# Bawua Gupta vs State Of U.P. on 11 April, 2025

## Author: Sangeeta Chandra

## Bench: Sangeeta Chandra

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

High Court of Judicature at Allahabad

(Lucknow)

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Neutral Citation No. -2025:AHC-LKO:20615-DB

Judgment Reserved on 11.02.2025

Judgment Delivered on 11.04.2025

Court No.-9

Case :- CRIMINAL APPEAL No. - 3 of 2002

Appellant :- Bawua Gupta

Respondent :- State of U.P.

Counsel for Appellant :- B. D. Mishra, Alok Kumar, Anil K. Tripathi, , Prem Kumar Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Ajai Kumar Srivastava-I, J.)

1. Heard Shri Prem Kumar Singh, learned Amicus Curiae for the appellant, Shri Umesh Chandra Verma, learned A.G.A.-I for the State and perused the entire record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 23.11.2001 passed by the learned Additional District & Sessions Judge, Court No.13, Lucknow in Sessions Trial No.655 of 2000 arising out of Case Crime No.453 of 1999, under Section 376 of the Indian Penal Code1, Police Station Wazirganj, District Lucknow, whereby the appellant, has been convicted and sentenced to undergo life imprisonment for the offence under Section 376 I.P.C. with a fine of Rs.10,000/-.

3. The case of the prosecution, in nutshell, is that on 14.12.1999 at about 7:00 P.M., when the victim, P.W.-2 aged about 7 years, daughter of P.W.-1 went out of the house to buy paan for her mother, the accused/ appellant, Bawua Gupta lured her with toys and clothes and took her to Birhana Park and thereafter he raped her there. When the victim started crying and screaming, the accused/ appellant threatened to strangle her. She remained unconscious in Birhana park and the next morning after reaching home, she told her mother about the said incident. P.W.-1, father of victim went to the Police Station, Wazirganj and gave a written report.

4. On the basis of aforesaid written report, Ext. Ka-1 submitted by the first informant, the first information report, Ext. Ka-7 came to be lodged against the accused/ appellant under Sections 376 I.P.C.

5. P.W.-3, Dr. Ratna Pandey had examined the victim, P.W.-2 at about 04:30 P. M. on 15.12.1999. The following injuries described by P.W.-3, Dr. Ratna Pandey, were found on the body of the injured :-

1.

A lineral Abrasion about 1 cm size on front of Lt ear Pinna on Lt Cheek reddish in color.

2. 5-6 eleplical about 1 cm size Abrasion Mark on both side of neck just below angle of jaw reddish in color.

3. A contusion about 3 cm x 4 cm in size about 4" above Rt. nipple redish.

4. A contusion about 4 cm x 4 cm in size about 1" above Lt nipple reddish in color.

5. Multiple Abrasion about 1 cm size on back reddish in color.

6. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure2. He visited the places of occurrence and prepared two site plans thereof as Ext. Ka-10 and Ext. Ka-11.

7. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ext. Ka-12 under Section 376 I.P.C. against the accused/ appellant.

8. Charge for the offence under Section 376 I.P.C. was framed against the accused/ appellant, who denied the charge and claimed to be tried.

9. In order to bring home guilt of the accused/ appellant, the prosecution has examined the complainant, who is the father of the victim, as P.W.-1, the victim as P.W.-2, Dr. Ratna Pandey as P.W.-3, mother of the victim as P.W.-4, H.C. 187 Ashok Singh as P.W.-5 and Avinash Singh Thakur, S. I. as P.W.-6.

10. The accused/ appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case. He also claimed to be innocent.

11. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

12. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 23.11.2001 whereby the accused/ appellant came to be convicted as aforesaid.

13. Aggrieved by the aforesaid impugned judgment and order dated 23.11.2001, the accused/ appellant has preferred the instant criminal appeal.

14. At the out set, it is pertinent to mention that learned Amicus Curiae for the appellant has not assailed the finding of guilt of the appellant and has confined his argument to the quantum of sentence awarded to appellant which, according to learned Amicus Curiae for the appellant, is excessive and was imposed by the learned trial Court without considering the mitigating factors like age of the appellant, manner of commission of offence, absence of criminal history of the appellant who was aged about 19 years at the time of incident.

15. Learned Amicus Curiae for the appellant has submitted that the learned trial Court, while convicting the appellant, has imposed the maximum sentence provided for the offence. The learned trial Court while doing so has failed to appreciate the fact that at the time of incident, the age of the appellant was about 19 years, who had no criminal history. There was nothing on record to show that there was no possibility of reform of the appellant. Therefore, the appellant ought to have been awarded lesser punishment provided for the offence in question, however, the same has not been done by the learned trial Court without assigning any reason.

16. His further submission is that the impugned judgment and order dated 23.11.2001 passed by the learned trial Court deserves to be set aside and the sentence awarded to the appellant by the learned trial Court deserves to be modified.

17. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 23.11.2001, which is well discussed and reasoned. The accused/ appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

18. He has further submitted that the victim was aged about 7 years only. Therefore, having regard to the manner of commission of offence, the sentence awarded to the appellant does not deserve to be modified.

19. It is relevant to mention that Dr. Ratna Pandey has been examined as P.W.-3, who has proved the injury report, Ext. Ka-3 of the victim. H.C. 187 Ashok Singh has been examined as P.W.-5. He has prepared Chik F.I.R. and proved the same as Ext. Ka-7. He has also recovered clothes of the victim and proved the recovery memo as Ext.-Ka-2. S.I. Avinash Singh Thakur has been examined as P.W.-6, who has prepared two site plans and proved the same as Ext. Ka-10 and 11. He has recovered cloth (underwear) of the victim and prepared a memo thereof and proved the same as Ext.-Ka-9. He has also prepared a charge sheet and proved the same as Ext. Ka-12.

20. Having heard learned Amicus Curiae for the accused/appellant and the learned A.G.A. for the State, and upon perusal of the record, it transpires that the written report, Ext. Ka-1, was lodged by the first informant, P.W.-1, the father of the victim. The witnesses of fact i.e. P.W.-1, father of the victim, P.W.-2, the victim, and P.W.-4, mother of the victim, have supported the prosecution case in all material aspects. PW-3, Dr. Ratna Pandey, has examined the victim, and proved the injury report as Ext. Ka-3. The injury reported on the body of the victim also corroborates the prosecution story.

21. The prosecutrix, the victim, who has been examined as P.W.-2, has deposed in a consistent manner and has support the prosecution case. The injury report, Ext. Ka-3, which has been proved by P.W.-3, Dr. Ratna Pandey, also lends credence to the testimony of the victim, P.W.-2.

22. It is no more res integra that the prosecutrix of a sexual offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act does not require her evidence to be corroborated in material particulars before it can be accepted. In this regard, the judgments rendered by Hon'ble the Supreme Court in State of U.P. vs. Chhoteylal3 and State of Maharashtra vs. Chandraprakash Kewalchand Jain4 may be usefully referred to.

23. Hon'ble the Supreme Court in Phool Singh vs. State of Madhya Pradesh5 has held that in case of rape, conviction can be recorded on the basis of sole testimony of victim provided the same is reliable. In the case at hand as discussed above, we find the testimony of victim, P.W.-2 wholly reliable, therefore, we do not find substance in the submissions advanced by learned counsel for the appellant to the effect that in want of corroboration of testimony of victim, P.W.-2, the finding of guilt of the appellant cannot be sustained. We also notice that the testimony of victim, P.W.-2 has been duly corroborated by the medical evidence i.e. testimony of Dr. Ratna Pandey, P.W.-3 in the case at hand.

24. Thus, in view of what has been discussed above, we are of the considered view that the prosecution has successfully proved its case against the appellant on the basis of reliable evidence which is corroborated by medical evidence also. The learned trial Court has duly appreciated the prosecution evidence in its correct perspective while holding the appellant guilty of the offence under Sections 376 I.P.C. as it then existed on the date of occurrence, we do not find any illegality, irregularity or perversity in the finding of the learned trial Court by means of the impugned judgment and order dated 23.11.2001. The finding of guilt of the appellant under Section 376 I.P.C. is, therefore, affirmed.

25. So far as the quantum of sentence awarded to the appellant is concerned, the learned Amicus Curiae for the appellant argued with vehemence that the sentence awarded to appellant was excessive, as he was young, aged about 19 years on the date of the incident. The appellant is in jail for the last twenty five years. He also submitted that the appellant had no previous criminal history. Thus, without considering the aforesaid facts and possibility of the appellant's reform, the imposition of life imprisonment is legally unsustainable, which deserves to be modified.

26. Hon'ble the Supreme Court in Deen Dayal Tiwari vs. State of Uttar Pradesh6 in paragraph No.23 has held as under:-

> "23. This Court, while exercising its appellate jurisdiction under Article 136 of the Constitution of India, possesses the authority to scrutinize not only the conviction of an accused but also the appropriateness of the sentence imposed. As articulated in the principles laid down in Swamy Shraddananda, (2008) 13 SCC 767, the power to impose or modify a sentence within the prescribed framework of the Penal Code is exclusively vested in the High Court and this Court. The alternate punishment for offences punishable by death, such as imprisonment for a specific term exceeding 14 years or until the natural life of the convict, remains within the judicial conscience of this Court and the High Court. This ensures that the gravity of the offence, the mitigating and aggravating circumstances, and the possibility of reformation are thoroughly assessed before irrevocable sentences such as capital punishment are affirmed. Therefore, the commutation of a death sentence to imprisonment for the remainder of the convict's natural life, as an alternative to death, is well within the judicial prerogative of this Court and adheres to the constitutional mandate of ensuring justice. The Constitution Bench of this court in Union of India v. V. Sriharan, (2016) 7 SCC 1 have propounded upon these principles. The relevant paras from the same have been reproduced hereunder:
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> "103. In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinised by the Division Bench by virtue of the appeal remedy provided in the Criminal Procedure Code. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after

the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges.

104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

106. Viewed in that respect, we state that the ratio laid down in Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] that a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] that the deprival of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same.""

(emphasis supplied by us)

27. Learned A.G.A. has opposed the submissions advanced by learned Amicus Curiae for the appellant to the effect that the sentence awarded to the appellant, in the facts of this case, is excessive. However, in this regard, we find it relevant to refer to a judgment rendered by Hon'ble the Supreme Court in Deen Dayal Tiwari's case (supra) and having considered the facts in their entirety and after taking into account the manner of commission of the offence, the age of the appellant and

the fact that there was no prior criminal history of the appellant, we, while affirming the finding of conviction of the appellant, for the offence punishable under Section 376 I.P.C. recorded vide impugned judgment and order dated 23.11.2001, find it appropriate to modify the sentence awarded to him by impugned judgment and order dated 23.11.2001 for the offence under Section 376 I.P.C. from life imprisonment to thirty years' rigorous imprisonment without remission. The fine of Rs.10,000/- is affirmed.

28. It is also directed that the period already undergone by the accused-appellant, Bawua Gupta, in the aforesaid Sessions Trial, either as under trial or post-conviction, shall be adjusted towards the sentence awarded by this Court in terms of Section 428 Cr.P.C.

29. It is made clear that the said amount of Rs.10,000/- shall be deposited by the appellant within eight weeks from the date of his release and the same shall be released by the trial Court in favour of the victim immediately after its deposit, having regard to the provisions contained in Section 357 (2) Cr.P.C. without requiring her to file any sureties therefor.

30. It is directed that the accused-appellant shall furnish personal bond and two sureties in the like amount to the satisfaction of the court concerned within four weeks from the date of his release from jail in compliance with the provisions of Section 437A Cr.P.C.

31. The present criminal appeal is partly allowed.

32. Learned Amicus, Sri Prem Kumar Singh shall be entitled to Rs.15,000/- (Rupees Fifteen Thousand) from the High Court as fee for his services.

33. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court concerned for information and necessary compliance through fax/ e-mail.

(Ajai Kumar Srivastava-I, J.) (Sangeeta Chandra, J.) Order Date :- 11.04.2025 Mahesh