
(2013) 05 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 101 of 2013-E

Joginder Singh @ Jean

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 397, 401, 482

Immoral Traffic (Prevention) Act, 1956 — Section 5

Penal Code, 1860 (IPC) — Section 120B, 342, 354, 376, 506

Citation : (2013) 2 ShimLC 990

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : N.S. Chandel, for the Appellant; R.S. Verma, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—In terms of impugned order dated 12.3.2013, the learned Additional Sessions Judge, FTC, Chamba in Sessions Trial No. 59 of 2012, titled as State v. Anjna and others, has charged the present petitioner Joginder Singh @ Jeen for having committed offences punishable under the provisions of Section 5 of the Immoral Traffic (Prevention) Act, 1956 as also Section 376/511 all read with Section 120-B of the Indian Penal Code. The challenge in this petition, filed under the provisions of Section 397/401 read with Section 482 of the Code of Criminal Procedure is on the ground that the charges have been framed, in a stereotyped manner, against all the co-accused without any basis or material on record.

2. Having heard learned Counsel for the parties and also perused the record, I am of the considered view that petition only merits rejection.

3. F.I.R. No. 151/2012, dated 26.6.2012, was registered at Police Station Sadar, Chamba under the provisions of Sections 376, 354, 342, 506, 120-B of the Indian Penal Code.

4. As per the case of the prosecution, accused Anjana Devi, Joginder Singh and Anita conspired and kidnapped the prosecutrix, a minor girl, with an intent to procure her for the purpose of prostitution. They took her to various places where she was subjected to rape. In Chamba the present petitioner attempted to rape her. She was forced to have illicit relationship with various other persons. Police got to know of the same, found the prosecutrix and recorded her statement u/s 154 Cr.P.C., on the basis of which F.I.R. was registered.

5. As per the contents of the F.I.R showing the involvement of the petitioner, prosecutrix who is resident of village Meloh, Tehsil and Police Station, Sadar, Chamba, District Chamba, studied only up to eighth standard. Recently she had started residing at Chamba in a rented accommodation at Muhalla Mugala. She was taking training in stitching/tailoring. Here prosecutrix met Anju, who was known to her from before through Sonu, son of her uncle (mamma). On the asking of Anju, prosecutrix shifted her residence. Anju took the prosecutrix to the house of her friend Anita at Sultanpur, where one fat person whom Anju addressed as Jean (petitioner), was already present. There Anju, Anita and Jean took liquor and later on all had dinner. Later on Anju and Anita left the prosecutrix in the company of the petitioner by bolting the door from outside. Under the influence of liquor, petitioner opened her pajami and kameez and attempted to rape her. Prosecutrix resisted and raised alarm. Hearing her cries, Anju unbolted the door from outside and came inside the room. At that, prosecutrix and petitioner both wore their clothes. Thereafter prosecutrix and Anju returned to their own room. It is further alleged in the F.I.R that Anju entered into a criminal conspiracy with her co-accused, wrongfully confined her at her place and forced her to have illicit intercourse with different persons. In effect prosecutrix was subjected to prostitution and money was collected by Anju from various customers.

6. In the F.I.R., prosecutrix has clearly stated that she was taken by Anju to the house of Anita. There she met the present accused. After Anita and Anju left the room, accused fully removed her clothes and attempted to rape her. In vernacular, she has stated that "galat harkat karne laga".

7. According to the learned Counsel for the petitioner, at best accused only attempted to outrage the modesty of the prosecutrix and as such, offence would not fall within the definition of Section 376/511 but only u/s 354 of the Indian Penal Code which is intending to outrage modesty of a woman.

8. The expression "galat harkat karne laga" has to be read in the context of attending circumstances. Prosecutrix, who is minor and has studied only till class 8th, has clearly deposed that accused removed her pajami and shirt. When accused attempted, she shouted. Hearing her cries Anju unbolted the door from outside. Then both she and the accused wore their clothes. A girl coming from a rural background, has in no uncertain terms stated about the petitioner's overt acts, the only understanding of which can be rape and not outraging modesty. In this scenario, when both were naked, it cannot be said that accused had only

tried to outrage the modesty of the prosecutrix and never attempted to commit rape.

9. Hence it cannot be said that the Court below erred in framing the charges against the present accused for having committed offences punishable under the provisions of Section 376/511 of the Indian Penal Code.

10. It cannot be said that stereotyped charges have been framed against all the accused persons. Separate charges, under different provisions of the Indian Penal Code, have been framed against the accused. Role attributed to each of the accused person has been taken into account while doing so.

11. As such, there is no merit in the present petition and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of accordingly. Considering the nature of the offence, I am of the considered view that the trial needs to be expedited in the instant case. Allegedly prosecutrix who is a minor, was taken from place to place and subjected to sexual intercourse with different persons. As such, trial Court is directed to take up the case on priority basis and conclude the trial expeditiously and certainly within a period of six months. If possible, trial shall be conducted on day to day basis.

The Registrar General of this Court is directed to immediately send a copy of this order to the trial Court for compliance.