.m. on the date of incident was doubtful and that they were interested and were also chance witnesses. On the said basis it came to the conclusion that is not safe to place reliance on the evidence of these witnesses and there being no other reliable evidence benefit of doubt was extended to the respondents.

We have heard the learned counsel for the parties and examined the material on record. We are also of the opinion that the prosecution case is not beyond reasonable doubt. PW.1 and PW.2 as commented are chance witnesses and also related to the victim hence are interested witnesses. The medical evidence also does not support the case of the prosecution. In such circumstances, we think the respondents are entitled to the benefit of doubt as extended to them by the High Court. In the said view of the matter, the appeal fails and the same is dismissed.

.SP1

.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)

New Delhi,
November 21, 2002.