

(2015) 04 SHI CK 0096

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 532 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Surjit Singh

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 354, 366, 511

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(i)

Citation : (2015) 04 SHI CK 0096

Hon'ble Judges : Rajiv Sharma, J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : M.A. Khan, Additional Advocate General, for the Appellant; Sanjay Dutt Vasudeva, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—This appeal by the State seeks to challenge the judgment and order of acquittal passed by learned Special Judge, Kangra at Dharamshala, whereby and where under the Special Judge acquitted the respondent, who was charged under Sections 354, 366, 511 IPC and Section 3(i) and (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Briefly stated the prosecution story is that the victim belongs to the Scheduled Caste community and was returning home in bus when she was teased by the respondent. Even when the prosecutrix had alighted from the bus and was proceeding towards her house, the respondent, who belongs to the same village, again started teasing her. In the meanwhile a van appeared there and the accused attempted to push the prosecutrix into the van, upon which she raised hue and cry. On hearing her cries two ladies came there, who rescued the prosecutrix from the clutches of the accused. On reaching home, she narrated the incident to her mother and brother. The accused was called to the house of

the prosecutrix and is stated to have confessed his guilt and sought pardon. However, later on some supporters of the accused armed with sticks reached to spot and threatened to do away the life of the prosecutrix and her family. On such allegations FIR Ex. PW-8/A was got registered by Smt. Satya Devi, mother of the prosecutrix.

3. During the course of investigation, statements of prosecutrix and other persons were recorded and on completion of investigation charge sheet was presented. Charges were framed against the accused under the aforesaid Sections on 2.6.2009, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined eleven witnesses and after closure of the prosecution evidence, statement of the accused/respondent was recorded under Section 313 Cr.P.C. on 11.6.2010, whereby he denied all circumstances appearing against him and pleaded innocence. However, the accused also examined one witnesses and tendered copy of judgment Ex. DX in his defence. The learned Special Judge acquitted the respondent, against which the State has filed the instant appeal.

5. In order to prove her case, the prosecutrix appeared as PW-1 and in her examination-in-chief deposed that while traveling in a bus from Gaggal to Chambi, she came to occupy the last seat of the bus and the accused who belongs to the same village and was known to her sat beside her. The bus was heavily crowded and the accused proceeded to outrage her modesty, inasmuch as, he proceeded to reach out to her private parts. She requested the conductor of the bus to stop the bus, but he refused to do so on the pretext that it was overloaded. She alighted from the bus at Chambi at 4:00 P.M. and made a telephonic call to her house, which was responded to by her younger brother Badal Kumar and she asked him to come to Chambi to help her to carry three bags, which she had got along with her. It is further stated that her house was 2 KM away from Chambi. However, without waiting for arrival of her brother, the prosecutrix proceeded towards her house and the accused followed her. When they reached at a lonely place at little ahead to Chambi, the accused attempted to snatch her bags, but failed to do so. Finally he pulled the prosecutrix along with bags down on the road, then fondled her breasts, in which process her shirt was torn. She further deposed that the accused also tried to un-string her salwar and in the meanwhile a van came there and the accused tried to forcibly push her into the van. The prosecutrix raised an alarm and two ladies on hearing the same arrived at the spot and in the meanwhile her brother also arrived there and on seeing them, the accused fled away from the spot. On returning home, she narrated this incident to the elders in the house, which led her mother Smt. Satya Devi (PW-2) to make an enquiry qua the incident from the wife of the accused. However, the accused and other relatives numbering about 100 came at the site and threatened the prosecutrix and her family and only thereafter the complaint came to be lodged.

6. In her cross-examination, the prosecutrix did not deny that a report had been

lodged by the accused on 25.4.2008, but feigned ignorance regarding the fact as to whether the same was lodged earlier to the complaint made by the prosecutrix. The prosecutrix further did not deny that she had made a statement to the police that she did not wish to be medically examined as she had not sustained injuries. She further states that she could not assign any reason as to why she did not take the shirt Ex. P1 along with her to the S.P. Office at the time of making complaint, though she admits that in between 25.4.2008 and 1.5.2008 police had met them 2-3 times. The prosecutrix reiterated that the bus was jam-packed and further admits that there were lady passengers also in the bus. She further admits that she did not tell any male or female passenger about the alleged activities of the accused. She further states that at Chambi there was a bus stop, a taxi stand and number of shops and that it was situate at a confluence of three roads, one goes to Shahpur, other goes to Gaggal and the third one goes to Chari. Even at Chambi she did not raise any alarm nor raised any hue and cry and further states that a number of other passengers had also disembarked along with her from the bus. She further admits that she had not told any of the passengers who had got down along with her from the bus that the accused had teased her. Prosecutrix further states that during the course of investigation neither the van nor the two ladies, as mentioned above had been shown to her for identification. The prosecutrix further states that Shahpur Police Station can be reached from her village within fifteen minutes.

7. PW-2 Satya Devi is the mother of the prosecutrix, who in her statement disclosed that the prosecutrix had informed her that the accused had teased her and had passed vulgar remarks while she was on her way to home. She claims to have consoled the prosecutrix during the night and made enquiries on the next morning. It is then claimed that on the next morning, the prosecutrix told her that the accused had tried to kidnap her in a van, tried to snatch her bag and had pulled her towards a drain. The prosecutrix also informed that in the bus, the accused had touched her breasts and other parts of her body and she was not allowed to get down at Ladwara. She also claims to have been informed by the prosecutrix that she had raised alarm and two ladies had appeared and rescued her from the clutches of the accused. She then claims to have met the wife of the accused when she had gone out to answer the call of the nature and informed her about what had been told to her by the prosecutrix. It is alleged that the wife of the accused came to our house, who was informed about the entire incident and she was further informed that now complaint in the police would be lodged. It is claimed that the wife of the accused came back after half an hour with 50-60 men and women of their caste and brotherhood and claimed that the accused was being falsely roped in. It is also claimed that mother of the accused had slapped the prosecutrix while brother of the accused dragged her son Raj Kumar out of the house and had beaten him. The father of the accused was also alleged to have pushed the husband of this witness. The prosecutrix is alleged to have been manhandled by a mob of 50-60 persons. It is after the mob left that PW-2 alongwith prosecutrix and Raj Kumar (her son) went to the Office

of S.P., Dharamshala and submitted her complaint to the police. The testimony of PW-2 is based upon what was allegedly told to her by PW-1.

8. This witness in her cross-examination states that she had not read the complaint Ex. PW-2/A before signing the same. She further states that the contents of the complaint had not been read over to her by anybody before she signed the same. She further states that many of the contents as given in Ex. PW-2/A had not been mentioned by her. She further admits that the accused had lodged a report against her, her son and her elder daughter prior to the present complaint. Interestingly, this witness states that they had gone to the office of S.P. Kangra at Dharamshala for filing a complaint against the accused regarding the brother of the accused having given beatings to the son of PW-2 and father of the accused had pushed her husband, but the police had refused to register the case on the pretext that they had committed a wrong. She further admits that during investigation no van was produced for identification.

9. PW-3 is the elder brother of the prosecutrix and has stated only what has been told to him by the prosecutrix.

10. PW-4 Badal Kumar is the younger brother of the prosecutrix, who has stated to have received the telephonic call and proceeded towards Chambi. He deposed that he had received the telephonic call from the prosecutrix, who had directed him to come to Chambi. When he was on way to Chambi, two ladies were moving ahead of him. On seeing the accused trying to push the prosecutrix into the van, the two ladies raised hue and cry and ran towards the van. When accused saw these two ladies and Badal Kumar, he fled from the spot. He along with prosecutrix thereafter came home.

11. PW-5 Laxmi Devi is the sister of the prosecutrix and her statement is not of much relevance. PW-6, PW-7 and PW-8 are formal witnesses, while PW-9 is stated to have prepared the site plan at Chambi. PW-10 is the Pradhan, who is the witness to the seizure memo by which torn shirt was handed over to the investigating agency.

12. PW-11 is the investigating officer, who simply stated that there are cross cases between the parties and he has taken into possession this shirt only on 1.5.2008.

13. Having heard the learned counsel for the parties and having gone through the records of the case, we find no infirmity in the judgment passed by the learned Special Court.

14. It is more than settled that the sole testimony of the prosecutrix can sufficiently be relied upon to bring home the case against the accused. The law on the point has been succinctly stated in Narender Kumar Vs. State (NCT of Delhi), AIR 2012 SC 2281 : (2012) CriLJ 3033 : (2012) 3 JCC 1888 : (2012) 5 SCALE 657 : (2012) 7 SCC 171 : (2012) AIRSCW 3391 : (2012) 4 Supreme 59 in the following terms:-

"20. It is settled legal position that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case."

15. The oral testimony can be classified in three categories, namely.

(i) wholly reliable

(ii) wholly unreliable, and

(iii) neither wholly reliable nor wholly unreliable.

In case of wholly reliable testimony of a single witness, the conviction can be maintained without corroboration. These principles apply with great vigor in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the Court has no option then to acquit the accused.

16. In the instant case, we find the version put forth by the prosecution to be improbable and difficult to accept on its face value. Having found it difficult to accept the testimony on its face value, we searched for support from other material, but find complete lack of corroboration on material particulars, therefore, her testimony is not worthy of credence and is totally unreliable.

17. In case, the prosecutrix would have been groped in a crowded bus, we see no reason why she should have not raised an alarm or atleast told her co-passengers, especially the lady co-passengers about this incident. After all, the prosecutrix at the relevant time was well educated as she was studying in B.Com. 1st year in Government College, Dharamshala.

18. Even when the prosecutrix alighted at Chambi, why she did not inform or complaint to anyone regarding the ordeal she had allegedly suffered in the bus. Why she did not ask anyone to catch hold of the accused. Above all why she still ventured to go home all alone knowing well that her younger brother would be reaching there shortly and further being fully aware of the fact that the accused had been following her.

19. The prosecutrix claims to have been saved from the clutches of the accused by two ladies, who have remained a mystery in this case. In case a girl's honour is saved, as claimed by the prosecutrix, we see no reason why the prosecutrix would not have acquainted herself with those ladies and at least taken their addresses, after all, it was a whole time gratitude which she owed to those ladies. Besides, why the shirt, which was alleged to have been torn by the accused when he groped her breast, was not handed over to the police at the

time of lodging of the complaint and why the same was handed over only on 1.5.2008 is not forthcoming.

20. The prosecutrix in her statement has made reference to a Van, in which she was sought to be forcibly pushed in. But who was driving the Van and what was its registration number, is not forthcoming, despite the fact that both the prosecutrix and her younger brother are educated.

21. The prosecution has failed to prove on record that the prosecutrix in fact had on the fateful day travelled in a crowded bus, because neither the driver or the conductor nor any co-passenger of the bus has been examined.

22. Lastly, what appears from the cross-examination of PW-2 is that she had gone to the office of S.P. Kangra to lodge a complaint regarding the brother of the accused having given beatings to her son and her husband having been pushed by the father of the accused. It has further come in her statement that the police had refused to register the case on the pretext that it was they (PW-2 and her family) who were the aggressors or had committed wrong. Therefore, having failed to get a case registered, it appears that the present case was thereafter got registered or else we see no reason why PW-2 would not even remember the material particulars as contained in her complaint Ex. PW-2/A. Furthermore, there would be no reason why the prosecutrix would refuse to undergo medical examination.

23. In these circumstances, we find it extremely difficult to rely upon the version of the prosecutrix alone to bring home the charges against the respondent.

In view of the aforesaid discussion, we find no merit in this appeal and the same is accordingly dismissed. Bail bonds are ordered to be discharged.