
(1993) 07 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Criminal M.P (M) No's. 543 and 710 of 1993

Rattan kumar Boardwaj and Shiv Dayal and Another

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1994) 1 ShimLC 366

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : Jagdish Vats, in Cr. M.P. M No. 710 of 1993 and M.S. Chandel, in Cr. M.P. M No. 543 of 1993, for the Appellant; Om Prakash Sharma, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sood, J.—This order shall dispose of two Criminal Misc. Petition (M) Nos. 710 of 1993, (Rattan Kumar Bhardwaj v. State of H.P.) and 543 of 1993 (Shiv Dayal and Anr. v. State of H.P.), respectively, arising out of the same impugned F.I.R. No 186 of 1993 dated 1st June 1993, of Police Station, Rohru, Tehsil Rohru District Shimla, and involving common questions of law and facts.

2. Rattan Kumar Petitioner is Naib-Tehsildar. He had earlier moved a petition for his bail registered as Cr. M.P. (M) No. 487 of 1993 which was rejected vide orders of this Court dated June 4, 1993. However, it was observed that the Petitioner shall be at liberty to file fresh bail application seeking his release on bail if the putting of the challan is delayed or on other ground(s) if they emerge from the entire material collected by the prosecution agency.

3. Shortly stated, the incident relates to the commission of the offence of rape upon Smt. Sheela Devi, a married woman, in the absence of her husband, of village Kadhiun Teh. Rohru on May 29, 1993, in the evening, in between 7 p.m. to 8.30 p.m. Record shows that Sh. Mohan Singh, her husband, reached home

and he ultimately on coming to know of this fact simply reported the matter to the police of Police Station Rohru vide D.D. No. 8 dated May 31, 1993. After lodging the report without giving details thereof, he told the police that he would come back after getting full information as to the manner in which the offence had been committed. However, the police on the following day reached the spot, recorded the statement of the victim and registered a Criminal Case vide the impugned F.I.R.

4. The prosecution case is that Rattan Kumar alongwith his co-accused Shiv Dayal, posted as Patwari at Pujarli No. 4, Sub-Tehsil Tikkar and Kalag Ram, Up-Pradhan of Local Panchayat had visited village Kadhiun in connection with some official work on the date of occurrence. All the accused visited the house of the prosecutrix in between 6.00 p.m. to 7 p.m. when the two brother-in-laws of the prosecutrix besides her three children, eldest being of 11 years, were present at the house. The two brother-in-laws, referred to above, were sent by the accused persons under the pretext of bringing liquor and eatable like eggs and thereafter the accused indulged in sex with the lady without her consent and against her will.

5. The police investigated the matter, got the prosecutrix medically examined and collected other material relevant to the occurrence. Petitioner Rattan Kumar, Naib-Tehsildar is a stranger to the family of the prosecutrix. The case of the prosecution further is that the Up-Pradhan Kalag Ram attempted to allure the prosecutrix for sex indulgence in the first instance and on her refusal he forcibly committed rape upon her in the kitchen where she was all alone at the material time and other accused were in the adjoining room Thereafter the other Petitioners also indulged in sex with her turn wise without her consent or against her will. Further allegation is that the two brother in-laws returned with liquor and eatable after more than an hour at the residence of the prosecutrix but the prosecutrix did not narrate the incident to either of them. The accused party enjoyed the drinks However, Petitioner Rattan Kumar is stated to have pretended to be over-drunk and stayed for the night at her place during which period he is stated to have taped the lady again. He left her house early in the morning and went to the house of Ram Rattan. It is contended by M/s M.C. Chandel and Jagdish Vats, learned Counsel appearing on behalf of the Petitioners, Rattan Kumar and others that in view of the material collected by the investigating agency, no case is made out against either of the accused person. According to them, Petitioner Rattan Kumar-Naib-Tehsildar, had come to the village on official tour as per the tour programme annexed with the petition and he had conducted the demarcation proceedings on the basis of the complaint made by Ram Rattan aforesaid against Shri Mohan Singh, the husband of the prosecutrix. It is then pointed out by the learned Counsel that on demarcation being carried out it was found that Shri Mohan Singh, the husband of the prosecutrix, had encroached upon the path and had caused obstruction to said Ram Rattan Since the said demarcation on the spot went against the husband of the prosecutrix, he harboured ill-will against the accused and falsely implicated them.

6. Learned Counsel for the Petitioners have further submitted that the material collected by the prosecution in the form of medical evidence and the statements of the witnesses do not disclose the commission of the offence as there is no eye-witness nor the attenuating circumstances collectively corroborate the alleged happening on the date time-broad-day-light. Learned Counsel have urged that the time of the commission of the offence during broad-day-light in the presence of the children in the kitchen-adjoining room, where the children were sitting, belies the prosecution version. Apart from it, there is no evidence of resistance put up by the prosecutrix nor the medical certificate refers to any injury on her person nor she narrated the incident to her near relations-brother-in-laws on their return alongwith the liquor and eatables admittedly brought by them. They reinforce their submissions by submitting that this Court has to see whether the material reflects reasonable grounds qua the guilt of the accused. Relying on the observations of the apex Court in Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, it is pointed out that the proper test of whether bail should be granted or refused is, whether it is probable that the Defendant will appear to take his trial and this test should be applied by reference to the following considerations:

- (1) The nature of the accusation....
- (2) The nature of the evidence in support of the accusation....
- (3) The severity of the punishment which conviction will entail....
- (4) Whether the sureties are independent, or indemnified by the accused person....

Support has also been sought for by the observations made in Babu Singh and Others Vs. State of U.P., In short, the crux of the arguments of the learned Counsel for the applicants is that the instant case is a case of no evidence.

7. On the contrary Pt. Om Prakash Sharma, Additional Advocate General appearing on behalf of the State has pointed out that the crime has been committed in relation to the fair sex by all the accused who are public servants According to him, it is a case of gang rape. It is contended that evidence has not to be weighed at this stage. Further the material collected by the investigating agency reflects the following attenuating circumstances:

- (i) presence of all the accused in village Kadhiun as per their own admission;
- (ii) the statements of the prosecutrix giving details as to the manner and the circumstances under which the accused indulged in sex with her;
- (iii) out of the three children the eldest is aged 11 years and not 16 years as argued by the learned Counsel for the applicants;
- (iv) visit of the accused persons in the house of the prosecutrix and bringing of liquor and eggs as per the statements of Jeet Ram and Murat Singh-brother in-laws;

(v) return of brother-in-laws Jeet Ram and Murat Singh after about 1-1/2 hours alongwith liquor and eggs from Bazar and Dogri respectively as per their statements; and

(vi) that S/Shri Jeet Ram and Murat Singh brother-in-laws used to reside separately at a distance of 2-1/2 Kms from the house of the prosecutrix where she alongwith her husband and three children use to reside.

8. I have carefully considered the entire record as also the submissions advanced by the learned Counsel for the parties.

9. At the very out-set it may be stated that so far as Rattan Kumar applicant is concerned no new circumstance has been pointed out which attracts the grant of the application in contradiction to the earlier order of rejection passed by this Court. As such his application straightway attracts dismissal.

10. However, as the other two Petitioners have approached this Court for the first time, a detailed order is being passed.

11. "Bail before Jail" is an accepted principle but its applicability, in a barbaric society, should be subjected to utmost caution and due deliberation. In other words bail is though a rule and refusal is an exception, yet while granting bail to persons accused of heinous offences, the Court should not allow themselves to be misled into the use of this section with misplaced leniency and sympathy.

12. The prevailing lawlessness and increase in crime rate requires the matter to be seriously considered. Normally, we observe that rape, molestation and eve-teasing are common offences against minor girls, young and even married women. The experience of the victims is indeed traumatic. Rape victims not only suffer humiliation, but also undergo untold miseries. Unmarried victims lose prospects of marriage and married victims face desertion by husbands. Such is the fate and after effects of the ghastly crime committed by sex perverts little realizing the consequences of the wrong committed by them. Even a woman of loose morals has self respect and dignity. She also cannot be violated by man at his pleasure. On the contrary a male dominated society often does not treat rapist with contempt. When released on bail, he moves in society like any other person.

13. It is true that while granting bail the Courts should be liberal. The accused has a right to bail under Article 21 of the Constitution which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. However, the question of grant of bail to the accused depends upon the circumstances of each case and the factors which the Court would take into consideration in a given case cannot be put in a straight jacket, but some of these have been spelled out by the apex Courts in various cases. (See: Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Another, Gurcharan Singh v. State (Delhi Administration) AIR 1978 SC 179 ; Bhargwada Bhoginbhai Hirjibhai Vs. State of Gujarat, ; Gagan Bihari Samal and Another Vs.

State of Orissa, and Harpal Singh and Another Vs. State of Himachal Pradesh,

14. In addition to the above, it may be stated here that when cases of rape come up for trial, the Courts do not insist upon corroboration if the evidence of the prosecutrix is credible and worthy of belief. In my view, rightly so. Hardly a woman, muchless a minor or young un-married girl would venture to experience herself to scrutiny in a Court by bringing false allegations of sex crime and destroy her reputation. Indeed false accusations of rape are rare. (See: Prithi Chand Vs. State of Himachal Pradesh, .

15. In the instant case there are various attenuating circumstances appearing from the material collected by the Investigating Agency which affords reasonable grounds for prima facie considering that the accused are guilty of the commission of the offence. What evidentiary value has to be attached to the statements of prosecutrix or other witnesses including Jeet Ram and Murat Singh - brother-in-laws of the prosecutrix has to be judged by the Court conducting the trial.

16. Crime against women is on increase and Courts have to be circumspect in granting bail to the accused persons accused of having committed heinous offences against the fair sex.

17. Considering over all facts and attenuating circumstances involved in the case, both the petitions entail dismissal. I order accordingly.