

CASE NO.:
Appeal (crl.) 398 of 2008

PETITIONER:
Ramesh Kumar

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 27/02/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO 398 OF 2008
(Arising out of SLP (Criminal) No.5064 of 2007)

V.S. SIRPURKAR, J.

1. Leave granted.
2. This appeal is filed by one of the accused persons who was convicted for commission of offences under Sections 376 (2)(g), 506, read with Sections 149 and 148 of the Indian Penal Code. Initially as many as six accused persons came to be tried under Sections 376 (2)(g), 506 read with Sections 149 and 148 IPC before the Sessions Court on the allegation that on the night intervening 5th and 6th February, 1999 at Village Rajapur they committed gang-rape on Smt. Nirmala Devi, wife of Lal Chand. It was further alleged that the accused persons formed an unlawful assembly and in prosecution of common object of such assembly they also criminally intimidated said Nirmala and had also committed the offence of rioting. The Sessions Judge convicted all the accused persons and sentenced Veer Bhan (A-1), Ajmer Singh (A-3) and Ramesh (A-4) for the offence under Section 376 (2)(g) IPC and came to the conclusion that these three accused persons had gang-raped Nirmala, the prosecutrix. They were accordingly sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for three years. It was directed that the fine, if realized, be paid to the prosecutrix as compensation. The other three accused persons, namely, Bagicha (A-2), Raju (A-5) and Suraj Bhan @ Surja (A-6) were, although convicted for the aforementioned offences, sentenced to undergo imprisonment for 10 years and also to pay a fine of Rs.10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for three years. All the accused persons were also sentenced to suffer rigorous imprisonment for two years for the offence under Section 506 read with Section 149 IPC and rigorous imprisonment for two years for the offence under Section 148 IPC. All the sentences were ordered to run concurrently.
3. All the accused persons filed appeal before the High Court wherein the High Court came to the conclusion that the charges of gang-rape and criminal intimidation were proved against all the appellants. However, the High Court took slightly lenient view in case of accused Bagicha (A-2), Raju (A-5) and Suraj Bhan @ Surja (A-6) as they had not indulged in sexual intercourse with the prosecutrix. The High Court took into consideration that they were behind the bars for about four years and therefore, they were let off with the sentence already undergone by them. However, the High Court did not show any leniency in the case of Veer Bhan (A-1), Ajmer (A-3) and Ramesh Kumar (A-4) who had committed the act of rape and confirmed their life sentence.
4. Now out of the abovesaid three accused persons only Ramesh (original Accused No.4) has come up before this Court. This Court

condoned the delay in filing the appeal and issued notice only on the question of sentence.

5. Though a limited notice was issued, the learned counsel tried to argue before us for acquittal. According to him the offence of rape or the more serious offence of gang-rape was not proved at all. It was also urged that since the appellant has undergone about nine years of incarceration, the court should take lenient view in the matter. Learned counsel also pointed out that the prosecutrix was not injured though she was allegedly raped by three persons. Learned counsel also urged that the parents of accused Ramesh are old and have already been deprived of the company of their son for more than nine years ever since the accused-appellant is behind the bars.

6. Since only a limited notice was issued regarding the sentence, we do not propose to discuss in details the prosecution story and the evidence tendered by the prosecution in its support. However, we must notice certain facts in order to appreciate the question of sentence.

7. The alleged incident appears to have happened on the night intervening 5th and 6th February, 1999. It is alleged that the husband of the prosecutrix was addicted to drinking and on evening of 5th February, 1999, Suraj Bhan @ Surja (A-6) came to the house of the prosecutrix and took along her husband. Again at about 11 p.m. at night her door was knocked and after opening of the door she saw that Veer Bhan (A-1) was present there and he told her that her husband was lying in a drunken state and, therefore, she should fetch him back. The prosecutrix allegedly accompanied Veer Bhan (A-1) who took her near the engine in the fields of one Mukhtiar Fauji where the other accused persons, namely, Bagicha (A-2), Surja (A-6), Ramesh (A-4), Ajmer (A-3) and Raju (A-5) were already present. The prosecutrix identified each of the accused as they were known to her. When she asked the whereabouts of her husband she was threatened by Veer Bhan (A-1) as she would lose her life if she were to raise an alarm. She was thereafter relieved of all her clothes by Veer Bhan (A-1) and then Veer Bhan (A-1), Ajmer (A-3) and Ramesh (A-4) (present appellant) committed rape on her turn by turn whereas the other three accused merely kept on scaring her. It was then she was taken back to her house by Veer Bhan (A-1) and again she was threatened not to disclose the incident to anybody, else she would be killed. On the following day when her husband came home, she disclosed the occurrence to her husband whereupon she, along with her parents, went to Police Station Sadar Panipat and lodged the FIR. She was thereafter sent for medical examination and the examination was conducted by the Lady Doctor. The accused were eventually arrested on different dates and all of them were sent for medical examination on 15.2.1999. All of them were found to be fit for committing sexual intercourse. The clothes of the accused were also sent to Forensic Science Laboratory and it was found that there were semen stains on the Salwar of the prosecutrix, vaginal swabs and the underwears of accused Ramesh (the present appellant) and accused Ajmer. The prosecution led evidence of Nirmala, the prosecutrix, the husband of Nirmala, namely, Lal Chand, son of Gian Chand and Prithvi Singh, the Investigating Officer. Some of the witnesses were given up while Dr.K.L. Chopra, who had examined the accused Veer Bhan and Raju was examined. One Dr.S.K. Gupta was also examined who had examined accused Ramesh Kumar, Ajmer, Suraj Bhan and Bagicha. The accused generally denied their participation in the crime and the present appellant asserted that on the date of occurrence he was not present in the Village. It was his evidence that since Radhu Ram, his father was contesting the elections of Sarpanch for the last 20 years and one Diwan Chand was contesting the elections against his father and since his father was winning the elections throughout, the said Diwan Chand was nursing a grudge against the accused. On the basis of the evidence and more particularly relying on the evidence of Nirmala, the prosecutrix, all the accused were convicted.

8. It is not for us now to consider whether the appellants were rightly convicted since that question does not remain in view of the fact that this Court had issued only limited notice regarding the sentence obviously taking the view that there was nothing wrong with the judgment of

conviction recorded by the Trial as well as the Appellate Courts. The question is only of the sentence.

9. In this case the courts below have awarded the maximum penalty against the three accused being the life sentence. The only plea that was raised before us was that the appellant Ramesh comes from the poor background and that his old parents will be deprived of his company. There is no material placed before the Trial and the Appellate Court as well as before us in support of his poverty. At any rate we can take the notice of the fact that the father of the appellant has been the Sarpanch for the last 20 years. Again there would be no question of taking a lenient view particularly because of the daring dastardly act on the part of the accused persons in which the appellant took active part inasmuch as out of the six accused persons, he was one of the three accused who had committed rape on the lady. We cannot ignore the fact that the lady was a married person and was tricked to accompany the accused who obviously had an evil design. It cannot be forgotten that the husband of the lady was lured on the evening of the day of occurrence itself taking advantage of his addiction to alcohol and it was then that the lady was lured to come out of the house for taking back her husband who was lying in a drunken state. Here was a defenceless married person who was tricked out of her house taking the advantage of the drunkenness of her husband and then was ravished in a most dastardly manner by as many as three persons, one of whom was the appellant before us. Under such circumstances we do not think that any leniency can be shown in the matter of sentence. It cannot be forgotten that out of three accused persons only one of the accused person has come up by way of an appeal. He cannot be treated differently from others who are serving their life sentence.

10. Under the circumstances we do not wish to interfere with the judgments of the Trial and Appellate Courts in so far as the sentence is concerned. The appeal has no merits and is accordingly dismissed.