

(2011) 04 SHI CK 0175
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 285 of 2001

State of Himachal Pradesh

APPELLANT

Vs

Shyam Chand Katoch

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2011) 04 SHI CK 0175

Hon'ble Judges : Rajiv Sharma, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—State has come in appeal against the judgment dated 29.4.2001 rendered by the learned Additional Sessions Judge, Mandi in Sessions Trial No. 20 of 1996 whereby the Respondent, who was charged with and tried for offence punishable, under Sections 376 of the Indian Penal Code, has been acquitted.

2. Case of the prosecution, in a nutshell, is that prosecutrix Kumari Krishna Devi daughter of Keshav Ram (P.W. 10) was resident of village Dogri. She got her statement recorded on 7.7.1994 Ex. PK, u/s 154 of the Code of Criminal Procedure to the effect that she was student of 5th class and her parents were poor, therefore, she was employed in the house of Respondent on payment of Rs. 200/- per month. In the night of the month of June, 1993, Respondent entered the room after consuming liquor where the prosecutrix was sleeping and committed sexual intercourse with her. Respondent threatened the prosecutrix to do away with her life in case she disclosed about this incident. Thereafter Respondent developed illicit relations with the prosecutrix. Prosecutrix could not disclose this incident out of fear. She went to her house on 5.11.1993. Thereafter, she went to her maternal aunt on 6.11.1993. She returned to her village on 29.6.1994 and told her parents that the Respondent has committed

sexual intercourse with her and she was carrying 8-9 months" pregnancy. On the basis of the statement of prosecutrix, case u/s 376 of the Indian Penal Code was registered vide F.I.R. Ex. PL at Police Station, Balh. Prosecutrix was medically examined by P.W. 1 Dr. (Mrs.) Suresh Kaul. She was found carrying pregnancy of approximately 34-36 weeks and she was exposed to sexual intercourse about 9 months back. The age of the prosecutrix, as per certificate, issued by P.W. 2 was between 17-19 years. The matter was investigated and the challan was put up after completing all the codal formalities.

3. Prosecution examined number of witnesses to prove the charge against the Respondent. He was also examined u/s 313 of the Code of Criminal Procedure. He pleaded not guilty. The trial Court acquitted the Respondent on 29.4.2000.

4. Mr. R.K. Sharma has strenuously argued that the prosecution has proved the case against the Respondent. According to him, learned trial Court has not correctly appreciated the oral as well as documentary evidence led by the prosecution. According to him, the trial Court has come to a wrong conclusion that the age of the prosecutrix was more than 16 years and it was a case of consensual act.

5. Mr. M.S. Chandel, Senior Advocate has supported the judgment dated 29.4.2000.

6. We have heard the learned Counsel for the parties and have perused the record carefully.

7. The prosecutrix has appeared as P.W. 5. According to her, she was domestic servant of Respondent. She worked with him from 1990 to 1993 and was getting Rs. 200/- per month. She has passed 5th standard. She used to sleep in a separate room during the period she remained in the house of Respondent. The wife of Respondent was residing in his house at Gutkar where he was working. Smt. Ambika Katoch wife of Respondent was working as Compounder in Behna Hospital (Dispensary). In June, 1993 at about 12.00 in the night, when she was sleeping in the room, Respondent started misbehaving with her and opened the string of her salwar and committed sexual intercourse. Respondent threatened her that in case she disclosed about this incident to anybody, he would kill her. According to her, Respondent was in the house with his children and his wife had gone to attend some marriage. He was drunk. He continued committing sexual intercourse with her till 4.11.1993. She took her wages on 5.11.1993 and went to her parents" house at village Dogri. The son of Respondent was studying in 6th standard and his daughter was studying in 3rd standard. The Respondent used to have sexual intercourse with her when nobody was at home. She did not tell this incident to her parents when she came there in November, 1993 due to threat extended by the Respondent. Her uncle, Bhim Chand took her to Lauhal (Udaipur) as her aunt was residing at Udaipur. She remained at Udaipur for about eight months and came back home on 28.6.1994. She was not having menstruation since November, 1993. Her aunt inquired from her about her

health. She could not disclose anything to her aunt due to fear. However, aunt was apprehensive that prosecutrix was pregnant. Thereafter, her uncle and aunt also came with her from Lauhal to her parents' house. Aunt told her parents that she suspected pregnancy. She was given slap by her mother and thereafter she disclosed the entire incident to her mother. She gave birth to a daughter on 17.7.1994. She went to the house of Respondent alongwith her father on 2.7.1994. Many ladies assembled there, but nobody listened to her. She has admitted in her cross-examination that she left the school in the year 1984-85. She went to the house of Respondent to work as maid on 5.8.1990. On 6.11.1993, when she left the house with her uncle for Lauhal, she stayed with her uncle for the night at Manali. In cross-examination, she has further deposed that Respondent had sexual intercourse with her many time but could not tell the numbers approximately. She admitted categorically that she was going to her parents' house every month for about 1-2 days from June, 1993 to November, 1993. She was going to her parents' house at Dogri almost every month. She never narrated the incident to her parents, brother, sister or anybody else. Her statement was recorded by the learned Additional Chief Judicial Magistrate, Mandi on 5.12.1995. She also admitted that she ran away from the house of Respondent and Megh Singh Kapoor asked why she has left the service.

8. P.W. 6 Bhim Dassi is mother of prosecutrix. She could not give the age of the prosecutrix. According to her, prosecutrix remained a maid servant with Respondent at Gutkar for 3 years and 3 months. She was being paid Rs. 200/- per month. She was taken by Bhim Chand, her sister's husband to Lauhal and she remained there for 7-8 months. Her sister told that prosecutrix was pregnant. She inquired from the prosecutrix but she did not tell anything. She gave beatings to the prosecutrix on which she told that Respondent had committed sexual intercourse with her. The prosecutrix told her that she could not narrate the incident earlier being threatened by the Respondent.

9. P.W. 8 Krishan Lal, Secretary had brought the original Pariwar Register, copies of which were Ex. PM and Ex. PN.

10. P.W. 10 Keshav Ram is the father of prosecutrix. According to him, the age of the prosecutrix at the time of recording of his statement on 19.6.1997 was 19 years. He could not tell the age of other children, being illiterate. According to him, his wife was also illiterate. His daughter Krishna (prosecutrix) remained as domestic help from 1990 to 1993. She also stayed with her uncle Bhim Chand. Bhim Chand was his brother-in-law. He brought the prosecutrix back on 29.6.1994. Bhim Chand told him that prosecutrix was pregnant. On 17.7.1994, prosecutrix gave birth to a daughter and he got the entry recorded in Panchayat record. Prosecutrix has studied upto 5th standard at Pandoh School.

11. P.W. 11 is Prem Singh. He got the prosecutrix medically examined on 7.7.1994. He also obtained Ex. PC to PG.

12. Prosecutrix was medically examined by P.W. 1 Dr. (Mrs.) Suresh Kaul.

According to her, it was a case of alleged history of the exposor to sexual intercourse 8-9 months back. The prosecutrix's secondary sex characters were well developed. She was carrying approximately 34-36 weeks of pregnancy. For age, she was referred to Radiologist. In the copy of MLC Ex. PA, the age of the prosecutrix has been mentioned as 16 years. According to P.W. 2 Dr. Jaya Vaidya, radiological age of prosecutrix was between 17-19 years. This is the evidence led by the prosecution.

13. What emerges from the evidence, as discussed hereinabove is that prosecutrix was engaged as domestic help with the Respondent in the year 1990. According to prosecutrix (P.W. 5), Respondent committed sexual intercourse with her in the month of June, 1993. She has categorically admitted in her cross-examination that she used to visit her house but did not narrate the incident either to her parents or brother or sister. She went to her village on 5.11.1993 and thereafter she had gone to meet her maternal uncle on 6.11.1993. She came to her village on 29.6.1994. Aunt told her mother that she was suspecting pregnancy. Thereafter, she was given beatings by P.W. 6 Bhim Dassi and the prosecutrix narrated the entire incident to her mother. The parents went to the Police Station. Statement of the prosecutrix Ex. PK was recorded, u/s 154 of the Code of Criminal Procedure. F.I.R. was registered on 7.7.1994 vide Ex. PC. In the MLC issued by P.W. 1 Dr. (Mrs.) Suresh Kaul, age of prosecutrix has been given as 16 years. Her mother did not give any date of birth of her daughter in her statement. According to P.W. 10, Keshav Ram, age of his daughter was 19 years at the time of recording of his statement. P.W. 8 Krishan Lal, has proved on record the copies of Pariwar Register. The prosecution has not produced the birth and death register. P.W. 8 has categorically stated in his cross-examination that he has not brought the death and birth register. According to him, entry at page 9 of the family register regarding family of Keshav Ram is undated and the same was not prepared by him. Radiological age of the prosecutrix, as given by Dr. Jaya Vaidya (P.W. 2), is between 17 to 19 years. Thus, it is evident from the statement of witnesses read with radiological age that the prosecutrix was major at the time of incident. She has not narrated the incident to her parents even though she had been visiting her parents' house every month. The version of the prosecutrix that she did not disclose this fact out of fear cannot be believed. Rather, it was difficult for her to hide the pregnancy after 6-7 months. The version of the prosecutrix could also not be believed for the reasons that the Respondent was living with his family comprising of his wife and two children. The trial Court has rightly relied upon the radiological test of the prosecutrix qua her age.

14. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the appeal and the same is dismissed. Bail bonds of the Respondent stand discharged.