
(2010) 10 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal A. No's. 47 and 181 of 2004

Ramesh Chand

APPELLANT

Vs

State of H.P.
 State of H.P. Vs Ramesh Chand

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 378

Penal Code, 1860 (IPC) — Section 353, 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2010) 10 SHI CK 0003

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—This judgment shall dispose of the aforesaid two appeals. The first appeal, being Cr.A. No. 47 of 2004, has been filed by the appellant Ramesh Chand u/s 374 Cr.P.C. and the second appeal, being Cr.A. No. 181 of 2004, has been filed by the State of H.P. u/s 378 Cr.P.C. against the judgment of the court of learned Special Judge, Kinnaur Sessions Division at Rampur, dated 14.1.2004.

2. Briefly stated, the facts of the case are that on 29.11.2001, a report was lodged with the police by one Smt. Birma Devi at 5.15 p.m. in which she alleged that she was working as a JBT in Primary School, Aundi. There was no other Teacher or employee posted in the said School. She alleged that on the previous day i.e. on 28.11.2001, she was on duty and was checking the annual examination papers of the students of Class 5 and the accused Ramesh passed through the School and made some comments. He appeared to be under the influence of liquor. It was alleged that thereafter he came to the School where she was sitting and tried to snatch the papers. He also asked the complainant that his son Bhumeswar should come second in the class and he snatched the paper from her hand which was torn. She further alleged in the complaint that she asked the accused to leave the place but he tried to put his hand on her neck and breast and gave her beating with a danda on her shoulder which danda was

lying nearby. One Gopi Chand was watching the incident from some distance, whom she called who turned the accused out of the School. It was further alleged that the accused started giving her abuses, called her Chamari being from lower caste and that he would commit sexual intercourse with her. The accused also used indecent abuses and gave a threat to take her life. She closed the School and went back to her residence and lodged the report with the police on the next date.

3. The case was registered by the police under Sections 353 and 506 IPC and Section 3(x)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SCST Act). The accused was tried by the learned trial Court for the said offences and the learned trial Court vide its impugned judgment acquitted the accused of the charge framed against him under Sections 353 and 506 IPC, but held him guilty u/s 3(x)(xi) of the SCST Act and convicted and sentenced him to undergo SI for six months and to pay a fine of Rs. 1,000/-. In default of payment of fine, the accused was to undergo SI for one month.

4. Being aggrieved by the acquittal of the accused under Sections 353 and 506 IPC, the State has filed the appeal No. 181 of 2004, while the accused has filed the appeal No. 47 of 2004 against his conviction u/s 3(x)(xi) of the SCST Act.

5. I have heard Mr. J.S. Guleria, Assistant Advocate General for the State and Mr. Rajiv Rai, Advocate, for the accused and have gone through the record of the case.

6. On appraisal of the record of the case, it is clear that the complainant Birma Devi has stepped into the witness box as PW-1 and reiterated the assertions made by her in her complaint lodged with the police. In her statement, she stated that the accused had given her a danda blow, while she was on duty and called her Chamari and also told that he would rape her. However, she did not state in her statement that any threat was also given at that time. A perusal of her statement further shows that she stated that prior to her posting at Audi, she was posted at Lauti and had also filed a complaint against two persons at Lauti and they were acquitted by the court, though she denied her knowledge in case they were acquitted on the complaint filed by her. She admitted that there was a Committee constituted for the construction of the school building at Audi since 2000 and she was the Secretary of the said Committee, while accused Ramesh was the Pradhan. Ishwar Singh was the Pradhan of the said Committee prior to accused Ramesh Chand. She denied the suggestion that the BDO had visited the School one day prior to the incident i.e. on 27.11.2001. However, she admitted that a sum of Rs. 50,000/- was withdrawn by the Pradhan under the signatures of the Pradhan and the Secretary and she happened to be the Secretary of the said Committee. However, she denied the suggestion that the accused being the next Pradhan had demanded the details of all expenditure when he became the Pradhan of the Committee. She admitted that the Secretary was supposed to maintain the accounts of income and expenditure, but she had not maintained

any record. She stated that the stick was the property of the School but the said stick has not been produced during the trial of the case. She admitted that the stick is prohibited in the School. She denied the suggestion that when the accused demanded the details of expenditure from her, then she filed a false complaint against him. She stated that the School timings were from 10.00 a.m. to 3.30 p.m. and the students of Class 5 were present at the time of incident. In her examination-in-chief, she has also stated that the students of the School had also seen the incident. However, she did not name any student from the School to have witnessed the incident, but only named one Gopi Chand having witnessed the occurrence.

7. The said Gopi Chand, who had also been named in the FIR, has been examined as PW-8. This witness has stated that he was a student of another School and was only passing through the School when he learnt about the occurrence and the accused and the teacher of the School were talking with each other. He is a chance witness and there is no occasion for his being present outside the School. He admitted that he did not enter the School premises and stated that the accused had complained that she was not teaching the students properly and that he would commit sexual intercourse with the complainant Birma Devi. He clearly stated that the accused did not say anything else to the school teacher in his presence, meaning thereby that he had not called the complainant Chamari or gave a threat to her, as alleged by her in the report lodged with the police. PW-2 Gopi Chand further stated that the school teacher lifted the stick and tried to hit the accused, but the accused caught the stick and thereafter the school teacher took her shoe to beat the accused. He further stated that thereafter the accused left the place. Therefore, it is clear that this witness had nowhere stated that the complainant was hit by the accused with a stick and on the contrary the complainant attempted to give beatings to the accused with her shoe, as per PW-2 Gopi Chand. This witness was declared as hostile, since he had made improvements at some places, as has come up in his statement. He stated in his cross examination that the accused had also beaten the complainant Smt. Birma Devi. He again stated that his statement was recorded by Dy. S.P. He also stated that when the accused had used abusive language against the complainant Birma Devi, she tried to hit the accused with a stick and in defence the accused hit Birma Devi with a stick. He denied the suggestion that the accused was under the influence of liquor. He also stated that the students were also present in the School, but not naming those students in the report makes the statement of the complainant doubtful. He further stated that the accused told the complainant that she does not teach the students throughout the year but there were no allegations that the accused had asked the complainant that his son should be passed in second division or gave a threat to the complainant or called her by her caste, as stated and alleged by the complainant. In further cross examination, PW-8 Gopi Chand also admitted that Birma Devi was not checking answer sheets.

8. The prosecution had also examined another witness, namely, PW-4 Ravi Kant,

a student of 7th class, as an eye witness, though he was never named in the report lodged by the complainant with the police after one day when the complainant must have cooled down and recollected all the facts. PW-4 Ravi Kant has stated that the accused snatched the answer sheets from Birma Devi and answer sheet was torn. He further stated that Gopi Chand also came there. The accused inflicted stick blow on the body of Birma Devi. He further stated that the accused told Birma Devi that she is Dagini, Chamari and also told that he would commit sexual intercourse with Birma Devi, which was never stated by Gopi Chand, the only witness named in the FIR and also examined as a witness apart from this witness. He is a student of Class 7, though the complainant was checking the papers of 5th class and the introduction of the name of PW-4 Ravi Kant as an eye witness casts a doubt about the version of the complainant. PW-4 Ravi Kant also stated that 7 students were present in 5th class, but none had been named or examined in the court. He also stated that Birma Devi had brought him to the court premises and none from his family has come to the court premises along with him. He stated that the accused enquired from Birma Devi that why his son scored less marks in the answer sheet, which was not the case of the complainant and her case was that the accused had asked her that his son should be passed in second division.

9. Another eye witness Master Rajni Kant has been examined as PW-3, who was not named in the report lodged by the complainant and that makes his presence at the spot doubtful. He stated that the accused had asked that complainant Birma Devi that his son should come second in examination, which was not so stated by other witnesses, as discussed above. He stated that the accused picked up stick and inflicted blows on the person of Birma Devi, though the complainant had referred to only one blow. PW-3 further stated that the accused abused Birma Devi and told that she is Dagini and belongs to inferior caste and that he would commit sexual intercourse with her. Thereafter, Gopi Chand came and took the accused Ramesh Chand outside the school building. He denied his knowledge about the number of answer sheets lying on the table. He also denied his knowledge as to how many answer sheets had been checked by Birma Devi. He stated that he did not know about the whereabouts of the two torn pieces of the answer sheet. However, the original answer sheet Ext.PW-1/C shows that it was not torn into two pieces. PW-3 further stated that Birma Devi did not lift the stick, which was stated by other witness. He is not aware about the injuries sustained by Birma Devi from the stick blow. This witness also came up with the plea that the accused told the complaint that she was not teaching the students throughout the year. He denied the suggestion that he was tutored by the learned Public Prosecutor and Birma Devi. However, he admitted that Birma Devi had provided meals to them today and she is also related to him as Bhabhi (elder brother's wife) from the village.

10. The prosecution had also examined another student PW-2 Shakuntla of Class 5, who stated that the complainant was checking the answer sheets and the accused asked that his son be declared first in the examination, though the

complainant had stated that the accused asked her for passing his son in the second division. She stated that the accused told Birma Devi that she belongs to lower caste and that he would commit sexual intercourse with her, but did not state that any threat was given at that time. She stated that the accused inflicted stick blow upon Birma Devi and he, apart from other witnesses, had seen the incident, but the names of such witnesses do not find mention in the FIR. In cross examination, she admitted that the complainant is her maternal aunt and all the students have come with her to the court premises. She admitted that Birma Devi provided lunch to all the students who came in the court yesterday. She also admitted that Birma Devi tutored all the students, who came in the court today. She stated that she was sitting separately when Birma Devi was checking the answer sheets. She stated that the accused also inflicted stick blows in her presence, though the complainant referred to only one stick blow on her shoulder. This witness admitted that admission to the son of the accused was not given for two months and the BDO etc. had come to the School prior to the incident which supports the defence plea that there were allegations against the complainant for mis-appropriation and they may have come in that connection. She has also come up with the statement that Birma Devi was checking the answer sheets at the relevant time, but no answer sheets checked by the complainant PW-1 Birma Devi had been produced on record, except the answer sheet of the son of the accused and the same has been exhibited as Ext.PW-1/C. However, the name of the student was not mentioned in the said answer sheet, but it appears to have been added with red pen with which the marks have been allotted. In case the prosecution had produced in evidence all the answer sheets checked by the complainant PW-1 Birma Devi to show that how many papers were checked by the complainant and when these were submitted to the authorities, it would have given credence to the plea of the complainant that she was checking the papers at the relevant time.

11. From the above discussion, it is clear that in view of the contradictions in the statements of the prosecution witnesses and the infirmities in the prosecution case, the statement of the complainant is not such on the basis of which conviction could have been made by the learned trial Court. The learned trial Court had been very casual in its approach when it referred to the case law in general, but did not refer to the infirmities in the statements of the prosecution witnesses or the contradictions that had come up on record and expressed no opinion that the only eye witness examined had nowhere stated that the accused had called the complainant by caste, which was a material part of the statement.

12. Therefore, it follows from the above discussion that the findings of the learned trial Court convicting the appellant under the SCST Act are liable to be set aside and the appeal filed by the appellant Ramesh Chand against his conviction is accepted and the appeal filed by the state of H.P. against the acquittal of the accused under Sections 353 and 506 IPC is dismissed accordingly. A certified copy of the judgment be placed on the record of Cr.A. No. 181 of 2004. The bail bonds furnished by the accused Ramesh Chand shall stand

discharged.

13. Both the appeals stand disposed of accordingly.