
(2010) 09 SHI CK 0121
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 452 of 1997

State of H.P.

APPELLANT

Vs

Gulab Singh

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Penal Code, 1860 (IPC) — Section 323, 354, 376, 427, 452
Probation of Offenders Act, 1958 — Section 3

Citation : (2010) 09 SHI CK 0121

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present Criminal Appeal has come up for adjudication after the grant of leave to appeal u/s 378(3) of the Code of criminal Procedure has been granted in reference to judgment dated 21.5.1997, passed by the Learned Additional Sessions Judge, Mandi, District at Mandi, H.P., in Sessions Trial No. 4 of 1995, under Sections 452, 376, 323, 427 and 504 of the Indian Penal Code, whereby acquitting the alleged accused/respondent.

2. The prosecution case is that on 20.10.1994, when victim major lady having children, was alone in her house at village Dehri Nullah, and there was Mela in the village and at about 10.10 P.M., in the night, Gulab Singh, Guard, came under the influence of liquor and opened her door and tried to outrage her modesty. In that respect FIR No. 108/1994 was lodged for the aforesaid offences.

3. After investigation, the accused was arrested and charged for the aforesaid offences. The case was committed for Sessions Trial. In order to prove its case, the prosecution has examined as many as 11 prosecution witnesses. Whereas, the accused through his statement u/s 313 of Cr.P.C., has denied the prosecution case.

4. On scrutiny of the prosecution witnesses and materials on record, we notice that PW.1 Dr. Vanita Kapoor, Medical Officer, Zonal Hospital, Mandi, has stated that on October 24, 1994 at 12.10 noon, she examined Bheli Devi wife of Keshav, and following injuries were found on her person:

- 1) Complaint of pain in right cheek but no injury was seen there. No tenderness.
- 2) Abrasion right breast with bruises 1 cm in length linear shape bluish brown colour as shown in figure.
- 3) Complaints of pain in right leg but no injury was seen. No tenderness.

PW.1 has opined that vagina admits two fingers easily and there was no sign of inflammation or tenderness or injury on the vagina. No discharge was present and no dead or alive spermatozoa was seen and that the injuries were simple with blunt weapon and she was used to sexual intercourse.

5. PW.2 Dr. Hemant Kumar, Medical Officer, Zonal Hospital, Mandi, has conducted medical examination of accused-respondent and has found no signs of injuries on his body.

6. PW.3 Dugla Ram has stated that Keshav Ram came to him that on the previous night, his wife has been sexually assaulted by accused, who was under the influence of liquor and offered Rs. 400/- to settle the matter.

7. PW.4 Amar Chand in support of the prosecution case has stated that on 21.4.1994, the victim / prosecutrix and her husband came to his house and told him that accused had come to their house on the previous night and after breaking open the door he did "Jabardasti" with her.

8. PW.5 Hukam Chand, Constable, PW.6 H.C. Diwan Singh and PW.7 SI Bishambhar Dutt, in due discharge of their official duty have supported the prosecution case to the extent they were assigned the role.

9. PW.8 Gheli Devi (victim / prosecutrix) has stated that she is having four children e.g. three daughters and one son and on the fateful day, when she was alone in her house, accused-respondent after breaking open the door entered the room and tried to outrage her modesty. PW.8 has further stated accused-respondent caught hold of her and tore the string of her Salwar and tore her shirt. As per testimony of victim / prosecutrix (PW.8), accused-respondent gave her bite on her breast and on her cheek and threatened her that in case she disclose this to her husband, she would kill her and throw her in the nullah. PW.8 has further stated that when her husband came to the house at about 3.00 A.M., she told about the happening to her husband. Accordingly, her husband went to the quarter of accused-respondent to enquire the matter at 8.00 A.M., and then alongwith her husband went to Pradhan Amar Singh and told the entire episode to him.

10. PW.9 Keshav Ram has also deposed like PW.8. PW.10 ASI Tenjin has investigated the case and supported the case of the prosecution.

11. We have analyzed the prosecution witnesses and materials on record, we find that though the victim / prosecutrix (PW.8) is married woman and having four children, and in a natural manner has described the incident, though none of the prosecution witnesses have seen the occurrence, however, the sole testimony of PW.8 is inspiring confidence. Therefore, in our considered view keeping in view the facts and circumstances, accused-respondent has rightly been found guilty of the offence u/s 354 of the Indian Penal Code alone and other offences as indicated above, rightly have not been proved beyond reasonable doubt.

In the facts and circumstances, learned Additional Sessions Judge, while holding him guilty u/s 354 of the Indian Penal Code, has taken lenient view and has released the accused-respondent after due admonition u/s 3 of the Probation of Offender's Act for the offence u/s 354 of the Indian Penal Code and after elapse of 13 years taking a different view and imposing punishment would have imposed by learned Additional Sessions Judge through impugned judgment, will not be appropriate, in these circumstances, this Court is also not making any interference in the verdict of learned Additional Sessions Judge. In the peculiar facts and circumstances, the present criminal appeal, being devoid of any merit, is dismissed.

12. The bail bonds furnished by the accused/respondent are hereby discharged.