



2019 INSC 1267

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2127 OF 2009

CHAITU LAL

...APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND

...RESPONDENT(S)

JUDGMENT

N.V. RAMANA, J.

1. The present criminal appeal arises out of the impugned order dated 27.03.2009 passed by the High Court of Uttrakhand at Nainital in Criminal Appeal no.144 of 2006 whereby the High Court dismissed the appeal of the appellant and confirmed the order dated 08.05.1992, passed by the Sessions Judge, Chamoli in S.T. No. 36 of 1991 convicting the accused for offences under Section 354 and Section 511 read with Section 376 IPC. The accused was sentenced to undergo rigorous imprisonment of one

year for commission of offence under Section 354 IPC and he was further sentenced to undergo two years Rigorous Imprisonment and pay a fine of Rs. 200/- for commission of offence under Section 511 read with Section 376 IPC.

2. The brief facts according to the prosecution are that the complainant-victim is the aunt of the accused-appellant. The accused-appellant had earlier also committed indecent behavior with the complainant-victim, which is the subject matter of another criminal proceeding. On 12.01.1991, the accused-appellant after seeing the complainant-victim alone took advantage of the same and attempted to molest her. On the same date at around 10:00 P.M while the complainant-victim along with her daughters was sleeping in her house, the accused-appellant entered into the house of the victim in a drunken state. While the complainant-victim was getting up from her bed, the accused-appellant pounced upon her making her fall into the bed. The accused-appellant thereafter lifted her petticoat, sat upon her and attempted to commit rape. Upon hearing the noise, the daughter of the complainant-victim (P.W.2) got up and beseeched the accused-appellant to let go of her mother. Upon hearing the commotion, certain other villagers

interfered, accused-appellant ran away after threatening the complainant-victim. Thereafter, the complainant-victim narrated the entire incident to her husband, pursuant to which they approached the Court of the CJM to file the complaint on 16.01.1991.

3. The trial court, vide order dated 08.05.1992, convicted the accused-appellant for offence under Section 354, pursuant to which he was directed to undergo one-year rigorous imprisonment. He was further convicted for offence under Section 511 read with Section 376 IPC and was directed to undergo rigorous imprisonment for two years and to pay a fine of Rs. 200/-. Aggrieved, the accused-appellant approached the High Court in Criminal Appeal No. 144 of 2006. The High Court vide impugned judgment dated 27.03.2009 dismissed the appeal and upheld the order of conviction passed by the trial court. Aggrieved by the aforesaid dismissal, the accused-appellant approached this Court by way of present appeal.

4. The counsel on behalf of the accused-appellant submitted that accused-appellant has been framed by the complainant-victim pursuant to certain existing enmity. Further, it was pleaded that

the FIR was registered with a delay of 3 days and the prosecution has failed to explain the same. Lastly, the evidence of the witnesses does not suggest any liability for offence under Section 511 read with Section 376 of IPC.

5. On the contrary, the counsel for the State has supported the concurrent judgments of conviction passed against the accused-appellant.
6. Heard counsel appearing for both parties. In the present case, the statement rendered by the complainant-victim (P.W.1) is corroborated by the daughter of the complainant-victim (P.W. 2) who is an eye-witness to the said incident, husband of the complainant-victim (P.W.3) and independent witness Sohan Lal (P.W.4). The courts below have observed that although these witnesses were subjected to lengthy cross-examination, they have remained persistent in their statements and there was no material contradiction so as to raise any doubt regarding their credibility.
7. The statement of the complainant-victim reveals that the accused-appellant had attempted to molest her on numerous occasions. In order to attract culpability under Section 354 IPC,

the prosecution has to prove that the accused applied criminal force on the victim with the intention of outraging her modesty. In the case at hand, prior to the commission of the offence, the accused-appellant had attempted to molest the complainant-victim on the same day itself. Later that night, the accused-appellant forcibly entered the house of the complainant-victim in a drunken state, being aware about the absence of her husband. Thereafter, the accused-appellant, exerting criminal force, pounced upon the complainant-victim and forcibly lifted her petticoat. Although, the complainant-victim pleaded the accused to stop considering the fact that she was his aunt; he responded stating, it does not matter to him. The aforesaid action of the accused-appellant is sufficient to prove his culpability.

8. The counsel of the accused-appellant has pleaded that the actions of the accused-appellant do not constitute the offence under Section 511 read with Section 376, as the accused-appellant had not committed any overt act such as; any attempt to undress himself in order to commit the alleged act. This Court in the case of ***Aman Kumar and Anr. v. State of Haryana, (2004) 4 SCC 379*** held that-

“11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part...”

9. The attempt to commit an offence begins when the accused commences to do an act with the necessary intention. In the present case, the accused-appellant pounced upon the complainant-victim, sat upon her and lifted her petticoat while the complainant-victim protested against his advancements and wept. The evidence of the daughter (P.W.2) also reveals that she pleaded with the accused-appellant to spare her mother. In the meantime, hearing such commotion, other villagers intervened and threatened the accused of dire consequences pursuant to which the accused ran away from the scene of occurrence. Here, the evidence of independent witness Sohan Lal (P.W.4) assumes significance in corroborating the events on the date of occurrence, wherein he has averred that at around 10:00 p.m, he heard noise coming from the house of complainant-victim, pursuant to which he saw the accused-appellant's wife holding his neck coming out from the house of the complainant-victim. P.W.-4 had also overheard the complainant-victim complaining

that the accused-appellant was quarreling with her.

10. Herein, although the complainant-victim and her daughter were pleading with the accused to let the complainant-victim go, the accused-appellant did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the accused-appellant would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to commit the said offence.

11. The counsel on behalf of the accused-appellant placed reliance upon the case of ***Tarkeshwar Sahu v. State of Bihar (Now Jharkhand)***, (2006) 8 SCC 560 to claim the benefit of acquittal for offence under Section 511 read with Section 376 of IPC. But, on careful perusal of the aforesaid decision in the backdrop of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the accused-appellant in

forcibly entering the house of the complainant-victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance.

12. Further, the plea of the accused-appellant regarding the delay in registering the FIR has been duly considered by both the courts below. It has been duly noted that the husband of the complainant-victim (P.W.3) was staying in Nandprayag while the incident occurred in the remote village of Salna. Subsequent to the incident, the complainant-victim first travelled to meet her husband (P.W.3). After narrating the said incident to him, she further travelled to register a complaint before Chief Judicial Magistrate, Chamoli, which is again far off from the place of occurrence. Considering the aforesaid factual scenario, the delay in registering the FIR does not affect the case of the prosecution adversely.

13. Considering the facts and circumstances, the guilt of the accused-appellant has been established beyond doubt. In our opinion, therefore, the courts below have rightly convicted and

sentenced the accused. In view of the aforesaid observations, the appeal lacks merit and is accordingly dismissed.

.....**J.**

(N.V. RAMANA)

.....**J.**

(AJAY RASTOGI)

**New Delhi;
November 20, 2019**