
(2012) 01 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 49 of 2006

Shri Prakash Chand

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313, 397, 401, 483
Penal Code, 1860 (IPC) — Section 354, 376

Citation : (2012) 01 SHI CK 0036

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, Judge

1. The judgment dated 27.02.2006 passed by learned Presiding Officer, Fast Track Court, Mandi, in Criminal Appeal No. 6/2004, 21/2005, affirming judgment dated 31.05.2004/01.06.2004 passed by learned Sub Divisional Judicial Magistrate, Sarkaghat, in P.C. No. 50-II/ 2000 convicting the petitioner u/s 354 IPC and sentencing him to undergo rigorous imprisonment for a term of one year and to pay fine of Rs. 2,000/- with default clause has been assailed in this revision.

2. The prosecution case, in brief, is that on 19.01.2000 at about 11.00 a.m. at village Huen, the petitioner used criminal force against PW-1 complainant with intend to outrage her modesty. It has been alleged that complainant was taking her cattle to the water source when she was intercepted by the petitioner, who finding complainant alone pounced upon her and caught hold of her breasts and thereafter petitioner indulged in indecent behaviour. The complainant tried to rescue herself, but could not do so. The clothes worn by the complainant were also torn when she tried to free herself from the clutches of the petitioner. The complainant raised alarm on which her father PW-3 Gurdyal Singh, sister-in-law PW-2 Khyalo Devi found petitioner criminally assaulting her. The petitioner

thereafter fled away from the spot.

3. The incident was reported on 22.01.2000 at Police Station, Sarkaghat and FIR Ex. PW1/A was registered against the petitioner for offence punishable u/s 354 IPC. The Investigating Officer during investigation prepared spot map Ex. PW7/A. On completion of investigation, report u/s 173 Cr.P.C. was prepared against the petitioner. The notice of accusation was put to the petitioner for offence punishable u/s 354 IPC. The petitioner pleaded not guilty and claimed trial. The prosecution has examined 7 witnesses. The statement of petitioner was recorded u/s 313 Cr.P.C. The petitioner pleaded his innocence. The petitioner led no evidence in defence. On conclusion of trial, the petitioner was convicted and sentenced as noticed above by the trial Court. The appeal filed by the petitioner was also dismissed, hence, petitioner has come in revision.

4. I have heard learned counsel for the petitioner and learned Assistant Advocate General for the respondent and has also gone through the record. It has been submitted by learned counsel for the petitioner that two Courts below have gravely erred in convicting and sentencing the petitioner for the offence which he has not committed. The impugned judgment is based upon mis-construction and misinterpretation of evidence. There is unexplained delay in lodging the FIR. The prayer has been made for acceptance of the revision and acquittal of the petitioner. The learned Assistant Advocate General has supported the impugned judgment. He has submitted that in such matters honour of the family is involved, therefore, generally time is taken before reporting the matter to the police. The two Courts below have rightly appreciated the material on record. There is no scope for interference.

5. PW-1 complainant has stated that on 19.01.2000 at about 11.00 a.m., she was taking her cattle to the water source. The petitioner was coming with a bundle of grass. She was alone, the petitioner threw the bundle of grass and caught hold her from her beasts. She tried to get herself released from the petitioner, but in the process her shirt was torn. On raising hue and cry, Gurdyal Singh and Khyalo Devi reached the spot. They have also seen the occurrence. On that date, she could not report the matter to the police as her husband was not in the house. She reported the matter to the police on 22.01.2000 along with her husband. The police took into possession shirt in presence of Raju Ram and Hari Singh. The shirt is Ex. P-1 which was taken into possession vide memo Ex. PW1/B. FIR is Ex. PW1/A. In cross-examination, she has stated that Gurdyal Singh is her father. There are 2-3 houses nearby. She reported the matter to the police on 22.01.2000 in consultation with her husband. The petitioner gave her beatings and even her shirt was smeared in blood. The incident continued for about one hour and she continued to raise hue and cry for one hour. The witnesses came thereafter.

6. PW-2 Smt. Khyalo Devi has stated that she was in her cowshed, she heard the noise and came out. She heard the cries of complainant. The shirt of the complainant was torn from top. The father of the complainant was also on the

spot, so also the petitioner, who caught hold the complainant from her breasts. In cross-examination, she has stated that she heard the complainant raising cries and saw nothing.

7. PW-3 Gurdyal Singh has stated that on 19.01.2000, petitioner had caught the complainant from breasts, the complainant raised hue and cry. She tried to get herself released from the petitioner and in this process her shirt was torn. The complainant is his daughter. In cross-examination, he has stated that there are 4-5 houses in his village. The incident was in progress when he reached the spot. The petitioner was hurling abuses. The petitioner took the bundle of grass and went to his home. Thereafter nothing happened in his presence.

8. PW-4 Govind Ram is the husband of the complainant. He has stated that in January, 2000, he was not at his residence, next day when he returned to home, his wife told him that petitioner misbehaved with her. He accompanied his wife to the Police Station for reporting the matter. PW-5 Raju Ram is a witness to recovery of shirt Ex.P-1 vide memo Ex.PW1/B which bears his and Hari Singh's signatures.

9. PW-6 has proved statement of the complainant. He has proved FIR Ex. PW1/A. PW-7 S.I. Amar Singh has proved spot map Ex. PW7/A. He has stated that on the path he has shown house in which four persons used to reside. The population of Village Pehad is 70-80. Ex. PW1/A FIR was lodged by PW-1 on 22.01.2000 at 11.50 A.M. PW-1 complainant has stated that petitioner threw the bundle of grass and caught hold her from her breasts. She raised hue and cry, Gurdyal Singh and Khyalo Devi reached the spot. There are 2-3 houses nearby. She reported the matter to the police on 22.01.2000 in consultation with her husband. The petitioner gave her beatings and even her shirt was smeared in blood. The incident continued for about one hour and she continued to raise hue and cry for one hour. The witnesses came thereafter. PW-2 Khyalo Devi has stated that she heard the complainant raising hue and cry and saw nothing. PW-3 Gurdyal Singh has stated that there are 4-5 houses in his village. The incident was in progress when he reached the spot.

10. The close scrutiny of the statements of PW-1, PW-2 and PW-3 reveals that there are contradictions in their statements. PW-1 has stated that her shirt was smeared with blood. The incident continued for about one hour. PW-2 and PW-3 have not stated that any blood oozed out from any part of the body of PW-1 and her shirt was smeared in the blood nor they have stated that incident continued for about one hour. PW-1 lodged the report and it has been recorded in the FIR that she does not want to get herself medically examined. There is no MLC of the petitioner on record. It is surprising that in case blood oozed out from any part of the body of PW-1, then why she was not got medically examined. The statement of PW-1 that she does not want to get herself medically examined was not enough for dispensing with her medical examination. The medical examination of PW-1 would have been an important piece of evidence. PW-1 has stated that two witnesses came on the spot after one hour when she raised hue and cry. The

witnesses are none-else, but PW-2 Khyalo Devi and PW-3 Gurdyal Singh, who is father of PW-1. PW-2 has stated that PW-1 is her sister-in-law. Thus, both PW-2 and PW-3 are close relatives of PW-1 and inference can be drawn that they are interested witnesses. It is not the case of the prosecution that no houses of the independent witnesses were nearby. PW-1 herself has stated that there are 2-3 houses nearby. PW-3 Gurdyal Singh has stated that there are 4-5 houses nearby. There is no explanation why independent witnesses were not joined in the investigation. PW-1 has stated that she reported the matter to the police on 22.01.2000 in consultation with her husband.

11. The learned Assistant Advocate General has submitted that in a case of outraging modesty of a woman, ordinarily, a woman would not put her character at stake. It has been submitted that her sole testimony is sufficient to convict the petitioner. In *Pandurang Sitaram Bhagwat Vs. State of Maharashtra*, the Supreme Court has held that ordinarily a lady would not put her character at stake may not be wrong, but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions where charges under Sections 376 and 354 of IPC have been found to have been falsely advanced. In the present case, the evidence is not of that nature where sole testimony of PW-1 is enough to prove accusation against the petitioner. The prosecution story suffers from inherent defects and contradictions. The testimony of PW-1 in the facts and circumstances of the case does not inspire confidence.

12. The learned Assistant Advocate General has submitted that in revision scope of interference is limited. The Supreme Court in *Krishnan and another Vs. Krishnaveni and another*, after noticing Sections 397, 401, 483 Cr.P.C. has held that when High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.

13. In view of above discussion, the two Courts below have erred in convicting and sentencing the petitioner u/s 354 IPC and, therefore, impugned judgment is not sustainable.

14. The result of above discussion is that the revision is allowed. The judgment dated 27.02.2006 passed by learned Presiding Officer, Fast Track Court, Mandi, in Criminal Appeal No. 6/2004, 21/2005, is set aside and petitioner is acquitted of the accusation u/s 354 IPC. Fine amount, if any, deposited by the petitioner be refunded to him. The bail bonds of the petitioner are discharged.