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MOHAN CHAND

v.

STATE OF UTTARAKHAND
(Criminal Appeal No. 140 of 2009)

B

JANUARY 23, 2009.

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

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Penal Code, 1860 – s.376 – Rape – Appeal against conviction – Plea raised that the name of the accused was not stated in the FIR and, therefore, there was false implication and that the evidence was insufficient to establish accusations against him – Held: Accused was not personally known to the victim and therefore question of mentioning the name of the accused in the FIR did not arise – Also, after arrest of the accused, he was put in TI Parade and the victim correctly identified him – Evidence of the victim was clear and cogent – Conviction maintained.

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The prosecution case was that PW4 was raped by the accused-appellant and other accused persons. Appellant was a truck driver. PW5, one of the accused, later on turned approver. The trial court found the evidence to be sufficient and convicted the appellant u/s.376 IPC with rigorous imprisonment for 7 years. The conviction was upheld by the High Court.

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Before this Court, the conviction of appellant was challenged on the ground that his name was not stated in the FIR and therefore there was false implication and that the evidence was insufficient to establish the accusations against him.

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Dismissing the appeal, the court

HELD:1. PW4 did not know the name of the appellant

and, therefore, there was necessity for Test Identification Parade. The evidence of PW4 is clear and cogent. In the instant case the appellant is not personally known to PW4 and therefore stating his name in the FIR did not arise. However, she has categorically stated that the rape was committed on her by the truck driver. After the arrest of the appellant he was put in TI Parade and PW4 had correctly identified him. That being so, the judgments of the trial Court and the High Court do not suffer from any infirmity to warrant interference. [Para 6] [503-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 140 of 2009.

From the Judgment and Order dated 22.2.2008 of the High Court of Uttarakhand at Nainital in CrI. Appeal No. 852 of 2001.

Jitendra Kumar for the Appellant.

Jatinder Kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of Uttarakhand at Nainital High Court finding the appellant guilty of offence punishable under Section 376 of the Indian Penal Code, 1860 (in short the 'IPC') and sentencing him to undergo rigorous imprisonment for seven years. Two persons i.e. Khemanand and the present appellant filed the appeal before the High Court which was dismissed by the impugned judgment.

3. Background facts in a nutshell are as follows:

On 6.2.1985 the prosecutrix was sent by her mother to purchase rice from cheap grain shop. The prosecutrix waited there for sometimes in front of the shop. Ultimately, the

A prosecutrix returned to her home without purchasing rice. When her mother saw her without rice and coming late at home, she scolded and admonished her. The prosecutrix was again sent to the cheap grain shop and she again found it closed. When the prosecutrix was in a sad and remorseful mood, the accused

B Basant Ballabh (who died during the pendency of appeal) who was known to the prosecutrix came over there and inquired from her the reason for her remorse. The accused Basant Ballabh started to console her by saying that her mother was admonishing her everyday and suggested that they should run

C away and marry at Purnagiri temple. The accused, Basant Ballabh also told her that his maternal uncle has a factory where he would get an employment and earn money and live comfortably. The accused Basant Ballabh took the prosecutrix to his room where they stayed throughout the night. The

D accused Basant Ballabh promised her to marry on the next day in Purnagiri Temple. During the intervening night of 6th/7th February, 1985, accused Basant Ballabh committed rape on the prosecutrix thrice in the night. On the next day, the

E prosecutrix along with accused Basant Ballabh proceeded to the bus station Champawat. The accused Basant Ballabh asked the prosecutrix to go on foot 1 k.m. ahead from

F Champawat towards Tanakpur side and wait for him near the Deodar tree from where he would pick her up in the bus. Following the said instructions, the prosecutrix proceeded towards the Deodar tree on foot which is ahead of Champawat,

G from where she was taken in the bus by the accused Basant Ballabh and Trilok Singh (who turned Approver) who had also joined hands with accused Basant Ballabh. They all proceeded towards Tanakpur and got down little before Tanakpur from where they proceeded on foot and reached on Tanakpur-Bareilly

H road. They again boarded a bus going towards the side of Bareilly. The prosecutrix became anxious and inquired as to where they were going. In reply, the accused told her that they would first purchase the articles required to perform marriage from Pilibhit and then would go to the temple. When they reached at Pilibhit, the prosecutrix was taken to a liquor shop

where the accused Khemanand used to work as a Salesman. The accused Khemanand was also having an accommodation there. The accused Basant Ballabh, Trilok Singh and Khemanand took the prosecutrix inside the room of accused Khemanand where the accused persons consumed liquor. After finishing the drinks, Trilok Singh and Basant Ballabh slept on one cot, while Khemanand and the prosecutrix took separate cots. After sometimes, accused Khemanand went upto the cot of the prosecutrix and tried to molest her. The prosecutrix resisted his attempts and complained against accused Khemanand to Basant Ballabh. Accused Basant Ballabh instead of helping her, asked her to fulfill the desire of the accused Khemanand. Accused Khemanand subjected the prosecutrix to sexual intercourse forcibly. On 9.2.1985 the prosecutrix was taken to village Tikri where distantly related sister of Trilok Singh was residing so that they may not be apprehended by the police. Accused Triok Singh and Basant Ballabh went outside the village to ascertain whether any report against them has been made or not. They came to know that a report has been lodged in the police station. The accused brought the prosecutrix from village Tikri to Tanakpur. At Pilibhit, accused Basant Ballabh got down and asked Trilok Singh to send the prosecutrix to Champawat. Trilok Singh brought the prosecutrix to Tanakpur. Thereafter, accused Trilok Singh found truck No.USZ-4480 with its driver accused Mohan Chand near a pump at Tanakpur. Accused Trilok Singh told accused Mohan Chand that the prosecutrix was a student of class IX and her school is to open the next day, therefore, she may be taken in the truck. Accused Trilok Singh also paid fare and instructed accused Mohan Chand that the prosecutrix be made to get down 1 k.m. before Champawat. Thereafter accused Mohan Chand also committed rape upon her. When the truck moved a little forward, it stopped and an unknown person who was sitting by the side of the driver also went to the prosecutrix and committed rape upon the prosecutrix. Accused Mohan Chand made the prosecutrix to get down 1 k.m. before Champawat. She covered the distance on foot and went straight to the house

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A of accused Basant Ballabh. A written report Ex.Ka.7 was
lodged by Girish Chandra Paneru on 07.02.1985 before the
Patti Patwari Talla Charao alleging therein that his niece, i.e.
the prosecutrix is not traceable since 06.02.1985 and that he
has gathered the information that the accused Basant Ballabh
B has taken her away from Champawat towards Tanakpur. On the
basis of FIR, the Chick FIR Ex.Ka.8 was prepared. Patti Patwari
Devi Datt (PW7) investigated the case. He recorded the
statement of the prosecutrix under Section 161 of the Code of
Criminal Procedure, 1973 (in short the 'Code') on 10.02.1985.
C During the course of investigation, the prosecutrix gave a written
report Ex.Ka.3 and disclosed that she has been raped by the
accused persons. The Investigating Officer sent the prosecutrix
for medical examination in order to ascertain her age and
whether she was subjected to sexual intercourse or not. The
D investigating officer after completing the necessary formalities
of the investigation submitted the charge sheet Ex.Ka.13 before
the Court.

After completion of investigation charge sheet was filed
and since the accused persons pleaded innocence trial was
E held. Prem Lata Tiwari (PW-2) was the principal of the school
where the prosecutrix was studying. PW-4 was the prosecutrix.
Trilok Singh (PW-5) was the accused but later on was made
an approver. The trial Court found the evidence to be sufficient
and convicted the accused persons.

F In appeal, the basic stand taken was that at the first
instance the name of the appellant was not stated and,
therefore, there was false implication and the conviction should
not have been recorded as the evidence is not sufficient to
G establish the accusations. The High Court did not find any
substance in the plea and dismissed the appeal.

4. The stand taken before the High Court was reiterated
by the appellant.

H 5. Learned counsel for the State on the other hand

supported the judgment of the trial Court and the High Court.

6. It is to be noted that the prosecutrix did not know the name of the accused and, therefore, there was necessity for Test Identification Parade. The evidence of the prosecutrix is clear and cogent. In the instant case the accused is not personally known to the victim and therefore stating his name in the FIR did not arise. However, she has categorically stated that the rape was committed on her by the truck driver. After the arrest of the accused he was put in TI Parade and the victim had correctly identified him. That being so, the judgments of the trial Court and the High Court do not suffer from any infirmity to warrant interference.

7. The appeal is dismissed.

B.B.B.

Appeal dismissed.