
(2016) 06 SHI CK 0073

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 141 of 2013

State of Himachal Pradesh

APPELLANT

Vs

Sohan Lal

RESPONDENT

Date of Decision: June 30, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376, Section 506

Citation: (2016) LatestHLJ(HP) 1585

Hon'ble Judges: Mr. Rajiv Sharma and Mr. Vivek Singh Thakur, JJ.

Bench: Division Bench

Advocate: Mr. M.A. Khan Additional Advocate General, for the Appellant; Ms. Rita Goswami, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Vivek Singh Thakur, J. - In present case, the respondent-accused had been acquitted of offences punishable under Sections 376 and 506 of the Indian Penal Code by learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr vide Judgment dated 23.11.2012 after undergoing Sessions trial No. 36 of 2009, in case FIR No. 42/2009, dated 19.06.2009, Police Station, Brow, Rampur. The aforesaid Judgment has been assailed by the State in the present appeal.

2. Shri M.A. Khan, learned Additional Advocate General has argued that there are sufficient grounds and evidence on record to punish the respondent-accused under Sections 376 and 506 IPC and learned trial Court has failed to appreciate and consider the evidence on record in right perspective.

3. On the contrary, the learned counsel defending the respondent-accused has supported the Judgment passed by the learned trial Court and has argued that no grounds have been made out in the appeal warranting the interference of this Court.

4. We have heard respective counsel and have also gone through evidence on record.

5. As per the prosecution, PW-1 Kanta Devi had contacted PW-2 Ramesh Negi, Advocate for filing complaint Ex. PW-1/A on 19.06.2009 alleging therein that she was married to accused but after subjecting due to maltreatment, she was ousted six years back and therefore, she was residing at Averi with her parents. Three daughters born out of wedlock PW-10 victim (11 years old), Churamani (9 years old) and Sapna (6 years old) were living with the accused. On 31.05.2009, her eldest daughter (victim) reached village Averi about 2.00 PM. She was feeling perplexed and tired. She informed PW-1 Kanta Devi that she had left house of her father to stay with her mother PW-1 Kanta Devi. During night, she screamed in sleep but PW-1 thought that it was girls' child behaviour. On 12.06.2009, accused (husband of PW-1) along with Pritam and Shamu visited house of PW-1 at Averi and asked to handover PW-10 (victim) the eldest to them. PW-10(victim) was frightened on seeing accused and had refused to go with him. After departure of accused victim has told PW-1 that accused was ravishing her for the last three months and for this reason accused is interested to take her back.

6. The victim had informed that mother of accused (grand mother of victim) had also bothered her with Darati on complaining against accused and accused used to ravish victim on returning home from work. PW-10 victim had told that she had immense pain and bleeding in her private parts. It was alleged that accused used to close mouth of victim at the time of intercourse so that she could not cry and had threatened victim to throw her into river after packing in a gunny bag on making complaint to anybody. On 12.06.2009, accused had said to send his mother (grand mother of victim) to Averi for taking victim back after a week. Therefore, waiting for mother of accused, PW-1 did not report the matter, but mother of accused did not turn up. At last, it has been stated in the complaint that matter was also not reported because of threatening of accused and also for the reason that there was no male member in family and parents of complainant were infirm and old. It was apprehended that accused may assault other minor daughters similarly.

7. Aforesaid complaint was filed in the Court of learned SDJM, Rampur Bushahr. On the basis of order dated 19.06.2009, passed by learned SDJM, Rampur, FIR Ex. PW-15/A was recorded. During investigation, victim was medically examined by PW-7 Dr. Sangeeta Uppal, Medical Officer, MGMSC, Khaneri on 19.06.2009. The victim was also medically examined by Medical Board in I.G.M.C. Shimla. Opinion of Medical Board is Ex. PW-15/D. PW-8 Dr. Ghanshayam Verma, M.O. C.H.C. Nirmand examined accused Sohan Lal and opined that accused was not suggestive of incapable of performing sexual act. PW-9 Dr. Neeti Aggarwal, Assistant Professor, Radiology, IGMSC, Shimla had medically examined the victim and estimated her age between 10 to 12 years vide report Ex. PW-9/A.

8. During investigation, blood samples of victim and accused, vaginal and introitus swab of victim and pubic hair of Sohan Lal were sent to State FSL Junga through Constable Kuldip by PW-5 HC Chet Ram vide RC No. 26/2009 dated 06.07.2009. As per chemical analysis report Ex. PW-15/E, no blood or semen was found on these exhibits. PW-12 Dr. Anil Tagra, Professor and Head, Department of Microbiology I.G.M.C. Shimla had processed swab sample and vide report Ex. PW-12/A he had opined that there was no evidence of sexually transmitted disease.

9. PW-11 Sunder Lal, JBT teacher Government School, Susaya has proved date of birth of victim as 04.03.1999 through certificate Ex. PW-11/B prepared on the basis of admission and withdrawal register. PW-13 Faquir Chand has proved copy of Pariwar Register Ex. PW- 13/B on the basis of original Pariwar Register and has corroborated date of birth of victim as 04.03.1999.

10. PW-3 HHC Bhoop Singh has proved rapat No. 20 and 21 Ex. PW-3/A and PW-3/B and PW-4 ASI Sohan Lal has proved receipt of report by SDPO from PW-15 SI(retired) Tej Ram in case No. 42/2009 dated 19.06.2009. During investigation statement of victim Ex. PW 10/A under Section 164 Cr.P.C. was also recorded by SDM, Rampur.

11. PW-2 Ramesh Negi has deposed that he is a practicing Lawyer at Rampur and on 19.06.2009 complainant PW-1 Kanta Devi had approached him in his house along with her daughter PW-10 (victim) and had narrated facts as stated in complaint Ex. PW-1/A which were also confirmed by victim on inquiry and after his satisfaction with their version, he had prepared complaint PW-1/A and had filed the same in the Court of SDJM, Rampur. The said complaint was forwarded to SHO, Police Station, Brow vide order dated 19.06.2009 (Ex. PW-2/A) for registration of FIR and investigation in accordance with law. He has explained delay in reporting matter to police since 12.06.2009 to 19.06.2009. In his examination-in-Chief he has stated that PW-1 Kanta Devi had explained to him that she was waiting for visit of her mother-in-law for seven days and also delay was caused due threatening of accused to throw victim in river by packing her in gunny bag in case of making complaint to any one. However, he has admitted that it was not mentioned in complaint that accused had assured to send his mother to the complainant. He has stated that PW-1 Kanta Devi had not told him regarding her marriage with one Khub Ram. He has further stated that PW-1 Kanta Devi had also not informed him regarding allegations levelled regarding her character by accused Sohan Lal. As per him, she only informed that accused had been maltreating her.

12. PW-1 Kanta Devi mother of victim, PW-6 Kumari Churamani younger sister (9 years old) of victim and PW-10 victim have corroborated version given in the complaint Ex. PW-1/A. PW-6 and PW-10 are child witnesses. Conviction can be based upon evidence of child witnesses with corroboration or without corroboration but with qualification that their evidence is cogent, reasonable, trustworthy and convincing to prove guilt of accused.

13. In present case, PW-1, PW-6 and PW-10 have stated that grand mother of victim, all three sisters and accused used to sleep in the same room in which offence alleged to have been committed by accused. It has also been stated that PW-6 Kumari Churamani used to go out for urination for number of times because of her habit. It is also alleged that grand mother was also knowing about act of accused. In the complaint, it has been stated that PW-10 victim was used to be ravished by accused on his return to home from work for three months. However, in the Court PW-10 has stated that she has been ravished by accused for 2-3 times whereas PW-7 Dr. Sangeeta Uppal has stated that she has examined victim and not found that victim had been sexually assaulted.

14. Version of PW-1, PW-6 and PW-10 that accused has committed offence in a room where his mother and other two daughters were sleeping is unbelievable, more particularly, for the reason that allegations of violation of person of victim by accused either for three months or 2-3 times is not corroborated by medical evidence but has been falsified. PW-7 Dr. Sangeeta Uppal has opined that possibility of sexual assault cannot be ruled out. However, she has admitted that as per MLC PW7/A issued by her, there was no sign of mark of injury to show that the child was sexually assaulted by accused. Opinion of Medical Board consisting of Chairperson Professor OBJ, Members Assistant Professor OBJ, Assistant Professor Forensic Medicine and Medical officer on emergency duty I.G.M.C. Shimla does not lend support to case of prosecution. As per opinion of Medical Board, there was nothing to suggest about recent or remote complete sexual intercourse as also in absence of any evidence in Microbiological and Chemical analysis. PW-1 Kanta Devi and PW-10 victim has specifically alleged that accused has committed sexual intercourse which had resulted into immense pain and bleeding in private part. Opinion and reports of Medical experts are contrary to the said version.

15. It is true that corroboration by medical evidence is not necessary to convict accused and conviction can be based upon testimony of victim only. However, in present case, medical evidence is not supporting the prosecution case but also falsifying version of prosecution witness. Claim of ravishing victim for three months causing immense pain and bleeding to private parts is completely shattered by medical evidence.

16. It has also come in cross examination of PW-1 that accused was not having good relations with PW-1 Kanta Devi and PW-1 has re-married with one Khub Ram resident of Village Averi without divorcing accused and it has been admitted by Kanta Devi that accused was asking her either to live with him or give him divorce. She has also stated that accused was suspecting her relations with her father and, therefore, she had hatred with accused and started living separately. She had admitted that at the time of making complaint Ex. PW-1/A Khub Ram was accompanying them to Rampur. It is also admitted by PW-6 that Khub Ram had accompanied her mother on date of her examination in the Court and was sitting

out side the Court room. PW-10 has also admitted that she was living with her mother and Khub Ram in village Averi and on the date of her deposition in court, she had come with Khub Ram. At the time of making complaint, PW-1 Kanta Devi had not disclosed all these facts and had only stated that she was living with her parents who were infirm and old.

17. In all these circumstances, learned trial Court has rightly observed that there is possibility of filing false complaint against accused to settle personal scores. Prosecution case is not above suspicion.

18. Having perused the testimony of prosecution witnesses on record, it cannot be said that prosecution has been able to prove its case, beyond all reasonable doubts, by leading clear, cogent, convincing and reliable material on record. It cannot be said that findings returned by the Court below are not borne out from record, perverse, illegal and erroneous or arisen out of incorrect and incomplete appreciation of the prosecution evidence resulting into miscarriage of justice.

19. The Court below, in our considered view, has correctly and completely appreciated the evidence so placed on record by the prosecution.

20. For all the aforesaid reasons, present appeal, devoid of any merit, is dismissed, as also pending applications, if any. Bail bonds, if any, furnished by the accused are discharged. Records of the Court below be immediately sent back.