

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.985-987 OF 2000

STATE OF HIMACHAL PRADESH

APPELLANT(S)

VERSUS

JAI NAND & ORS.

RESPONDENT(S)

O R D E R

These appeals have been preferred by the State of Himachal Pradesh challenging the judgment of the Division Bench of the High Court whereby the three respondents herein were acquitted of their conviction under Sections 363, 366 and 376 of the Indian Penal Code.

Originally the appellant registered a case against five accused but one

of the accused remained absconded and the Sessions Court at Bilaspur

in Himachal Pradesh tried four accused persons. The fourth accused

Ashok Kumar was acquitted and he was charged under Section 212 of

IPC only. The present respondents were found guilty of the offences

under Sections 363 and 366. They were sentenced to undergo rigorous

imprisonment for a period of 5 years each and for the major offence

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under Section 376 IPC they were sentenced to undergo rigorous

imprisonment for a period of 10 years.

The case against the present respondents is that they enticed

PW-I who was a student of 9th class on 30th May, 1996. According to

PW 1 on the date of the incident she wanted to attend a marriage and

she requested her mother to give Rs.5/-. Her mother PW-2 dissuaded

her from attending the marriage and declined her to pay the amount.

As PW 1 felt annoyed she understoodly took Rs.5/- from her house and

left the house and at about 3.00 p.m. she met the second and third

accused and it is alleged that they offered money and other food items.

She further alleged that she was given some eatables and she was later

taken to some unknown place and there she was raped by the accused

persons. She was in the custody of the accused from 30.5.1996 to

4.6.1996 and she returned home on 5.6.1996 and meanwhile her

mother PW 2 gave information to the police on 4.6.1996 and thereafter

the police registered the case.

On 5.6.1996 when she came back she was taken to the police

station and PW 12 - the doctor examined her and it was found that she

was sexually assaulted and he issued a medical certificate to that effect.

The police conducted further investigation and lodged the report. On

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the side of the prosecution 12 witnesses were examined. PW-1 the

Prosecutrix, PW 2 the mother and two other witnesses were examined

to prove that the prosecutrix was found in the company of the accused

respondents. The Prosecutrix also was subjected to medical

examination to determine her age. It is pertinent to note that PW 11

the Dental Surgeon examined prosecutrix and gave the opinion that she

was approximately between 14 to 16 years. He issued a certificate

Exh.P-11 to that effect. PW-17., the Radiologist also examined the

prosecutrix and he was of the opinion that the prosecutrix was not less

than 14 years and not more than 17 years. According to prosecution

the prosecutrix was born in 1982 and had attained the age of 14 ½

years at the time of the incident. The Sessions Judge held that the prosecutrix was 14 ½ years at the time of the incident; she was a minor; she was illegally taken away from the custody of the guardians and thus, the accused committed the said offences. The Sessions Judge also found that the accused committed the gang rape and they were sentenced to 10 years Rigorous imprisonment. This finding of the Sessions Judge was reversed by the High Court by the impugned judgment.

We heard learned counsel for the State and also counsel for

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the respondents-accused. The counsel for the State submitted that the Division Bench seriously erred in holding that the prosecutrix was above 18 years of age at the time of the incident. It is pointed out that the records produced by the prosecution clearly established that the prosecutrix was born on 27.3.1982 and that she was only 14 ½ years at the time of the incident. Counsel for the State also pointed out that the appreciation of evidence was not correctly done by the High Court and

the High Court was not justified in reversing the finding of the Sessions

Court. However, counsel for the respondents supported the impugned

judgment and contended that the evidence of the prosecutrix was

highly improbable and that she had given different versions at different

occasions and that serious contradictions were there in the evidence

of PW 1. Counsel for the respondents pointed out that the prosecutrix

though reached home on 5.6.1996 she was medically examined on the

same day but she was not questioned by the police till 8.6.1996 and,

therefore, her evidence had rightly been discarded by the High Court.

We have carefully perused the judgment of the High Court as

also the evidence of PW 1. As regards the age, the prosecution had

relied on the school certificate maintained by the Principal-PW 8. In

order to prove the school record the Principal of the Government

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secondary school was examined. He produced the register which

showed that the age of the prosecutrix recorded in the school register

was 27.3.1982. In the cross-examination PW 8 stated that this entry

was made on the basis of the transfer certificate produced from another

school when she had joined the present school. There is no cross-

examination to prove that these entries were wrongly recorded or there

is anything to discredit entries made in the register. To prove the age of

the prosecutrix yet another document was produced. That was the copy

of Pariwar register maintained by the Panchayat. In the register

apparently there was some correction and that was relied on by the

High Court in view of the correction regarding the year i.e. the year

1980 was seen to be corrected to 1982. But this register by itself was

not relevant as per the relevant school records to prove the age of the

prosecutrix. That apart, PW 2, the mother of the prosecutrix stated

that she was 14 ½ years at the time of the occurrence of the incident.

It is true that PW 8, the Principal gave a statement that the entries in

the school records were done on the basis of the certificate from the

Panchayat but that has no significance as PW 8 may not have any

direct information as to how the date of birth was recorded in the

school register, particularly, in view of the categorical evidence of PW 2

and also the certificate given by PW 11. In view of all these items of

evidence it could easily be inferred that the version given by PW 2 and

the school records were correct and the prosecutrix must have been of

the age of 14 ½ years at the time of the incident.

As regards the commission of the gang rape by the accused

there is evidence of the prosecutrix which is corroborated by other

evidence also. The fact that she was raped by more than one person is

evident from the certificate issued by PW 12. The certificate issued by

the doctor show that wild sexual intercourse had been performed one

week before the examination by the doctor. Though no external injuries

were seen, the doctor opined that there was a possibility of gang rape

between 30.5.1996 to 4.6.1996. The evidence of the prosecutrix in this

case is very relevant. She had given a detailed narration of the incident

but her evidence was disbelieved by the High Court on the basis of her

two previous statements and the version given by the doctor. PW 1,

before being examined by PW 12, recorded her statement. That was on

5.6.1996. Of course in that statement she has not mentioned the

names of any of the accused; but she has given the details of the manner in which she had left the house and later in custody from 30.5.1996 to 4.6.1996 and she had also mentioned that she was in a

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semi conscious state during some period in a hotel and she was repeatedly sexually assaulted by the assailants . After she reached home she was questioned by the police on 8.6.1996. At the time of questioning she gave a written statement regarding the whole incident.

The 161 statement and the written statement were made available to the accused and they had cross-examined the witnesses. But only some portions alone were confronted but unfortunately the High Court extensively placed reliance on the 161 statement and also the written statement which also assumed the character of 161 statement to find out contradictions in the testimony of PW 1. If at all there was a contradiction with the previous statement, the same should have been put to the witnesses and she should have been given reasonable opportunity to give her version. Without that opportunity being given to

the witness the High Court made a reference to the various contradictions in these two statements and held that there were contradictions between the two previous statements of the evidence given by the prosecutrix before. PW 1 gave a detailed version regarding the incident and there is no dispute regarding the identity of these accused and that all the respondents were identified properly by the prosecutrix. There is another witness PW 5 who saw the prosecutrix

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travelling in the bus and he saw the accused Jai Nand in the company of the prosecutrix. The first accused Kallu @ Mohan Lal is from the same village and the prosecutrix very well knew this accused previously. So there is no question of mistaken identity and the prosecutrix gave evidence to the effect that she was in the custody of these accused from 30.5.1996 to 4.6.1996 and we do not find any serious contradiction in the evidence of this witness and the Sessions Judge rightly believed the version of this witness. The High Court seriously erred in disbelieving the evidence of PW 1 based on the two

previous statements which were not fully put to the witness at all at the time of the evidence.

We have carefully gone through the evidence of the prosecution and we find no reason to disbelieve evidence. The medical evidence and other attending circumstances clearly show that these accused persons have enticed the girl from the custody of her parents and for about 6 days she was unlawfully detained by the accused and the accused had committed sexual assault on her. The finding of the High Court is contrary to the evidence on record and it was not warranted in the facts and circumstances of the case. The reasons given by the High Court are not correct and it was not justified in

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reversing the conviction of the respondents for the offences charged against them.

In the result, we set aside the judgment of the High Court and confirm the conviction entered by the Sessions Court for the offences under Sections 363, 366 and 376 of the IPC. However, for the offence charged under Section 376 of the accused, we take into consideration

the fact that these respondents were acquitted by the High Court as early as in 1999 and the incident had happened in the year 1996. Of course these accused-respondents have committed a heinous offence but considering these facts, we are taking a lenient view and the sentence imposed upon the accused by the Sessions Court of 10 years rigorous imprisonment for the offence under Section 376 IPC is reduced to a period of 5 years rigorous imprisonment. The sentences entered for the offences under Sections 363 and 366 are confirmed. The respondents are directed to surrender forthwith. If the respondents fail to surrender, the Sessions Judge will take appropriate action. We also notice that one of the accused Rajeev is absconding. The State may take appropriate action in that regard. The sentences shall run concurrently. The accused to undergo the remaining period of sentence.

The appeals are accordingly allowed.

.....J.

(K.G. BALAKRISHNAN)

.....J.  
(LOKESHWAR SINGH PANTA)

.....J.  
(D.K. JAIN)

NEW DELHI;

23RD NOVEMBER, 2006

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ITEM NO.1(PH)

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO(s). 985-987 OF 2000

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VERSUS

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(Office report for direction)

Date: 23/11/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

HON'BLE MR. JUSTICE D.K. JAIN

For Appellant(s)

Mr. J.S. Attri, AAG.

Mr. Vivek Singh, Adv.

For Respondent(s)

Mr. Vishwajit Singh, Adv.

Mr. Siddharth Sengal, Adv.

Mr. Pankaj Tiwari, Adv.

Mr. Devendra Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard both sides.

The appeals are allowed in terms of the signed order.

(G.V. Ramana)

(Vijay Aggarwal)

Court Master

Court Master

(Signed order is placed on the file)