

Supreme Court of India

State Of U.P vs Manoj Kumar Pandey on 7 November, 2008

Author: . A Pasayat

Bench: Arijit Pasayat, C.K. Thakker, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1068 OF 2001

State of U.P.

...Appellant

Versus

Manoj Kumar Pandey

...Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order of a Division Bench of the Allahabad High Court dismissing the appeal filed by the State. Challenge in the appeal was to the judgment of the learned Special Additional Sessions Judge, Fatehpur in Sessions Trial No. 566 of 1996. The respondent faced trial for alleged commission of offences punishable under Sections 376 and 323 of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court dismissed the appeal in very cryptic manner holding that there was possibility of the prosecutrix being a consenting party as she was above 16 years of age.

2. Learned counsel for the appellant-State submitted that the manner of disposal of the Government appeal needs much to be desired. Trial court did not even record any finding that the prosecutrix was a consenting party to the sexual intercourse. It went on some hypothetical questions regarding alleged delay in lodging FIR. The trial court concluded that since the girl was more than 16 years of age consent had to be presumed. The High Court concurred with the view and disposed of the appeal which is as follows:

"Heard learned A.G.A. and perused the judgment of the trial court. The age of the girl was found to be above 16 years and further finding is that from the circumstances appearing in the case the possibility of the prosecutrix being a consenting party was not ruled out. The reasons in support of order of acquittal are plausible and cogent. No sufficient ground is made out for interference in the order of acquittal.

Leave to appeal is refused."

3. The approach of the trial court and the High Court is clearly unsustainable. Merely because the victim was more than 16 years of age as held by the trial court that cannot be a ground to hold that she was consenting party. No evidence was led to show such consent. Apart from that normal rule regarding the duty of the prosecution to explain the delay in lodging FIR and the lack of prejudice and/or prejudice caused because of such delayed lodging of FIR does not per se apply to cases of rape. This has been the consistent view of this court. The High Court was, therefore, clearly wrong in disposing of the appeal in such cryptic manner. In the circumstances of the case, we set aside the order of the High Court and remit the matter to it for fresh hearing so that it can consider the matter and hear in detail and dispose of the same by a reasoned judgment. Whatever has been expressed by us supra is only for the purpose of coming to the conclusion that the manner of disposal of the appeal is not proper.

4. The appeal is allowed to the aforesaid extent.

.....J. (Dr. ARIJIT PASAYAT)J. (C.K. THAKKER)
.....J. (D.K. JAIN) New Delhi:

November 7, 2008