

(2011) 06 SHI CK 0057

High Court of Himachal Pradesh

Case No: Criminal Appeal No. : 653 of 2001

State of Himachal
Pradesh

APPELLANT

Vs

Balbir Singh and
Others

RESPONDENT

Date of Decision: June 28, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(3)
- Penal Code, 1860 (IPC) - Section 376

Hon'ble Judges: V.K. Sharma, J; R.B. Misra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

R.B. Misra, J.

The present appeal has come up for consideration after leave to appeal has been granted u/s 378(3) Code of Criminal Procedure, in reference to the impugned judgment dated 02.06.2001, passed by the learned Addl. Sessions Judge, Shimla, H.P, in Sessions Trial No. 21-S/7 of 1997, acquitting the accused-Respondents for the offence u/s 376 IPC.

2. The prosecution case, in brief, is that FIR Ex.PW-16/A was lodged by the prosecutrix-victim (PW-16) that on 12.1.1996, while she was coming from Dehradun to Chandigarh and at Chandigarh bus stand she was looking for the bus to Shimla, when two boys namely Sanju and Ravi came to her and inquired from her as to whether she wanted to go to Shimla, as they had their own taxi. Consequently, the victim-prosecutrix accompanied them to Shimla in their vehicle. They reached at Shimla at about 8.00 PM and accused Sanjay took the victim-prosecutrix to the quarter of his friend, near tunnel, Shimla. Thereafter, accused Sanjay subjected her to rape in night. In the next morning Ravi who was driving the taxi also came there and both Ravi and Sanjay took her in the taxi for sight seeing around Shimla. They

brought the victim in the evening at about 5.00 PM in Choura Maidan at Shimla. Then one Chinnu, PW-8, also came there and started inquiring from the prosecutrix, as to where from she had come? and what she had been doing here?. Then the prosecutrix-victim narrated the entire incident to him and he also moved away from that place. When the victim-prosecutrix was going near Tunnel with aforesaid Ravi at about 12 P.M., then all of sudden three boys came there and started beating both Ravi and the prosecutrix. Ravi ran away from that place and the prosecutrix was taken by these three boys in a room near the Railway Station where they closed the door of the room and sexually assaulted the victim. Her mouth was also gagged and she was threatened with death. Later on, from the identity cards of these persons, the prosecutrix came to know that these persons were namely Balbir, Gaje Singh and Sanjay Kumar. Next morning when accused Balbir Singh was taking the prosecutrix towards Bus-Stand, Shimla, she saw Chinnu alias Sanjay, PW-8 there, who had met her on the previous evening near Choura Maidan, who took her to the police station Boileauganj, Shimla and lodged FIR Ex.PW-16/A. During the course of investigation, it was also found that the accused Dinesh was also involved in the case alongwith other co-accused. After investigation charge-sheet was submitted and the accused were charged for the aforesaid offence.

3. In order to prove its case, the prosecution has examined as may as 18 witnesses, whereas, the accused-Respondents through their statement u/s 313 Code of Criminal Procedure have denied the prosecution case.

4. PW-14, Dr. S. Kumar, after examining the victim-prosecutrix on 14.9.1996, at 3.15 PM, did not notice any mark of injury on the body of the victim, however, has made the following observations:

P/S. Labia Majora well developed. Labia Minora normal. Hymen was torn. Old tears (cranculae Myrtiformis were present) P/V. Vagina admitted two finger easily. was backwards. Uterus A.V.A.F. normal Forinices were clear. Carvix in size.

Vaginal semear taken. Sent for the presence of spermatozoa.

Referred to Dental Surgeon and Radiologist for confirmation of age. Vaginal smear report (O.P.D No. 120156 and Lab. No. was 601). No spermatozoa were seen.

In the opinion of the doctor PW-14, the prosecutrix was used to sexual intercourse and doctor has issued MLC Ext. PW-14/A.

5. In order to ascertain the dental age of the prosecutrix, she was again examined by Dr. Mrs. Neelam Jaswal, PW-13, who as per her statement Ex.PW-13/A, opined the dental age of the prosecutrix more than 14 years and less than 17 years. During the course of analysis of prosecution witnesses, we also notice that PW-2 Davinder Kumar, in whose quarter as per prosecution the victim was taken and subjected to sexual assault had not supported the prosecution case. PW-7, Ravinder Kumar, who was working as Chowkidar at Railway Station and PW-8, Sanjeev Kumar, who took

the prosecutrix-victim to police station for the purpose of registration of case, have not supported the prosecution case. As per Ex.PW-1/A, the date of birth of the victim-prosecutrix at the time of incident was 8.1.1979. Thus, at the time of commission of offence, the prosecutrix was more than 17 years and 8 months. We also take note of the fact that the victim-prosecutrix had come with one Ravi in a taxi of her own sweet will and she was neither seduced or enticed by any of the accused persons in any manner, nor she was kidnapped/abducted. As per the testimony of PW-16, victim-prosecutrix, it is revealed that she was sexually assaulted by the persons, who brought her from Chandigarh to Shimla and thereafter on 12.9.1996, when she was being taken by Ravi Kumar, she was over-powered by three boys. The narration of the incident made in FIR Ex.PW-16/A appears to be different to the depositions made by the victim-prosecutrix before the Court. The prosecutrix specifically deposed before the court that she came in a taxi which was being driven by one Ravi and another boy, who was accompanying Ravi at that time. In the beginning of her examination, the prosecutrix stated that they both, however, were not present in the court at the time of deposition made by the prosecutrix-victim. Later on, she restated while pointing towards accused Dinesh that he was accompanying Ravi in the taxi when she was taken from Chandigarh to Shimla. Whereas perusal of FIR Ex.PW-16/A shows that the prosecutrix has stated the name of other person as Sanju. Besides this, the prosecutrix has stated that on reaching Shimla, accused Dinesh committed rape on her without her consent and against her will and on the next day, she was again taken in the car by Ravi for sight seeing around Shimla, whereas, accused Dinesh was not present on that day. From analysis of the testimony of the prosecutrix-victim, it appears that she did not complain to Ravi or even other persons regarding the act of rape, which was committed on her on the previous night by accused Dinesh. It is very surprising that despite having been sexually assaulted during the previous night by accused Dinesh, she opted for sight seeing with Ravi.

6. In our considered view, the prosecutrix was having sufficient time to lodge report or make complaint with any person, regarding sexual assault on her in the previous night. As per the testimony of victim-prosecutrix, accused Balbir, Gaje Singh and Sanjay Kumar gave beatings to Ravi, as a result of which Ravi ran away from that place. Surprisingly, the victim-prosecutrix did not raise any hue and cry, when she was forcibly taken to a room near Tunnel No. 103 and was subjected to rape by accused persons one after the other. Strangely enough, the victim-prosecutrix opted for sight seeing around Shimla with Ravi instead of informing the police about the sexual assault, so that the accused persons could be apprehended. As per the testimony of PW-16, she narrated the entire story to Chhinu alias Sanjeev Kumar, whereas contrary to it, PW-8, Sanjeev Kumar had stated that the prosecutrix had revealed that she had no problem and she was alright. PW-8, Sanjeev Kumar, again met prosecutrix on 14.9.1996, in the morning at Bus-Stand, then the prosecutrix told that she was subjected to sexual intercourse by someone. As per the version of

PW-8, Sanjeev Kumar, the prosecutrix did not disclose the name of the accused persons to him. In our considered view, version of victim-prosecutrix, regarding commission of rape and narrating the entire incident to PW-8, (Sanjeev Kumar), is not corroborated in any manner by any of prosecution witnesses.

7. On the basis of material on record, it is revealed that the prosecutrix was taken to quarter of his friend by accused Dinesh and for this purpose prosecution has examined PW-2 Davinder Kumar, who was living in that rented accommodation at that time, who has deposed that accused Dinesh neither came to him along with a girl nor stayed in his quarter. PW-2, Davinder Kumar, has specifically denied that accused Dinesh had committed rape on a girl in his quarter. PW-5, Shyam Lal, who has been cited as a witness to recovery memo Ex.PW-5/A, had also not supported the prosecution case. PW-7, Ravinder Kumar, who at the relevant time was working as Chowkidar at the Railway Station also did not support the prosecution case by saying that the accused persons neither came to him nor threatened to open the room of the Railway Club.

8. As alleged by the victim-prosecutrix that she was forcibly sexually assaulted by the accused persons at Choura Maidan on the day when she came from Chandigarh to Shimla and subsequently Balbir, Gajey Singh and Sanjay Kumar gave beatings to Ravi. Surprisingly, she neither raised any hue and cry nor resisted sexual assault. One more aspect could be noticed that if victim-prosecutrix had been subjected to sexual intercourse by the accused persons, she could have complained about it to PW-8 Sanjeev Kumar, who was a constable. Surprisingly, she opted to go for sight seeing around Shimla after the alleged sexual assault committed upon her.

9. In our considered view, she was having sufficient time and opportunity to report the matter to police or public, however, for the reasons best known to her she did not do anything. None of the prosecution witnesses have corroborated the testimony of victim-prosecutrix that the accused persons sexually assaulted her. For lack of corroboration by PW-14, Dr. S Kumar, the sole testimony of victim-prosecutrix, PW-16, cannot be said to be inspiring confidence. For inherent inconsistencies and improbabilities, the testimony of victim-prosecutrix cannot be relied upon. On analysis of the prosecution evidences and materials on record, learned Addl. Sessions Judge has rightly arrived at the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt. Accordingly, the appeal is dismissed being devoid of any merit.

10. The bail bonds furnished by the accused-Respondents are discharged.