

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 1459 of 2004.

Neutral Citation No. - 2025:AHC-LKO:72752

[AFR][Reserved]

Ram Sajeewan and Ors.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Dileep Pandey, Gopesh Tripathi
Counsel for Respondent(s)	:	Govt.advocate,

Court No. - 28

HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. Heard learned counsel for the appellants, Sri Sushil Kumar Pandey, learned AGA for the State and perused the record.
2. The present criminal appeal under Section 374(2) of Cr.P.C. has been filed by the appellants, Ram Sajeewan and Smt. Kevala, against the judgment and order dated 15.06.2004 passed by learned Special/Additional Sessions Judge, District Raebareli in Sessions Trial No. 793 of 1998 in Case Crime No. 1995, under Sections 363, 366, 376 IPC, Police Station Deeh, District Raebareli, convicting the appellants under Section 363 IPC to undergo 3 years rigorous imprisonment and fine of Rs. 500/- and under Section 366 IPC 5 years rigorous imprisonment and fine of Rs. 1000/- and both the sentences are directed to run concurrently.
3. Factual matrix of the case is that there is a house of appellant-Ram Sajeewan in front of informant house, wherein brother-in-law of Ram Sajeewan, namely, Budhai was living from one and half month and he often used to go in the house of informant. On 11.02.1995 at about 06:00 to 07:00 p.m. on the behest of the appellants Ram Sajeewan and his wife Smt. Kevala, Budhai,

who is brother-in-law of Ram Sajeevan, enticed the informant's minor daughter, aged about 15 years and took her away with intention to marry her. It is also alleged that when Budhai was taking her away, they were seen by the villager Babadeen Kori and others.

4. In respect of the said incident, a written complaint, Exhibit-Ka-1 was submitted by the informant-Fulmati to the SHO, Police Station Deeh, District Raebareli. On that basis, FIR Exhibit Ka-4 lodged on 12.02.1995 against Budhai, Ram Sajeevan and wife of Ram Sajeevan, namely, Smt. Kevala, under Sections 363 and 366 IPC.
5. During the course of investigation, medical examination of the victim was conducted. Site plan of the place of occurrence was prepared and statement of the witnesses were recorded and after collecting evidence, the chargesheet against Ram Sajeevan and Smt. Kevala, under Sections 363, 366 IPC had been filed.
6. Finding the above offence exclusively triable by learned Sessions Court, the copy of relevant documents had been provided to the appellants and on 26.11.1998 the case was committed to the sessions Court, from where this case was transferred in the court of Special Judge/Additional Sessions Judge, Raebareli. Before the trial court, the appellants/accused persons appeared and charge under Section 363, 366 and 376 IPC was framed against them on 14.02.2000, wherein they denied from the charge levelled against them and claimed to be tried.
7. From the side of prosecution, as many as seven witnesses have been examined. PW-1 Phulmati W/o Devatadeen, PW-2 Pramila Devi and PW-3 Babadeen have proved the prosecution case. PW-4 Dr. Reeta Raman, who has conducted the medical examination of the victim, PW-5 Ashok Kumar, who has proved the FIR as Exhibit K-4, PW-6 S.L. Sharma, PW-7 Ram Sundar Yadav who had proved the site plan Exhibit Ka-6 and chargesheet as Exhibit Ka-7.

8. After closing the evidence of prosecution, the statement of the appellants/accused persons have been recorded under Section 313 Cr.P.C., wherein they stated that they have falsely been implicated and concocted evidence has been produced against them.
9. In defence, they have not adduced any ocular evidence but produced a copy of Parivar register in their support.
10. After hearing the learned District Government Advocate (Crl.) and learned counsel for the appellants/accused persons, the learned trial court passed the impugned judgment dated 15.06.2004, wherein the appellants, Ramsajeevan and Mrs. Kevala were acquitted for the charge under Section 376 IPC levelled against them but in the same order they have been convicted for the offence under Section 363 and 366 IPC.
11. After hearing on sentence, the learned trial court passed the sentence against them under Sections 363, 366 IPC.
12. Feeling aggrieved from the impugned judgment and order, appellants have filed the instant criminal appeal on the grounds that learned trial court has totally failed to appreciate the evidence available on record and passed the order in a very arbitrary and cursory manner. No recovery memo was prepared by the Investigating Officer. Learned trial court did not pay heed to consider the copy of family register in respect of the age of the victim and put its reliance on medical report in arbitrary manner, though there is no single iota of evidence against the appellants. Neither motive is mentioned nor it is established and due to rivalry of neighborhood, they have falsely been implicated in this case. The victim was recovered in Delhi where she was not medically examined and prosecution had failed to prove its case beyond reasonable doubt but despite of the aforesaid facts, the trial court has passed the impugned judgment and order dated 15.06.2004 in a very cursory manner which is not in consonance with the law and is liable to be quashed. Therefore, the prayer is made that this appeal may be allowed and the impugned judgment and order may be quashed.

13. Learned AGA has orally submitted that during the course of investigation, all the relevant material has been collected against the appellants and finding them sufficient, the chargesheet was filed against them. He next submits that during the course of trial, prosecution has adduced sufficient evidence which is substantiated by the eye witness account and proved its case beyond reasonable doubt against the appellants. He also submits that the learned trial court, after considering the entire facts and circumstances of the case in totality, has found the appellants' guilty for the offence under Sections 363, 366 IPC and consequently, sentenced the appellants. Thus, the learned trial court did not commit any illegality and there is no perversity in the impugned judgment and order and, thus, the instant appeal is devoid of merits and is liable to be dismissed.
14. I have heard learned counsel for the appellants and Sri Sushil Kumar Pandey, learned AGA for the State as well as perused the lower court record.
15. At the outset, it is expedient to mention that initially the case was registered against the appellant and one other co-accused, under Sections 363 and 366 IPC, wherein during the course of investigation, the offence under Section 376 IPC was added and chargesheet was filed only against the present appellants under Sections 363, 366 and 376 IPC but after conclusion of the trial, the learned trial court has acquitted the appellants for the offence under Section 376 IPC, thus, this appeal is only for the charge under Section 363 and 366 IPC for which they are convicted. Before analyzing the said evidence and to see whether offence under the above-mentioned Sections are made out or not, it would be appropriate to refer here the necessary ingredients of those offences.
16. For offence under Section 363 I.P.C., following ingredients are required to be fulfilled:-
 - "(i) That the accused did:
 - (a) Forceful compulsion or inducement by deceitful means;
 - (b) The object of such compulsion or inducement must be the going of a person from any place;

(ii) That such kidnapping of any person was done from India or from the lawful guardianship."

17. As regards offence under Section 366 I.P.C., following ingredients are required to be fulfilled:

"(i) Kidnapping or abducting of any woman;

(ii) Such kidnapping or abducting must be-

(i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or

(ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or

(iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not. "

18. Now in the light of above provisions, it is the duty cast upon the prosecution that it had to prove that the victim was below the age of 18 years and she was compelled or induced by deceitful means in order to seduce/intercourse or other intent to marry against her will.

19. On perusal of the material available on record, it transpires that the prosecution has adduced witness Dr. Reeta Raman as PW-4 who conducted the medical examination of the victim in respect of her age, who has stated in her statement on oath that age of the victim was found about 17 years, while radiologist, Dr. S.L. Sharma, who was examined as PW-6, has stated that the age of the victim was around 16-17 years at the time of incident.

20. Surprisingly, the learned counsel for the accused persons did not cross-examine them, though one copy of the family register of the victim had been filed towards accused persons but that was not proved in accordance with the provisions of the Evidence Act, therefore, the learned trial court relied upon the medical evidence and observed that the age of the victim was below 18 years at the time of commission of alleged offence. Thus, there is no any perversity or illegality in the findings given by the trial court in regard to the age of the victim.

21. Now come to another question that whether the ingredients of Sections 363 and 366 of IPC have been proved by the

prosecution by adducing cogent and reliable evidence. In this regard, on perusal of the material available on record, it reveals that the mother of the victim, who was examined as PW-1, has stated that house of the appellants' is situated in front of her house and brother-in-law of Ram Sajeewan was living with appellant Ram Sajeewan, who often used to come in the house of the informant and during his visit, he came into contact with informant's daughter. She further stated that on the behest of Ram Sajeewan and his wife, co-accused Budhai enticed the daughter of informant and took her away and they were witnessed by the villagers Babadeen and others.

22. In this regard, evidence of star witness, the victim, who was examined as PW-2, is most significant who has stated in her examination that Budhai was a widower and brother-in-law of the appellant Ram Sajeewan and often used to come in her house and stated her to marry with him. She further stated that Ram Sajeewan and his wife Kevala were also used to come in her house and they also used to convince her that if the marriage of Budhai took place with her, then he will keep her very happy in Delhi and a lot of money, jewellery and domestic households etc. will be given to her. She further stated that when she told this conversation, made by the appellants and Budhai, her mother scolded them and resisted them to come in her house. Despite this, the appellants were always making efforts to marry the alleged victim with Budhai. On the date of incident, when the victim was going outside for easing, the appellant Ram Sajeewan, Kevala and co-accused Budhai met her who enticed her and induced her. The appellants Ram Sajeewan and Kevala forcefully sent her with co-accused Budhai. She further stated that Budhai took her away in the bicycle and kept her in the Mausi's house where he committed rape on her. On the very next day, Budhai took her Lucknow where she tried to escape from Budhai but he took away her away in Aajadpur, where his brother was living in one room, where Budhai committed rape on her against her will and threatened her. In this respect, statement of Babadeen, who

was the villager and is alleged to have seen the occurrence, had been examined as witness, who had stated that Budhai took the victim in bicycle to marry her after inducement. He categorically stated that he has seen the incident through his naked eye.

23. From the cross-examination of the witnesses of fact, no such cogent material had been emerged out by virtue of which the prosecution story could be falsified. On perusal of the evidence of the victim, her mother as well as eye witness, in totality, it can be safely concluded that no offence under Section 376 IPC against the appellants was proved but offence under Section 363 and 366 IPC has been duly proved. The finding given by the learned trial court court in this regard is based on the statements, evidence of the prosecution witnesses and facts placed on record. Nothing is emerged out that beyond the material available on record, the learned trial court has exercised its discretion. Thus, there is no illegality or perversity in the finding of the trial court with regard to conviction of the appellants under Section 363 and 366 IPC.
24. During the course of hearing, the learned counsel appearing for the appellants has made a prayer and states that one of the appellant, namely, Ram Sajeewan has become the age of 70 years and her wife, appellant no. 2, namely, Mrs. Kevala has become 65 years of age and thus, they are very old and they are unable to move also. No other case against them is previously lodged and after conviction, they have not committed any other offence, thus, after giving the benefit of Section 4 of the Probation of Offenders Act, 1958, they may be released on the bond of good behaviour.
25. Learned AGA for the State, on the other hand, opposed the appeal and has submitted that there is no material irregularity or illegality committed by trial court and keeping in view the evidence on record, accused-appellants have been rightly convicted.

26. Learned AGA further states that the benefit of Section 4 of the Act of 1958 could be extended to the accused-appellants on certain stipulations as specified in Section 4 of the Act of 1958.
27. In this regard, Sections 3 and 4 of the Probation of Offenders Act, 1958 is quoted as under:

“3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

28. From perusal of the aforesaid provisions of the Act of 1958, it is clear that Section 4 of the Act of 1958 does not create any distinction between the category of offenders and the provision of the said Section can be made applicable in any case where the offender is found guilty for committing an offence which is not punishable with death or imprisonment for life.
29. That Hon'ble Apex Court in case of **Jagat Pal Singh & others vs. State of Haryana, AIR 2000 SC 3622** has given the benefit of probation while upholding the conviction of accused persons under Sections 323, 452, 506 IPC and has released the accused persons on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.
30. It is notable that the incident of the present case took place way back in the year 1995. The accused-appellants have suffered in the matter for past 30 years and no any criminal antecedent against the appellants has been produced.
31. As the age of the appellant no. 1, Ram Sajeewan is 70 years and the age of appellant no. 2, Smt. Kevala is 65 years, which is not controverted by the learned AGA for the State and

considering the entire facts and special circumstances, narrated above, I am of the view that the benefit of provision of the Act of 1958 should be provided to the accused/appellants, then the object of the justice would be fulfilled.

32. In the light of the above discussions, the conviction of the appellant no.1 Ram Sajeewan and appellant no. 2 Smt. Kevala is maintained.
33. But the sentence is modified to the extent that instead of sending appellant no.1 Ram Sajeewan and appellant no. 2 Smt. Kevala to jail immediately, they are given the benefit of the provision of Section 4 of the Probation of Offenders Act, 1958 and they are directed to file two sureties each of the like amount of Rs.50,000/- alongwith their personal bonds before District Probation Officer concerned and also an undertaking to the effect that they shall maintain peace and good behaviour during the period of two years from today. The said bonds are to be filed by appellant no. 1 Ram Sajeewan and appellant no. 2 Smt. Kevala within a period of one month from the date of this judgment.
34. In case they commit breach or violate any conditions, stipulated in the bonds and undertaking, they shall appear before the trial court where they will be taken into custody and shall have to undergo the sentence awarded to them.
35. With the above modification, the instant criminal appeal is **partly allowed**.
36. A certified copy of the order be also sent to the court concerned for compliance.
37. Office is directed to communicate this order to the court concerned for necessary compliance.
38. Trial court record, if any, shall also be sent back to the district court concerned.

Order Date:

14/11/2025

kkv/

[Pramod Kumar Srivastava, J.]