

(2021) 01 SHI CK 0244

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.2354 Of 2019

State Of Himachal Pradesh

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 164, 313, 378(3)

Indian Penal Code, 1860 — Section 354, 451, 506

Protection Of Children From Sexual Offences Act, 2012 — Section 11

Citation : (2021) 01 SHI CK 0244

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : S.C. Sharma, Piar Chand

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present petition is maintained by the applicant/State under section 378 (3) Cr.P.C. for grant of leave to file an appeal against the judgment,

dated 06.07.2019, passed by learned Special Judge, Bilaspur, District Bilaspur, H.P. in Sessions Trial No. 18/7 of 2018, whereby the non-

applicant/accused/respondent (hereinafter referred to as "the accused") was acquitted for the commission of offence punishable under Sections

354, 451 and 506 Indian Penal Code and Section 11 of the POCSO Act, 2012.

2. Tersely, the facts of the case, leaving the fiddling details, are summarized as under:-

As per the prosecution, on 10.04.2018, a police team was present at village Bhager where, at about 03:00 p.m., Station House Officer received call

from Sh. Kishori Lal, Up-Pradhan, informing that some unknown person was

nabbed by local people, who had purportedly committed indecent acts with a minor girl. After receiving the information, Police rushed to the spot. The statement of the victim/prosecutrix (name withheld) was recorded under Section 154 Cr.P.C., wherein she stated that she is a student of +1 Class in a School at Ghumarwin and resides with her grand parents in village Takrehra. She used to go to a local bowri (water spring) near Takrehra School regularly. About three months back, a boy (accused), who is a resident of village Manjher, used to come to that bowri and he attempts to talk to her. Initially, for 3-4 time, she refused to talk to the accused, however, he started following her up to the bowri and they started talking with each other regularly. The accused gave his mobile phone to the victim and threatened her that in case, she refused to accept it, then he will defame her and also do away with her life, so she kept the phone and accused started making calls to her. Thereafter, as per the prosecutrix, during holidays, she came to her parental house and stopped picking up the calls of the accused. On 09.04.2018, around 7:30 p.m., when she was cooking food at her home, accused entered the room and caught hold of her and starting touching her private parts. As per prosecutrix, on this she raised alarm, ran to the lintel of her house and called her mother, who was working in the cow-barn. The accused called her from her own phone and started threatening her with dire consequences. In the interregnum, as per prosecutrix, her mother, uncle and aunt also came there and on seeing them, the accused fled away. The prosecutrix narrated the entire story to her mother, who informed the incident to Up-Pradhan, Sh. Kishori Lal. At about 02:00 p.m., when the prosecutrix, alongwith other family members, was busy in the household work, the accused again came there and caught hold of her. As per prosecutrix, she raised hue and cry, on which, her family members came there and apprehended the accused. The incident was again informed to the Up-Pradhan with a request to lodge a complaint against the accused. The statement of the prosecutrix formed basis for registration of FIR against the accused. Police visited the spot and prepared the spot map. The accused was arrested and during the course of personal search of the accused, two mobile phones were recovered. The prosecutrix and the accused were medically examined. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. Police also procured the records qua the

date of birth of the prosecutrix. Statements of the witnesses were recorded and after conclusion of the investigation police presented the challan before the learned Trial Court.

3. The learned Trial Court, vide impugned judgment acquitted the accused for the offences alleged against him, on the ground that prosecution has failed to prove its case against the accused beyond all reasonable doubt, hence the present petition seeking leave to file an appeal against the impugned judgment of the learned Trial Court.

4. In order to prove its case, the prosecution examined as many as eleven witnesses. The statement of the accused, under Section 313 Cr.P.C., was recorded and he claimed innocence. No witness, in defence, was examined by the accused.

5. I have heard Mr. S.C. Sharma, Additional Advocate General for the applicant/ State and Mr. Piar Chand, learned counsel, for the accused/respondent.

6. The learned Additional Advocate General has argued that the accused has been acquitted by the learned Trial Court on the basis of surmises and conjectures. He has further argued that there is sufficient material on record which clearly establishes the guilt of the accused. He has further argued that the learned Trial Court appreciated the evidence in a slipshod and perfunctory manner. He has argued that the entire material, which has come on record, clearly demonstrates that the accused was involved in the commission of the crime, so considering the material on record, leave to appeal be granted and the impugned judgment of the learned Trial Court be set aside. Conversely, the learned counsel for the accused has argued that the coherent connection inter se the purported occurrences, as portrayed by the prosecution, and the role of the accused, has not been cogently and conclusively established by the prosecution, which, in fact, is fatal to the prosecution case. He has further argued that there is nothing on record which could connect the accused with the commission of the offence. He has argued that the learned Trial Court has properly appreciated the material, which has come on record, appreciated the same correctly, so the judgment rendered by learned Trial Court is not required to be interfered with and the same be upheld by dismissing the application seeking leave of this Court to file an appeal against the impugned judgment of the learned Trial Court.

7. In order to appreciate the rival contentions of the parties, I have gone through the record carefully.

8. After meticulous examination of the records, it is clear that the present is not a case of penetrative sexual assault, but is a case of physical contact,

i.e., accused's touching the bosoms of the prosecutrix, who at that time was minor. Now, in the above backdrop, the version of the prosecutrix, as

narrated by her in the learned Trial Court is of immense importance. The prosecutrix stepped into the witness-box as PW-2. The prosecutrix, in her

examination, though supported the prosecution case, but she nowhere stated that the accused touched her private parts while assaulting her. She

stated that on 09.04.2018, when she did not pick the telephonic calls of the accused, at about 07:30 p.m., accused came in her house and pushed her

and she also pushed him. Thereafter, she raised hue and cry, so her mother, uncle Shri Rajesh Kumar and his wife Smt. Sunita Devi came and the

accused fled away. She has further deposed that accused threatened her to spoil her life and took the mobile phone, which he gave to her. As per the

prosecutrix, the next leg of the incident occurred on 10.04.2018, around 02:00 p.m., when the accused came into the verandha of their house and

started assaulting her. When she (prosecutrix) started raised alarm, her parents, grand-father, uncle and aunt came and the accused was

apprehended. Pradhan, Shri Kishori Lal, on being informed, came to the spot and the police was informed by the Pradhan. Though, the version of the

prosecutrix, in her examination-in-chief, has not blotted the prosecution case, but her version fails to prove the ingredients of Section 354 IPC, as

nothing has come on record, in her statement that the accused with an intent to outrage her modesty used criminal force on her or assaulted her. On

the other hand, the prosecutrix, in her cross-examination, caused severe dent to the prosecution story. She deposed that she had another mobile phone

and she admitted that she used to make telephonic calls to the accused with two SIMs. She further admitted that on 09.04.2018 accused came to her

house and started compelling her parents to allow him to meet her. She stated that her parents were against her's having talking terms with the

accused.

9. Thus, after careful examination of the version of the prosecutrix, it is discernible that the purported assault or criminal force used by the accused

against the prosecutrix lacks his intent to outrage her modesty.

10. Now, it would be apt to delve upon the solitary statement of an independent witness, i.e., PW-10, Shri Kishori Lal, the then Up-Pradhan. This

witness, in his examination-in-chief, stated that on 10.04.2018, he was telephonically informed by one Shri Sita Ram, that a boy had come to his house, who is doing indecent acts with his grand-daughter (prosecutrix). He further stated that he went to the spot and found that a boy (accused) has been

kept in captivity, so he informed the police and the police visited the spot. He further deposed that grand-father of the prosecutrix divulged to him that

on the previous day, around 07:30 p.m., accused tried to outrage the modesty of the prosecutrix and when she raised hue and cry, the accused fled

away. This witness, in his cross-examination, stated that on 09.04.2018, the previous date of alleged incident, he was informed qua the incident.

11. The solitary statement of PW-10, an independent witness, is hearsay in nature and nothing has happened in his presence. The version of PW-10 is

rather scarce to arrive at a conclusion of guilt of the accused and, in fact, it is of no help to the cause of the prosecution.

12. It has come on record that the house of the prosecutrix is located in a densely populated area, having many houses. However, strangely, despite

the availability of many independent witnesses, the Investigating Officer did not bother to join more independent witnesses to fortify the prosecution

case. Thus, non-joining of more independent witnesses, despite their availability in abundance remains an unsolved riddle and in turn compels this

Court to doubt the veracity of the prosecution case. Be that as it may, now if the wheel of the prosecution witnesses is turned to eye-witnesses, which

happened to be relative witnesses also, the evaluation of their versions fail to render help to the prosecution case.

13. PW-5, Shri Rajesh Kumar, uncle of the prosecutrix, deposed in his examination-in-chief that on 09.04.2018, at about 07:30 p.m., he alongwith his

wife, was in cow-barn and when he heard screams of the prosecutrix, he rushed to the house of the prosecutrix, but by that time the accused had fled.

He has further deposed that on 10.04.2018, at about 02:00 p.m., he was called by his wife, so he rushed to his house and saw accused kept in custody

by his family members. As per this witness, his father called the Pradhan, who reached the spot at about 02:45 p.m. Thereafter, police visited the spot

and took into possession two mobile phones from the accused. This witness, in his cross-examination, denied that the prosecutrix was used to talk to

the accused from the mobile phone, which was taken into possession by the police. After careful examination of the testimony of PW-5, it is clear that

versions of PW-5 and PW-2 (prosecutrix) travel in divergent directions. PW-5 stated that molestation took place on 09.04.2018, whereas, the

prosecutrix stated that on 09.04.2018 the accused assaulted her and pushed her. The prosecutrix nowhere stated that the accused tried to outrage her

modesty. Thus, the versions of PW-2 and PW-5, travel in different directions, which makes the prosecution story doubtful.

14. Likewise, PW-4, Smt. Parwati Devi (mother of the prosecutrix) deposed in utmost calibration to PW-5. She also deposed that on 09.04.2018 the

accused tried to outrage the modesty of the prosecutrix, whereas, the prosecutrix did not even whisper about the alleged attempts of accused

outraging her modesty. She further deposed that police took into possession the mobile phone of the prosecutrix and the mobile phone given to her by

the accused. Thus, despite having a mobile phone, the prosecutrix accepted mobile phone from the accused with probable intent to talk to him through

that phone.

15. The rest of the prosecution witnesses are official prosecution witnesses and they have stated and supported their official roles through their

versions. However, their versions need not to be examined in depth, as the testimonies of the key prosecution witnesses, including the prosecutrix is

untrustworthy.

16. Upon incisive reading of the material on record, vis-À-vis, the testimonies of key prosecution witnesses, it can be safely held that the evidence,

which has come on record, is slippery and full of lacunae, which render the prosecution case highly doubtful. Conclusively, the lacunae completely

riddle the edifice of the prosecution case and render it untrustworthy and doubtful.

17. In view of what has been discussed hereinabove, in a nut shell, it can be held safely that the prosecution case is marred by discrepancies and

lacunae and makes the story of the prosecution doubtful. The prosecution fails to prove the guilt of the accused beyond the scope of reasonable doubt.

Therefore, the only conclusion is that the learned Trial Court has rightly

appreciated the evidence to its true and correct perspective and rightly acquitted the accused. This Court find no reason to reverse the findings rendered by the learned Trial Court.

18. For the reasons, which have been recorded hereinabove, this Court holds that the learned trial Court has appraised the entire evidence, on record, in a wholesome and harmonious manner, apart from it, the analysis of the material, on record, by the learned trial Court, does not suffer from any gross perversity and mis-appreciation of evidence, and, non-appreciation of evidence on record.

19. Consequently, the impugned judgment, of acquittal, is upheld. Resultantly, leave to appeal is dismissed. Pending application(s), if any, shall also stand(s) disposed of.