

Hem Raj - Appellant @HASH State of Himachal Pradesh

Court: High Court of Himachal Pradesh

Date of Decision: Sept. 23, 2016

Acts Referred: Protection of Children from Sexual Offences Act, 2012 - Section 30, Section 4

Citation: (2017) 1 CriCC 302 : (2017) 1 JCC 364 : (2016) LatestHLJ(HP) 1578 : (2017) 1 RCRCriminal 96

Hon'ble Judges: Sanjay Karol, J.

Bench: Single Bench

Advocate: Anoop Chitkara, Advocate, for the Appellant; M/s Vikram Thakur and Puneet Rajta, Deputy Advocate Generals, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Karol, J. - In this appeal filed under Section 374 Cr.P.C., convict Hem Raj has assailed judgment dated 10.02.2016, passed by Special

Judge, Hamirpur, H.P., in Sessions Trial No.21 of 2014, titled as State of H.P. v. Hem Raj, whereby he stands convicted for having committed

offences punishable under the provisions of Section 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the

POCSO Act) and Section 506 Part-II of the Indian Penal Code and sentenced to serve rigorous imprisonment for a period of seven years and to

pay fine of Rs. 20,000/- and in default thereof, further to undergo simple imprisonment for a period of one year for commission of offence

punishable under the provisions of Section 4 of the POCSO Act. Also he was sentenced to undergo rigorous imprisonment for a period of one

year for the commission of offence punishable under the provisions of Section 506 Part-II of the Indian Penal Code and to pay fine of Rs. 5000/-

and in default thereof, further to undergo one month simple imprisonment.

2. It is the case of prosecution that prosecutrix aged approximately ten years was subjected to sexual assault by the accused. Such act was

committed by extending threats and with criminal intimidation. Last of such acts was committed on 22.06.2014 and the matter reported to the

police on 13.07.2014, when FIR No.104/2014 (Ex.PW.20/A) came to be registered. With the completion of investigation, which prima facie

revealed complicity of the accused in the alleged crime, Challan was presented in the Court for trial.

3. The accused was charged for having committed offences punishable under the provisions of Section 4 of POCSO Act and Sections 376(2)(i)

and 506(2) of the Indian Penal Code, to which he did not plead guilty and claimed trial.

4. In order to establish its case, in all, prosecution examined as many as twenty two witnesses and statement of the accused under Section 313 of

the Code of Criminal Procedure was also recorded, in which he took the plea of innocence and false implication. No evidence in defence was led.

5. Appreciating the testimonies of the prosecution witnesses, Trial Court convicted the accused of having committed offences punishable under the

provisions of Section 4 of the POCSO Act and Section 506 Part-II of IPC and sentenced as aforesaid. Hence the present appeal by the convict.

6. Challenge is laid to the judgment passed by the trial Court, on the grounds that (a) testimony of the prosecutrix and her mother cannot be said to

be inspiring in confidence or the witnesses reliable and trustworthy; (b) there is inordinate delay in lodging the FIR and also on this aspect, there is

material contradiction with regard to the date of narration of the incident.

7. Having heard learned counsel for the parties as also perused the record, one finds that trial Court has clearly appreciated the material on record

in its entirety and in consonance with the settled principles of law. There is neither any illegality nor any perversity therein, warranting interference

by this Court. Also reasons assigned are based on clear, cogent, consistent and reliable piece of evidence.

8. Record reveals that with the registration of FIR dated 13.07.2014, prosecutrix was got medically examined from Dr.Sunita Galoda (PW.16),

who issued MLC (Ex.PW.16/A). Clearly the doctor was of the opinion that prosecutrix was subjected to sexual assault. But by whom? That is the

question for determination.

9. That prosecutrix was born on 02.08.2004, stands established through Birth Certificate (Ex.PW.18/B), issued under the Registration of Births

and Deaths Act, 1969 as also Rules framed thereunder. Significantly, all throughout, age of the prosecutrix is disclosed to be ten years. Such fact

also stands corroborated by the prosecutrix, her mother Promila Devi (PW.2) and HC Hem Raj (PW.18).

10. That prosecutrix was studying in Class 6th in Government Senior Secondary School, Mundkhar, District Hamirpur, stands established through

the testimony of Hem Raj (PW.8).

11. One finds that statement of the prosecutrix, under Section 164 Cr.P.C. (Ex.PW.22/D), came to be recorded before the Judicial Magistrate,

1st Class, Court No.II, Hamirpur, wherein she disclosed that she would leave her house for school in the vehicle of Hem Raj, who before the

school hours would take her alone in the vehicle towards Nehlvi side and after committing sexual assault drop her back to the school. On her

crying, accused would gag her mouth. She was threatened and intimidated not to disclose the incident to anyone, lest she and her parents be killed

with Darat. Lastly it was so done on 20th/21st June. Noticing red and white stains on her clothes, her mother made inquiries but on account of

threats, initially she did not disclose the incident.

12. When examined in Court, one finds such version to have been clearly deposed. She is clear that she would travel to her school in a jeep driven

by the accused, who would sexually assault her inside the vehicle. At that time she would be alone. Accused would drag her inside the vehicle and

gag her mouth. Also she was threatened and intimidated not to disclose the incident either to her parents or the police, lest she and her parents

would be killed with darat. Last of such act was done on 20/21.06.2014. Finding her clothes to be stained with red and white stains, on

22.06.2014, her mother made queries when out of fear she did not disclose the incident. However, on 07.07.2014, when her mother, with

affection, inquired again, she divulged everything. Thereafter, matter came to be reported on 13.07.2014. Prior thereto, her mother repeatedly

made inquiries for ascertaining as to whether she was telling the truth or not.

13. This witness has totally withstood the test of cross-examination. It cannot be said that her credit stands impeached. It is not a case of an

isolated incident. Repeatedly, she was subjected to sexual assault over a period of time. Out of fear, she did not divulge the incident to anyone, till

her mother affectionately made inquiries, finding her clothes to be stained.

14. Her version stands materially corroborated by her mother Smt. Promila Devi (PW.2), who is also categorical that probably on 22.06.2014,

while she was bathing the prosecutrix, she noticed tenderness and swelling on the private part and blood stains on the salwar worn by the

prosecutrix. By taking her daughter into confidence, affectionately she inquired reasons thereof, and only on 07.07.2014, prosecutrix disclosed that

accused used to take her towards village Nehli and sexually assault her. Prosecutrix also disclosed that accused had threatened to kill her and her

parents with a Darat. When confronted accused denied having committed such an act. The incident also came to be narrated to the Pradhan, who

advised to remain silent, as any disclosure of such fact would have brought insult to the family. On 12.07.2014, when her husband returned from

Rampur, matter came to be reported to the police with the recording of her statement (Ex.PW.2/A). One finds that even her version is clear on the

issue of sexual assault.

15. Pradhan Smt.Veena Devi (PW.4), corroborates version of the prosecutrix and her mother. Even she had made inquiries from accused Hem

Raj, who denied the allegations. She is categorical that mother of the victim had informed her that she would verify the allegations and take action

on the return of her husband.

16. Kamlesh Kumar (PW.3), father of the prosecutrix, simply states that on his return from Rampur to his village on 12.07.2014, his wife informed

him that prosecutrix had been subjected to sexual assault by the accused on 20/21.06.2014.

17. Now significantly, in his statement under Section 313 Cr.P.C., accused admits to have been called by Veena Devi, in connection with the

allegations in issue when he had expressed his innocence and false implication.

18. At this juncture, it would be relevant to deal with the defence taken by the accused in his statement under Section 313 Cr.P.C., which reads as

under:-

In the month of January 2014 marriage of daughter of PW.2 Promila Devi named Santosh Kumari was fixed and PW.2 being my co-villager had

demand money from me i.e. Rs. 50,000/- on credit basis. I and my father refused to advance loan to PW.2 Promila Devi and her husband

PW.3 Kamlesh Kumar. On our refusal PW.2 and PW.3 got annoyed with us and the result is that I have been roped in a false case. PW.3

Kamlesh Kumar had threatened me to get my jeep impounded as I had not advanced loan to them. As a matter of fact the case has been lodged

against me at the instance of one Budhi Singh and Mehar Singh, residents of our village. My father had purchased a piece of land from Harnam

Singh for constructing a temple of Baba Bharbhag Singh. With the purchase of land and construction of temple, passage of tractor to their fields

was blocked. Therefore, they got annoyed with us and father-in-law of PW.2 Promila Devi works in the fields of Budhi Singh and at the instance

of Budhi Singh I have been implicated in this false case. Budhi Singh etc. had ganged against me.

19. Significantly the said defence cannot be said to have been probablized at all either through the testimony of prosecution witnesses or by

examining any defence witness.

20. From the testimony of prosecutrix (PW.1) and Promila Devi (PW.2), unrebuttedly, and yes, it has come on record that prosecutrix was a

student of 6th Class in Government Senior Secondary School, Mundkhar, Hamirpur. She used to travel to the school in a vehicle owned by

accused Hem Raj. When one peruses the testimony of the prosecution witnesses, on the issue of sexual assault, one does not find any

contradiction at all. On the question of sexual assault, threats and intimidation, version is clear and consistent.

21. Perusal of testimony of Promila Devi (PW.2) does reveal certain improvements to have been made in Court and that being with regard to her

noticing tenderness on the private part of the prosecutrix and the Pradhan having advised the parties to remain silent, till things clear out. But then

such fact in itself, in no manner, renders the genesis of the prosecution story to be doubtful. After all, medically prosecutrix was found to have been

subjected to sexual assault and the Pradhan having been told by this witness that she would verify the allegations and take action on the return of

her husband. Also accused admits to have been called by the Pradhan and inquiries made.

22. One cannot forget the fact that accused is a close relative of the prosecutrix.

23. The only noticeable and as argued, relevant contradiction is of the disclosure of exact date of the incident by the prosecutrix to her mother; by

her mother to her father; and by her mother to the Pradhan.

24. Prosecutrix states that despite the fact that her mother made inquiries from her on 22.06.2014, she disclosed the incident only on 07.07.2014,

whereas, according to Pradhan Veena Devi (PW.4), mother had told her that victim had narrated the incident to her on 20.06.2014. Further

according to the mother, she disclosed the incident to her husband only on his return to the village on 12.07.2014, whereas, according to the

husband, his wife had already disclosed the incident on 22.06.2014. Based on these contradictions, it is argued that there is inordinate delay in

lodging the FIR, which came to be so done only on 13.07.2014.

25. Can it be said that the contradictions are material or the delay fatal? In the given facts and circumstances, no. Court is dealing with the

witnesses, who hail from rural areas. Father of the prosecutrix is a small businessman doing business at a far-off place. Mother is a rustic villager.

There is none else in the house except for one elder daughter. The accused is none else, but her close relative. The incident which the husband is

talking about is not clearly that of sexual assault. After all, on 22.06.2014 itself, mother had found clothes of the prosecutrix to be stained with

blood. Also statements of the witnesses came to be recorded in Court not immediately but after a period of 7/8 months. As such, some leeway is

required to be given to the witnesses in not remembering the exact dates. This contradiction alone has not impeached the credit of the witnesses

who with regard to the actual occurrence of the incident, are clear and consistent and their deposition reliable and trustworthy. Delay in lodging the

FIR, in the given facts and circumstances, considering the nature of offence, cannot be said to be fatal. Uncontrovertedly, it has come on record

that father of the prosecutrix returned only on 12.07.2014 and promptly, matter came to be reported to the police.

26. The Apex Court in *Satpal Singh v. State of Haryana*, (2010) 8 SCC 714, held as under:-

14. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally

shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than

comfort and sympathise with her. Family remains concerned about its honour and reputation of the prosecutrix. After only having a cool thought is it

possible for the family to lodge a complaint in sexual offences. Vide (Karnel Singh v. State of MP., 1995 AIR (SC) 2472; and State of

Punjab v. Gurmeet Singh & Ors., 1996 AIR (SC) 1393.

15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not,

results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of

spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of

deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any

delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the

complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [Vide (State of Andhra Pradesh v. M.

Madhusudhan Rao, (2008) 15 SCC 582].

16. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As

honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact-situation, near relations

of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken

judicial notice of the fact that:

Ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of

this nature is a normal phenomenon""".

[vide (Satyapal v. State of Haryana, 2009 AIR (SC) 2190].

17. In State of H.P. v. Prem Singh, (2009) 1 SCC 420, this Court considered the issue at length and observed as under: (SCC p. 421, para 6)

6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other

offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge

a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution

case merely on the ground that there is some delay in lodging the FIR.

18. Thus, in view of the above, the delay in lodging the FIR in sexual offences has to be considered with a different yardstick. If the instant case is

examined in the light of the aforesaid settled legal proposition, we are of the considered opinion that the delay in lodging the FIR has been

satisfactorily explained.

27. Further the Apex Court in State of Uttar Pradesh v. Manoj Kumar Pandey, (2009) 1 SCC 72, has held that:-

3... .. 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.

28. In State of Rajasthan v. Roshan Khan and others, (2014) 2 SCC 476, Court has observed that complainant would not come forward to

lodge a false report pertaining to the character and chastity of his daughter. As such, prosecution story on the ground of delay per se cannot be

said to be false.

29. Testimonies of prosecution witnesses, more so that of minor cannot be said to be unbelievable. Witnesses are trustworthy, and in the opinion

of the Court, have deposed truthfully. Safely it can be held that prosecution has discharged the initial burden of establishing its case and the

statutory burden, so required by the accused under Section 30 of the POCSO Act. Ocular evidence stands materially corroborated by other

evidence on record.

30. The ocular version as also documentary evidence clearly establishes complicity of the convict in the alleged crime. The testimonies of

prosecution witnesses are totally reliable and their depositions believable. There are no major contradictions rendering their version to be

unbelievable.

31. From the material placed on record, it stands clearly established by the prosecution witnesses, beyond reasonable doubt, that the convict is

guilty of having committed the offences charged for. There is sufficient, clear, convincing, cogent and reliable piece of evidence on record to this

effect. The guilt of the convict stands proved beyond reasonable doubt to the hilt. It cannot be said that convict is innocent or not guilty or that he

has been falsely implicated or that his defence is probable or that the evidence led by the prosecution is inconsistent, unreliable, untrustworthy and

unbelievable. It cannot be said that the version narrated by the witnesses in Court is in a parrot-like manner and hence is to be disbelieved.

32. Thus, from the material placed on record, it stands established by the prosecution, beyond reasonable doubt, by leading clear, cogent,

convincing and reliable piece of evidence, that convict committed penetrative sexual assault on the child/prosecutrix and criminally intimidated her

to do away with her life.

33. For all the aforesaid reasons, I find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the

evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and complete appreciation of the material so

placed on record by the parties. Findings cannot be said to be erroneous in any manner. Hence, the appeal is dismissed.

34. Records of the Court below be immediately sent back.