

# Ashok Singh Kandari vs State Of Uttarakhand on 7 May, 2022

**Author: Ramesh Chandra Khulbe**

**Bench: Ramesh Chandra Khulbe**

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

JUSTICE SHRI RAMESH CHANDRA KHULBE

CRIMINAL JAIL APPEAL NO.08 OF 2018

Reserved on: 05.05.2022

Delivered on: 07.05.2022

Between:

Ashok Singh Kandari

..... Appellant

Vs.

State of Uttarakhand

..... Respondent

Counsel for the appellant

: Mr. Mukul Dangi ld amicus curiae.

Counsel for the State

: Mr. V. S. Rathore, learned AGA.

Upon hearing the learned Counsel, the Court made the following

JUDGMENT:

This is a horrible case where the victim, who is merely a child of 9 years of age, has been traumatized at the hands of appellant who raped and sodomized the victim, who is none other than his real niece.

2. Appellant-Ashok Singh Kandari has preferred this appeal from jail through the Secretary High Court Legal Service Committee assailing the judgment and order dated 12.03.2015 passed by the Trial Court in S.T. No.50 of 2014, State v. Ashok Singh Kandari, whereby the Trial Court convicted and sentenced him as under:-

Conviction Sentence Fine (in Rs.) Sentence in default of payment of fine 376 IPC 10 years' R.I. 10,000/- Six months 377 IPC 10 years' R.I. 10,000/- Six months 506 IPC 02 years' R.I - -

Sec. 6 10 years' R.I. 10,000/- Six months POCSO Act

3. Briefly stated, facts of the case are that on 30.04.2014, informant (PW5) lodged a First Information Report (Ex.Ka-8) with Police Station Lalkaun, District Nainital, in which it is alleged that "on 27.04.2014 at 2:30 P.M., accused Ashok Singh Kandari, who is her real brother, came to her house. She was working out of her house and when she returned to her house, she saw that her brother accused Ashok Singh Kandari was doing wrongful act with her daughter victim (PW-1) aged about 11 years. Accused was laid down upon her daughter (PW-1). She pushed the accused, then accused ran away by pushing her. Victim told her that her maternal uncle (accused) had been committed wrongful act with her for many days and threatened her not to tell about the incident to anyone, in case she would tell about the incident to anyone, he will kill her. The behavior of her daughter has been changed and her daughter seems fearful. Accused raped her daughter (PW-1) and he also sexually assaulted to her daughter for many days. Her husband is driving taxi, he returned to house from his work in the evening of 30.04.2014, then after consultation with him she approached police station and prayed to lodge her report."

4. On the basis of above written-report, the case was registered as F.I.R. No.39 of 2014 u/s 376, 506 IPC and Section 3/4/5 (L)(m)(n)/6 of the Protection of Children from Sexual Offences Act (to be referred as 'POCSO Act' for brevity sake) against the accused Ashok Singh Kandari and after completing the investigation, police has submitted Charge-sheet Ex.Ka-18 against the accused Ashok Singh Kandari u/s 376, 506 IPC and Section 3/4/5 (L)(m)(n)/6 of POCSO Act.

5. Charges u/s 376, 377, 506 IPC along with Section 4 & 6 of the POCSO Act were levelled against the accused Ashok Singh Kandari. He pleaded not guilty and claimed for trial.

6. In support of its case, prosecution examined nine witnesses i.e. victim as P.W.1; Harish Chandra Joshi, Head Master Dr. Sushila Tiwari Junior High School Lalkuan as PW-2; Dr. Manju Rawat, Female Hospital Haldwani as PW-3; Dr. L. M. Rakholia as P.W.4; Mother of victim as P.W. 5; Rajendra Prasad Upreti, scribe of FIR as P.W.6; Constable Neeraj Singhal as P.W.7; Sub-Inspector Rajeev Upreti (first investigating officer) and S.I. Suman Pant (second I.O.) as P.W.9.

7. After completion of prosecution evidence, statement of accused-appellant Ashok Singh Kandari was recorded u/s 313 Cr. P. C. He denied the accusations of the prosecution and mainly stated that he has been falsely implicated in this case due to enmity, as the father of victim has to pay Rs.40,000/- which were taken by him from his father and to escape from the liability of payment, a concocted story was prepared to falsely implicate the accused.

8. After hearing both the parties, the Trial Court convicted the appellant and sentenced as mentioned in Paragraph no.1 of the judgment.

9. It is argued by learned amicus curiae that there is no evidence against the appellant; there is no medical report regarding sexual offence; the trial Court did not assess the evidence properly; and the appellant is liable to be convicted.

10. Per Contra, learned counsel for the State has argued that the prosecutrix was minor; she supported the prosecution story; there is no infirmity in the impugned finding; and accordingly, the

appeal is liable to be dismissed.

11. I have heard the submissions put forth on behalf of either party and have also gone through the entire evidence produced before the trial Court.

12. The prosecution to prove its case to the hilt has examined the victim, who appeared as PW-1 before the trial Court. At the time of incident, she was merely a child of nine years. The Court after recording its satisfaction that the victim was capable of giving statement, proceeded to record her statement. The victim in her deposition explicitly identified the accused in the Court as her maternal uncle. Her statement was recorded in the month of August, 2014 and the victim stated before the Court that the accused was chasing her since January, 2013 and during this period he committed uncalled for activities against her. She has clearly deposed before the Court that the accused had committed rape upon her for 3-4 times. On 27.04.2014, the accused came in her room and again tried to commit rape upon her, however, her mother came inside the room and on the alarm raised by her mother and further on being slapped, the accused ran away from the spot pushing her mother. On being further enquired about the manner of committing the crime, the victim disclosed that on the earlier occasions of committing the crime, the accused would commit rape upon her and also sodomized her. She has disclosed her date of birth as '05.03.2005'. The victim was subjected to cross-examination at the hands of defence counsel, but nothing could be derived to create any doubt on the testimony of this witness.

13. PW-2 Harish Chandra Joshi is the Principal of the school where the victim had passed out class-2. He has deposed that while admitting the victim in the school, her parents had registered her date of birth as '05.03.2005'. He has proved the date of birth certificate issued by him regarding the victim.

14. Dr. Manju Rawat, who medically examined the victim, appeared as PW-3 before the trial Court and she clearly stated that on medical examination of the victim, it was found that there was slight abrasion and redness present on the fourchette of victim besides slight discharge from her vagina, and these symptoms could be due to sexual assault. She has also deposed that in her opinion, the victim was 10-11 years of age at the time of incident.

15. PW-4 Dr. L. M. Rakholia is a formal witness, who has examined the appellant and proved the supplementary medical report. As per the supplementary report, no spermatozoa either dead or alive was found in the slide of appellant.

16. PW-5 is said to be the mother of victim. She has addressed the accused to be her brother. She has stated that on 27.04.2014 at about 2:30 p.m, while she was working outside the house, for some household work, she came inside the room where she saw that the accused had caught hold the neck of her daughter and was putting his knee on the chest of her daughter with the intention to commit rape upon her. On seeing this, she yelled on the accused as to what he was doing, then the accused on being scared ran away from the room by pushing her. When she enquired from her daughter about the incident, her daughter informed her that 2-3 times earlier also the accused had committed rape upon her.

She was further informed by her daughter that the accused had also threatened of her life in case she discloses this incident to anyone. She has also stated that her daughter remains scared even after the incident. She has proved the report lodged by her which was marked as Ex.Ka-8. The evidence of this witness also appears to be trustworthy.

17. PW-6 Rajendra Prasad Upreti, who is the neighbour of complainant, is the scribe of 'written report' Exhibit Ka-8.

18. On the basis of written report, Chick FIR Exhibit ka-10 was lodged and accordingly, GD Exhibit ka- 11 was prepared which are proved by PW-7 Head moharrir P. S. Lalkaun.

19. PW-8 S. I. Rajeev Upreti has proved the arrest memo of accused as Ex.Ka.12.

20. PW-9 S. I. Suman Pant is the I. O of the case. She has deposed that after conducting investigation and doing necessary formalities, she submitted the charge-sheet against the accused as Ex.Ka-18.

21. The statement of accused was recorded u/s 313 Cr.P.C in which he denied the allegations made against him. In his defence, he has proved DW-1 Shankar Singh Kandari and DW-2 Smt. Mohini Devi. Those witnesses have only deposed the false implication of accused on account of some money transactions between the accused and parents of victim.

22. In so far as the age of the victim is concerned, as per the certificate issued by the concerned school, her date of birth is 05.03.2005. In this regard, the prosecution produced PW-2 Harish Chandra Joshi, who is the Head Master in Dr. Sushila Tiwari Junior High School, Bindukhatta Lalkuan, who stated that victim (PW-1) passed out Class-II from his school, and at the time of her admission, her parents got registered the victim's date of birth as 05.03.2005. Thus, it can safely be inferred that at the time of incident, the victim was about 9 years old.

23. From the evidence of witnesses discussed hereinabove, it is borne out that the accused-appellant who is none other than the real maternal uncle of the victim, had sexually molested the victim for 2-3 times earlier than the incident of 27.04.2014 when he was nabbed red handed by his own sister. The accused not only sexually assaulted the victim but also sodomized her. The entire tale of incidents has unequivocally been disclosed by the victim who appeared as PW-1 in the dock of the Court. She has clearly stated that the accused entered her house and victimized her for 2-3 occasions and when she began to cry due to inhuman behavior of the accused, he threatened her for dire consequences. The accused even showed obscene photographs to the victim on his mobile phone. The victim, who was merely a child of nine years' of age, has suffered this trauma at the hands of appellant, who is her real maternal uncle. The same story has been disclosed by her mother who was examined as PW-5 before the trial Court. These two witnesses were subjected to lengthy cross-examination but nothing material could be derived so as to attribute any doubt on the testimony of these witnesses.

24. Moreover, the medical evidence in this case further corroborates the prosecution story. PW-3 Dr. Manju Rawat, who examined the victim, has clearly stated that the abrasion, redness and discharge from the fourchette of the victim is clearly attributable to the sexual assault.

25. At this stage, learned amicus curiae made a feeble attempt to cast a doubt on the prosecution story by arguing that in the supplementary medical report (Ex.Ka-5) of the victim, no spermatozoa either dead or alive was found. The Court finds no force in this argument for the simple reason that on 27.04.2014, when the accused was trying to sexually assaulting the victim once again, her mother (PW-5), for some work, came inside the house and found the accused lying over her daughter keeping his knee over her. Moreover, the medical officer has found redness and discharge from the private parts of victim, which clearly prove the fact of commission of sexual assault by the accused against the victim. The medical officer, who examined the victim, has clearly stated that the symptoms detected on the body of victim were attributable to the sexual assault. The victim also disclosed her mother that the accused also sexually assaulted her on 2-3 previous occasions. Moreover, the victim is the real niece of the accused and the informant is her real sister, then there is no ground to falsely implicate the accused by his own blood relations.

26. At this stage, it is necessary to take note of a judgment in the case of 'Ganesan vs. State' (2020) 10 SCC 573, the Hon'ble Apex Court has held that where the testimony of a victim is found reliable and trustworthy, conviction on the basis of her sole testimony is permissible.

27. In an of-late judgment, the Apex Court in "Phool Singh vs. State of Madhya Pradesh" (2022) 2 SCC 74 has held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. It was further held that as a general rule, if credible, conviction of the accused can be based on sole testimony without corroboration. Sole testimony of the prosecutrix should not be doubted by the Court merely on basis of assumptions and surmises.

28. Furthermore, it is also well settled that in cases involving sexual harassment, molestation etc., the Court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroborations. The statement of the prosecutrix is more reliable than that of a injured witness as she is not an accomplice.

29. On evaluating the deposition of PW-1 victim on the touchstone of the law laid down by the Hon'ble Apex Court in the aforesaid decisions, the Court is of the considered opinion that the testimony of victim (PW-1) is absolutely trustworthy and unblemished and her evidence is of sterling quality. Therefore, without any further corroboration, the conviction of the accused relying upon the testimony of prosecutrix can be sustained.

30. Thus for the reasons stated in the forgoing paragraphs, I have no hesitation to hold that the accused-appellant committed rape upon the victim, sodomized her and also threatened to kill her

who was merely 9 years of age at that time. Therefore, the offences under Sections 376, 377, 506 IPC as well as offences under Section 4 and 6 of the POCSO Act, 2012 are clearly proved against the accused-appellant. I am in full agreement with the findings of conviction recorded by the trial Court and there is no reasonable ground to interfere with the well reasoned and elaborate judgment of the trial Court. The sentence awarded to the accused-appellant by the trial Court under each count is also in conformity with the law.

31. Therefore, the appeal sans any merit is liable to be and is, accordingly, dismissed. The judgment and order, under challenge, is hereby affirmed. The appellant is already in jail. He shall serve out the sentence so imposed by the trial Court against him.

32. Let a copy of this judgment and order along with the trial Court's record be transmitted to the court concerned for doing the needful. The appellant be also informed about the fate of his appeal through the concerned District Jailor.

\_\_\_\_\_ RAMESH CHANDRA KHULBE, J.

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