

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 05 of 2001

Chhota @ Chhote Lal
S/o Jag Ram Balmiki
R/o Village Jiyapotta
P.S. Kankhal, District Haridwar

..... Appellant

Versus

State of Uttaranchal (now State of Uttarakhand)
..... Respondent

Mr. Navneet Kaushik, Advocate, present for the appellant.
Mr. P.S. Saun, Brief Holder, present for the State

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 15.12.2000 passed by III Additional Sessions Judge, Haridwar, in Sessions Trial No. 143 of 1996 whereby said court has convicted accused/appellant Chhota @ Chhote Lal under section 363, 366A and 376 IPC. He (accused/appellant) has been sentenced to rigorous imprisonment for a period of three years and directed to pay fine of ₹ 500/- under section under section 363 IPC, rigorous imprisonment for a period of three years and directed to pay fine of ₹ 500/- under section

under section 366A IPC and rigorous imprisonment for a period of seven years and directed to pay fine of ₹ 1,000/- under section under section 376 IPC.

2. Heard learned counsel for the parties and perused the reconstructed record.

3. Prosecution story, in brief is that in the intervening night of 14/15.06.1994, P.W.1 Kalpana left her father's house in village Jeeyapota within the limits of Police Station Kankhal, District Haridwar. On 15.06.1994 her father P.W.4 Shadilal gave first information report at 12:15 hours at Police Station Kankhal alleging that his minor daughter has been kidnapped and abducted by accused Chhota @ Chhote Lal son of Jagram. On the basis of said FIR crime no. 116 of 1994 was registered at Police Station Kankhal against accused Chota @ Chote Lal in respect of offences punishable under section 363, 366 and 376 IPC. Investigation was taken up by Sub-Inspector Rameshwar Prasad (P.W.8), during investigation the girl was recovered on 28.06.1994 (after about fourteen days) and she was got medically examined. P.W.2 Dr. Manisha Agarwal who medically examined the girl found that the girl was aged between 16-18 years.

There were no marks of injury on her body. The medical officer further opined that no definite opinion regarding rape could be given. After interrogating the witnesses, and on completion of investigation, the Investigating Officer submitted charge sheet before the Magistrate against accused Chota @ Chote Lal for his trial in respect of offences punishable under section 366, 363, 376 IPC.

4. It appears that the case was committed to the court of Sessions for trial, and the trial court framed charge of offences punishable under section 363, 366A and 376 IPC against accused Chhota @ Chhote Lal who pleaded not guilty and claimed to be tried. The prosecution got examined P.W.1 Kalpana (victim), P.W.2 Dr. Manisha Agarwal (who medically examined the girl), P.W.3 Dr. R.K. Pande (Radiologist), P.W.4 Shadilal (informant and father of the victim), P.W.5 Shobharam (declared hostile), P.W.6 Satyapal (declared hostile), P.W.7 Constable Vikram Singh and P.W.8 S.I. Rameshwar Prasad (Investigating Officer).

5. Oral and documentary evidence was put to the accused under section 313 Cr.P.C. in reply to which

the accused pleaded that the evidence adduced against him was false. No evidence in defence was adduced. The trial court after hearing the parties found that the prosecution has successfully proved charge of offence punishable under section 363, 366A and 376 IPC, and convicted accused Chhota @ Chhote Lal accordingly. After hearing on sentence the convict was sentenced to rigorous imprisonment for a period of three years and directed to pay fine of ₹ 500/- under section 363 IPC, rigorous imprisonment for a period of three years and directed to pay fine of ₹ 500/- under section 366A IPC and rigorous imprisonment for a period of seven years and directed to fine of ₹ 1,000/- under section 376 IPC. Aggrieved by said judgment and order dated 15.12.2000 passed by III Additional Sessions Judge, Haridwar, this appeal was preferred by the convict.

6. Before further discussion it is relevant to mention here that the record of the trial court is reported to have been lost. On receiving said information, this Court directed the trial court to re-construct the record, and re-constructed record includes copy of check report of first information report, copy of General Diary, copy of charge sheet,

copy of medical examination report, copy of case diary only. Copies of statement of witnesses recorded by the trial court could not be re-constructed due to the non availability of the same.

7. It is relevant to mention here that from the impugned judgment and order and the re-constructed papers that the age of the girl was between 16-18 years. From the copy of first information report it is clear that the girl had left her father's house in the intervening night of 14/15.06.1994. It is also relevant to mention here that from the medical evidence on record no opinion of rape could be given. Perusal of the re-constructed medical report shows that there were no marks of injury anywhere on the body of the girl. Breast was developed, axillary hair were scanty. There were no marks in the private parts and thighs of the girl. Vagina admitted two fingers easily which suggests that the girl was habitual to sexual intercourse. Needless to say the girl was aged more than sixteen years and she could have given consent for sexual intercourse as the law existed in the year 1994.

8. The most important feature of this case is that the girl appears to have remained with the accused for about two weeks (fourteen days) and she never raised any alarm, nor she ever made any hue and cry for her help. The trial court has observed in the impugned judgment that in the house where the accused kept the prosecutrix, relatives of Chhota @ Chhote Lal also used to live there. In the above circumstances, consensual sex between the accused and the victim cannot be ruled out.

9. Lastly, this Court thinks it just and proper to mention that the prosecution story has not been corroborated by witness P.W. 5 Shobharam and P.W.6 Satya Pal who were got declared hostile by the prosecution. Name of witness Shobharam is mentioned in the FIR but he appears to have not supported the prosecution case.

10. For the reasons as discussed above, keeping in mind that the statement of witnesses could not be reconstructed, this Court is of the view that the conviction and sentence recorded by the trial court against accused Chhota @ Chhote Lal cannot be upheld. And this Court is of the view that it cannot be

said that the charge against the accused stood proved beyond reasonable doubt.

11. Therefore, the appeal is allowed. Impugned judgment and order passed by the III Additional District Judge, Haridwar, in Sessions Trial No. 143 of 1996 is hereby set aside. Accused/appellant Chhota @ Chhote Lal son of Jagram is hereby acquitted from the charge of offences punishable under section 363, 366A and 376 IPC. He is on bail. He need not surrender. Copy of this judgment be sent to the lower court.

(Prafulla C. Pant, J.)

31.05.2013

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