
(2016) 08 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 278 of 2011

Archana Chauhan

APPELLANT

Vs

Ashwani Kumar

RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 417, 506

Citation : (2016) 4 Crimes 37

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

Bench : Division Bench

Advocate : Mr. Ashwani Kumar Sharma-II, Advocate, for the Appellant; Mr. Anup Chitkara, Advocate, for the Respondent No. 1; Mr. M.A. Khan, Additional Advocate General, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J.—Appellant has assailed acquittal of respondent No. 1, vide judgment dated 05.10.2010, passed by Sessions Judge, Solan, H.P. in Session Trial No. 3-S/7 of 2009, under Sections 376, 506 and 417 IPC, in Case FIR No. 116/2009, registered in Police Station Dharampur, District Solan, H.P.

2. Case of Prosecutrix in brief is that respondent No. 1, had been committing sexual intercourse with her since 2008 without her consent but with assurance to marry her. An application Ex. DA was submitted by prosecutrix on 1.09.2009 to the Superintendent of Police. As per this application, prosecutrix had met respondent No. 1 in the year 2007 in Subathu who had assured to marry her but she had not disclosed this fact to anyone and respondent No. 1 had committed sexual intercourse with her so many times at Subathu. Thereafter respondent No. 1 was out of Subathu for a long time. On noticing respondent No. 1 in Subathu on 16.08.2009 prosecutrix had conveyed him that he had cheated her but respondent No. 1 had again assured to marry her. On 17.08.2009 respondent had taken prosecutrix to Solan along with his brother-in-law Jaggi uncle. At Solan, after marrying prosecutrix, respondent had filed an application in the

court of Sub Divisional Magistrate for registration of marriage. After that Ashwani Kumar brought prosecutrix to Subathu but on refusal for acceptance of marriage by family of respondent, they stayed in Rest House Subathu where respondent committed sexual intercourse with her with assurance to keep her happy. On 18.08.2009 at about 12.00 O'clock respondent took prosecutrix to Parwanoo and kept her in the house of his cousin Sohan Lal in Sector No. 4, where she resided till 28.08.2009 and during this period respondent tortured her physically and mentally. In the evening of 28.08.2009, respondent left prosecutrix on Subathu road Solan by asking her to go to her home because he was not to keep her. Thereafter he was not contacting her and had threatened her not to approach him and there was threat to her life from respondent. It is further stated that respondent had married prosecutrix with intention to develop physical relations with her resulting in physical and mental harassment to her. This application was sent to Police Post, Subathu for necessary action on 2.09.2009.

3. On 5.09.2009, prosecutrix had submitted another application Ex. PW-11/B to Superintendent of Police, Solan by giving further details stating therein that at the time of writing application on 1.09.2009, she was perplexed and could not mention complete details in the said application, and no action had been taken against respondent after submitting that application. This application was sent to SHO, Dharampur to register a case and investigate the matter as per law. Consequently, FIR Ex. PW-11/A was registered and after completion of investigation, challan was presented in Court against the respondent. On conclusion of trial respondent has been acquitted and the State has not preferred to file an appeal and present appeal has been preferred by prosecutrix.

4. Prosecution has examined 17 witnesses to prove its case. Whole case revolves around testimony of prosecutrix, who has been examined as PW-16. In the application Ex. DA, prosecutrix had claimed developing of intimacy with respondent in the year 2007 and having intercourse with her so many times in Subathu with assurance to marry her. Whereas in application Ex. PW-11/B, she had stated that in the year 2008 her neighbour (respondent) had called her to upload songs in newly purchased computer of his brother. Earlier she had already installed typing software in computer of his brother in presence of his family members. By taking such excuse, prosecutrix was called by respondent in his house but when she did not find his family members there, she tried to come back but respondent had committed forcible intercourse without her consent. On weeping of prosecutrix, respondent had assured to marry her but with threatening that in case incident was disclosed to anyone then he will defame prosecutrix and in similar manner he continued to have intercourse with her. She has stated that when respondent did not marry then she had filed an application on 11.08.2009 before Deputy Superintendent of Police, Solan and on 17.08.2009 respondent and his all family members were called in Police Post, Subathu, where respondent had agreed to marry prosecutrix. Thereafter respondent along with his family members had taken prosecutrix to Solan Court and in the presence of his family members had married prosecutrix and Hardev Sharma and

Jagdish had witnessed the same.

5. It is further stated in the application Ex. PW- 11/B that thereafter respondent had taken prosecutrix with him to his house in Subathu. Family members and other relatives of respondent, present there had stated that respondent had married without their desire and had respondent been married with their desire, they would have also received dowry. But greedy father of prosecutrix will not be able to give them anything and therefore, daughter of such person will not be allowed by them in their home. Thereupon respondent had taken prosecutrix to rest house Subathu. At that time, he was accompanied by his brother Jai, brother-in-law Sanjay and one Soni son of Malkhan. Soni had arranged for stay. On desire to have copulation prosecutrix had expressed to have such relations only after performing Sapatpati in Temple but respondent had committed forcible intercourse with prosecutrix without her desire and prosecutrix was not spared despite weeping. On next day i.e. on 18.08.2009, respondent along with his brother Jai, brother-in-law Sanjay and friend Soni took her to house of cousin at Parwanoo and there also till 28.08.2009, respondent had committed intercourse with prosecutrix without her desire and treated her brutally. On 22.08.2009 parents and other relatives came and abused prosecutrix alleging that she had ruined them and in case of marriage from Chandigarh they would have had sufficient dowry and had asked her to bring Rs. 1.00 lac and other articles i.e. furniture, Refrigerator, motorcycle etc. from her father for living with respondent, failing which they had threatened to arrange second marriage of respondent. She had expressed her inability to ask her father to fulfil this demand as she had married without desire of her father. Thereupon all of them threatened to oust her from house and to vanish. On 28.08.2009, prosecutrix was brought to Solan in a vehicle. Family members and relatives of respondent stopped vehicle at bypass Solan and asked to throw prosecutrix there. Father of respondent had said that father of prosecutrix will not give anything whereupon sister-in-law of respondent had pushed prosecutrix from the vehicle and all of them left the place. On approaching Deputy Superintendent of Police, prosecutrix was sent to Police Station Dharampur, but in absence of SHO, no action was taken. Prosecutrix had submitted an application on 31.08.2009 to the Superintendent of Police, who referred prosecutrix to Police Women Cell but no action was taken there also. Prosecutrix had submitted application before Deputy Superintendent of Police on 1.09.2009 by writing the same there.

6. In her deposition in the Court, prosecutrix has further stated that in the year 2008, she was working as Computer Operator in Airtel Sharma Enterprises Subathu. Respondent had purchased new computer and younger brother of respondent had borrowed software of computer and Pen drive from her. Firstly, she states that on 5th July, 2008 respondent had taken her to his house to download songs in his computer but again she states that respondent had told that his brother and bhabhi were asking for downloading songs and thereupon she had gone to house of respondent from her office for 10 to 15 minutes. There was no one in the house except respondent and respondent had bolted the door

from inside and put his hand on her mouth and on attempt to speak loudly she was slapped and pushed on the bed whereupon she received injury near her eye on hitting corner of bed but the respondent asked her to keep quiet by putting his hand on her mouth and it was difficult for her to breath. She was frightened and after putting her on bed respondent had committed sexual intercourse with her without her will. On her weeping respondent asked her not to weep and put Sindoor on her forehead by saying that thereafter she was his wife and had promised to marry her.

7. She has further stated that thereafter respondent used to call her in his house to have to sexual intercourse asserting his right being her husband with assurance to marry her after marriage of his sister. She has further stated that on 4th May, 11th May and 15th May, 2009 respondent called her in Mahadev Complex Hotel and committed sexual intercourse with her against her wishes. On 11.08.2009 she was sitting on the stairs of her office and was weeping as respondent was not responding to her calls. She was noticed by PW-7 Shakun Chauhan and on her consistent inquiry prosecutrix had disclosed the matter to her. She had told Shakun Chauhan that matter had not been disclosed to anyone including her parents but one application was submitted to Deputy Superintendent of Police. Besides reiterating averments made in the complaint Ex. PW-11/B, prosecutrix has stated that family of respondent did not allow her and respondent to enter the house and they had to stay in Forest Rest House, Subathu.

8. In cross-examination, prosecutrix has stated that she had mentioned year 2007 in Ex. DA, under duress. However, she has admitted that before 1.09.2009, she had also made a complaint to the police on 11.08.2009. Police had also recorded her statement under Section 161 Cr.P.C. on 7.09.2009 and in that statement also she had mentioned that first intercourse was committed in the year 2007. She has tried to explain that she had stated so as she was alone and under stress. Her statement under Section 161 Cr.P.C., dated 7.09.2009 is Ex. DB. In that statement, she has stated that she had submitted complaint to Superintendent of Police, on the basis of which FIR was registered and the said complaint was drafted by Shri Arvind Kumar, who was son in law of her Aunt (Buaa), but in the Court, she has denied to have made such statement. There is also one supplementary statement Ex. DC of prosecutrix recorded under Section 161 Cr.P.C. In this statement, prosecutrix had stated that when she was left at Solan by respondent she had made call to her Aunt (Buaa), and after reaching home had narrated entire episode to family members. However, as per statement made in the Court prosecutrix has stated that one lady met her at Solan through whose mobile she had contacted PW-7 Shakun Chauhan and on request of Shakun Chauhan that lady had provided Rs. 50/- to prosecutrix so as to enable prosecutrix to reach Subathu. Prosecutrix has shown her ignorance regarding the place where the statement Ex. DB was recorded. She has been confronted with all improvements made in the Court, which she claimed to have been stated in FIR as well as in her statement Ex. DA but not found to be recorded. She has

also stated in the Court that she was asked to sign divorce papers and on refusal to sign to such papers she was thrown out of the vehicle at Solan. But no such fact was ever stated in her earlier complaints or applications Ex. DA or Ex. PW-11/B or Ex. DB or Ex. DC.

9. It has also been admitted by the prosecutrix that application for registration of marriage was submitted to the S.D.M. Solan who had asked to come after one month. She has also admitted that prior to expiry of one month she had lodged complaint against respondent and respondent was behind the bar on the day when both of them were called by the S.D.M. for registration of marriage. She has admitted that her father wanted to marry her with more educated and better boy and was not liking respondent, who was earning nothing. She has admitted that Shakun Chauhan had also accompanied her in the Court on previous occasions. She has also admitted that respondent used to talk to her on mobile through telephone No. 98056-53934, which was in the name of prosecutrix but she has claimed that respondent had forcibly taken Sim from her but she has not disclosed in any complaint regarding forcible taking of mobile Sim by respondent.

10. Firstly prosecutrix has denied that S.D.M. had asked them after one month on 17.08.2009 to check marriage certificate. However, later on she has admitted that S.D.M. had asked them to come after one month. She has also stated so in her statement Ex. DB.

11. PW-2 Himanshu has been examined by prosecution to prove that respondent had booked rooms in Mahadev Guest House on 4th May, 11th May and 15th May, 2009 and had stayed with prosecutrix in those rooms, for 2 to 3 hours in the morning time after 10:00 AM. In cross examination, this witness has admitted that both respondent and prosecutrix had come on foot for first time and on second time the girl had come on foot earlier to boy and boy was late about 20 to 25 minutes. He has also stated that for second time payment of guest house was made by prosecutrix.

12. PW-3 father of prosecutrix has shown his ignorance about marriage of his daughter. He has admitted that they referred matter to Community Panchayat and Community Panchayat was organised on 6.09.2009. He has admitted that he had asked to marry her. He has denied that he had demanded money in the Community Panchayat for withdrawing the case.

13. PW-7 Shakun Chauhan has also admitted convening of Community Panchayat meeting on 6.09.2009. She has stated that Community Panchayat had inquired brothers of the accused regarding help they could provide respondent and prosecutrix. Brothers of respondent had responded that they will provide rented accommodation for prosecutrix and respondent and help both of them by providing daily needs. She has further stated that Secretary of Panchayat had put humiliating indecent questions to prosecutrix and therefore, prosecutrix, her father and this witness had left the Panchayat without signing proceedings. This witness has admitted that she had accompanied prosecutrix and her father in the

Court on 8.03.2010. She has admitted that she had not received any summons for appearance on 8.03.2010.

14. From the statement of PW-7, it appears that father of prosecutrix was not happy with marriage of respondent and prosecutrix and was worried about future of her daughter as respondent was not having any means of income and for that reason only Community Panchayat had shown concern about future of prosecutrix and had asked question to brothers of respondent with respect to providing help to respondent and prosecutrix in future.

15. From the application, statements Ex. DA, Ex. PW- 11/B, Ex. DB and DC and deposition of prosecutrix in the Court it transpires that there are lot of contradictions discrepancies and improvements on material facts which render genesis of the prosecutrix case doubtful. Veracity of prosecutrix is shrouded by suspicion.

16. Allegations of committing forcible sexual intercourse do not seem to be true. First instance of sexual intercourse as narrated by prosecutrix in her deposition in the Court is highly improbable. She has admitted developing intimacy with respondent in her application Ex. DA and has stated because of that intimacy coupled with assurance of marriage by respondent physical relations were developed. Respondent has shown his intention to marry her by submitting his application to the S.D.M. Consent of prosecutrix in maintaining physical relations is at large.

17. Defence propounded by respondent is that respondent agreed to marry with prosecutrix and for that purpose he had taken her to office of S.D.M., Solan and had submitted application for registration of marriage but father of prosecutrix did not agree for this marriage and under pressure of her father in connivance with PW-7, prosecutrix had lodged complaint prior to expiry of one month when certificate of marriage was to be issued.

18. From the admissions of prosecutrix, defence put forward by respondent is probablised than proving commission of offence by the respondent beyond shadow of all reasonable doubts.

19. Statements of other officials witnesses including doctors are not relevant to be discussed to determine guilt of respondent.

20. Contradictions and discrepancies cast doubt on the veracity of prosecutrix. Conduct of prosecutrix renders her statement under cloud of suspicion. It appears that truth is something else as is being portrayed in Court by prosecutrix, her father and PW-7. Version of prosecutrix is not credible, trustworthy and confidence inspiring so as to rely to convict respondent under Section 376, 417 and 506 IPC.

21. The accused has been acquitted by the trial Court. From perusal and scrutiny of evidence, it cannot be said that trial court has not appreciated the evidence correctly and completely and acquittal of accused has resulted into travesty of

justice or has caused miscarriage of justice. After considering arguments of respective counsel for the parties and minutely examining the testimonies of the witnesses and other documentary evidence placed on record, we are of the considered view that prosecution has failed to prove the guilt of respondent accused beyond reasonable doubt and thus, no case for interference is made out.

22. The 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.