
(2009) 12 SHI CK 0013
In the High Court Of Himachal Pradesh

Som Pal, Rajinder Singh and Satnam Singh
Vs

APPELLANT

State of H.P.

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(2)(g)

Citation : (2010) 1 ShimLC 373

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Judgement

Surjit Singh, J.—Appellants in all the three appeals have been convicted of offence of gang rape, u/s 376(2)(g) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- each; in default of payment of fine to undergo rigorous imprisonment for a further period of two years, by the learned Sessions Judge, Sirmaur District at Nahan, vide judgment dated 16th May, 2006. Therefore, all the three appeals are being disposed of by a common judgment.

2. Prosecution's case may be stated thus. On 30.4.2004, prosecutrix examined as PW-1, went to Police Station, Paonta Sahib at 8.15 p.m. and lodged report that on that very day around 11 in the morning, she had gone to a nursery in village Matraliyon to collect fuel wood, where all the three appellants were already present and consuming liquor and that when after collecting the fuel wood, she went to take a few vines to make a rope for bundling the fuel wood, one of the appellants, namely Satnam Singh, caught hold of her, threw her on the ground and committed rape on her, after removing her Salwar. Thereafter another appellant, namely Som Pal, came there and he too committed rape on her. The third appellant, Rajinder Singh, had been encouraging the other two appellants to enjoy to the full, though he himself did not commit sexual intercourse. Names of the appellants, except that of Rajinder Singh, were not disclosed at the time of lodging of the FIR, but it was stated that the other two appellants were drivers by occupation and she knew them well.

3. Police took the prosecutrix to the house of appellant Rajinder Singh. He was not there. Then the prosecutrix was taken to Civil Hospital, Paonta Sahib and got medically examined from PW-3 Sunita Mangla, who prepared slides of vaginal swab for being sent to the Chemical Examiner. She also took into possession the clothes, i.e. shirt Ext. P-1 and Salwar Ext. P-2, which the prosecutrix was wearing. The same were made into a parcel, which was sealed by the doctor with her own seal. Blood sample of the prosecutrix was also taken. The vaginal swab and the clothes of the prosecutrix were sent to the Chemical Examiner, who vide report Ext. PW6/B reported that Salwar of the prosecutrix and the vaginal slides had human semen on them. Underwears of appellants Satnam and Som Pal were also sent to the Chemical Examiner and stains of human semen were found on those underwears also. Blood sample of the prosecutrix was also examined in the laboratory and per report Ext. PW6/C, the sample contained 94% alcohol.

4. Appellants Satnam and Som Pal were also got medically examined and the doctor gave opinion that both of them were capable of performing sexual intercourse.

5. All the appellants were charged with offence, u/s 376(2)(g) IPC and on their pleading not guilty, they were tried for the said offence.

6. Prosecution relied upon the testimony of the prosecutrix, who was examined as PW-1, the doctor, namely Sunita Mangla, who medically examined the prosecutrix and the Investigating Officer, namely PW-6 SI Gurdeep Singh, to bring the charge home to the appellants.

7. Appellant Rajinder Singh took the plea that earlier the prosecutrix used to reside in his village Rampur Ghat and there she used to indulge in immoral activities, including illicit distillation of liquor and its sale and when he and other residents brought this fact to the notice of the Pardhan of the Panchayat, she was thrown out of the village and because of this, she had falsely implicated him. Other two appellants stated that they had been falsely implicated and no crime was committed by them against the prosecutrix. They denied that they committed sexual intercourse with her.

8. We have heard the learned Counsel for the appellants as also the learned Deputy Advocate General, representing the respondent-State and gone through the evidence.

9. Prosecutrix, while in the witness box, categorically stated that on the relevant date she had gone to a nursery in village Matralion to collect fuel wood, where she saw all the three appellants consuming liquor and that when after collecting the fuel wood she went to collect a few vines for making a rope to bundle the fuel wood, she was offered liquor by the appellants and that she consumed two cups of liquor and thereafter appellant Satnam Singh overpowered her, threw her on the ground and committed rape on her and after that appellant Som Pal also committed sexual intercourse with her. She also testified that when appellants Satnam Singh and Som Pal had been committing rape on her, appellant Rajinder

Singh, who was standing at some distance, exhorted them to enjoy to the full.

10. Testimony of the prosecutrix is corroborated by Chemical Examiner's report Ext. PW6/B, per which stains of human semen were found on her Salwar Ext. P-2 and also human semen was present in her vaginal swab. Stains of human semen were also found by the Chemical Examiner, per the aforesaid report Ext. PW6/B, on the underwears of appellants Satnam Singh and Som Pal.

11. Condition of the clothes of the prosecutrix, i.e. shirt Ext. P-1 and Salwar Ext. P-2 also suggests that she had been subjected to sexual intercourse. Chemical Examiner, per report Ext. PW6/B, noticed a large number of particles of grass and straw both on the Salwar and the shirt of the prosecutrix. This fact also corroborates the prosecutrix testimony that she had been subjected to sexual intercourse in the nursery.

12. PW-3 Dr. Sunita Mangla, after perusing the report of the Chemical Examiner Ext. PW6/B, gave the opinion that possibility of the prosecutrix having been subjected to sexual intercourse was there.

13. On behalf of the appellants it is submitted that evidence on record suggests that sexual intercourse had taken place with the consent of the prosecutrix. Learned Counsel has pointed out that the prosecutrix consumed liquor, per her own deposition, as also per report of the Chemical Examiner Ext. PW6/C, and this fact suggests that she was a consenting party. It is also submitted by the learned Counsel that this fact had been concealed by the prosecutrix while lodging FIR, but she could not conceal the same while appearing as witness in the Court, because the report of the Chemical Examiner clearly indicated that she had consumed liquor.

14. We have considered the submission of the learned Counsel for the appellants. Mere presence of liquor in the blood sample of the prosecutrix or the fact that the prosecutrix admitted that she had consumed two cups of liquor in the company of the appellant does not mean that she consented to the sexual intercourse. This is especially so when all the three appellants, in their statements, u/s 313 Cr.P.C. have even denied their presence in the nursery, leave alone their pleading that the prosecutrix willingly joined them in the orgy. Appellants Satnam Singh and Som Pal have not indicated any motive for their alleged false implication by the prosecutrix, either in their examination, u/s 313 Cr.P.C. or while cross-examining the prosecutrix.

15. Third appellant Rajinder Singh though did suggest to the prosecutrix and also stated, in his examination, u/s 313 Cr.P.C, that he was responsible for the ouster of the prosecutrix from village Rampur Ghat, on account of her indulging in immoral activities, yet from the testimony of the witness examined by him, namely DW-1 Akber Ali, it appears that it was not only appellant Rajinder Singh, but all the residents of village Rampur Ghat, who objected to the alleged immoral activities of the prosecutrix and got her ousted from that village. Thus, there was no special reason for the alleged false implication of appellant Rajinder Singh.

16. It is also submitted by the learned Counsel for the appellants that the prosecutrix indulged in immoral activities and this fact by itself should be enough to disbelieve her testimony and to presume that she was a consenting party. Submission has been noticed only to be rejected. No specific instance of any immoral activity has been testified by DW-1 Akber Ali nor had any such instance been suggested to the prosecutrix in her cross-examination or stated by any of the appellants in their examination, u/s 313 Cr.P.C.

17. Otherwise also, every woman irrespective of the fact whether she is virtuous or vicious has modesty. No person can violate the person of a woman, if she happens to be a lady of easy virtue or even a prostitute, without her consent or will. Presumption cannot be, when a woman of easy virtue makes allegation of rape, that it was not a case of rape, but a sexual intercourse with her consent or that she was a willing partner to the act of sexual intercourse. Moreover, as already noticed, the appellants have even denied their presence at the place of occurrence, leave alone their claiming that it was a case of consensual intercourse.

18. Another submission made by the learned Counsel for the appellants is that though from the testimony of the prosecutrix it appears that she was raped by appellants Satnam Singh and Som Pal at the same site, the site plan prepared by PW-6 SI Gurdeep Singh, the Investigating Officer, and the testimony of the said witness show that she was subjected to sexual intercourse at two places, one marked by letter "A" and another by letter "B", in the site plan Ext. PW6/A and that the distance between the two points is 50-60 yards, per testimony of PW-6 SI Gurdeep Singh.

19. We have carefully gone through the testimony of the prosecutrix, examined as PW-1 as also the FIR. The testimony and the FIR do not suggest that the prosecutrix claimed that she was raped only at one place or point in the nursery, though at the same time the testimony and the FIR also do not suggest that she was raped at two different points. The defence did not cross-examine the prosecutrix qua this aspect of the matter. It is quite likely that if cross-examined, she would have successfully clarified the alleged discrepancy.

20. For the foregoing reasons, we are of the considered view that the conviction of the appellants for the aforesaid offence does not call for interference. Sentence of substantive imprisonment awarded by the trial Court also does not call for any interference, because it is the minimum prescribed sentence for the offence committed by them. However, we do feel that the sentence of fine of Rs. 20,000/- and the sentence of two years rigorous imprisonment in default of payment of fine is too harsh for the appellants, who are stated to be poor persons and do not have the means to pay such a huge amount of fine. Therefore, we reduce the amount of fine to Rs. 2,000/- in the case of each of the appellants. If the fine is not paid by them, they shall undergo rigorous imprisonment for a further period of six months each. Fine, if realized, shall be paid to the prosecutrix as compensation.

With the aforesaid modification, in the sentence part of the judgment of the trial Court, with respect to the amount of fine, all the appeals are dismissed.