

(1993) 03 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 127 of 1992

Vidya Singh and Another

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 109, 366, 368, 376

Citation : (1993) CriLJ 1988 : (1993) 3 RCR(Criminal) 144

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : B.B. Vaid, for the Appellant; Shyama Dogra, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—This appeal is directed against the judgment dated 22-6-1992 of Sessions Judge, Shimla whereby both the appellants have been convicted of offence u/s 366 IPC and sentenced to undergo rigorous imprisonment for one year each and to pay a fine of Rs. 500/- each. Appellant No. 1 Vidya Singh has further been convicted under Sections 368 and 376 IPC and sentenced to undergo rigorous imprisonment for two years and four years respectively and to pay a fine of Rs. 1,000/- and Rs. 3,000/- respectively. Appellant No. 2 Davinder Singh is also convicted u/s 109 read with Sections 368 and 376 IPC and sentenced to undergo rigorous imprisonment for one year and two years respectively and to pay a fine of Rs. 500/- and Rs. 1,000/- respectively. In default of payment of fine imposed upon them, they were ordered to undergo further rigorous imprisonment as mentioned in the judgment.

2. The prosecution case was initiated at the instance of Budh Ram PW-7, brother of the prosecutrix Lakhpati PW-3, on his lodging report which was entered in Daily Diary Ext. PE, on the basis of which FIR Ext. PF was recorded, According to him, on 13-7-1991 his sister Lakhpati went to the house of Davinder, Pardhan to

condole the death of his wife along with many other residents of his village and stayed in his house during the night. On next day i.e. 14-7-1991 when he had come to village Katgaon to watch tournament, he was informed by Pawan son of Rajinder Singh resident of village Kafnoo that in the morning his sister Lakhpati along with the daughter of Davinder, whose name he did not know, was coming to watch the tournament and when she reached near village Shango, Vidya Singh son of Shyama Nand with the help of his other companions abducted her. On receipt of this information, he had tried to locate his sister at places Durang, Kangrang etc. but did not find the whereabouts of her or Vidya Singh. The police started investigation and recovered prosecutrix Lakhpati from the house of one Hem Chand on 17-7-1991 from the custody of Vidya Singh. From her statement it was revealed that Vidya Singh with the help of Davinder Singh and others forcibly took the prosecutrix to Dowar (Cave) and thereafter to Kanda Jungle and kept in a Dogri from 14-7-1991 to 16-7-1991 where she was subjected to sexual intercourse by Vidya Singh without her consent and against her will. Lakhpati was got medically examined from Doctor Madhu Swami PW-14 and medico-legal certificate issued by her is Ext. PW-14/A. The wearing apparels of prosecutrix as well as underwear of Vidya Singh were taken into possession, which were sent for analysis to Forensic Science Laboratory, Shimla and the report is Ext. PG on record.

3. After investigation challan was put up against the appellants and one Raj Pal but he was discharged by the Sessions Judge vide order dated 25-11-1991. Only the appellants were charged and tried for offences under Ss. 366, 368, 376 read with Section 109 IPC To prove its case, the prosecution has produced as many as 17 witnesses but out of them the material witnesses are Lakhpati PW-3, the prosecutrix; Rajeshwari PW-16, who was accompanying the prosecutrix at the time of her abduction; Jogi Ram PW-2, who was one amongst those who had witnessed the occurrence and Budh Ram PW-1, brother of the prosecutrix, besides the statement of Doctor Madhu Swami PW-14.

4. As per the statement of Lakhpati, on 14-7-1991 she along with her friend Rajeshwari was going to watch the tournament at Katgaon and when they reached at Shango at about 9.30 or 10.00 A.M., four boys, namely, Vidya Singh, Davinder Singh, Suresh Chand and Raj Pal lifted her and took her to Dowar, from where Suresh Chand went away and the remaining three persons further took her to Kanda Dogri. According to her, she had raised hue and cry at the time of her abduction in the presence of Rajeshwari and Jogi PWs. She has categorically stated that she was kept at Kanda Dogri for three days and Vidya Singh forcibly subjected her to sexual intercourse against her will and without her consent. Vidya Singh had told the prosecutrix that in case she attempted to leave the place she would be done to death and thrown in a Khad. Sister of Vidya Singh named Raju and one Hukam Chand had also met the prosecutrix in Kanda Dogri. On 16-7-1991, the brother of the prosecutrix came with police and she was handed over to him at Tutrang. She has identified her sweater Ext. P-2, shirt Ext. P-3 and salwar Ext. P-4 which were taken into possession by the doctor and then

handed over to the police. The prosecutrix has admitted that both Vidya Singh and Davinder Singh were known to her for about one year prior to occurrence and their village is about 50 or 60 meters away from her village. In her cross-examination, she has further admitted that about two years ago accused had come along with other persons to stay in her house when local Deity had arrived there. She along with other persons had slept in the same room where Vidya Singh had slept during that night but she has denied that they had any talk about their marriage at that time or since then she had ever met Vidya Singh. According to her, distance between the Dowar (cave) to Shango is about 2 kilometers and to Kanda Dogri is 10 kilometers. She has also stated that during the period she was taken to cave from Shango and thereafter to Kanda Dogri, she was consistently crying. When she was taken from Dowar to Kanda Dogri, Raju was holding her in a friendly manner and not taking her forcibly. On the asking of Raju, she has denied that she wanted to marry Vidya Singh and to stay at Dowar or at Kanda Dogri with him. She has also admitted that one Hukam Chand had met her during this period but she did not tell him that she was abducted by Vidya Singh and others. She has further stated that on the way from Kangran to Kanda Dogri there are houses but nobody came forward to rescue her, though she was calling for help. During her stay at Kanda Dogri, another sister of Vidya Singh, named Balmani had met her, whom she had informed that Vidya Singh had committed rape on her and she had no intention to live with him. She has also stated that at the time of abduction, she saw PW Jogi on the spot who was at a distance of 10 or 12 meters. She has denied the suggestion that from Shango she had gone with Vidya Singh of her own without raising hue and cry, with a view to marry him and did not tell any one that she was unwilling to accompany or stay with him.

5. Another witness Rajeshwari PW-16 has corroborated Lakhpati, the prosecutrix that on 14-7-1991 she was accompanying her to village Katgaon and when they reached near Shango, 3-4 boys came and caught hold of Lakhpati and took her towards Tutrang and at that time she was weeping. She denied that besides these boys she noticed any one else on the spot. Out of these boys, she recognised only Davinder Singh, present in the Court and refused to identify others including Vidya Singh, who was present in the Court on the ground that she had not seen them earlier. At this Public Prosecutor took permission to cross-examine her as she had resiled from her statement u/s 161 Cr. P.C. In her cross-examination she admitted that she knew Vidya Singh as she had seen him earlier, who was present in the court and was one of those 3-4 boys who had taken away Lakhpati but she has denied that she saw Lakhpati trying to get rid of these boys and heard her cries because Lakhpati had been removed to a place from where she was not visible. She had only seen her weeping when she was caught hold of by these boys. She showed her ignorance that one old man named Jogi Ram PW was also present near the place of occurrence. According to her, after the occurrence, she had left for Katgaon where she narrated the occurrence to an old lady. She had asked some school children at Katgaon to

inform the members of family of Lakhpati about the occurrence. This witness has denied that she had made statement portion A to A and portion C to C of Ext. PW-7/ A to the police wherein she had named Vidya Singh, Davinder Singh, Jaswant Singh and Suresh, who had forcibly taken away Lakhpati and at that time Jogi Ram was also seeing the occurrence. She has further stated that Lakhpati was known to her for the last two years, but during this period she had never seen her in the company of Vidya Singh. In her further cross-examination on behalf of the appellants, she has admitted the custom in the area that marriage is solemnized after the girl is forcibly taken away by the boy and during the course of her abduction she puts up show of resistance by weeping and crying but she has denied that in the present case also Lakhpati wept a little and thereafter walked with the appellant and others and also that she was taken away in furtherance of her prospective marriage with Vidya Singh to which she was a consenting party. As per her statement, the appellants and others had caught hold of Lakhpati from her arm and taken away, though she was on her feet at that time and she was not bodily lifted.

6. Another eye-witness in respect of occurrence of abduction is Jogi Ram PW-2. He has stated that while going to Katgaon when he reached Shango, he saw a crowd of 3-4 boys from a distance and on enquiry, he was told by the people that Vidya Singh and others have taken away a girl. According to him, he did not hear any cry or saw the forcible dragging of the girl himself. At this stage, Public Prosecutor was permitted to cross-examine this witness as he had resiled from his earlier statement u/s 161 Cr. P.C., but he stuck to his stand and refused that he saw the appellants and two other boys forcibly dragging Lakhpati while she was crying and abusing them. He has admitted that Rajeshwari PW 16 was present on the spot, who had seen the whole occurrence and he had gathered information about it from her. He has denied his statement portion A to A and portion B to B in Ext. PW-2/A made to the police wherein he had stated that on 14-7-1991 he had seen Vidya Singh and Davinder along with two other boys dragging a girl, whose name was later told to him as Lakhpati, towards Tutrang and at that time she was crying and abusing. He has stated that he had seen the occurrence from a distance of 60 yards. In further cross-examination on behalf of appellants, he has admitted that in the area to which he belongs, marriage is solemnized after the girl is abducted by the boy but it is done to make it public that both of them love each other and want to marry and during the course of abduction, some girls raise hue and cry as a token of resistance, while others walk away laughingly. According to him Rajeshwari had told him that Lakhpati had gone to marry Vidya Singh. Besides his own marriage two other marriages were performed according to this custom.

7. Shri Budh Ram PW-1, brother of Lakhpati the prosecutrix, has given the account of occurrence on the information received from Lakhpati after she was recovered and handed over to him by the police on 17-7-1991 vide recovery memo Ex. PA. He was associated with police during investigation and signed memo Ext. PB whereby underwear Ext. P-1 of Vidya Singh was taken into

possession. In his cross-examination, he has also admitted the custom of marriage prevalent in the area to which he belongs whereby first the girl is abducted by the boy and thereafter their parents negotiate and if agreed, perform marriage by bottle pooja. He further admitted that at the time of abduction, the girl puts fake resistance if she knows the boy and wants to marry him. He has denied that at about three years ago Vidya Singh along with others had come to his village when local Deity had arrived there. He has showed his ignorance that Lakhpati and Vidya Singh were in love with each other but categorically denied that Lakhpati had accompanied him of her own accord. He has admitted that father of Vidya Singh had come to him with a proposal of marriage of Vidya Singh with Lakhpati, about 12 months after the occurrence and he had demanded Rs. 20,000/- as "Izzat" but has denied that marriage of Vidya Singh and Lakhpati would have taken place even after the amount of Rs. 20,000/- was paid to him. He has also admitted that when Vidya Singh and Lakhpati were called to the house of Hem Chand by the police at the time of recovery of Lakhpati, they did not put any resistance and came there willingly.

8. The prosecution had got Lakhpati, the prosecutrix medically examined from lady doctor Madhu Swami PW-14, who had issued medico-legal certificate Ext. PW-14/A. She has stated that wearing apparels of Lakhpati, the prosecutrix were intact and not torn. Her Salwar was blood stained, the scrapping of which she had sealed and handed over to the police for chemical examination and also her clothes. Some of the observations made by this witness are as under :--

1. A multiple abrasion all over body which was redish brownish in colour was found on her person.
2. Pubic hairs were metted with whitish discharge.
3. Hymen was absent.
4. Carnual edges were torn which were felt by one finger on examination.
5. Utress size nullipartous.

Retrovered bleeding on touch. There was bleeding from vagina.

On Microscopic examination of swab slids taken from vagina, dead sperms were found.

In the opinion of the doctor sexual intercourse with Lakhpati had taken place 3 to 7 days before her examintion and the probable duration of abrasions found on her body was also of the same age. She has further stated that these abrasions have been caused by dragging her on rough terrain. She has also opined that "the bleeding on touch and the bleeding per vagina" were due to tearing of hymen which was freshly torn i.e. 3 to 4 days before the examination. In her cross-examination, she has categorically denied that abrasions found on the person of Lakhpati could be caused by fall or skidding or rolling down a hillock. She has also stated that a healed hymen not bleed on touch.

9. Out of other prosecution witnesses, Ram Padam PW-5, Secretary Bhaba Gram Panchayat, District Kinnaur had placed on record the extract of Pariwar Register Ext. PC, wherein the date of birth of Lakhpati is recorded as 6-9-1969. Another witness Tilak Raj Sharma PW-6 was Headmaster, Government High School, Katgaon, who has placed on record certificate Ext. PD in respect of date of birth of Lakhpati as per the school record as 18-3-1972. One more witness Doctor Arbind Kumar Vaish PW-15 has placed on record medico-legal certificate Ext. PW-15/A of Vidya Singh. Statements of other prosecution witnesses are not material and need not be referred to. Besides producing oral evidence documents Exts. PH and PE were placed on record. Ext. PH is the opinion of Doctor V. K. Bhardwaj that radiological age of Lakhpati, the prosecutrix was more than 19 years at the time of occurrence. As per the report Ext. PG sample of blood of prosecutrix (coagulated and anti-coagulated) of Group A and the sample of blood of Vidya Singh was found of Group B. On the wearing clothes of Lakhpati Salwar Ext. P-4 and shirt Ext. P-3 and underwear of Vidya Singh the blood stains of Groups A and B as well as semen stains were found. Blood stains were also detected on sweater Ext. P-2 but in the vaginal smear slide blood or semen not detected.

10. In his defence, Vidya Singh has admitted that on 13-7-1991 Lakhpati had gone to the house of Davinder Singh at Chango to attend Kirya ceremony of his wife and on 14-7-1991 she along with PW Rajeshwari was going to Katgaon via Shango to see a tournament and he had accompanied them right from Chamasu. According to him, as stated in answer to question No. 16, from Shango, Lakhpati of her own free will accompanied him to Kanda Dogri and on the way his sister Rajwanti and Hukam Chand met them. The defence of accused Davinder Singh is also on the similar lines. In reply to question No. 16, he has stated that on the day of occurrence he, Vidya Singh, Lakhpati and Rajeshwari were coming together from Chamashu and when they reached Shango, Vidya Singh told Lakhpati that she should accompany him if she wanted to marry him as earlier she had been persuading him for the marriage. Davinder Singh further states that saying this, Vidya Singh caught her hand and Lakhpati went away with him. Thereafter, he left for his house.

11. In defence, the appellants have produced two witnesses Hukam Chand DW-1 and Balamani DW-2. According to Hukam Chand, in July, 1991, he was coming from Kanda to his house in village Dutrang when on the way he met Vidya Singh along with Lakhpati and on enquiry, both of them told that they intended to marry. Thereafter he accompanied them to Dogri and on the way sister of Vidya Singh named Raju also joined them. As per this witness, Lakhpati had accompanied Vidya Singh of her sweet will and without any pressure with the purpose to marry him and she had never cried on the way In his cross-examination, he has denied his knowledge about the pendency of criminal case of abduction and rape against the appellants for forcibly taking away Lakhpati and subjecting her to rape by Vidya Singh. He has also denied his knowledge about the visit of police in the village and investigation on the spot. The other

witness Balamani DW-2 has claimed that Vidya Singh is co-villager and her brother. About 10 months ago Vidya Singh along with Lakhpati had come to her house at Kanda Dogri and stayed there for four days. He had introduced Lakhpati as his wife, whereas, on enquiry Lakhpati had informed that she intended to marry Vidya Singh and with that purpose she was accompanying him. In the cross-examination, she has denied that she knew Hukam Chand or Raju, sister of Vidya Singh who according to her did not visit Kanda Dogri. She has further denied that she had visited Vidya Singh and Lakhpati along with her son after three days on their arrival in the Dogri of Vidya Singh when Lakhpati had informed her that Vidya Singh had committed rape on her and brought her against her will. According to her, she had resided at Kanda Dogri along with her three years old son.

12. On the assessment of evidence on record, the trial court has held that prosecution has proved that the appellants have abducted Lakhpati by use of force with intent to compel her to marry Vidya Singh against her will and to force her to illicit intercourse by Vidya Singh. It is further held that Davinder Singh has assisted Vidya Singh in abducting Lakhpati as well as in the commission of offences by Vidya Singh u/s 368 and 376 IPC.

13. Mr. B. B. Vaid, learned counsel for the appellants, has challenged these findings on almost same grounds which were agitated before the trial court. The main contention of Mr. Vaid is that from the statements of Budh Ram PW-1, Jogi Ram PW-2 and Rajeshwari PW-16, it is proved that there exists a custom in the area that would be bridegroom with the help of his companions abducts the would be bride, who puts a fake resistance to the abduction by weeping and crying and later on marriage between them is solemnized by performing bottle pooja with the approval of their parents. According to Mr. Vaid, in the present case also the appellants have abducted Lakhpati, the prosecutrix with the purpose of her marriage with Vidya Singh but later on her brother Budh Ram PW-1 objected to it and a false case has been registered against the appellant. He has admitted that in this customary form of marriage consent of girl is necessary, rather normally it happens when the boy and the girl love each other and have intention to marry and in order to make their intention public, fake drama of abduction by boy with the help of his companions and resistance by the girl, is played, Mr. Vaid further submits that in the present case Lakhpati, the prosecutrix knew Vidya Singh, she wanted to marry him and had accompanied him willingly by showing fake resistance. For making this submission, he has referred to the circumstances proved on record that Lakhpati and Vidya Singh knew each other for the last two years and had she been really taken away forcibly against her will, she could put tough resistance being a Kabaddi player and people watching could have come to her rescue. It was not possible to drag her for a distance of 10 kilometers from Shango to Dowar and thereafter to Kanda Dogri. He has also relied upon the statement of Jogi Ram PW-2 that Rajeshwari had told him that Lakhpati had gone to marry Vidya Singh, and also the statements of Hukam Chand DW-1 and Balmani DW-2 that on their enquiry,

Lakhpati admitted that she wanted to marry Vidya Singh and had accompanied him with that purpose of her own accord.

14. All these submissions have been considered and rejected by the trial court and this Court is in agreement with the conclusions arrived at by the trial court. It is basic that no custom opposed to law can be upheld unless it is saved by the law itself. The custom proved by the prosecution witnesses Budh Ram, Jogi Ram and Rajeshwari is that if a boy and a girl, presumably eligible in all respects, love each other and intend to marry, they in order to make their intention public, enact a drama of fake abduction and resistance and thereafter their parents solemnize their marriage by performing bottle pooja. Such a custom and the abduction do not seem to be in conflict with law and can be pleaded as defence, as Mr. Vaid had tried to do on behalf of I appellants. But the question arises, from the " evidence on record, has it been proved that Lakhpati prosecutrix was intimate with Vidya Singh and they intended to marry and had enacted the drama of abduction and resistance in order to make their intention public. The answer is in negative. Lakhpati prosecutrix has categorically denied all such suggestions as to her intimacy and intention to marry Vidya Singh, though she knew him and his sister and had met him two years ago in a social function. Her statement inspires confidence as it has been corroborated by Rajeshwari PW-16, who has stated that she never saw Lakhpati prosecutrix and Vidya Singh together during last two years since when she had known Lakhpati prosecutrix. Further, the statement of Lakhpati prosecutrix in this regard has not been controverted by any other circumstance proved on record. Therefore, the question of enacting drama of abduction and resistance to declare their intention to marry, to the public does not arise. The defence put up by the appellants is an after-thought and prima facie false. Her statement that she was forcibly taken away by the appellants and others despite her resistance, is also corroborated by Rajeshwari PW-16 and minor contradictions as pointed out by Mr. Vaid are of no effect. The statement of Jogi Ram PW-2 that Rajeshwari PW-16 had told him that Lakhpati prosecutrix had gone with Vidya Singh to marry him, cannot be believed as it was not put to Rajeshwari PW-16 to enable her to admit or deny. Moreover, this witness has himself admitted that he had not seen the whole occurrence himself and came to know about it from Rajeshwari PW-16. According to him, he had seen "Halla" from a distance of 60 yards, therefore, no value can be attached to his version. Similarly, statements of both Hukam Chand DW-1 and Balmani DW-2 do not inspire confidence. Hukam Chand DW-1 did not know Lakhpati prosecutrix and was not present at the time of abduction. He met Lakhpati prosecutrix and appellant Vidya Singh on the way and accompanied them to Dowar and thereafter to Dogri. In these circumstances, it was not natural for Lakhpati prosecutrix to tell him that she was going with Vidya Singh to marry him. From his statement that he did not know that a criminal case of abduction and rape for forcibly taking Lakhpati prosecutrix and subjecting her to rape by Vidya Singh and the visit of the police to the village and investigation on the spot, further shows that this witness is not speaking the truth. So far

Balmani DW-2 is concerned, her statement is contradictory to the version given by Hukam Chand DW-1 and the defence put up by the appellants, as she has denied that Hukam Chand DW-1 and Raju sister of Vidya Singh were known to him and they had accompanied Lakhpati prosecutrix, Vidya Singh and others when they had come to reside with her in her Dogri. She is an interested witness and her statement cannot be accepted on its face value.

15. Above all, if abduction of Lakhpati prosecutrix by Vidya Singh and his companions was fake and in accordance with the custom, why Lakhpati prosecutrix was not taken by him to his house instead of the house of Balmani DW-2, who claimed herself to be a co-villager and sister of Vidya Singh. From these circumstances, it is clear that Lakhpati prosecutrix was really abducted and confined in the Dogri of Balmani DW-2 with intention to subject her to rape by Vidya Singh. It is also proved on record that Lakhpati prosecutrix did put up a tough resistance by crying for help but failed, may be the people watching her had taken it a fake resistance due to the custom prevalent in the area. She might be a Kabaddi player, but when she was forcibly taken, she was pitted against more than two healthy youths, the appellants.

16. The prosecution case that Lakhpati prosecutrix was dragged from Shango to Dowar and thereafter to Kanda Dogri, where she was put to sexual intercourse against her will, is further corroborated by the medical evidence on record i.e. medico-legal certificate Ext. PW-14/A and the statement of Doctor Madhu Swami PW 14. She has categorically stated that multiple abrasions found all over the body of Lakhpati prosecutrix could be caused by dragging on rough terrain and probable duration was of 3 to 7 days. She also stated that hymen of Lakhpati prosecutrix was found absent and it was bleeding on touch as it was freshly torn i.e. 3 to 4 days before the examination on 17-7-1991. She also found dead sperms on swab slids taken from vegina of Lakhpati prosecutrix on microscopic examination. The clothes of Lakhpati prosecutrix taken into possession by Doctor Madhu Swami were got examined from Forensic Science Laboratory and as per report Ext. PG, the blood of group A of prosecutrix and of group B of Vidya Singh was found thereon and also on the underwear Ext. P-1 of Vidya Singh. Therefore, on the totality of evidence on record, this Court finds that the trial court has correctly held that Lakhpati prosecutrix was subjected to rape after she was abducted by the appellants and others.

17. The participation of appellant Davinder Singh in abduction as well as his abetment in commission of crime of wrongfully concealing Lakhpati prosecutrix at Dowar as well as Kanda Dogri and also in commission of crime of rape by Vidya Singh at Kanda Dogri is also proved.

18. The result of above discussion is that there is no merit in this appeal and it is dismissed.