

it cannot be concluded that Basanta had not participated in the marriage of DW-1, Satyavir's daughter and after knowing about death of the deceased he had not informed the informant about death of the deceased. There might be another marriage in village Dolcha on 01.03.1994 as the marriage of the daughter of DW-1, Satyavir was solemnized on 02.03.1994. When it has not been proved by any evidence from the side of the defence that they informed the family members of the deceased about the incident and they reached on the spot same day just after few hours of the incident, it is immaterial as to how the informant came to know about death of his daughter. The accused persons were arrested next day. They had left the dead body of the deceased unclaimed in an unsafe position.

45. In view of the above discussion, this Court is of the view that the learned Additional Sessions Judge has misread the evidence and has given an incorrect finding when it is proved beyond the reasonable doubt that an unnatural death within two years of marriage had taken place and when the initial burden had already been discharged by the prosecution and the presumption under Section 113-B of the Evidence Act could not be removed by the defence and when there is also burden upon the defence to explain the circumstances under Section 106 of the Evidence Act, there was no occasion to record the finding of acquittal by the trial court. Section 106 casts duty to discharge the burden and explain the facts especially within the knowledge of the in-laws as to how the bride died. If the accused does not throw light on a fact which is within his knowledge his failure to offer any explanation would become a strong militating circumstance against him.

46. In *Balram Prasad Agrawal v. State of Bihar*,¹ a housewife was drowned to death in the well, in the court-yard of the house of her in-laws who were the only people present in the house at that

time. Cruelty by the in-laws for over years was also an established fact. The Supreme Court held that the burden lies upon the accused in-laws to show what happened during the night which brought about her death.

47. On the basis of the above discussion, this Court is of the view that the revision deserves to be allowed and a fresh judgment and order should be passed after affording the opportunity of hearing to both the parties.

48. The revision is, accordingly, allowed.

49. The impugned judgment and order of acquittal dated 12.06.1998 passed by the Additional Sessions Judge-IV, Meerut is hereby set aside. The Additional Sessions Judge-IV, Meerut, is directed to hear both the parties and again pass appropriate orders in accordance with law within three months on the basis of evidence available on the record and in light of the observations made in this judgment.

45. Let a copy of this judgment alongwith the original record be sent back to the court concerned forthwith for necessary compliance.

Revision Allowed.

[2024 (126) ACC 458]

(ALLAHABAD HIGH COURT—
LUCKNOW BENCH)

KARUNESH SINGH PAWAR, J.

Criminal Appeal No. 1230 of 2005

December 15, 2023

RAJU @ HANUMAN

Appellant

Versus

STATE OF U.P.

Respondent

Indian Penal Code, 1860—Sections 363, 366 and 376—Kidnapping—Rape—Conviction and sentence—Legality—Occurrence took place in year 2003—Delay of 9 days in lodging FIR—Scribe of FIR not examined—Prosecution withheld to examine two eye-witnesses of incident—No witness of recovery memo—Neither any effort made by prosecution to find out independent witness for recovery memo—Evidence

of prosecutrix suffering from inconsistencies and infirmities with other material—Prosecutrix went away with appellant and remained with him for 12 days—She never raised any alarm—She was found to be 10-14 years of age as ascertained by radiological examination—Therefore, margin of error in age to be taken as two years on either side—Appellant being accused is entitled to be given benefit of higher side—Therefore, victim will be deemed to be 16 years of age at time of incident—Age of consent for sexual intercourse as per unamended section 376, IPC prevalent at time of was 16 years—Therefore, no offence made out—Conviction and sentence—Set aside—Appeal allowed.

[Paras 26, 27, 39, 48 and 54 to 57]

Age Determination—Ossification test—Is not conclusive of age determination—Margin of error in age ascertained by radiological examination—Is two years by either side—Benefit of doubt on higher side to be given to accused.

[Paras 30 and 31]

Counsel for the Appellant : Eshan Kumar Gupta.

Counsel for the Respondent : G.A.

JUDGMENT

KARUNESH SINGH PAWAR, J.—

The present Criminal Appeal under Section 374 of the Code of Criminal Procedure, 1973 has been filed by the appellant, Raju @ Hanuman, against the judgment and order dated 9.9.2005 passed by learned Additional Sessions Judge, F.T.C. No. -II, Lucknow in Sessions Trial No. 126 of 2004 : *State v. Raju @ Hanuman*, arising out of Case Crime No. 478 of 2003 under Sections 363, 366, 376 I.P.C., Police Station Thakurganj, District Lucknow, whereby the learned Additional Sessions Judge, F.T.C.-III, Lucknow, convicted and sentenced the appellant in the manner stated hereinbelow:-

“(I) under Section 363 I.P.C. to undergo 5 years’ R.I. and a fine of ₹ 1,000/- and in default of payment of fine to undergo 6 months’ additional imprisonment;

(II) under Section 366 I.P.C. to undergo 7 years’ R.I. and a fine of ₹ 1,000/- and in default of payment of fine to undergo 6 months’ additional imprisonment; and

(III) under Section 376 I.P.C. to undergo 10 years’ R.I. and a fine of ₹ 2,000/- and in default of payment of fine to undergo one year’s additional imprisonment.

All the sentences were directed to be run concurrently.”

2. Heard Shri Ehsan Kumar Gupta, learned counsel for the appellant and Shri Alok Tiwari, learned A.G.A. for the respondent-State.

3. The prosecution case, as per the written report (Ext. Ka-1), is that the daughter of the informant (P.W.1-Satya Prakash Jaiswal), aged about 13 years went to school from home on 11.9.2003, however, when she did not return to home, then the informant (P.W.1) went to search her daughter but he could not trace her. On the same day, Raju (convict/appellant), who was his tenant, was also missing, therefore, the informant (P.W.1) believed that Raju has enticed her daughter away.

4. Thereafter, informant (P.W.1) got the written report scribed by a man of his locality, who after scribing it read it over to him and thereafter, he affixed his thumb impression on it. He then proceeded to Police Station Thakurganj and lodged it.

5. The evidence of P.W.3-1981 CP Jagannath Sori shows that on 20.09.2003, he was posted as Constable Moharrir at police station Thakurganj and on the said date, at 08:10 p.m. Satya Prakash (P.W.1) came and filed his written report on the basis of which he prepared the chik FIR (Ext. Ka.2).

6. A perusal of the chik FIR shows that the distance between the place of incident and Police Station Thakurganj was 1 kilometer. It is significant to mention that a perusal of the chik FIR also shows that on its basis, a case under Sections 363, 366 I.P.C. was registered against appellant.

7. The conducted (P.W.4). In deposited before

57. In view of the discussion made hereinabove and the law laid down by Hon'ble Supreme Court, the appeal is allowed.

The impugned judgment and order dated 9.9.2005 passed by learned Additional Sessions Judge (F.T.C. No. -II), Lucknow in Case S.T. No. 126/2004, *State v. Raju @ Hanuman*, in Case Crime No. 478 of 2003 under Sections 668/366/376 I.P.C., Police Station Thakurganj, District Lucknow, is set aside.

The appellant is acquitted of all charges. The appellant is reported to be in jail. He shall be released forthwith, if not wanted in any other case.

58. Office is directed to transmit the lower court record along with a copy of the judgment to the Court concerned forthwith for information and follow up action.

Appeal Allowed.

[2024 (126) ACC 473]

(ALLAHABAD HIGH COURT)

PRAKASH PADIA, J

Civil Misc. Writ Petition No. 10887 of 2015

November 03, 2023

GYANENDRA SINGH

Petitioner

Versus

STATE OF U.P. and others Respondents

Arms Act, 1959—Sections 13, 14, 17 and 18—Arms license—Right to have firearms license—Not a right but a privilege—Not a fundamental right—Held, there is no right to have an arms license—It is question of facts which is to be ascertained by the authorities concerned whether a person is entitled to the said privilege or not and no interference with such factual findings is possible in writ jurisdiction—Right to own a firearm is not a fundamental right in India—No illegality was found in the impugned order of refusal of grant of arms license—Writ petition dismissed. [Paras 13, 15, 16 and 19]

Counsel for the Petitioner : S.M. Ali, Om Prakash Tripathi and Neelabh Srivastava.

Counsel for the Respondents : CSC
JUDGMENT

PRAKASH PADIA, J.—Heard Mr. Neelabh Srivastava, Advocate, holding brief of Mr. Om Prakash Tripathi, learned counsel for the petitioner and learned Standing Counsel for the respondent-State.

2. The present petition has been filed *inter-alia* with the prayer to quash the impugned order dated 11.12.2014 and order dated 31.01.2014 passed by Commissioner Jhansi Division Jhansi and District Magistrate Jhansi respectively. Further prayer is made to direct the respondents for grant of fire arm licence of pistol in favour of the petitioner within time bound period. By the aforesaid orders the application for grant of fire-arm license of pistol in favour of the petitioner was rejected.

3. The facts in brief as contained in the writ petition are that petitioner has filed an application on 10.07.2012 for granting the fire-arm license in his favour for self defence and safety. The District Government Hospital issued a medical fitness certificate dated 15.10.2012 after medical examination of the petitioner. He has also submitted medical fitness and domicile certificate. The Sub-Divisional Magistrate, Jhansi and Superintendent of Police, Jhansi have also submitted report on 22.12.2012 and 05.04.2013 in favour of the petitioner. Since time limit prescribed in the Act for grant of fire arm licence was expired and no order was passed on the said application, the petitioner preferred a petition before this Court being Writ C No. 61262 of 2013, which was disposed of by this Court *vide* judgment and order dated 08.11.2013 directing the respondent No. 2 in that petition to consider and decide the petitioner's application by a reasoned and speaking order within three months. Pursuant to the same, a decision was taken by the District Magistrate, Jhansi on 31.01.2014 by which application for grant of fire-arm license was rejected. Aggrieved against the aforesaid appeal was filed by the peti-