

## IN THE SUPREME COURT OF INDIA

## CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 965 OF 2008

CHAIN SINGH

... APPELLANT(S)

VS.

STATE OF HIMACHAL PRADESH

... RESPONDENT(S)

## O R D E R

Appellant - Chain Singh was put on trial for offence under Section 376, 323 and 506 of the Indian Penal Code ("IPC" for short). The Sessions Judge, Chamba, by his judgment and order dated 3rd September, 1993 passed in Sessions Case No. 8 of 1993 acquitted him of all the charges. The State of Himachal Pradesh, aggrieved by the aforesaid acquittal, preferred appeal and the High Court by the impugned judgment had set aside the order of acquittal and convicted the appellant for offence under Section 376 of the IPC and sentenced him to undergo rigorous imprisonment for seven years and a fine of Rs. 5000/- with default clause.

Aggrieved by the same, the appellant has preferred this appeal.

According to the prosecution, on 14th September, 1991, a group of women, including the prosecutrix, Reto Devi, P.W. 3, and men from village Pukhru went to see a fair adjoining the District of Kangra. After they visited the fair, according to the case of the prosecutrix, she along with five ladies, namely, Kalasho, Seema, Billo, Sunni Devi and Pushpa and the appellant and his uncle were returning to the village. It is alleged that on the way, the appellant consumed liquor at a place called Manghiana. At about 8.30 P.M., other ladies left the prosecutrix behind by a few yards. The appellant, thereafter, started making vulgar utterances and he caught hold of the prosecutrix by her arm and dragged her towards the grassy land. It is alleged that on hearing the vulgar utterances of the appellant, other ladies ran away from the place of occurrence and then the appellant committed rape. It has further been alleged that after some time, one of the companion ladies of the prosecutrix, namely, Billo, P.W. 10, accompanied by her father-in-law, Manak (not examined), reached the grassy land where the prosecutrix had been raped. According to the allegation, after committing the rape, the appellant was lying on the prosecutrix and pressing her breast.

On the basis of the information given by the prosecutrix, a case under Section 376, 323 and 506 of the IPC was registered, and after usual investigations, the appellant was committed to the Court of Sessions. Appellant denied to have committed any offence and claimed to be tried. In order to bring home the charge, the prosecution has mainly relied on the evidence of the prosecutrix, Reto Devi, P.W. 3 and Dr. Jyoti, P.W. 1, who examined the prosecutrix. Further, P.W. 10, Billo, had been examined to support the case of the prosecution but she has been declared hostile.

The trial court, on analyses of the evidence and material on record, found the allegations to be highly improbable and in the absence of evidence of any of the women folk accompanying the

prosecutrix acquitted the appellant of all the charges. However, the High Court in appeal reversed that finding and relying on the evidence of the prosecutrix, the doctor, who examined her, and the F.S.L. Report came to the conclusion that the prosecution has proved its case beyond all reasonable doubt and held the appellant guilty under Section 376 of the IPC and sentenced as above.

Mr. Himinder Lal, learned counsel appearing on behalf of the appellant, submits that the view taken by the trial court was one of the possible views and the High Court ought not to have interfered with the same in appeal. He has drawn our attention to the reasons given by the trial court while acquitting the appellant, the same reads as follows:

- . "(i)It looks highly improbable that accused will try to commit rape upon her co-villager in the presence of four women folk of her area, his own wife, as well as in presence of his uncle, whose presence at the spot has been established.
- . (ii)It looks highly improbable that a co-villager of the prosecutrix will not support the prosecutrix in such eventuality when a serious offence has been committed against a woman.
- . (iii)Three women accompanying the prosecutrix were not examined along with other person who came to rescue her while fourth woman when examined did not support her.
- . (iv)Injuries on the person of the prosecutrix are not pointing out to the fact that they can be only sustained in case of a sexual assault."

Mr. Naresh Kumar Sharma, learned counsel appearing on behalf of the respondent-State, submits that the High Court rightly believed the evidence of prosecutrix and finding corroboration from the evidence of Dr. Jyoti, P.W. 1, and the report of the Forensic Science Laboratory rightly convicted the appellant.

We have considered the rival submissions and we find substance in the submissions of Mr. Himindar Lal. It is the case of the prosecution itself that the prosecutrix was returning to her village along with other five women of the area, including the wife of the appellant, as also his uncle. In the opinion of the trial court, it was highly improbable for the appellant to have committed the rape in their presence. The trial court further found it improbable that co-villagers would run away and could not support the prosecutrix when she is subjected to forcible intercourse. We have gone through the reasoning given by the trial court and we are of the opinion that the view taken by it is one of the possible view. Once it is held so, we are of the opinion that the High Court erred in setting aside the order of acquittal.

In the result, we allow the appeal set aside the judgment and order of the High Court and acquit the appellant. The appellant is on bail, he is discharged of his bail bonds.

.....J.  
(Chandramauli Kr. Prasad)

