

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Criminal Appeal No. 113 of 2005

Narayan Giri
S/o Nain Giri
R/o Village Kiroli, Patwari Area- Farsali
Tehsil- Kapkot, District Bageshwar

..... Appellant

Versus

State of Uttaranchal (Now State of Uttarakhand)

.....Respondent

Shri B.S. Adhikari, Advocate, present for the appellant.
Shri P.S. Saun, A.G.A, with Shri Asif Ali, Brief Holder, present for the
State/respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under section 374 of
Code of Criminal Procedure, 1973, (for short
Cr.P.C), is directed against the judgment and order

dated 25.06.2005, passed by Learned Sessions Judge, Bageshwar, in Sessions Trial No. 36 of 2004, whereby said court has convicted the accused/appellant Narayan Giri, under section 456 read with section 34 of I.P.C, and sentenced him to rigorous imprisonment for a period of two years and directed to pay fine of ₹ 5,000/-. In default of payment of which the convict is directed to undergo further six months imprisonment.

(2) Heard learned counsel for the parties, and perused the lower court record.

(3) Prosecution story, in brief, that is on 11.11.2003, at about 10.00 pm in Village Farsali Tehsil Kapkot, District Bageshwar, accused/appellant Narayan Giri along with co-accused Bhawan Singh (absconder) came in the house of PW2 Chanra Devi under the pretext to take the piece of lighting stick. The moment Chanra Devi (PW2) opened her door, co-accused Bhawan Singh entered in the house, and caught hold of PW1 Km. Prema (grand daughter of PW2 Chanra Devi), and dragged her out of the house. He (Bhawan Singh) took the girl in a field and committed rape on her. First Information

Report (Ex-A1) was lodged by PW1 Prema (victim) with Supervisory Kanoongo, Kapkot, on the next day (12.11.2003) at about 9.00 am. (In Uttarakhand hills, certain areas, Revenue Officials are given police powers). On the basis of the First Information Report Crime No. 09 of 2003 relating to offences punishable under section 376 and 456 of I.P.C, and one punishable under section 3 (1) (X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was registered against the co-accused Bhawan Singh (absconder), and one unknown person. The Supervisory Kanoongo initially investigated the crime whereafter the investigation was taken over by PW5 Satya Prakash Bhatt, Nayab Tehsildar. Dr. Khem Pal of Primary Health Centre, Bageshwar, recorded three bruise injuries on the back of chest of the girl. The girl (km. Prema) was further medically examined by PW4 Dr. Nisha Pandey of District Female Hospital, Almora, who prepared her report Ex-A8 and Ex-A9. After interrogating the witnesses and inspecting the spot, and on completion of investigation, PW5 Satya Prakash Bhatt, Nayab Tehsildar, submitted charge sheet (Ex-A10) against accused Bhawan Singh (absconder), and accused Narayan Giri (appellant)

for their trial in respect of offences punishable under section 376, 456 and 511 of I.P.C, and one punishable under section 3 (1) (X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(4) The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused as required under section 207 of Cr.P.C., appears to have committed the case to the court of Sessions for trial. But since main accused Bhawan Singh could not be arrested, as such, the trial further proceeded only as against accused Narayan Giri. On 14.12.2004, Learned Sessions Judge, Bageshwar, after hearing the parties framed charge of offences punishable under section 376 (2) (g) of I.P.C. and under section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Said court framed a separate charge against accused Narayan Giri (appellant) in respect of offence punishable section 456 read with section 34 of I.P.C, on 21.06.2005. To both the charges accused pleaded not guilty and claimed to be tried.

(5) Prosecution got examined PW1 Km. Prema

(victim), PW2 Chanra Devi (grand mother of the victim), PW3 Ram Datt Pandey (Supervisory Kanoongo, who started the investigation), PW4 Dr. Nisha Pandey (who medically examined the girl) and PW5 Satya Prakash Bhatt (who completed the investigation).

(6) It is pertinent to mention here that from the First Information Report (Ex-A1) itself, lodged by PW1 Km. Prema, it is clear that allegation of rape has been made only against co-accused Bhawan Singh (absconder), and not against the present appellant. Name of the present appellant nowhere figures in the First Information Report. Though, it is alleged in the First Information Report that when the door were knocked there was one more person with accused Bhawan Singh, but it has been specifically mentioned in the First Information Report that after Bhawan Singh dragged the victim in the field, and he asked another person who was accompanying him to run away. As such, First Information Report does not disclose if the second person committed rape on the victim, or if he was a non member of Scheduled Caste.

(7) PW1 Km. Prema (victim) in her cross examination stated that accused Narayan Giri (appellant) is also resident of her village and she knew him. She further told the court in her cross examination that accused (Narayan Giri) standing on the dock in the court is not the one who committed rape. She has also stated in her cross examination that out of the two persons who came in the fateful night in her house, one was Bhawan Singh and another was Bhagwan Giri.

(8) In the circumstances, the trial court has rightly held that prosecution could not prove either charge of section 376 (2) (g) of I.P.C., or that of section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) 1989.

(9) PW2 Chanra Devi (grand mother of the victim) has certainly stated that on the day of incident at about 10.00 am it was Narayan Giri (appellant) with co-accused Bhawan Singh (absconder) who trespassed and took the victim towards the field. Since the presence of this witness in her house on the day of incident is natural and there appears no enmity on her part against accused Narayan Giri

(appellant), as such, this court agrees with the trial court that testimony of this witness as against accused Narayan Giri that he also trespassed the house with common intention with co-accused Bhawan Singh (absconder) is trustworthy, as such, the charge of offence punishable under section 456/34 of I.P.C, stands proved against him.

(10) Learned counsel for the appellant pointed out that from the statement of the victim, it is clear that the present appellant is resident of the same village. As such, had the appellant been present with main accused Bhawan Singh? The victim could have easily named him in the First Information Report itself. This court has scrutinized the entire evidence on record carefully and finds that it is possible that due to the night time it is possible that the girl (Km. Prema) could not identify Narayan Giri and named only the person who dragged her and committed rape on her. On the other hand, PW2 Chanra Devi has told that she had no difficulty in identifying Narayan Giri at the time when the doors were opened before Bhawan Singh dragged the victim and took from the house. Therefore, this Court does not find any illegality committed by the trial court in

holding that the accused Narayan Giri did accompany main accused Bhawan Singh (absconder), with common intention when he (Bhawan Singh) committed house trespass.

(11) For the reasons as discussed above, so far as the conviction of the accused Narayan Giri recorded by the trial court under section 456 read with section 34 of I.P.C, is concerned, the same does not require any interference. But considering the fact that since the role of accused Narayan Giri (appellant) in commission of rape is not proved on the record, as discussed above, the punishment awarded to the accused Narayan Giri under section 456/34 of I.P.C, can be reduced to the period of imprisonment already undergone by him during investigation and trial, without disturbing the punishment of fine awarded by the trial court.

(12) Accordingly, the appeal is dismissed on the point of conviction, and the conviction recorded by Learned Sessions Judge, Bageshwar, against accused Narayan Giri under section 456/34 of I.P.C in Sessions Trial No. 36 of 2004 is hereby affirmed. However, the sentence of imprisonment awarded by

the trial court under section 456 read with section 34 of I.P.C., is reduced to the period already undergone without interfering with the punishment of fine directed to be paid by the trial court in default of which the appellant shall undergo further six months imprisonment. Lower court record be sent back.

(Prafulla C. Pant, J.)

28.06.2013
Nahid