

(2012) 07 SHI CK 0099
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 22 of 2004

State of H. P.

APPELLANT

Vs

Lekh Raj

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 354, 376, 452
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(x)

Citation : (2012) 07 SHI CK 0099

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Rajesh Mandhotra, Deputy A.G, for the Appellant; Anup Rattan, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, Judge

1. This appeal is directed against the judgment dated 18.11.2003, passed by the learned Special Court (Sessions Judge), Kangra at Dharamshala (H.P.) in Sessions Case No. 7- G/VII/2002, whereby the respondent, who was charged with and tried for offence punishable under Sections 354, 452 and 376 of the Indian Penal Code and u/s 3(x) of the Scheduled Castes and Scheduled Tribes (Preventions of Atrocities) Act, has been acquitted. According to the case of the prosecution, PW-8, Balbir Singh was working as a Mason and had also worked for the accused. On 21.10.2001, at 9:00 a.m., accused visited the house of Balbir Singh, where his daughter Ms. Sunita (PW-4) was present. He offered due wages of Rs. 2,000/- of Balbir to his daughter Sunita. She declined to accept the same without permission of her father. Thereafter, accused molested Sunita by holding her from breast. At that time, Smt. Promila Devi, mother of Sunita was inside the room. Promila Devi was a patient of schizophrenia and, as such, was in the habit of pelting stones on others. She was tied through an iron chain with the bed in

order to prevent her from doing so. Sunita escaped from the clutches of the accused and ran to the adjoining house of her aunt. Sunita informed about the incident to her. Alongwith Suman, Sunita came to her house, where they found accused raping Promila Devi. In the meantime, PW-6, Smt. Shashi Kanta and PW-7 Raghubir Singh alongwith other also reached there. Accused then attempted to escape, in which process, Sunita hit him with a danda. Accused then hurled filthy abuses and threatened to burn houses of all Jullahs including Balbir Singh in case report was made to the police. PW-8, Balbir Singh returned home at 8:00 or 9:00 p.m. He was apprised of the incident. On the next day, Balbir approached Vice President Jaishi Ram and thereafter accompanied by Jaishi Ram on 23.10.2001, Sunita went to the Police Station, Dehra, where on the statement of Sunita, FIR, Ex. PW-4/A was registered.

2. The accused after arrest was also got medically examined by Dr. Puran Chand (PW-1). PW-17, Dr. Sita Thakur medically examined Promila. She preserved pubic hair, vaginal swab, cervical swab, two vaginal smear slides and clothes of Promila Devi which subsequently were sent for chemical analysis. The report of the chemical examiner was received. Thereafter, after completing all the codal formalities, the challan was put up.

3. The prosecution has examined a number of witnesses. The statement of the accused was also recorded u/s 313 of the Code of Criminal Procedure. He has denied either molesting Sunita or raping her mother Promila Devi. He claimed himself to be innocent and claimed trial. Learned trial Court acquitted the accused on 18.11.2003. Hence, this appeal by the State.

4. Mr. Rajesh Mandhotra, learned Deputy Advocate General has strenuously argued that the prosecution has proved its case against the respondent. According to him, the learned trial Court has not correctly appreciated the evidence led by the prosecution.

5. Mr. Anup Rattan, learned counsel for the respondent has supported the judgment dated 18.11.2003.

6. We have heard the learned counsel for the parties and gone through the records carefully.

7. According to PW-1, Dr. Puran Chand, he was posted as Medical Officer in S.D.H., Dehra since 1994. On 25.10.2001, he examined Shri Lekh Raj, son of Shri Dassu Ram. According to him, the person examined by him was capable of doing sexual intercourse. He issued M.L.C. Ex. PW-1/C. He noticed following injuries on the person of accused:

1) Lacerated injury 2 cm x 2 cm z 1/4 cms. on proximal part of right little finger covered granulation tissue and scab.

2) Painful swelling present on lower half of right forearm.

X-ray was advised for right forearm AP & lateral view.

8. PW-2 is Dr. Dinesh Mehta, Medical Officer. He was posted as Medical Officer in Dr. R.P.G.M.C. hospital, Dharamshala since July 1997. On 23.10.2001, he examined Promila Devi wife of Sh. Balbir Singh. On examination, the following injuries were noticed on her body:

1. Abrasion on nose 1 cm. in size brownish in colour.
2. Bruise on left cheek 1 cm in size brownish in colour.

9. According to him, the patient appeared to be mentally retarded and was unable to give proper answers. For gynecological examination, the victim was referred to gynecologist on duty. According to him, the injuries were simple. He issued M.L.C. Ex. PW-2/B. He also obtained thumb impression of Promila on Ex. PW-2/B. He also examined PW-4, Sunita, D/o Balbir Singh, aged 14 years. She was brought with alleged history of sexual assault by Lekh Raj, son of Dasu Ram. On examination, no external injury was found on her person. According to him, for gynecological examination and opinion, she was referred to gynecologist. He also obtained signatures of Sunita on M.L.C. Ex. PW-2/C. On M.L.C., Ex. PW-2/C, Sunita had written with her own hand that she was not willing to get herself medically examined as no untoward incident had taken place with her. He had also taken consent of her father in this regard, who himself wrote on the M.L.C.

10. PW-3, Dr. B.C. Khanna deposed that on 25.10.2001, the police brought before him Promila to ascertain her mental condition. He examined her as an expert. According to him, the patient had been having mental symptoms for 6 1/2 years previously. She did not speak much and did not eat normally. Sometimes, she had hit others and was violent. There was positive history of mental illness in the family. She had taken treatment from mental hospital Amritsar and from a psychiatrist at Mandi.

11. PW-4, Sunita has testified that accused Lekh Raj is Rajput by caste. She has studied up to 8th standard. She has two younger brothers and they live with their parents. Her father was working as a Mason. Her mother was not mentally sound for the last 7-8 years. She had been stoning others. She used to chain her with the cot. On 21.10.2001, at 9:00 a.m., accused Lekh Raj came to their house and at that time, she and her mother were alone. Her father had gone for work. The accused handed over an amount of Rs. 2000/- to her. She declined to accept the money as they were prohibited by their father to receive any money from others. According to her, the accused held her from breast and also teased her. He then ran away. At that time, her mother was lying on the bed, with which she was chained. Thereafter, she went to the house of her aunt Suman and apprised her about the entire episode and also told her that the accused was giving wages of her father, which she declined and then he caught hold of her from breast and then she ran away and came to her house. Her aunt then came up to the retaining wall below which their house was located. She did not go to her house due to fear of pelting stones by her mother. In the meantime, her uncle Raghubir came there who went to their house. She also accompanied him. On reaching

house, they saw accused having kept his pant on one side. Accused has removed salwar of her mother, which was kept on one side and her shirt from both sides was torn. According to her, the accused was raping her mother at that time. She further stated that in the meantime, Suman, Saroj, Shashi and other villagers came there and then accused put on his pant. He was questioned by Shashi Kanta as to what he was doing. Shashi Kanta hit the accused with a danda. They were standing on the one side of the door and accused ran away through another door. While running, he threatened that in case any complaint is made to the police, he will burn their houses. She further stated that thereafter, Up Pradhan Jaishi Ram was apprised. He assured that the accused could not cause any harm. They went to the police Station on 23.10.2001. Her father, mother, Saroj, Shashi Kanta and she also went to Police Station, Dehra, where F.I.R. Ex. PW-4/A was lodged. She alongwith her mother were brought by the police to Dharamshala hospital. She declined the medical examination as she was not raped. She also admitted in her cross-examination that on the way to their house, there are houses of Lakhu Ram, Jaswant Singh and Hari Ram. According to her, Des Raj and Yashpal also reside in their Behra (compound). She has also admitted that the wife of the accused had also come to their house. She remained in their house for 3-4 hours. She also admitted that Biradri of upper Behra had gathered. She has also admitted that in upper Behra (compound), Biradri members questioned the accused. She further admitted that from retaining wall behind their house, nothing is visible inside their house.

12. PW-5, Promila, wife of Balbir Singh could not be examined due to her unsound mind. According to PW-6 Shashi Kanta, Promila, wife of Balbir Singh is of unsound mind. They used to chain her with a cot. On 21.10.2001, Renu, d/o Sh. Des Raj came to their house and informed that Lekh Raj had entered house of Balbir and requested her to go there. She then went to the house of Balbir Singh. When she reached there, Raghubir, Suman, Kalapati, Chanchla and Saroj were already there. They came down and saw accused having taken off his pant and removing salwar of Promila. Accused was raping her. She asked accused what he was doing, upon which, the accused hurled abuses on them. The accused put on his pant and started running. In the meantime, she hit him with a danda. According to her, there were 15 houses of Jullahs in their village. At that time, Balbir Singh was not in the house. She has admitted that there are 15-20 persons living in Behra (compound) of Balbir. According to her, the house of Des Raj is also in the same Behra (compound). She also stated that the daughter of Des Raj had come to call her. When she reached on the spot, all residents of that Behra (compound) had already gathered there. She could not say what had happened prior to her reaching the spot, but she saw accused committing rape. When she reached the spot, Raghubir was there. She was the first to go near house of Promila and other ladies stood around to prevent escape of accused. She admitted in cross-examination that wife of accused had also come to the spot at about 10:00 a.m. and remained there for about 4-5 hours.

13. PW-7, Sh. Raghubir Singh has testified that the house of Balbir is on upper

side from his house. According to him, on 21.10.2001 at about 9 or 9:15 a.m., he had gone to cut grass from fields near his house. When he was cutting grass, Sunil Kumar, resident of their Behra (compound), came and informed that a person had entered the house of Balbir. He then came running and above retaining wall saw ladies of Behra (compound) standing, including Suman, Shashi Kanta, Saroj and 2-3 other women. Thereafter, he jumped from danga and stood in front of the door of the house of Balbir. He further deposed that he saw from the door that accused had removed his pant and also salwar of Promila and was committing rape. In the meantime, Shashi Kanta, Sumna Devi and 3-4 other ladies also came. He called ladies to prevent escape of the accused. Shashi Kanta hit the accused with a danda and thereafter he ran away. According to him, Neetu, daughter of Balbir told him that she was caught from breast by the accused, but she escaped from him. He further stated that Pardhan of their Panchayat made inquiries from the accused and wife of the accused also came there.

14. PW-8, Balbir Singh is the husband of the prosecutrix Promila Devi. According to him, his wife is suffering from mental ailment since 7-8 years. He came back from work. He was informed by his daughter Sunita that the accused came and caught her from chest and also teased her and that she escaped and informed the villagers. She saw accused raping Promila on the cot. He made enquiries from the residents of Behra. He further stated that due to night, he could not go anywhere and on the next day, he went to Pradhan Jaishi Ram and reached there at 9:00 p.m. On the next day, he, his daughter Sunita and his wife Promila went to Police Station. On the basis of statement made by Sunita, police recorded the F.I.R. Police took his daughter and wife to Dehra hospital, but the lady doctor was not available. They were brought to Dharamshala hospital. He has admitted in his cross-examination that on 22nd, he called a doctor to his house for treatment of Promila. Thereafter, he tried to contact telephonically Pardhan Panchayat, but he was not in the house. He also stated that he was told by his daughter that accused burnt chillies. She also told that chillies were taken by him from their house and burnt them by lighting fire in Chullah.

15. PW-9, Jaishi Ram was Up Pardhan of Gram Panchayat Rodi Kodi. According to him, on 21.10.2001 at 2:00 p.m., he received a telephone from Babu Ram Panch, informing that Lekh Ram had been apprehended in the house of Balbir Singh in village Rodi-Kodi. Thereafter, he took two panches and went to the house of Balbir Singh. According to him, by that time, many persons had gathered in the compound of the house. He was informed by Shashi Kanta and others that accused had raped Promila, wife of Balbir Singh and also that he molested the daughter of Balbir, namely, Sunita by holding her from breast. According to him, accused was also there alongwith 2-3 persons of his village. He then questioned the accused why he had come there. Accused told him that he had come to deliver money. He told him that when Balbir was not in the house, he should have gone back. Accused told him, that he burnt chillies in the fire in order to cure Promila. According to him, at about 7:00 or 7:30 p.m., Balbir came

his house on 22.10.2001 and requested him to accompany him to the police station. He told him that since it was dark, they would go in the morning. On 23.10.2001, they went to the Police Station, Dehra.

16. According to PW-15, Sh. Santosh Patyal, he was posted as S.D.P.O., Police Station Dehra in the year 2001. He was present in the Police Station, Dehra when Sunita alongwith her parents and other persons came to the Police Station. Sunita lodged the F.I.R. Promila and Sunita were sent to SDH, Dehra for medical examination vide application Ex. PW-2/A. He deposed that as lady doctor was not available at Dehra, they were taken for medical examination to Zonal Hospital, Dharamshala. He prepared the spot map Ex. PW-15/A. He has recorded the statements of witnesses. The accused was arrested. During interrogation, he revealed washing of his undergarments, which he was wearing at the time of incident. From his house, he produced one underwear, Ex.P-3. It was sealed and taken into possession vide memo Ex. PW-7/A. He also procured treatment record of Promila from her husband mark-1 to 14 and Ex. PW-8/B, which were also taken into possession vide memo Ex. PW-7/B.

17. PW-17, Dr. Sita Thakur, Medical Officer has examined Promila on 24.10.2001. She issued M.L.C., Ex. PW17/A after perusing the chemical examiner's report Ex. PW16/A. There was no evidence of recent sexual intercourse. According to her, if there had been forcible intercourse with the prosecutrix, then in addition to injuries found by her on her person, there would have been also some injuries around mouth, breast, lips and private parts. According to her, forcible rape on hard surface may cause injury on back and the lower part or any part of body.

18. In the present case, the incident has taken place on 21.10.2001 at 9:00 a.m., however, the F.I.R. has been registered on 23.10.2001 at 3:00 p.m. PW-8, Balbir Singh came back in the evening on 21.10.2001. The F.I.R. could be recorded on the same night or in the morning of 22.10.2001. According to PW-8, Balbir Singh, he went to the house of Up Pardhan Jaishi Ram in the evening. PW-9, Jaishi Ram has told him that they would go to the Police Station in the morning. However, fact of the matter is that F.I.R. has been registered at 3:00 p.m. on 23.10.2001. The delay in registering the F.I.R. has not been explained satisfactorily. According to PW-4, Sunita Devi, the accused has run away from the spot. PW-6, Smt. Shashi Kanta has also deposed that the accused has run away. It has come in the statement of PW-6 that wife of the accused had also come on the spot at about 10:00 a.m. and she remained there for 4-5 hours. It has come in the statement of PW-7, Raghubir Singh that about 30-40 persons had assembled at the spot. The Up Pradhan of the Panchayat made enquiries from the accused in the presence of Balbir. PW-9, Sh. Jaishi Ram has also deposed that accused alongwith two three persons of his village was present there. He made enquiries from the accused.

19. It has come in the statement of PW-8, Balbir Singh that he was told by his daughter PW-4, Sunita that the accused has burnt chillies in the Chullah. PW-9, Sh. Jaishi Ram has also deposed that the accused has told him that he has burnt

chillies to cure Promila Devi. However, as per the prosecution story, the accused came and tried to hand over a sum of Rs. 2000/- to PW-4, Sunita. She declined the same. Thereafter, he molested her and raped Promila Devi. It is not the case of the prosecution that thereafter accused burnt chillis to cure Promila Devi. It also casts doubt in the story of the prosecution, the manner in which the incident might have taken place.

20. PW-17, Dr. Sita Thakur issued M.L.C. report after perusing the chemical examiner's report Ex. PW-16/A and has opined that there was no evidence of recent sexual intercourse. According to her, if there had been forcible intercourse with the prosecutrix, then in addition to injuries found by him on her person, there would have been also some injuries around mouth, breast, lips and private parts.

21. According to the report of the Chemical Examiner Ex. PW-16/A, on the Salwar, Kameez of Poromila Devi, vaginal smear and slides, pubic hair, vaginal and cervical swabs and on underwear of accused neither semen nor blood was found. PW4, Sunita has refused to get herself medically examined by a gynecologist.

22. There is no trustworthy evidence led by the prosecution to prove the charge u/s 3(x) of the Scheduled Castes and Scheduled Tribes (Preventions of Atrocities) Act, except the self serving statement of PW-4, Sunita Devi. Now, as far as PW-6, Smt. Shashi Kanta is concerned, there is no averment that the accused uttered words "Jullahas" to her. According to her, while fleeing, the accused has stated that if the matter is reported to the police, he would burn the houses of "Jullahas". According to PW-7, Raghubir Singh, the accused has threatened to burn the houses of "Jullahs". Consequently, the prosecution has failed to prove the charge u/s 3(x) of the Scheduled Castes and Scheduled Tribes (Preventions of Atrocities) Act against the accused. The prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt. In view of the abovesaid position, we see no reason to interfere with the judgment of the trial Court. Hence, the appeal is dismissed. Bail bonds are ordered to be discharged.