

(2017) 11 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : 344 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Shri Lal Singh

RESPONDENT

Date of Decision : 08-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 154](#), [Section 313](#) - Information in cognizable cases - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 323](#), [Section 354](#) - Punishment for voluntarily causing hurt - Assault or criminal force to woman with intent to outrage her modesty
[Probation of Offenders Act, 1958](#), [Section 4](#) - Power of court to release certain offenders on probation of good conduct

Citation : (2017) 11 SHI CK 0003

Hon'ble Judges : Vivek Singh Thakur

Bench : Single Bench

Advocate : Pankaj Negi, Rajpal Singh Thakur

Judgement

1. This appeal has been filed against acquittal of the respondent vide judgment dated 23.3.2009 passed by learned Additional Chief Judicial Magistrate, Sarkaghat in case FIR No. 75 of 2005 dated 22.3.2005 registered under Sections 354, 323 IPC in P.S. Sarkaghat, District Mandi (H.P.).

2. I have heard learned counsel for the parties and I have also gone through the record.

3. Crime Investigating Agency i.e. police was set in motion by complainant PW1 Mathura Devi by filing an application Ext.PW1/A to SHO, P.S. Sarkaghat stating therein that on 21.3.2005 at about 7.30 PM, she was returning home after grazing her goats and crossing a "khud" and at that time, respondent Lal Singh came there and started teasing her, caught her arm and pressed her breast and forcibly laid her on earth. On her resistance, he beat her with kick and fist blows, whereupon she raised cries and her husband Mahia Ram, brother-in-law Krishan

Chand and Rajinder came on the spot thereupon respondent fled from the spot and in this incident, she received injuries on her arm, leg and nose.

4. Ultimately on the basis of complaint of PW1 Mathura Devi, FIR Ext.PW3/A was recorded on 22.3.2005 at 3PM and investigation was carried out. During investigation, complainant was medically examined by PW2 Dr. Keshav Kaundal who issued her MLC Ext.PW2/B. Site plan Ext.PW4/A was prepared, statements of witnesses were recorded and on completion of investigation, challan was prepared and put in Court by PW5 Hari Ram.

5. Prosecution has examined five witnesses to prove its case. After recording statement under Section 313 Cr.P.C., respondent had chosen not to lead evidence in defence. On conclusion of trial, respondent stands acquitted by the trial Court, hence present appeal.

6. According to the complaint filed at the time of incident, complainant was alone in "khud" and husband of complainant Mahia Ram, brother-in-law Krishan Chand and Rajinder had arrived on the spot after hearing cries of the complainant. But, in Court, only complainant has been examined as PW1 and her husband PW Mahia Ram, though present in Court on that day, was given up by learned Additional Public Prosecutor on 3.1.2006 denoting him as a witness of same sequence. Whereas, PWs Krishan Chand and Rajinder Kumar, who were present in Court on 22.5.2006, were also given up by learned Additional Public Prosecutor stating that they were won over by accused person. Therefore, statement of only one witness of the spot, i.e. complainant herself examined as PW1, is available on record.

7. The only evidence for corroboration, available on record, is statement of PW2 Dr. Keshav Kaundal, who had examined complainant and issued MLC Ext.PW2/B after medical examination of the complainant. PW3 ASI Prem Lal had recorded statement of complainant under Section 154 Cr.P.C. and had registered FIR Ext.PW3/A on the basis of application Ext.PW1/A filed by complainant. PW4 Investigating Officer, after recording statements of witnesses, had prepared the spot map and on completion of investigation had submitted the file to PW5 Hari Ram, the then SHO, P.S. Sarkaghat, who had prepared challan and presented it in Court.

8. The trial Court has acquitted respondent on the grounds that other witnesses of the spot and also other villagers were not examined by the prosecution and deposition of the complainant in Court did not corroborate the contents of her complaint Ext.PW1/A on the basis of which FIR was registered and also medical evidence did not corroborate the statement of complainant and there was omission on the part of complainant to state the facts in Court, which were stated in application.

9. Further, as admitted by complainant, husband of complainant had filed a suit against respondent and therefore, possibility of initiating criminal proceedings against respondent on account of enmity cannot be ruled out.

10. From the record, it is evident that complainant is an illiterate lady. She had put her thumb impression in complaint Ext.PW1/A, FIR Ext.PW3/A and in her deposition in Court. In complaint Ext.PW1/A, she had stated that respondent had teased her, caught her arm, pressed her breast and laid her on the earth and on her resistance, beat her with kick and fist blows, causing injuries on her arm, leg and nose and also that on raising noise by her, arrival of her husband Mahia Ram, brother-in-law Krishan Chand and Rajinder, made respondent to flee from the spot. In Court, she reiterated this statement except that in incident, her arm, leg and nose were injured. However, she stated that she was medically examined after the incident. PW2 Dr. Keshav Kaundal had proved MLC Ext.PW2/A and deposed on the basis of observations reported in MLC. In his deposition, he reiterated the injuries noticed by him on person of complainant. As per MLC Ext.PW2/B following injuries were noticed by him:-

1. Swelling on right hand tenderness positive.
2. Swelling in right thigh mild with positive tenderness.
3. Complaining of pain in right shoulder, tenderness positive on examination.
4. Complaining of pain in right breast upper medial and middle part and tenderness was found.

Therefore, findings of the trial Court are contrary to the evidence on record that injuries alleged by complainant in complaint Ext.PW1/A are not corroborated by medical evidence, rather, medical evidence fully corroborates the injuries alleged by complainant in her complaint.

11. According to opinion of PW2, which was questioned in his cross examination, the approximate time of receiving injuries was 20-24 hours from the date of examination i.e. 4.45 PM on 23.3.2005. According to complainant, incident had happened at 7.30 PM on 21.3.2005. The probable time mentioned in MLC is coinciding with the time of incident mentioned in complaint. Therefore, finding of the trial Court that only statement of complainant, available on record, is not corroborated by Ext.PW1/A and MLC Ext.PW2/B is contrary to record.

12. Another important witness, who had arrived at the spot, was PW Mahia Ram, husband of the complainant and he was present in Court on 3.1.2006 when complainant was examined. However, he was given up by learned Additional Public Prosecutor Mr.K.K.Chaudhary, who was conducting the case on behalf of prosecution on that day, on the ground that he was a witness of same sequence. I fail to understand that when only one witness complainant was examined and no other witness out of three witnesses who had arrived on spot immediately after the incident, had been examined, how, one of the three witnesses available to be examined on first day was considered to be a repetitive witness of the same sequence. Other witnesses are definitely witnesses of the same sequence but they should be given up only if sufficient corroborative evidence on record is available on examination of the some of spot witnesses. But here in present

case, only complainant had been examined on that day and even PW2 Dr. Keshav Kaundal was examined two years thereafter. Therefore, conduct of learned Additional Public Prosecutor who was conducting the case on that day is not above the board, either for extraneous reason or for carelessness or laxity on his part to conduct the case on behalf of the complainant. It has resulted into such mistake, which certainly amounts to dereliction of his duty.

13. From the record, it is evident that complainant, belonging to lower strata of society, was an illiterate person, not capable of understanding the criminal proceedings and also unable to understand the consequences of nonexamination of her husband.

14. Non-examination of PW Mahia Ram becomes more serious for the reason that on 22.5.2006, the same learned Additional Public Prosecutor gave up other two witnesses PW Krishan Chand and Rajinder on the ground that they were won over by accused person. These witnesses had not entered in witness box and were never examined in the Court. Therefore, on what basis they were declared to be won over by accused person, is best known to learned Additional Public Prosecutor who had given up first corroborative spot witness PW Mahia Ram.

15. Complainant was having no control over the decision of learned Additional Public Prosecutor to examine or to give up the witnesses to be produced on her behalf in Court. Therefore, non-examination of these witnesses cannot be attributed to the complainant. In any case, on finding the statement of complainant reliable and duly corroborated by the contemporary record including the medical evidence, conviction can be recorded only on statement of complainant.

16. It is not the quantity but the quality, which matters for determining the guilt or innocence of accused. In present case, statement of PW1 made in her complaint Ext.PW1/A finds corroboration on material particulars in her deposition in Court and also in medical evidence on record. She had deposed in Court in truthful manner as she had clearly admitted that in their village there are 100-200 houses with considerable population and other persons had also heard the noise, but none had come on the spot. She also, without hesitation, admitted that her husband had filed a suit against Lal Singh. However, she denied that she has filed the false complaint at the instance of her husband. Enmity is double edged weapon. It can be reason for false implication, at the same time and enmity can be reason for committing the crime by accused. There is nothing to shake the credibility of complainant and her complaint Ext.PW1/A and her deposition in Court duly corroborated by medical evidence on record, has wrongly been considered to be unreliable by the trial Court.

17. In view of above, in my opinion the prosecution has been able to prove beyond reasonable doubt that respondent has voluntarily caused hurt to the complainant and used criminal force against her with intent to outrage her modesty, by leading cogent, reliable and trustworthy evidence on record.

Therefore, respondent is liable to be convicted and is accordingly convicted under Sections 323 and 354 IPC.

18. Learned counsel for the respondent, in alternative, has also submitted that ultimately, if this Court arrives at a conclusion that there is sufficient evidence on record to convict the respondent, the respondent deserves the benefit of Probation of Offenders Act, 1958 on the ground that there is no evidence on record to show that respondent is habitual offender and for the reason that respondent has faced the criminal proceedings for more than 12 years and has suffered a trauma as an accused. He has further submitted that by the passage of time, parties are residing in same village in a peaceful manner and responsibilities of respondent have also increased for supporting his family.

19. In view of facts and circumstances of the case and submissions made on behalf of the respondent, before considering the extension of benefits of Probation of Offender Act to the respondent, it would be appropriate to call for a report of the concerned Probation Officer under Section 4 of the Probation of Offenders Act. Therefore, Probation Officer, Sarkaghat is directed to submit his report in the Registry qua the respondent on or before 1st December, 2017. Respondent is directed to be present in Court on 6th December, 2017.