

STATE OF U.P.

v.

MANOJ KUMAR PANDEY
(Criminal Appeal No. 1068 of 2001)

NOVEMBER 7, 2008

[DR. ARIJIT PASAYAT, C.K.THAKKER AND
D.K. JAIN, JJ.]

Penal Code, 1860 – ss.376 and 323:

Rape – Acquittal – Appeal against, disposed of by High Court in cryptic manner – High Court dismissed appeal against acquittal of accused on ground that there was possibility of the victim being a consenting party as she was above 16 years of age – On appeal, held: Merely because the victim was more than 16 years of age, that cannot be a ground to hold that she was consenting party, particularly when no evidence was led to show such consent – Manner of disposal of appeal by High Court was not proper – Matter remitted back to High Court.

Rape – Delay in lodging FIR – Effect of – Held: Normal rule regarding duty of prosecution to explain delay in lodging FIR and lack of prejudice and/or prejudice caused, because of such delayed lodging of FIR, does not per se apply to cases of rape.

According to the prosecution, Respondent committed offences punishable under ss.376 and 323 IPC. The Trial Court went into the issue of alleged delay in lodging of FIR. It concluded that since the prosecutrix was more than 16 years of age, her consent had to be presumed and on that ground acquitted the Respondent.

The High Court dismissed appeal filed by the State holding that there was possibility of the prosecutrix being

- A a consenting party as she was above 16 years of age. Hence the present appeal.

Allowing the appeal, the Court

- B HELD: The approach of the Trial Court and the High Court is clearly unsustainable. Merely because the victim was more than 16 years of age as held by the Trial Court that cannot be a ground to hold that she was consenting party. No evidence was led to show such consent. Apart from that normal rule regarding the duty of the prosecution to explain the delay in lodging FIR and the lack of prejudice and/or prejudice caused because of delayed lodging of FIR does not per se apply to cases of rape. The High Court was, therefore, clearly wrong in disposing of the appeal in such cryptic manner. In the circumstances of the case, the order of the High Court is set aside and the matter is remitted to it for fresh hearing so that it can consider the matter and dispose of the same by a reasoned judgment. [Para 3] [905-G-H; 906-A]

- E CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1068 of 2001.

- F From the final Judgment and Order dated 12.2.2001 of the High Court of Judicature at Allahabad in Government Appeal No. 1982 of 1998.

S.N. Pandey, Chandra Prakash Pandey for the Appellant.

P.K. Jain, P.K. Goswami and K.K. Mishra for the Respondent.

- G The Judgment of the Court was delivered by

- H DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order of a Division Bench of the Allahabad High Court dismissing the appeal filed by the State. Challenge in the appeal was to the judgment of the learned Special Additional

Sessions Judge, Fatehpur in Sessions Trial No. 566 of 1996. The respondent faced trial for alleged commission of offences punishable under Sections 376 and 323 of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court dismissed the appeal in very cryptic manner holding that there was possibility of the prosecutrix being a consenting party as she was above 16 years of age.

2. Learned counsel for the appellant-State submitted that the manner of disposal of the Government appeal needs much to be desired. Trial court did not even record any finding that the prosecutrix was a consenting party to the sexual intercourse. It went on some hypothetical questions regarding alleged delay in lodging FIR. The trial court concluded that since the girl was more than 16 years of age consent had to be presumed. The High Court concurred with the view and disposed of the appeal which is as follows:

"Heard learned A.G.A. and perused the judgment of the trial court. The age of the girl was found to be above 16 years and further finding is that from the circumstances appearing in the case the possibility of the prosecutrix being a consenting party was not ruled out. The reasons in support of order of acquittal are plausible and cogent. No sufficient ground is made out for interference in the order of acquittal.

Leave to appeal is refused."

3. The approach of the trial court and the High Court is clearly unsustainable. Merely because the victim was more than 16 years of age as held by the trial court that cannot be a ground to hold that she was consenting party. No evidence was led to show such consent. Apart from that normal rule regarding the duty of the prosecution to explain the delay in lodging FIR and the lack of prejudice and/or prejudice caused because of such delayed lodging of FIR does not per se apply to cases of rape. This has been the consistent view of this court. The High

- A Court was, therefore, clearly wrong in disposing of the appeal in such cryptic manner. In the circumstances of the case, we set aside the order of the High Court and remit the matter to it for fresh hearing so that it can consider the matter and hear in detail and dispose of the same by a reasoned judgment.
- B Whatever has been expressed by us supra is only for the purpose of coming to the conclusion that the manner of disposal of the appeal is not proper.

4. The appeal is allowed to the aforesaid extent.

C B.B.B.

Appeal allowed.