

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 592/2020

VIJAY PEINULY

APPELLANT(S)

VERSUS

THE STATE OF UTTARAKHAND

RESPONDENT(S)

O R D E R

On 19.10.2015, a complaint was filed by the father of 'X' alleging that on 26.09.2015 when she was coming from Bhatgaon to meet her mother at Khaleti, the appellant lured her into his shop and committed rape. FIR was registered against the appellant for an offence under Section 376(2)(1), IPC. The victim was sent for medical examination on the same day. Thereafter, the appellant was arrested on 20.10.2015. The Trial Court convicted the appellant under Section 376(2)(1), IPC and sentenced him to rigorous imprisonment for a period of 10 years, along with a fine of Rs.25,000/-. The conviction and the sentence was affirmed by the High Court.

Mr. Kaleeswaram Raj, learned Amicus Curiae appearing for the appellant, submitted that the conviction and the sentence of the appellant

deserves to be set aside for various reasons. He argued that the statement of the victim could not be recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) as she was found not fit for recording such statement. Even the chief examination of the prosecutrix was in a question-and-answer format and therefore, it cannot be relied upon. He argued that the oral evidence of the prosecutrix is not supported by the medical evidence. He highlighted the contradictions in the evidence of the prosecution witnesses to argue that, at the most, this is a case of an offence under Section 354, IPC. Further, it was urged by Mr. Raj that there is no credible evidence on the basis of which the conviction of the appellant under Section 376(2) (1), IPC can be sustained. He relied upon a judgment of this Court in *Santosh Prasad @ Santosh Kumar vs. State of Bihar* reported in (2020) 3 SCC 443 which according to him has similar facts.

Dr. Abhishek Atrey, the learned counsel appearing for the respondent, took us through the evidence of the prosecutrix reliable to submit that conviction can be based on her sole testimony. He referred to the evidence of the parents of the prosecutrix to submit that further corroboration of the prosecutrix's testimony was

not required, if such testimony was credible.

We have carefully scrutinized the entire material on record including the evidence that is filed by the prosecution. After considering the submissions of the learned Amicus Curiae appearing for the appellant, we are not in agreement that an error has been committed by the courts below in convicting the appellant under Section 376(2)(1), IPC. It is true that there was delay in the registration of the FIR. Naturally, the medical examination of the victim 20 days after the incident would not disclose any injuries or any evidence of rape. There are certain minor contradictions in the evidence. However, we are of the considered view that the testimony of the prosecutrix, which is credible, can be the sole basis for the conviction of the appellant under Section 376(2)(1), IPC. The judgment in the *Santosh Prasad* case (supra) is a case where there was a dispute of land between the prosecutrix and the accused. Taking that into account, this Court held that the contradictions in the evidence of the prosecutrix and the medical evidence has to be looked into by the courts carefully. In para 5.3 of the said judgment, this Court made it clear that the conviction can be based solely on the evidence of the prosecutrix.

After detailed consideration of the submissions made by both sides, we see no reason to interfere with the judgments of the courts below convicting the appellant under Section 376(2)(1), IPC. As the sentence imposed is for a period of 10 years which is the minimum prescribed under Section 376(2)(1), IPC, there is no case for interference with the sentence as well.

The appeal is dismissed. Pending application(s), if any, shall stand disposed of.

.....J
(L.NAGESWARA RAO)

.....J
(ANIRUDDHA BOSE)

NEW DELHI;
12th AUGUST, 2021

ITEM NO.8 Court 5 (Video Conferencing) SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 592/2020

VIJAY PEINULY

Appellant(s)

VERSUS

THE STATE OF UTTARAKHAND

Respondent(s)

(MR. KALEESWARAM RAJ HAS BEEN APPOINTED AS AMICUS CURIAE)

Date : 12-08-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s) Jail Petition, AOR

Mr. Kaleeswaram Raj, Adv. (A.C.)

For Respondent(s) Dr. Abhishek Atrey, AOR

Mr. Vikas Negi, Adv

Ms. Ambika Atrey, Advoc

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the
Signed Order. Pending application(s), if any,
shall stand disposed of.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Court Master

(Signed Order is placed on the file)