
(2012) 01 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 203 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Bhag Singh and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 342, 363, 366, 366A, 376

Citation : (2012) 01 SHI CK 0028

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—For an offence, which is alleged to have been committed on 26, 27 and 28 September, 1998, accused were put to trial. In terms of judgment dated, 29.1.2005, passed by the Ld. Presiding Officer, Fast Track Court, Hamirpur, H.P. in Sessions Trial No. 15 of 2001/5 of 2004, titled as State versus Bhag Singh and others, all the accused persons stand acquitted of the charged offences.

2. It is the case of prosecution that prosecutrix (PW-5) was undertaking training at sewing centre in village Baragram. On 26.9.1998 prosecutrix was on way to the sewing centre when accused Bhag Singh who runs a vegetable shop close by asked her to come inside his shop. The moment prosecutrix entered accused immediately closed the door and then forcibly committed sexual intercourse with her. He threatened her not to disclose the incident to anyone. She was confined and made to stay inside the shop throughout the night and allowed to leave next day. She came to her house but due to the threats given by accused Bhag Singh did not narrate the incident to anyone. Again on 27.9.1998, accused Bhag Singh came to her house and in the absence of her parents forcibly took her to his shop and confined her there throughout the night when again she was raped by him. Following morning i.e. 28.9.1998 she was made to sit in a bus. In the bus

prosecutrix saw accused Parkash Chand and accused Nand Lal sitting. When she wanted to alight from the bus at the sewing centre both of them prevented her. It was only at Samaila curve that she was allowed to alight the bus where accused Nand Lal and Parkash Chand also got down. Thereafter accused Nand Lal took the prosecutrix into the forest and sexually assaulted her. Accused Parkash Chand kept standing on the road. From there accused Parkash Chand took the prosecutrix in a bus to the Rest House at Bijhar. After some time he took her to nearby forest and forcibly committed sexual intercourse with her. Accused Parkash Chand then brought accused Ramji Dass @ Pappu who also forcibly subjected her to sexual intercourse. In turn accused Ramji Dass brought accused Raju who also raped her. Raju then took the prosecutrix to his house at Bhota where she spent the night. Even here Raju had sexual intercourse with her. Following morning Raju dropped her at Rest House, Bijhar where prosecutrix met her mother who took her home. Since prosecutrix was not feeling well and her father had gone out to search her, she did not narrate the incident to her mother but waited for her father to return. The following morning, i.e. 29.9.1998 her father returned. She narrated the incident to her parents who took her to the police station where she lodged F.I.R. No. 92/98 (Ext. PW 5/A), dated 1.10.1998, under Sections 342, 363, 366-A, 376, 506 IPC at Police Station Barsar, Distt. Hamirpur, H.P.

3. Police commenced investigation which was conducted by SI-Prem Lal (PW-12) and Inspector Madan Kant (PW-13). Prosecutrix was got medically examined from Dr. Suman Sharma (PW-2), who issued MLC Ext. PW 2/A and opined that prosecutrix was habitual of sexual intercourse. Dr. H.R. Kalia (PW-1) also examined the prosecutrix and issued MLC (Ext. PW 1/A). He found injuries on body of the prosecutrix, other than her private parts. To determine age of the prosecutrix, police got the ski gram test conducted through Dr. H.R. Kalia (PW-1), however opinion was given by Sh. P.C. Verma, Radiologist (PW-3) vide medical report (Ext. PW 3/A). Dr. P.R. Katwal (PW-6) issued birth certificate (Ext. PW 6/A) showing date of birth of prosecutrix to be 11.1.1982. Smt. Sandhya Devi (PW-9) produced the school admission register of the prosecutrix. Accused were arrested. They also were got medically examined. Dr. H.R. Kalia (PW-1) examined accused Bhag Singh, Nand Lal, Ramji Dass @ Pappu and Parkash Chand and issued MLC's Ext. PW 1/F, Ext. PW 1/H, Ext. PW 1/H & Ext. PW 1/L respectively. Dr. S.K. Sharma, (PW-4) examined accused Raj Kumar and issued MLC (Ext. PW 4/A). Police sent the clothes and the vaginal swab to the Forensic Science Laboratory and obtained Report (Ext. PA). Statements of witnesses including Sh. Prabha Ram (PW-8) father of the prosecutrix were recorded. With the completion of investigation challan was presented in the Court for trial.

4. Accused Bhag Singh and Raj Kumar were charged for having committed offences punishable under Sections 342, 363, 366, 376, 506 IPC, accused Ramji Dass @ Pappu was charged for having committed offences punishable under Sections 376 and 506 IPC, and accused Nand Lal and Parkash Chand were charged for having committed offences punishable under Sections 363, 366, 376

and 506 IPC, to which they did not plead guilty and claimed trial.

5. In order to prove its case, in all prosecution examined thirteen witnesses and statements of the accused u/s 313 Cr. P.C. were also recorded in which accused took up defence of false implication.

6. Court below acquitted the accused of the charged offences, hence the present appeal.

7. On the question of age, prosecutrix does not clearly state her date of birth. Her father is also silent about this fact. Dr. P.C. Verma (PW-3) opined age of the prosecutrix to be between 18 to 20 years. His opinion (Ext. PW 3/A) and other medical record produced by PW-1 is evidently clear on this aspect.

8. Dr. P.R. Katwal (PW-6) testified having issued certificate (Ext. PW 6/A) which shows that a girl was born on 11.1.1982 to Sh. Prabha Ram of Panchayat Badagram, Tehsil Barsar, Distt. Hamairpur. Now this witness admits that entry of names of family members of Prabha Ram is made in different inks and significantly that at the time of issuance of Ext. PW 6/A name of prosecutrix and Nirmala Devi was not there. Quite apparently insertions have been made subsequently. Thus this evidence is of no value. Prosecution has also not shown that there is only one Prabha Ram in the entire Gram Panchayat Badagram or that Prabha Ram mentioned in Ext. PW 6/A is father of the prosecutrix.

9. Smt. Sandhya Devi (PW-9) simply states that as per school record date of birth of prosecutrix is entered as 11.1.1982. But then she does not state that she herself made entries in the register. She does not know when such entries were actually made. She also does not state that in fact the date was got entered by parents of the prosecutrix. Except for this material there is nothing on record to establish the exact date of birth or age of the prosecutrix. Consequently in our considered view prosecution has failed to prove the exact date of birth/age of the prosecutrix by leading clear, convincing and legal piece of evidence.

10. Coming to the report (Ext. PA) of the Forensic Science Laboratory we find that there is nothing to link the accused to the alleged crime. Blood and semen found on clothes of the prosecutrix could in no manner be linked to the accused.

11. In the instant case it is not the case of the prosecution that all of the accused persons were acting in tandem with each other. It is not a case of gang rape. It is also not that all the accused knew each other but individually subjected the prosecutrix to rape on different times at different places. In fact why a common challan was filed is not clear. Prosecutrix appears to have been sexually abused by each of the accused person separately and individually. Except for accused Nand Lal and accused Parkash Chand no two persons were present same time at the time of commission of crime.

12. According to the prosecution, prosecutrix was raped by accused Bhag Singh on 26.9.1998 and 27.9.1998. After Bhag Singh allowed the prosecutrix to leave she was subjected to rape by accused Parkash Chand and Nand Lal the very

same day. Accused Pappu and accused Raju separately raped her on 28.9.1998. Now in the instant case F.I.R. was registered only on 1.10.1998 at 10.00 a.m.

13. According to the prosecutrix she met her mother on 28.9.1998 but did not disclose the incident to her. Her father was away. The day he returned she disclosed the incident to her parents and the very same day F.I.R. was lodged. Now mother has not been examined in Court and father (PW-8) contradicts her statement by stating that the prosecutrix met her mother the very same day when he reached home i.e. 29.9.1998. Thus delay in lodging F.I.R. has not been explained. It may not be fatal but casts a doubt about the genesis of the prosecution story. After all prosecutrix was sexually assaulted by different persons on different dates at public places and different times. It is not that she was subjected to threats by all the accused persons. She travelled by public transport, stayed both at private and public places where passersby and neighbours were available and could have been contacted conveniently.

14. According to the father he searched for the prosecutrix who was missing for more than three days. But then except for a bald statement to this effect there is nothing to show where and with whom he searched for his daughter. He also did not report the matter to the police. Why so? has not been explained. Names of relatives have not been disclosed. In cross examination he sates that he had gone to search for his daughter in the houses of Mahantu, Sukhia, Hari Ram etc. But then these persons have not been examined in Court or associated by the police during investigation. Where do these persons stay has not been disclosed. Whether these exist or not is not proved. This shakes the foundation of the prosecution story rendering it to be doubtful. 15. Coming to the statement of prosecutrix (PW-5) we find her version not to inspire confidence at all. She has made several improvements. Her statement is not free from embellishments. There are unexplainable circumstances and facts. Medical evidence shows that she is habitual to sexual intercourse. It belies version of the prosecutrix that she was subjected to sexual intercourse only four days prior to lodging of F.I.R. That apart, Doctors PW-1, PW-2 and PW-3 have categorically stated that no injuries were found on her private parts or for that matter any one of the accused persons. Now if prosecutrix was subjected to sexual intercourse and that too for the first time, some injuries were bound to be there on private parts of at least any one of the parties. But it is not so. The nature of threats given by accused Bhag Singh, Nand Lal and Parkash Chand have not been disclosed. PW-1 did find external injuries on other parts of body of prosecutrix. But then these injuries do not relate to the period of alleged crime. Doctors have opined them to have been inflicted after the alleged incidents. Possibility of prosecutrix being beaten up by her parents, after being traced cannot be ruled out.

16. According to the prosecutrix accused Bhag Singh confined her in his shop and raped her on 26.9.1998. The version appears to be improbable, if not false, for the simple reason that prosecutrix admits that Bhag Singh resides at the back portion of the shop with his family. It is not her case that at that time none of his

family members were present. Also nature of threats given by him have not been disclosed. Significantly alleged threats were given after she was raped and not prior to the same. It has come on record that the shop is situated on the main road where also there are shops of other persons. Alleged crime took place during broad day light. She could have easily cried for help which would have attracted attention of neighbours. After all she was confined inside the shop for two nights. That apart, her version that on 27.9.1998 Bhag Singh forcibly took her away from her house appears to be false for the simple reason that her house as also shop of accused Bhag Singh is situated in a thickly populated area. There are residences and shops of others in close vicinity. Prosecutrix was confined during broad day light. She admits that all of her relatives reside in the village and that there is a saw mill of Sh. Birbal and shop of Sh. Praveen adjoining to the shop of the accused Bhag Singh. She could have conveniently cried for help. Her cries would have attracted public attention and someone would have come to her rescue on both the occasions which for some unexplainable reasons she failed to do so.

17. Coming to the alleged incidents qua other accused persons also we find version of this witness not to be true. She was confronted with her statement-FIR (Ext. PW 5/A). She has made several improvements. They are replete with same. She admits that when she boarded the bus five passengers were sitting. Yet she did not raise any hue and cry. For the first time in Court she narrates that when she tried to raise hue and cry accused Parkash and Nand Lal gagged her mouth. She was confronted with her previous statement wherein this fact was not so recorded. She could not have forgotten such an important fact. She admits that near Rest House, Bijhar many people reside. She admits that in the house of accused Raju family members were present from whom she had taken tea in the morning. She admits that when she met her mother at Bijhar many people had gathered. Yet she did not disclose the incident to anyone of them. Prosecutrix had sufficient time to raise alarm on different occasions and at different places. She chose not to do so. Why so? has not been explained. She could have conveniently done so. It is difficult to believe that involuntarily prosecutrix allowed herself to be taken by different persons, at different times and to different places.

18. To us it appears that prosecutrix accompanied the accused of her own volition and sexual intercourse, if any, is with consent. It cannot be said that accused had wrongfully confined the prosecutrix, forcibly taken her from her lawful guardianship/kidnapped her with an intention of seducing her to commit illicit intercourse or subjected her to rape or criminally intimidated her.

19. Having perused testimonies of prosecution witnesses we find that no case for interference is made out. It cannot be said that the prosecution has been able to prove its case by leading clear, cogent, convincing, legal and reliable material on record.

20. The accused have had the advantage of having been acquitted by the Court

below. Keeping in view the ratio of law laid down in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., , it cannot be said that the Court below has incorrectly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. Present appeal is thus dismissed. Bail bonds, if any, furnished by the accused are discharged.