
(1975) 06 SHI CK 0008
In the High Court Of Himachal Pradesh

Harpal Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-06-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 540
Penal Code, 1860 (IPC) — Section 366, 376

Citation : (1976) CriLJ 162

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Judgement

D.B. Lal, J.—This appeal is brought from the decision of the Sessions Judge, Hamirpur, in a case u/s 376 of the Indian Penal Code, whereby the accused Harpal Singh and Bhagirath have been convicted and sentenced each to undergo rigorous imprisonment for four years and to pay a fine of Rs. 500/- in default to undergo further rigorous imprisonment for six months. The prosecution case was, that on 20th August, 1972 Saroj Kumari a minor girl below 16 years, was sent by her mother Smt. Lajwanti from village Samnoli to village Baret where she was- required to see her ailing aunt. On her way back to Samnoli at about 4 p.m. of the same day, she passed by Chanbi Civil Dispensary. Harpal Singh accused met her and told her falsely that her brother was lying sick in the dispensary and that she was being called there. The girl went with Harpal Singh but was entrapped in a room of which the door was bolted from inside. Thereafter at about 5.30 p.m. after taking their meals etc. Harpal Singh, Bhagirath and a third person Ashok who has been acquitted by the learned Sessions Judge, started the nefarious activity of criminally assaulting this girl one after the other. She was released from their clutches at about 6 a. m. on the next morning when her brother Om Prakash came to the spot being guided by one shopkeeper Shambhu who happened to see the girl in that vicinity. In fact Smt. Lajwanti sent Om Prakash on the morning of 21-8-1972 to know her whereabouts as she had not returned last evening. Om Prakash made enquiries from Mast Ram and his wife who was related as aunt to Saroj Kumari. When he

went to the hospital, he found the accused Bhagirath dispensing medicine. Harpal Singh was also present and his sister Saroj Kumari was sitting there. Thereafter the girl was brought to her parents where she also narrated the entire occurrence. However, it was considered that publicity should not be given because the honour of the minor girl was involved. In fact Daulat Ram ? the father of the girl was informed at Chintpurini where he was employed. He came post haste to his house at Samnoli and got the girl examined by a midwife Smt. Tabo because she was in a bad shape. It appears the matter was left as such at that stage. After some time a news item appeared in a local newspaper and the nefarious activity of the three accused was publicised. This gave rise to an investigation by Head-constable Santokh Singh" of Police Station Amb who reached the residence of Dault Ram. Thereafter the statement of the girl was recorded and the First Information Report Ex. p. A. was instituted at Police Station Amb on 31-8-1972 by 4 p.m. The girl was medically examined by Dr. R. S. Nanda on 4-9-1972. Her radiological examination was made by Dr. Jagdish Roy and according to him the age was near-about 15 years. On these facts and allegations the three accused Harpal Singh, Bhagirath and Ashok were prosecuted for the offences under Sections 366, 368 and 376 of the Indian Penal Code.

2. The defence was one of denial and Bhagirath stated that he was a dispenser at Chambi hospital but he developed enmity with one Parkash Chand Verma who was the former dispenser of the same hospital. Parkash Chand Verma had stood in the election and in that connection he gave up his service. Bhagirath was appointed in his place. Later Parkash Chand Verma lost the election and wanted re-employment which was resisted by Bhagirath. According to this accused the present case is foisted upon him at the instance of Parkash Chand Verma.

3. The prosecution produced 16 witnesses including Saroj Kumari (P.W. 1) prosecutrix, Om Prakash (P.W. 2) her brother. Daulat Ram (P.W. 3) her father, Smt. Lajwanti (P.W. 4) her mother. Sarwan Kumar (P.W. 6), Mast Ram (P.W. 7) uncle of the girl and Shambhu Datt (P.W. 8) shopkeeper besides Dr. R. S. Nanda (P. W- 9) and Dr. Jagdish Roy Radiologist (P.W. 14). Bhupinder Pal (P.W. 10) was produced to prove the birth entry. The learned Sessions Judge on the question of age recalled two witnesses and examined one afresh u/s 540 of the Code of Criminal Procedure. These were Ram Sarup Headmaster (C. W. 1) who proved the birth entry shown in the Admission Register, Saroi Kumari (C. W. 2) and Daulat Ram (C. W. 3) both of whom were already examined as P.W. 1 and P.W. 3 respectively.

4. The accused did not examine any witness although they proved one or two documents showing the alleged birth entries of the sons of Daulat Ram.

5. The learned Sessions Judge believed the prosecution version and sentenced the accused Harpal Singh and Bhagirath u/s 376 and convicted them in the manner stated above. He acquitted these two accused under Sections 366 and 368 of the Indian Penal Code. The learned Sessions Judge extended the benefit

of doubt to Ashok accused and acquitted him for both the offences under Sections 368 and 376 of the Indian Penal Code. Both Harpal Singh and Bhagirath have felt aggrieved of the decision and have come up in this appeal.

6. The learned Counsel for the two appellants rather contended in the first instance, that the age of the prosecutrix was proved to be more than 16 years and, therefore, the offence of rape u/s 376 was not made out she being used to sexual intercourse and may perhaps have had given her consent. In order to prove the age of the prosecutrix the prosecution relied upon the birth entry made at the office of the Chief Medical Officer, Ex. P-D., which showed the date of birth as 11-11-1957. Shri Bhupinder Pal (P.W. 10) came to prove that entry. About this birth entry it was stated that the name of the girl was written as Ramesh but both Saroi Kumari (C. W. 2) and Daulat Ram (C. W. 3) stated that she was given that name at the time of birth although at the time of her admission in the school her name was changed to Saroi Kumari. The school admission according to Ram Sarup (C. W. 1) Headmaster of the Institution was made by her guardian and the date of birth was entered as 13-10-1957, Exhibit P-F. The same entry regarding date of birth was repeated in the school registers Ex. P-F/1 and Ex. p-F/2. There is no doubt a difference of nearly one month between the two dates of birth but that is not very material because usually when Persons give out the date of birth at the time of admission of a child they do not adopt that much precision as they should. Had there been considerable difference in the two dates something could be stated in this regard. The statement of Ram Sarup (C. W- 1) is categorical that it was Saroi Kumari who was brought for admission and the person who brought her gave out that age. There is no reason to disbelieve that statement. It is also every day experience that the names of infants are changed when they grow older and are admitted in a school. That may be due to a desire on the part of the parents to give them such names which appeal to their fancy and which they consider should be the names for subsequent stages in their lives. That apart, two facts clearly emerge out which corroborate the date regarding birth entry in the Birth Register as well as in the School Register. One is the fact elicited from the statements of Daulat Ram (P.W. 3) and Smt. Laiwanti (P.W. 4) to the effect that Saroi Kumari is the youngest daughter born to them. The entry regarding Ramesh is 11-11-1957 and admittedly she was a daughter and no other daughter having born on a later date, that entry must relate to Saroi Kumari the age comes to less 16 years definitely. The other factor is that the accused themselves produced birth certificates of the alleged two sons of Daulat Ram. They could as well produce the birth certificate of Saroi Kumari if they were so much particular regarding it. As they have" not done so, the inference can be drawn that the birth certificate of Saroi Kumari is Ex. P-D which bears out the date 11-11-1957. Apart from this evidence the X-Ray conducted by Dr. Jagdish Roy (P.W. 14) also discloses the age near about 15 years. As to oral evidence the statement of Saroi Kumari (P.W. 1), Daulat Ram (P.W. 3) and Smt. Laiwanti (P.W. 4) also proved the age. Saroi Kumari of course save out that her date of birth was 11-11-1957 which she presumably did with reference to the Birth Register

Ex. P-D. Daulat Ram (P.W. 3) besides giving the date as 11-11-1957 also stated that his eldest son is 26 or 27 years and Saroi Kumari is the sixth child. This also indicates that the age of Saroi Kumari could be less than 16 years and the date of birth given in the Register Ex. P-D is correct as it relates to Saroi Kumari. Smt. Laiwant (P.W. 4) stated that her age is 15 years and that she was born on 22 Kartik. She forgot the year but 22 Kartik will mean sometime early in November. This also tallies with 11th November which is the date of birth of Saroi Kumari. I have, therefore, no hesitation in accepting the finding of the learned Sessions Judge that the age of Saroi Kumari was below 16 years on the date this offence was committed.

7. The learned Counsel then contended that the statement of the prosecutrix could not be relied upon. For this the learned Counsel pointed out that there were discrepancies in the prosecution case and that the prosecutrix was used to sexual intercourse as reported by Dr. R. S. Nanda (P. W- 9). The learned Counsel then proceeded to say that corroboration of her statement was needed which was not forthcoming. I do not agree with the learned Counsel. As to the rule regarding corroboration, the prosecutrix cannot be considered to be an accomplice. The Court should normally look for some corroboration of her testimony in order to satisfy itself that she is telling the truth and that a person accused of kidnapping, abduction or rape has not been falsely implicated. That is no doubt a normal practice but it cannot be laid down as a rule of law that no conviction can be based on uncorroborated testimony of the prosecutrix. The only rule of law is the rule of prudence, the advisability of corroboration should be present in the mind of the Judge and may be forthcoming in most of the cases. There is no rule of practice either that there must in every case be corroboration before a conviction can be allowed to stand. Therefore, the statement of Saroi Kumari even if left uncorroborated can be relied upon and the learned Counsel has not been able to point out any inherent defect in that statement. That apart if corroboration was needed the same can be found in so much circumstantial evidence which I shall presently point out. In a case where the girl is used to sexual intercourse and there is no dispute regarding her age being major perhaps corroboration as to her statement may be required. For this reliance was placed on Ram Murti Vs. State of Haryana, It was observed by their Lordships that where the prosecutrix had been used to sexual intercourse, in order to accept her statement that she was compelled, threatened or otherwise induced to go with the appellant, there should be corroboration of some material particular from some independent source and her bare statement cannot be considered sufficient to sustain the appellant's conviction. In the instant case the girl is below 16 years and even if she consented to sexual intercourse, the offence of rape was made out. That is a distinguishing feature and perhaps corroboration may not be required of her statement. Even then if corroboration is sought for there is enough in the present case.

8. The statements of Smt. Laiwanti (P.W. 4), Daulat Ram (P.W. 3) Om Prakash (P.W. 2), Sarwan Kumar (P.W. 6), Mast Ram (P.W. 7) and Sham-bhu Datt (P.W. 8)

give out such corroboration. The girl narrated to her mother Smt. Laiwanti (P.W. 4) and to her father Daulat Ram (P.W. 3) the entire occurrence. Om Prakash (P.W. 2) her brother found her in the company of the two accused at Chambhi dispensary on 21-8-1972. She also narrated the occurrence to him. Shambhu Datt (P.W. 8) gave the clue to Om Prakash (P.W. 2) which led him to go to civil dispensary in search of the girl. The learned Sessions Judge has not placed exclusive reliance on the statements of P.W. 6 and P.W. -7 but in my opinion both these witnesses did corroborate the story of the girl inasmuch as Om Prakash went with them to the dispensary and found the girl in the company of the two accused. If a witness is turned hostile, it does not mean that his entire statement is to be discarded. The rule of prudence is that this statement has to be considered with due care and caution. In other words explicit reliance cannot be placed upon him but if he is duly corroborated by other evidence, his statement can certainly be availed of in favour of the prosecution or in favour of the accused as the case may be. In the instant case the two statements of Mast Ram (P.W. 7) and Sarwan Kumar (P- W. 6) although they prevaricated in small details as to what they stated before the Police and what they stated in Court, yet their statements did indicate that they were present at the spot and saw the two accused and the girl together at the civil dispensary Chambhi. That is certainly a corroboration of the statement of P.W. 1. The witnesses Om Prakash (P.W. 2) and Sarwan Kumar (P.W. 6) as well as Mast Ram (P.W. 7) also stated that either both the accused or Harpal Singh at any rate asked for forgiveness. This would again be a circumstance corroborating the version of the prosecutrix,

9. It was pointed out on behalf of the appellants that the First Information Report was delayed but as stated by Saroi Kumari (P.W. 1), Daulat Ram (P.W. 3) and Smt. Laiwanti (P.W. 4) it was to save the honour of a minor girl that the parents never leaked out the information. Rather they went to the doctor of Chambhi dispensary and there too stated that no one had raped their daughter within the dispensary. It was specifically stated by these witnesses that the said statement was given by the parents to save the honour of the girl. The police got scent of the occurrence from newspaper report. That is how the First Information Report was written. It was feebly contended that Santokh Singh, Investigating Officer, visited at the house of the girl but did not write her statement at that place. He rather brought her to the Police Station and there her statement was recorded. This is a very minor circumstance which was rightly discarded by the learned Sessions Judge. It was then stated that the midwife Tabu was not produced but it was not necessary to do so. If corroboration was needed of the statement of Saroi Kumari the same was- found elsewhere in other statements. Tabu would not have improved the position in any manner.

10. It was also strenuously contended that the two accused could not be identified by the prosecutrix as if meaning thereby that some one else had committed the rape. Regarding identification Saroi Kumari (P.W. 11 and Om Prakash (P.W. 2) both identified the three accused in Court. In the First Information Report the name of Harpal Singh accused was mentioned and Saroi

Kumari (P-W. 1) very much admitted that she got that name from the newspaper and also from the Police. At the same time she duly identified Harpal Singh while giving her statement in Court. When she was raped by this accused as well as by Bhagirath and they spent a few hours with her, it was not difficult for her to have identified them. Sarwan Kumar (P.W. 61) even stated that Om Prakash had told him that Harpal Singh accused was his friend. It may, therefore, be stated that Harpal Singh was even known to Om Prakash and he even asked for forgiveness from Om Prakash when he was accosted by him on the morning of 21-8-1972 at Chambi dispensary. Similarly Sarwan Kumar (P.W. 6) and Mast Ram (P.W. 7V) both identified the two accused in Court and even named them. Shambhu Datt (P.W. 8), however, named Bhagirath accused because he found him actually dispensing medicine on the morning of 21-8-1972 when he reached Chambi dispensary. In the circumstances of the case it was not necessary to have produced the accused in any identification parade. It is then contended that Ashok has been acquitted and a similar benefit should have been given to the other two accused. The learned Sessions judge has distinguished the case of Ashok from the other two accused. I do not find any reason to take a different view in the matter.

11. In the last it was contended that no witness could be examined u/s 540 of the Code of Criminal Procedure. The argument is devoid of any merit. The learned Sessions Judge was right when he thought that the evidence regarding age was necessary. In the ends of justice he decided that two of the witnesses be recalled and one fresh witness be examined. This he did and no exception can be taken to the procedure adopted by him. It is also mentioned in the grounds of appeal that the benefit of Probation of Offenders Act should be granted to the two appellants. It is not a case in which that benefit can be extended and So the plea is devoid of any force.

12. In the end I am in entire agreement with the findings of the learned Sessions Judge. The appeal is dismissed and the conviction and sentence of the two appellants u/s 376 of the Indian Penal Code are maintained.