
(2010) 03 SHI CK 0194
In the High Court Of Himachal Pradesh
Case No : Criminal A No. 159 of 1998

State of H.P.

APPELLANT

Vs

Ranvir Chand

RESPONDENT

Date of Decision : 20-03-2010

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 20, 7A(2)
Penal Code, 1860 (IPC) — Section 376

Citation : (2010) 03 SHI CK 0194

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—State has appealed against the judgment, dated 25th October, 1997, of learned Sessions Court, whereby Respondent Ranvir Chand, who was tried for offence, u/s 376 of the Indian Penal Code, for allegedly committing rape on the prosecutrix, examined as PW-2, has been acquitted.

2. Case of the prosecution, as per record, is like this. Prosecutrix (PW-2) used to learn tailoring at a place, which was away from her village. On 6th October, 1994, around 4 p.m., when she was returning home, after learning the skill and was crossing a jungle that fell between her house and the tailoring centre, the Respondent, who was hiding in the bushes, overpowered her, dragged Whether reporters of the local papers may be allowed to see the judgment? her to the bushes by the side of the path and committed rape on her. Two other boys, named Inderjit and Jagdish, where also spotted near the scene of occurrence. They allegedly threatened the prosecutrix that she should not be disclosing to anybody the act of commission of offence against her, otherwise she will be done to death. Prosecutrix, on reaching home, informed her mother PW-3 Jayawanti. Father of the prosecutrix was not at home that evening, as he had gone to some other village to perform some religious rites, as he is a priest by occupation. Next morning, Om Prakash, a brother of the prosecutrix, went to inform his father,

namely PW-4 Prem Dutt, who returned home the same evening.

3. Matter was brought to the notice of Pradhan of the Panchayat, on the very day of the occurrence. On the next day, when the father of the prosecutrix returned to the village, he also informed the Pradhan, who told him to lodge report with the police. Thereafter, the prosecutrix accompanied by her father went to Police Station, Sarahan, where FIR Ex. PD was lodged.

4. Prosecutrix was got medically examined. PW-13 Dr. Savita Sharma conducted medico legal examination. She found that the prosecutrix had been having ruptured hymen, with swollen red edges, indicating that she had been subjected to sexual intercourse in recent past. Police also collected evidence, with regard to the age of the prosecutrix, in the form of school record and entry in the Pariwar register. Her date of birth, as per record, was 8th January, 1979. Skeletal age was determined by Dr. G. Narag (PW-1). According to his report, Ex.PA, the prosecutrix was between 17 and 19 years of age. Respondent's own age was 16 or 17 years, at the relevant time, per his medico legal report Ex. PP and the memorandum of identification drawn by the police at the time of his arrest.

5. Prosecution examined the prosecutrix, her mother, her father, her brother, the doctor, who conducted the medical examination, the Radiologist, who determined her skeletal age, the Investigating Officer of the case and the Pradhan of the Panchayat, who was apprised of the incident on the very day of the occurrence, to prove its case.

6. Respondent took the plea that two other boys, namely Inderjit and Jagdish, had committed rape on the prosecutrix and that he witnessed the offence and told the prosecutrix that he would be informing her parents and because of that she falsely named him as an accused. Learned trial Court has observed that the plea appears to be probable. Consequently, the Respondent has been acquitted.

7. We have heard the learned Additional Advocate General as also the learned Counsel representing the Respondent.

8. We are unable to subscribe to the view taken by the learned trial Court, which is not supported by the evidence on record. Incident had taken place at 4 p.m., in the evening, on 6th October, 1994. Immediately, on reaching home the prosecutrix informed her mother about the incident, naming the Respondent as the culprit. Mother of the prosecutrix, while in the witness-box as PW-3, corroborated the testimony of the prosecutrix, who herself appeared as PW-2. Not only this, Pradhan of the Panchayat, Madan Mohan, was apprised of the incident on the very day of the occurrence and he has also corroborated the prosecution version, while appearing as PW-5.

9. Also, it is highly improbable and unnatural that a young virgin, who is subjected to sexual intercourse in a forest, while returning home in the evening, by two boys, would name another boy as the offender. The things perhaps could have been different had the case of the Respondent been that not two but one

boy, other than him, was the offender, because such a situation would be natural, as young boys and girls often get infatuated towards each other and happened to indulge in sexual activities. Normally, a girl would not consent to an act of sex by more than one boy. Exceptions may be there, but even exceptions are very rare in the case of virgins.

10. For the foregoing reasons, we hold that the view taken by the learned trial Court is perverse and not supported by the evidence on record. Consequently, the verdict of acquittal given by the trial Court in favour of the Respondent is set aside and the Respondent is held guilty of the offence of rape, u/s 376 of the Indian Penal Code.

11. It is made out from the evidence of the prosecution itself that the Respondent was below 18 years of age at the relevant time. Explanation to Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by the Amending Act of 2006, and reproduced herein-below, makes the provisions of the Act applicable to every person, who was below eighteen years of age at the time of the commission of the offence, irrespective of the fact whether the offence was committed prior to the coming into force of the aforesaid Act of 2000 or subsequent thereto and also irrespective of the fact whether the said person was or had ceased to be juvenile, at the time of the commencement of the said Act:

"Explanation to Section 20:

Explanation.-In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of Clause (I) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

12. "Juvenile", as per Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000, means a person who has not completed eighteen years of age. Therefore, the Respondent, in this case, being below 18 years of age, was juvenile, at the time of the commission of the crime. Section 7-A(2) of the Act provides for the procedure to be followed when the Court finds that the person concerned was juvenile at the time of the commission of the crime. As per this provision, the juvenile is required to be forwarded to the Board for passing appropriate order.

13. In the present case, Respondent is supposed to be about 34 or 35 years of age, as on date, and sending him to the Board now would be an exercise in futility, because the Board is supposed to pass appropriate orders only in respect of those persons who happen to be still juvenile. It has no power to send the offender to jail.

14. As a result of the above discussion, we accept the appeal, set aside the acquittal of the Respondent, holding him guilty of the offence, u/s 376 of the Indian Penal Code, convict him accordingly, but do not impose any sentence nor do we pass any other order, because at the relevant time he was a juvenile and, therefore, not liable to be punished.

Appeal stands disposed of accordingly.