
(2012) 06 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 178 of 2011

Shri Kishori Lal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376, 376(2), 376(9)

Citation : (2012) CriLJ 4640 : (2012) 3 ShimLC 1382

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : N.K. Thakur, with Mr. Ramesh Sharma, for the Appellant; A.K. Bansal, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Surinder Singh, J.—The appellant was tried along with his wife Shakuntla Devi for gang rape u/s 376 (2) of the Indian Penal Code. At the end of trial Shakuntla Devi was acquitted, whereas appellant, hereinafter referred to as "the accused" was convicted u/s 376 for allegedly committing rape on the prosecutrix, in Session Case No. 9 of 2009 and Sessions Trial No. 10/2010, thus sentenced to undergo imprisonment for a period 7 years and to pay a fine of Rs. 10,000/- with the default clause.

ADMITTED FACTS.

(i) The prosecutrix (35) is a widow, having three children. All of them have been living with father-in-law PW3 Gurdev Singh. The prosecutrix was a teacher in Anganwari School at Adarsh Nagar. The brother-in-law of theprosecutrix, Shri Ajay Kumar, is a Clerk of an Advocate at Amb. The prosecutrix belongs to upper caste whereas accused is Kabirpanthi from the lower caste. He had purchased a piece of land in front of the house of the prosecutrix. Thereafter he constructed a house thereupon and sold it to one Rustam Muhammad.

PROSECUTION STORY.

(ii) Precisely the prosecution story, as emerges from the evidence on record is that on 9.7.2008 after attending the School around 3.45 p.m., the prosecutrix was at her residence. The wife of the accused Shakuntla Devi called her through her daughter Neha to her house. The prosecutrix visited the house of the accused. The accused and his wife were found present, she set on the cot. Thereafter Shakuntla Devi left her in the company of the accused and bolted the door from out- side. It is alleged that the accused forcibly tried to over-power her. She offered resistance and scuffled with him, but the accused was successful in committing the rape on her. She also alleged to have raised hue and cry but no body came to her help. However, she put on her clothes and somebody, opened the door from out side and she left her house after putting on the torn clothes. There was no one in her house, however, she informed her aunt PW2 Asha Devi, in the presence of another aunt, who was sitting in her house. They told her to inform her father-in-law who had gone to village Mangarh to mourn the death of some near relative. Next day in the evening around 9 p.m., her father-in-law (PW3) returned to the house. She informed him about the occurrence in the presence of both the aunts aforesaid. Same night, she along with her father-in-law visited police Station and reported the matter to the police.

(iii) Police after registration of the case got the prosecutrix medically examined by PW4 Dr. Neenu Narula. During clinical examination, doctor noticed that prosecutrix was menstruating. She took vaginal swabs and handed over to the police for forensic examination. On clinical examination of the prosecutrix, doctor did not find any injury on her person. The prosecutrix is stated to have taken bath and changed the clothes. The clothes were not with her; therefore, these could not be taken into possession by the doctor. The doctor issued the medico legal certificate Ext. PW4/C on 29.9.2008. The wearing apparels of the prosecutrix were taken into possession. These were sealed and sent for forensic examination. The underwear and the vaginal swabs of the prosecutrix contained human blood but no semens were detected.

(iv) Accused obtained anticipatory bail, during the investigation he was got medically examined. His underwear was also taken into possession and sent for forensic examination. There were no stains either of the blood or semen. The doctor found the accused fit to perform sexual intercourse. His medico legal certificate is Ext. PX.

After completing investigation, police presented the challan in the Court for the trial of the accused along with his co-accused wife. Both were chargesheeted for the offence u/s 376 (9) read with sub-Section (2) of Indian Penal Code was ordered to be framed vide order dated 9.11.2010 passed in Criminal Revision No. 220 of 2010. They pleaded not guilty and claimed trial. Prosecution led its evidence, the accused persons were also examined u/s 313 of the Code of Criminal Procedure. The accused persons took up the stand that accused as well as his wife both were implicated falsely in the case on account of a dispute over a

piece of land which was purchased by him in front of the house of the prosecutrix but the learned trial Court disbelieved this version.

2. At the end of the trial, Shakuntla Devi co-accused was acquitted, whereas accused her husband was convicted and sentenced as aforesaid hence the present appeal.

3. Shri N. K. Thakur, learned Senior Advocate duly assisted by Mr. Ramesh Sharma, Advocate, vehemently argued that the learned trial Court did not appreciate the evidence on record in the right perspective and unduly attached too much importance to the statement of the prosecutrix. There are inherent probabilities in her statement which make the prosecution case a suspect which were totally ignored by the learned trial Court.

4. Contra Shri A.K. Bansal, learned Additional Advocate General supported the impugned judgment and submitted that the statement of the prosecutrix is worth inspiring confidence and defence taken by the accused could not be probablized.

5. I have given my thoughtful consideration to the rival contentions of the parties and have carefully and cautiously scanned the evidence on record viz-a-viz the defence taken particularly that of the accused.

6. As already stated above, the learned trial Court did not find complicity of Shakuntla Devi wife of the accused in facilitating the alleged crime as such she was acquitted. In the instant case, the statement of the prosecutrix is of a prime importance. As a matter of fact, the very story in its inception, as introduced by the prosecutrix, causes doubt in her version that the wife of the accused had facilitated the alleged offence by nobody else than her husband which statement has to be taken with a pinch of salt. Further, in her statement it is alleged that in the scuffle, her clothes were torn which were taken into possession vide memo Ext. PW1/A but there is no reference therein that her clothes, i.e., salwar/underwear were torn. Even the shirt which is specifically alleged to have torn was neither produced before the police nor to the doctor to lend credence to her statement. Surprisingly, the salwar and the underwear aforesaid were taken into possession on 29.7.2008, i.e., after about 20 days of the alleged incident.

7. I am aware of the fact that the corroboration to the statement of the prosecutrix is not sine qua non nor the corroboration is essential. The rule, which as per the cases decided by the apex Court has hardened into one of law but that the necessity of corroboration, as a matter of fact, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge. The only rule of law is that this rule of prudence must be present to the mind of the Judge and be understood and appreciated by him. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.

8. In the instant case, the testimony of the prosecutrix cannot be taken as a gospel truth on its face value. There is no mark of scuffle either on her body or

alleged torn shirt which has not been produced. The medical evidence does not corroborate her version. She stated before the Court that on the day of the alleged incident, she was menstruating. But according to the doctor, she started menstruating on the next day of the alleged occurrence makes her version doubtful. Further, the blood stains on the trouser and the underwear of the prosecutrix are attributable to the menstrual period. There was no injury what to speak of the bleeding injury on the genital of the prosecutrix to give support to her version.

9. Further, the prosecutrix is stated to have gone to the police station on 10.7.2008 itself along with her father-in-law and Ajay Kumar to lodge the report but the perusal of the FIR shows that it was not lodged on 10.7.2008 but on 11.7.2008 at 11.05 am.

10. The prosecutrix stated that when she was being ravished by the accused, she raised hue and cry but it has come on record and also shown in the site plan that where the prosecutrix was allegedly raped, immediately abutting to that room and even adjacent thereto, tenants have been residing. The place was not secluded or isolated from other inhabited area. In case of hue and cry, the neighbours would have come for her rescue. Further the brother-in-law of the prosecutrix is a Clerk of an Advocate at Amb, he must be in know of the effect of delay in FIR. The police station is also not too far. The distance of the police Station is only 3 furlong, as stated by PW3 Gurdev Singh, from the place of the alleged incident. In this background, it is not understood as to why they took two days in lodging the FIR and why the torn shirt was not produced by the prosecutrix which could have afforded material evidence against the accused.

11. Having gone through the entire record and having heard the learned counsel for the parties, in my considered view, the case of the prosecution does not stand established beyond reasonable doubt. Accused in the inherent probabilities, as is emerging in the statement of the prosecutrix, stands not connected with the alleged offence charged. These facts appear to have been slipped from the mind of the learned trial Court while assessing the statement of the prosecutrix.

12. Therefore, for the foregoing reasons, the appeal is allowed and the impugned judgment of conviction and sentence is hereby set aside. The fine amount, if any, deposited be refunded to the accused. The accused is in jail, serving out the sentence, be released forthwith, if not required in any other case. The Registry is directed to issue release warrants to the Superintendent Jail concerned forthwith.