

(2011) 04 SHI CK 0081

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 95 of 2010

Ranjeet Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: April 11, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 299, 313
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 376, 506

Citation: (2011) 2 ShimLC 483

Hon'ble Judges: Surinder Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Surinder Singh, J.

The Appellant hereinafter referred to as "accused" was tried and convicted for the offences punishable under Sections 376 and 506 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 7 years u/s 376 of the Indian Penal Code and to pay fine of Rs. 10,000/-. In default of payment of fine he was further ordered to undergo simple imprisonment for a period of 6 months. In addition, sentence of three years was also imposed upon the accused for the offence u/s 506(ii) of the Indian Penal Code. Both the sentences were ordered to be run concurrently. The period already undergone in police as well as in judicial custody by the convict was also ordered to be set off. Hence, the present appeal by the accused.

2. Heard and gone through the record.

3. Precisely, the prosecution story can be stated thus. The prosecutor belongs to an agricultural family. In the year 2005, she was studying in 7th standard. On 28th September, 2005 at about 5 P.M. she had gone to nearby fields to fetch fodder for

the cattle. It is alleged that the accused followed her along with his pet dog. When prosecutor started collecting fodder, the accused stood nearby. At that time her aunt Kamlesh Kumari also reached there and objected to the presence of the accused. But in turn, he replied that he had also come there to cut grass. After some time, Kamlesh Kumari left the place. When, the prosecutor was cutting the grass, accused pounced upon her, gagged her mouth and took her into the nearby maize field. When she cried for help, the accused is alleged to have gagged her mouth, tied her hands with towel, threatened with dire consequences and committed rape upon her. The prosecutor became unconscious.

4. P.W. 4 Urmila Devi, the mother of the prosecutor while returning to her house, heard barking of a dog from the fields. She went there and found her daughter lying unconscious. Her "dupatta" was in her mouth and she was half naked i.e. her "salwar" was removed. Seeing this scene, she got frightened and called her sister for help and lifted the prosecutor to her residence. On her gaining consciousness, she disclosed about the entire incident to her mother. Thereafter, P.W. 4 Urmila alongwith the prosecutor went to the police station and reported the matter to the police at 10 P.M. To this effect rapat No. 17 was recorded in daily diary, which ultimately culminated into FIR Ex. P.W. 1/A in Police Station, Nurpur.

5. The prosecutor was taken for medical examination which was conducted by Dr. Neeraja Gupta. She noticed blood stains on the "salwar" of the prosecutor. The wearing apparels, which the prosecutor, were wearing at the time of incident, were packed and sealed. On her examination, she found that the prosecutor was well built, secondary sex characters were found well developed and also noticed the following injuries on her person:

1. There was abrasion over the right side of palate 1/2 cm x 1/2 cm red in colour.
2. Contusion over the centre of plate 1/2 cm x 1/2 cm reddish blue.
3. There was abrasion over the right side face 1/2 cm x 1/2 cm reddish in colour.
4. There was an oblique abrasion extending from below the mandible on right side of neck 4" below the right ear pinna size 4"x 1/3 inches red in colour irregular margins.
5. No injury marks on the upper back. Small bits of grass and mud was present over the back. No injury marks over both arms thighs.
6. There was no abrasion over the right knee 1/2 cm x 1/2 cm red in colour.
7. There was an abrasion 1/2 cm x 3" over the left side of back lower part red in colour.

However, no injury mark was found over the perineum. Labia menera and majera were well developed but no injury was seen. The hymen was intact but without any tearing. The vaginal slides could not be prepared as it hardly admitted the little

finger. Thus, she was referred to Gynecologist for further opinion and preparation of vaginal slides. In the opinion of the doctor, she was not used to sexual intercourse.

6. The doctor also opined that the injury over the palate was caused with a blunt weapon but simple in nature having been caused within 6 to 12 hours. The doctor handed over the parcels of clothes, carbon copy of MLC, parcel containing pubic hair and vaginal slides taken by the Gynecologist along with other material to the police and she issued Medico legal certificate Ex. P.W. 2/A. Final opinion was reserved till the reports of Gynecologist and Chemical Examiner.

7. P.W. 14 Ramesh Chand, Incharge of Police Post Gangath, had recorded rapat No. 17 above (Ex. P.W. 9/A) took the prosecutor for medical examination to the Sub Divisional Officer, Nurpur and sent the rukka for the registration of the case. On 29th September 2005 he visited the spot and prepared the site plan Ex. P.W. 13/B as well as photographs of the occurrence Ex. P.W. 12/A to Ex. P.W. 12/E. On inspecting the alleged spot of occurrence, he found and took into possession four hair from the spot, vide memo Ex. P.W. 4/A in presence of Sadhu Ram and Karnail Singh. Further investigation was conducted by P.W. 13 Inspector Nathu Ram. He arrested the accused on 29th September, 2005 and his medical examination was conducted by P.W. 15 Dr. Raman Sharma on 30.9.2005. The doctor noticed the following one injury on his person:

(1) There was one abrasion along with the contusion on the left side of the face below left eye. The size was 3cm x 4 cm.

In the opinion of doctor, the injury was simple in nature having been caused within 24 to 48 hours. The accused was also found fit for sexual intercourse. To this effect he issued his medico legal certificate Ex. P.W. 15/A.

8. During the course of interrogation, on 1.10.2005 the accused made a disclosure statement (Ex. P.W. 7/A) u/s 27 of the Indian Evidence Act in presence of Rajender Sogha and Labh Singh to the effect that he had kept hidden one towel (Ex. P2) and pant (Ex. P1) near the place known as Balwan Bhati in the bushes about half kilometer away from his house which were got recovered and the police took into possession the same vide memo Ex. P.W. 1/C in presence of Sadhu Ram, Sujan Singh and H.C. Pradeep Singh, which were also identified by the prosecutrix.

9. During the course of investigation, the police also took into possession extract of "Parivar register" Ex. P.W. 6/A and birth certificate Ex. P.W. 6/B from the Panchayat concerned.

10. On the completion of the investigation the challan was presented against the accused for the offences aforesaid for his trial. Lateron, on the receipt of report of FSL Ex. P.W. 13/E, supplementary challan was also presented.

11. During the trial of the case, the accused absconded. He was declared Proclaimed Offender and the prosecution witnesses were examined, following the procedure as laid down in Section 299 of the Code of Criminal Procedure. Later on, he was apprehended and the trial was commenced. The accused, alleged enmity and also took the plea of consent, but the learned trial court disbelieved his defence, finding the prosecution evidence reliable. Accordingly, he was convicted and sentenced for the aforesaid offences, as stated above.

12. During the trial in her statement, recorded on 11.11.2009, the prosecutor gave a clear and vivid count of the incident. She fully corroborated the prosecution case. She testified that while working in the field, the accused came there, lifted her to the nearby field, removed her salwar and rapped her. When she had cried for help, he threatened her with dire consequences and had tied her hands with dupatta and put a towel in her mouth. She offered resistance but in vain. After the incident she fell unconscious. When she regained her senses, she found herself in her house. Her mother had brought her to her house. According to her, she sustained injuries on her mouth, back etc., which were caused at the time of struggle/resistance offered by her to ward off the sexual attack of the accused. According to her accused is resident of her village, she knew him. She further stated that on the same day at about 10 P.M. they went to police station and lodged the report Ex. P.W. 1/A, on which she identified her signature. She further stated that on 29.5.2005, police reached on the spot, took hair into possession which had fallen on the spot, vide memo Ex. P.W. 2/B. She further stated that accused was arrested, later on he got recovered the towel (Ex. P2) and pant (Ex. P1) from the bushes which were taken into possession by the police vide memo Ex. P.W. 2/C. She had identified both these articles during the trial of the case.

13. The prosecutor was subject to a lengthy cross-examination. She denied having sustained injuries on her person on account of cutting the grass. She also denied the suggestion that she got a slip and sustained the injuries. She further denied that when she along with accused was sitting in her field, on seeing her mother and aunt Kamlesh Kumari accused had run away. She also denied the suggestion that around 6 P.M. on the said date there was some exchange of hot words between the father of accused as well as that of the prosecutor. She categorically denied that the present FIR was lodged against the accused at the behest of her mother and also that her mother gave her beatings, accordingly she fell unconscious. She specifically denied that sexual intercourse took place by her consent.

14. Significantly, in his statement u/s 313 of the Code of Criminal Procedure, the accused did not set up the defence of consent. Even the above circumstances which appear on record totally rule out the "consent". The testimony of the prosecutor is duly corroborated by P.W. 4 Urmila Devi, her mother in material particulars. Not only this, further her testimony is also corroborated by P.W. 2 Dr. Niraja Gupta, who noticed the injuries on the person of the prosecutor corresponding to the time of

alleged incident. Further, the injuries which were sustained by the prosecutor on her body clearly indicates the resistance offered by her. Her mother also noticed that when the prosecutor was lying unconscious in the fields, her mouth was gagged with some cloth and she was half naked. Doctor made the mention of an injury inside the mouth, which was not possible due to skid nor there is any evidence that the prosecutor skidded off the surface. The accused had also a simple injury as stated above, relatable to the time of incident. The doctor also testified that there was sufficient evidence of sexual intercourse and the possibility of rape cannot be ruled out and the prosecutor without missing any word in her sworn testimony gave the sequence of facts leading to the offence(s) charged.

15. Further, I also find from the report of Forensic expert that the hair found on the spot by the Investigating Officer tallied with the hair of the prosecutor. The spot of the alleged incident also find the marks of struggle, the maize crop and grass was found trampled. It also find mentioned in the site plan Ex. P.W. 12/A prepared on 29.5.2005 by ASI Ramesh Chand and the photographs Ex. P.W. 12/A to Ex. P.W. 12/E.

16. The contradictions to the effect that the mother of the prosecutor stated that dupatta was found in the mouth of the prosecutor whereas, the prosecutor stated about towel is a minor and insignificant contradiction, not fatal to the prosecution case.

17. In the totality of the circumstances aforesaid for the reasons aforesaid, the statement of prosecutor confidence inspiring and also stands corroborated in material particulars. Thus, I do not find any ambiguity in the impugned judgment of conviction and sentence passed by the learned trial Court, as such the appeal is without, merit hence dismissed.

18. An authenticated copy of this judgment be sent to the accused through the Superintendent of the concerned jail by the Registry of this Court.