

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1843 OF 2011

Ramesh Kumar & Ors.

...Appellants

Versus

State of Himachal Pradesh

...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 6.1.2011/25.2.2011, passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.178 of 2000, convicting the appellants under Section 376(2)(g) read with Section 34 of the Indian Penal Code 1860 (hereinafter referred as 'IPC'), however, acquitting them for the offences punishable under Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced each of them to undergo R.I. for 7 years and a fine of Rs.10,000/- each and in default of payment of fine each of them shall further undergo an imprisonment for one year. The High Court has reversed the judgment and order of the trial Court dated 22.12.1999, passed by the learned Sessions Judge, Kangra in Sessions Case No.39-J/VII/98 by way of which and whereunder the appellants stood acquitted of all the charges.

2. Facts and circumstances giving rise to this appeal are:-
- A. That Smt. Sarla Devi (PW.1), wife of Shri Harnam Singh (PW.4) having four children belonging to Scheduled Tribes community alleged that on 23.1.1998 at about 6.30 p.m. the appellants who are residents of the same village had caught hold of her while she was returning from the work, took her in the agricultural field having the wheat crops. Karam Chand gagged her mouth with his hands. Thus, she could not raise hue and cry. He forcibly removed the string of her Salwar and committed rape on her. He was followed by accused Ramesh. Accused Pinta remained standing as guard. Thereafter, all the three left the place and the prosecutrix went to her house.
 - B. That after some time, her husband Harnam Singh (PW.4) who had gone to purchase the medicine returned at about 8 p.m. at their residence. The prosecutrix disclosed the incident to him. Thereafter, both of them went to the police station and lodged the FIR Ex.PA. The police took the prosecutrix immediately for medical examination to Dr. Sushma Sharma (PW.2) in the Community Health Centre. She was medically examined and the doctor found

that though the prosecutrix did not have any injury on her private parts but she found discharge present in the vulva portion. Her Salwar was also having stains. The wearing apparels of the prosecutrix were sealed and handed over to the police by the doctor. The doctor also took sample of pubic hair and vaginal smear slides which were sealed and handed over to the police for semen analysis/examination to Chemical Examiner. Doctor did not rule out the possibility of sexual intercourse but reserved final opinion till chemical examination report was received.

- C. On 24.1.1998 in the morning at 11.30 a.m. Daya Nand, S.I. (PW.7) arrested the appellants and got them medically examined. He also prepared the site plan and found that the wheat crops had been crushed out at the place of occurrence. Some residential houses were at a distance of about 150 yards from the place of occurrence.
- D. After investigation, the charge-sheet was filed against the appellants and the trial commenced. Witnesses were examined by the prosecution before the trial Court including that of the prosecutrix (PW.1), her husband Harnam Singh (PW.4), Dr. Sushma Sharma (PW.2), Investigating Officer Daya Nand, S.I. (PW.7) and other formal witnesses. The trial Court doubting the exact correctness of the site plan had an inspection of the site and prepared its own site plan and doubting the prosecution witnesses found the evidence of the prosecution witnesses having lot of contradictions/improvements etc. and acquitted all the accused/appellants.
- E. Aggrieved by the order of the trial Court dated 22.12.1999, the State of Himachal Pradesh preferred the appeal before the High Court by way of which the appellants stood convicted and sentenced as referred to hereinabove. Hence, this appeal.

3. We have heard Shri Bahar U. Barqi, learned counsel for the appellants and Shri Ajay Marwah, learned counsel for the respondent-State and perused the record.

4. The High Court summarised the grounds on which the trial Court had acquitted the appellants mainly as under:

(a) That the site plan Ext. PH prepared by PW7 Investigating Officer was not found in conformity by the learned Sessions Judge, with the position existing on the spot and observed that Investigating Officer intentionally did not mention the distance in between the place of the occurrence and the house of the accused and also failed to mention that any house existed within the distance of 100 meters from the place of occurrence and the house of the prosecutrix.

(b) The learned trial Court also observed that in the month of January, wheat crop could not be said to be more than 1 = feet to 2 feet which shows that if one of the accused persons committing rape at a distance of 20 yards from a common path in the early hours of the evening and the two others were standing, would be visible to any passer-by, including the husband of the prosecutrix who is alleged to have passed through that path around 7 p.m. for getting medicines.

(c) Further that there was no evidence that any person had seen the accused standing on the path or going towards that prior to the alleged occurrence or leaving the place after occurrence and it was surprising that all accused persons would venture to go and have the sexual intercourse with a married woman just near the place of her residence.

(d) Since the prosecutrix admitted that Pinta was running a mechanic shop and other two accused persons were real brothers doing the work in Atta chakki, it looked surprising that after leaving the shop before the closure time of the shop, they would be present on a common path waiting for the prosecutrix to approach with an intention to commit rape on her.

(e) Further that prosecutrix admitted that Pinta accused had good relations with her husband. They used to crack jokes with each other. In the evening, when Harnam Singh, her husband returned, he was under the influence of liquor and accused Pinta cracked some joke. On this, he felt annoyed and on reaching his residence, he along with prosecutrix went to police and lodged FIR.

(f) Also the prosecutrix had admitted pendency of the case against accused Kara @ Karam Chand with respect to the Motor vehicular accident case in which Shanti Devi, sister-in-law of PW4 Harnam Singh had suffered injuries.

(g) The statement of prosecutrix did not inspire confidence, as she stated that when she was lifted by accused kara @ Karam Chand, she did not depose that she could not raise alarm as her mouth was gagged. There was also a time gap between rape committed by Kara @ Karam Chand and accused Ramesh Chand, she could have raised alarm but she did not do so and she also not stated that she was prevented by any reason to raise alarm.

(h) It was not possible to believe that prosecutrix had allowed to gag her mouth without resistance and her statement did not reveal that she had ever put any resistance. Thus, there was possibility of false implication of the accused in the present case and even Medical Officer while examining did not observe that she was under shock after such a traumatic incident; and that

(i) There was a possibility of having indulged in sex with her husband sometimes prior to the occurrence and there were no marks of injury on the person of the prosecutrix, as stated by PW2 Dr. Sushma Sharma. Thus the medical evidence did not support the statement of the prosecutrix.

5. The High Court appreciated the evidence point-wise and came to the conclusion that all the grounds on which the trial Court had acquitted the appellants were irrelevant. More so, the High Court took serious note of the fact that the site plan prepared by the Investigating Officer may not be exactly scale-wise, but it would not make any difference for the reason that if the Investigating Officer had shown that there was a distance of 150 yards from the place of occurrence to the residential houses, the learned trial Court Judge after having local inspection has recorded the said distance as 105 yards and therefore, the trial Court labelled and found out the fault with the prosecution case and drew the conclusion that the prosecutrix had not raised any hue and cry otherwise some people could have come for her help. The trial Court ignored her evidence that her mouth was gagged by one of the accused by his hands, though she had raised hue and cry in the beginning but none came for her help. There was no reason to disbelieve this version given by the prosecutrix. The distant relation of the prosecutrix was having some dispute with one of the accused. That could not be a ground for false implication of the appellants in a case of rape. In fact it had been a case of giving

evidence in a case of accident of the tractor of Karam Chand - appellant, with the sister-in-law of Harnam Singh (PW.4).

6. There had been stains of semen on the clothes of the prosecutrix as deposed by Dr. Sushma Sharma (PW.2). As per report Ext. PD, Salwar Ext.P1 sent for forensic examination contained the stains of blood and human semen. Even vaginal swab of the prosecutrix tested positive for human semen. Blood was also found on her public hair.

7. There may be some discrepancies in the timing and distance between the place of occurrence and residential houses. Material witnesses had been the rustic villagers/labourers earning their livelihood by difficult means. So the case is to be examined keeping these aspects in mind.

8. The High Court had relied upon the deposition of the Investigating Officer Daya Nand (PW.7) and particularly, his statement that incident took place in the wheat fields wherein the wheat crop was found crushed and the said fact had been mentioned in the spot map Ex.PH and none of the defence had raised any issue in this respect while cross-examining the said witnesses. Rather the focus in his cross-examination had been with respect to the location of the houses near the place of occurrence which were material on the issue as to whether the hue and cry raised by the prosecutrix could attract the residents of those houses.

9. The trial Court found the prosecution case improbable for the reason that wheat crops could not be more 2-1/2 feet high and the passer-by could easily note of the situation. There is nothing on record to suggest that the said place had been quite busy as many persons had been passing through who would have an opportunity to see the accused nor such a question had been put to the prosecutrix in her cross-examination. More so, the incident occurred in the evening in the month of January. So it may be dark also.

10. In view of the above, we are of the considered opinion that the findings of fact recorded by the trial Court had been perverse and the High Court has rightly exercised its appellate power and reversed the said judgment of acquittal meeting the parameters of interference against the order of acquittal as laid down by this Court.

11. In view of the above, the appeal is liable to be dismissed. Before parting with the case, it may be pertinent to point out that the High Court had taken an unwarranted lenient view while imposing the punishment less than the minimum sentence provided by the statute for the offence of gang rape which is 10 years RI, though the appellants had been awarded 7 years RI. The consideration which prevail with the High Court for imposing lesser punishment had been as under:-

"The children of the convict/respondents are stated to be minor. Convict Ramesh has one leg short thus handicapped. The incident in question had taken place in the year 1998. We see these adequate and special reasons to pass a sentence less than 10 years."

We are of the considered opinion that none of the said grounds are relevant for this purpose and there was no justification for the High Court to impose the punishment less than 10 years RI. However, in the facts and circumstances of the case, we do not want to interfere with the said order.

The appeal lacks merit and is, accordingly, dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(S.A. BOBDE)

New Delhi,
July 15, 2013

ITEM NO.1A
(For Judgment)

Court No.6

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 1843 OF 2011

RAMESH KUMAR & ORS.

Appellant (s)

VERSUS

STATE OF H.P.

Respondent(s)

Date: 15/07/2013 This Appeal was called on for pronouncement of judgment today.

For Appellant(s)

Mr. Aftab Ali Khan, Adv.

For Respondent(s)

Mr. Anish Kumar Gupta, Adv.
Ms. Deep Shikha Bharati, Adv.
Mr. R.D. Gupta, Adv.

Hon'ble Dr. Justice B.S. Chauhan pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S.A. Bobde.

The appeal lacks merit and is, accordingly, dismissed in terms of the signed non-reportable judgment.

	(DEEPAK MANSUKHANI)		(M.S. NEGI)	
	Court Master		Court Master	

(Signed non-reportable judgment is placed on the file)