
(1994) 04 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 158 of 1993

Jagat Bahadur

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 376

Citation : (1994) CriLJ 3396

Hon'ble Judges : L.S. Panta, J; Bhawani Singh, J

Bench : Division Bench

Advocate : V.D. Khiota, for the Appellant; Shyama Dogra, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—This appeal from jail by the accused is directed against the judgment of Additional Sessions Judge, Kullu in Session Trial No. 20 of 1992 dated 21-8-1993 registered by the Police through First Information Report 165/92 dated 22-5-1992 for offences under Sections 376/302 of the Indian Penal Code. Two accused namely Jagat Bahadur (present appellant) and Lekh Raj alias Raju were tried for these offences. However, Lekh Raj alias Raju has been acquitted for lack of evidence against him. So far as the present appellant (hereafter the accused) is concerned, he has been convicted for both these offences and sentenced to rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of the fine to undergo simple imprisonment for a period of 3 years for offence u/s 302, I.P.C. and for 7 years rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of fine to undergo further simple imprisonment for 2 years for offence . u/s 376, I.P.C. Both the sentences have however, been ordered to run concurrently.

2. The facts of the case may now be briefly stated thus:

Phinu Ram (P.W. 15) is the husband of Smt. Kailaso Devi (hereafter deceased). He was running a "DHABA" at Manikaran Bus Stand. The couple was residing in a house nearby. On 25-5-1992 the complainant went to take bath leaving the deceased in charge of the "DHABA". When he was passing through Galo-bridge, he found the deceased in the company of driver Lekh Raj who was going towards the village Kasol. The complainant Phinu Ram (hereafter complainant) asked the deceased to prepare the meals in the house stating further that he would return in the meanwhile after taking the bath. When the complainant returned he did not find the deceased in the residence. He thought that she might be somewhere in the vicinity and therefore, did not bother much. But when she did not return during the night, he thought that she might have gone to her mother's sister at Bhuntar. The deceased did not return on 21-5-1992 therefore, the complainant went to search of her on 22-5-1992.

3. The complainant met the wife of Ram Bahadur at village Kasol. She informed the complainant that the naked dead body of his wife was lying in the GRAHAN NULLAH and that she had seen the deceased in the orchard of Shri K.K. Dhar with the accused on 20-5-1992 when the deceased was not wearing Salwar and blood was coming out from her mouth and private part, therefore, she was suspicious that the accused might have committed the rape and murder of the deceased. The complainant went to the spot-GRAHAN NULLAH and identified the dead body of the deceased. He came across Head Constable Daba Ram (P.W. 12) along with some police officials in village Kasol while on way to report the matter. Accordingly, he made a statement u/s 154 of the Code of Criminal Procedure (Ex. PN) on the basis of which First Information Report (Ex. PG) was registered in the Police Station Kullu.

4. The police starts the investigation. It took into possession the dead-body of the deceased. It prepared the inquest report (Ex. PB) and then sent the body for post mortem examination. Post mortem examination was conducted by Doctor Roshan Lal of District Hospital, Kullu, who issued Medico Legal Certificate (Ex. PK). According to the Doctor, the deceased had died due to shock and haemorrhage as a result of lacerated wound of vaginal perineum and anal region. The police also photographed the dead body (Ex. P16 to Ex. P27) the negatives whereof are Ex. P15. Site plan of the place where the dead body was found was also prepared (Exhibited PP). The police also prepared the site plan of the place where the liquor was taken by persons including the accused (Ex. PR) in the orchard of C.M.O. Prem Singh. Blood stained soil was also taken from the place where the deceased was found dead.

5. Thereafter, the accused was arrested by the Police on 22-5-1992. While in custody, he made disclosure statement u/s 27 of the Indian Evidence Act in the presence of witnesses Anant Ram and Lal Dass (Ex. PC). Consequent to this disclosure statement of the accused, shirt (Ex. P2) belonging to the deceased, kept hidden under a stone in the orchard of Shri K.K. Dhar was recovered. It was identified by the complainant to be that of the deceased. It was sealed and taken

into possession (Ex. PD). Police also recovered broken bangles, a shoe (Ex. P-8) of the right foot of the deceased, "Cappal" of the accused (Ex. P-7). Blood stained soil and grass was also taken in possession in addition to bottle (Ex. P4) glass (Ex. P3), Cigarette Pack (Ex. P5), pieces of cucumber (Ex. P6) vide recovery memo Ex.PB from the orchard of C.M.O. Prem Singh. It also took into possession under-wear of the accused (Ex. P10) his "Pajama" (Ex. P 11) vide memo. Ex.PG since the blood stains were noticed on them. They were sealed with seal impression "H" Site plan (Ex. PS) of the place wherefrom the shirt (Ex. P2) belonging to the deceased was got recovered by the accused was also prepared. Though another disclosure statement of accused dated 25-5-1992 (Ex. PL) jean-pant and white shirt was recovered from his house in the presence of witnesses. During the course of investigation, it was also found that Prem Chand and Room Singh were taking liquor with the accused and the deceased was brought to the place by Lekh Raj who was already intoxicated. All of them started taking liquor again in the orchard of C.M.O. Prem Singh. The accused was instigating others to commit the rape on the deceased but Prem Chand and Room Singh refused and left the place, while Lekh Raj and accused remained there pulling the deceased towards each other side. Finally, she was found in the company of the accused alone in the orchard of K.K. Dhar, located adjacent to the orchard of C.M.O. Prem Singh. There, the final occurrence took place. It was witnessed by Maya Devi (P.W. 1), Smt. Pushpa Devi (P.W. 2) Jog Dassi, Kalu (P.W. 5) and Thakur Dass. Soon thereafter she was found dead in GRAHAN NULLAH nearby. After collecting the relevant evidence in the case, the accused were challenged before the trial Court. The trial has ended in the conviction of the accused and acquittal of Lekh Raj. The accused has moved this appeal through jail. Since he was not represented by a counsel and looking to the facts contained in the grounds of appeal, we appointed Shri V.D. Khiota an experienced lawyer of this Court to appear for the accused and defend him in this case.

6. Shri V.D. Khiota vehemently assailed the trial Court's decision and pleaded that the appellant is totally innocent and the case against him is not supported by satisfactory evidence, therefore, the conviction is liable to be set aside. In support of his submission, extensive reference was made to the evidence and the impugned decision.

7. Ms. Shyama Dogra, learned Deputy Advocate General seriously opposed these contentions. Her submission is that both the offences have been proved against the accused beyond all reasonable doubt. It is accused who has committed the offence and in face of clinching evidence-direct as well as medical no other finding except that of guilt could be given by the trial court and therefore, the decision is absolutely in accordance with law and evidence placed before the court by the prosecution. We proceed to examine these rival submissions of the learned counsel for the parties now.

8. The first question to be examined is whether the incident was seen by the

witnesses cited by the prosecution in support of its case. We notice her that Smt. Maya Devi (P.W. 1) has stated that on 20-5-1992 at about 3 p.m. she was in the orchard of K.K. Dhar in village Kasol. She suddenly heard noise from a close quarter and saw the accused committing sexual intercourse on the deceased who was naked up to her breast. The lady was crying. She not only noticed the blood coming from her private parts but also injuries on her face. She asked the accused what he was doing and asked him to leave the deceased. But the accused picked up a stone in order to throw the same at her. She left the place and reported the matter to Smt. Pushpa Devi. (P.W. 2) Pradhan of Mahila Mandal. She further states that "Pajama" of the accused was down up to his knees while he was committing sexual intercourse. Pushpa Devi (P.W. 2) also came to the spot and asked the accused to release the deceased but he did not pay any attention to it and again picked up a stone. She was told to call some male persons to the spot. She shouted for Thakur Dass and Kalu Ram who were doing spraying work in the orchard of C.M.O. Prem Singh. Both these persons came to the spot and the lady pointed out the accused and deceased and then they left the place. Next morning she found dead body of the deceased in the Nullah nearby in a naked condition. She got scared and came to her house. Next day when the complainant came there in search of the deceased, the occurrence was narrated to him. According to her, the accused was last seen with the deceased. The version of Maya Devi (P.W. 1) has been completely corroborated by Smt. Pushpa Devi (P.W. 2) and Kalu Ram (P.W. 5). According to Room Singh (P.W. 4), on 20-5-1992 at about 2 p.m., he was sitting with one Prem Chand in the orchard of Prem Singh in village Kasol where they were taking liquor. Accused joined them and he paid Rs. 200/- to the accused for bringing two more bottles of liquor and all of them started consuming the same. Meanwhile, Lekh Raj came along with the deceased and joined them. Besides, liquor they took cucumber "salad". They were smoking cigarette and also had some mangoes. During this time the accused was telling them to rape the deceased. Room Singh as well as Prem Chand declined. There was scuffle between the accused and the deceased. He as well as Prem Chand left the place leaving the deceased, Lekh Raj and accused there. The accused and Lekh Raj were pulling the deceased to their sides from her hands and breast.

9. From the perusal of the statements of eye-witnesses, it is plainly clear that the deceased was brought to the place of occurrence by Lekh Raj. The deceased was drunk and the accused took liquor along with others. During the feast he was instigating others to commit rape on the deceased. Others declined and ultimately, only he remained in the company of the deceased. He committed rape on her against her consent. Other injuries on her person and her cries corroborated it. This fact has been proved by all the eye-witnesses in their testimonies discussed hereinabove. There is no reason why these witnesses should not be believed. They have no animus against the accused. Soon after the commission of crime the body of the deceased was found in the "Nullah" nearby wherefrom it was ultimately recovered.

10. Look at the medical evidence. Doctor Roshan Lal (P.W. 11) conducted the postmortem examination of the dead body of the deceased on 23-5-1992. He noticed that the thighs, legs and feet of the deceased were stained with dried up blood. She was naked and her "Salwar" was found missing. The right hand of the deceased was stained with blood. He noticed the following injuries on her person:-

1. Abrasion marks on the right side of the face, 3 cm. x 2 cm. Abrasion was present on the left side of the chin.

2. The multiple abrasions were present on both the legs.

3. There was defused swelling of both labia and dark coloured fluid was seen at vulva. A wooden stick was seen at vulva, entering into the vagina the thorax was found normal.

11. In the opinion of the Doctor, the deceased had died due to shock and haemorrhage as a result of the lacerated wound of vaginal perineum and anal region. The probable duration between injuries and death was half hour to two hours and between death and post-mortem was about 48 to 72 hours. The viscera was also sent for chemical analysis, along with Smeez (P.W. 19) Bra (P.W. 20), Urine and the wooden stick (P.W. 21) was found inserted into the vagina of the dead body. The post mortem report is on file (Ex. PK). The medical evidence not only corroborates the version given by the eyewitnesses but also demonstrates that the death of the deceased was homicidal and she had died on account of shock and haemorrhage as a result of lacerated wound of vagina, perineum and anal region. This was the hand-work of the accused and none else.

12. There is also evidence which points out semen stains on his "Kachha" and on the pubic hair of the deceased. The accused has been found capable of doing sexual intercourse and smegma was found absent on his glans penis. The prosecution case is further strengthened by the recoveries made sequel to the disclosure statement of the accused recorded u/s 27 of the Evidence Act. These recoveries have been found proved by Lal Dass (P.W. 3) and Sher Singh (P.W. 6). No flaw has been pointed out so far as recoveries in this case are concerned.

13. Shri V.D. Khidta has pointed out contradictions and improvements in the statements in the prosecution witnesses. We do not notice any material contradictions and serious improvements in the statements of the prosecution witnesses. As a matter of fact, minor variations are bound to occur since these witnesses have their own perceptions while witnessing the incident and also for the reason that there is generally sufficient time lag between the happening of the incident and their deposition before the court. However, it has to be seen whether such improvements and variations make any basic change in the case of the prosecution tilting the balance in favour of the accused and demonstrating that the case by the prosecution is not dependable. This is not so in the present case. In our considered opinion all the prosecution witnesses have said clearly that it was the accused who has committed the crime. They could have also

involved Lekh Raj in this case, however, they have not said anything against him which demonstrates that the witnesses have given a straightforward and truthful version of the incident.

14. We have examined the trial court's decision carefully along with the case file. In our considered opinion, we see no justification to take any other view of the matter more particularly, when the trial court has dealt with the matter meticulously before recording the findings against the accused. We confirm these findings and maintain the conviction of the accused.

15. We have heard the learned counsel for the parties on the question of sentence. Again, Shri V.D. Khidta pleaded for mercy so far as the accused is concerned. Mrs. Shyama Dogra, learned Deputy Advocate General submits that it is not a fit case where leniency can be shown to the accused. The facts of the case clearly point out that the act of the accused was completely barbaric. He behaved like an animal, therefore, the punishment awarded by the trial court is already lenient, therefore, the same may not be disturbed. We considered this aspect of the matter carefully. We do not think that there is some scope for interference so far as the sentence is concerned. It is really a case where the act of the accused is totally barbaric and he does not deserve any leniency. We therefore, refrain from interfering on this aspect.

16. The net result of the aforesaid examination of the matter is that there is no merit in this appeal and the same is accordingly dismissed.