

[2011] 2 S.C.R. 243

AMAR BHADUR SINGH

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v.

STATE OF U.P.

(Criminal Appeal No. 107 of 2006)

JANUARY 25, 2011

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[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

Penal Code, 1860: s.376 – Rape – Allegation of rape on prosecutrix in her house – Prosecutrix was 26 years of age and mother of seven children – Rape allegedly committed in the presence of her children and other family members – Trial court convicted the accused u/s.376 and sentenced him to undergo rigorous imprisonment for seven years – High Court reduced the sentence from seven to five years observing that the facts indicated that the prosecutrix was a consenting party – On appeal, held: The possibility of commission of rape in the presence of so many members in a small house is not convincing – The finding of High Court that the prosecutrix was a consenting party appears to be correct – The story of rape might have been cooked up to salvage family honour when the accused and the prosecutrix were caught red-handed – This is often the tendency in such matters – High Court went completely wrong in dismissing the appeal even after its categoric observations – Conviction set aside.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 107 of 2006.

From the Judgment & Order dated 23.08.2005 of the High Court of Judicature at Allahabad Lucknow Bench (Lucknow) in Criminal Appeal No. 140 of 1995.

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Praveen Chaturvedi for the Appellant.

The following order of the Court was delivered

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O R D E R

The respondents have been served but they are not represented before us.

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As per the prosecution story on the 2nd April, 1989 at about 11.45 p.m. the prosecutrix, the daughter in law of Santu, was sleeping in her in laws' house along with her daughter and other family members. Her husband was however away to the Punjab in connection with his employment. On an alarm raised by the prosecutrix all those at home woke up and saw that the appellant was committing rape on the prosecutrix. The appellant was accordingly apprehended on the spot with the help of a police party which was passing close by. It was also noticed that the prosecutrix was bleeding from her private parts. The appellant was accordingly brought to the police station where a report was lodged and a case under Section 376 of the IPC was registered.

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The Trial Court relying on the evidence of PW.1 the prosecutrix, PW.2 Santu, her father-in-law, and PW.6, her sister-in-law, held that the case against the accused was made out and accordingly sentenced him to undergo R.I. for seven years. The matter was thereafter taken in appeal to the High Court and the High Court while observing that the facts of the case indicated that the prosecutrix was a consenting party thought that in the circumstance it was a fit case where the sentence ought to be reduced from seven to five years. The appeal was nevertheless dismissed with the reduction in the quantum of sentence. This appeal by way of special leave is now before us.

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We have heard the learned counsel for the appellant. He has raised only one argument before us. He has pointed out that the prosecutrix was 26 years of age as on the date of the incident and was the mother of seven children and the very fact that the rape had been allegedly committed in her house not only in the presence of her children and other family members,

the story itself appeared to be unacceptable. It has also been highlighted that in the background of the fact that the High Court had observed that the prosecutrix was a consenting party the accused ought to have been acquitted on that basis alone.

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We find merit in this plea. We find that under the circumstance the possibility that rape could have been committed on her in the presence of so many members in a small house is difficult to believe. On the contrary the findings of the High Court that the prosecutrix was a consenting party appear to be correct and it was perhaps when the accused and the prosecutrix had been caught red-handed that the story of rape had been cooked up, to salvage some of the family honour. This is often the tendency in such matters. The High Court has therefore gone completely wrong in dismissing the appeal even after its categoric observations. We accordingly allow the appeal, set aside the conviction of the appellant and order his acquittal. The appellant is on bail; his bail bonds are discharged.

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Appeal allowed.