

Basant Ram Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Apr-03-2006

Reported in : 2006CriLJ2850,2006(1)ShimLC417

Judge : Deepak Gupta, J.

Acts : [Constitution of India](#) - Article 21; ;[Indian Penal Code \(IPC\), 1860](#) - Section 376; ;Code of Criminal Procedure (CrPC) - Sections 161, 313 and 365

Appeal No. : Criminal Appeal No. 306 of 1999

Appellant : Basant Ram

Respondent : State of H.P.

Advocate for Def. : J.S. Guleria, Law Officer

Advocate for Pet/Ap. : Vinay Thakur, Adv.

Disposition : Appeal dismissed

Judgement :

Deepak Gupta, J.

1. This appeal by the accused is directed against the judgment of the Sessions Judge, Kinnaur Division at Rampur Bushehar in Sessions Trial No. 18 of 1996 decided on 12.7.1999 whereby he has convicted the accused of having committed

an offence under Section 376 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 5,000/- and in default of payment of fine to suffer further rigorous imprisonment for 3 months.

2. The prosecution case, in brief, is that on 14.7.1995 the prosecutrix was proceeding to Pasha Kanda for extraction of Dhoop. She was accompanied by her daughter aged 4 years. The prosecutrix is a widow and had lost her husband a year earlier. When they reached Mooling, accused Basant Ram met them. He took the daughter of the prosecutrix and placed her on his mule. When they reached a place called Basteech the accused forcibly dragged the prosecutrix and raped her. The prosecutrix returned to her home after one day and narrated the incident to her sister-in-law Kesarmani. PW-6 Nargya Chhering who is brother of the prosecutrix was also away to collect Dhoop in another area and was coming home on 16.7.1995 when he met Longu Ram. Longu Ram informed him that his sister had been sexually abused by the accused and had gone home weeping. He reached home on 17.7.1995. The prosecutrix complained to him that she has been raped by the accused. She started crying that she is an orphan, and a widow and there is none to stand by her side. Thereafter, he alongwith the prosecutrix went to the police station at Bhabha Nagar on 18.7.1995 and the complaint was lodged at 10.15 a.m.

3. The prosecutrix was sent for medical examination on 20.7.1995 and the doctor opined that though there were signs of struggle but there was nothing suggestive of recent vaginal penetration. The police thereafter inspected the spot and recovered some pieces of broken bangles vide memo Ext.PA. These pieces are alleged to be pieces of the bangles worn by the prosecutrix at the time of the rape. A site plan Ext. PF was also prepared. She produced her salwar worn by her at the time of the incident. As per the FSL report (Ext.PH) human blood was found on the salwar and the vaginal smear of the prosecutrix. On completion of the investigation a challan was put up against the accused. On being charged the accused pleaded not guilty and claimed trial.

4. The prosecution examined as many as 10 witnesses. The case of the accused in his statement under Section 313 Cr.P.C. was of denial and according to him the

prosecutrix used to cut jokes with him and wanted him to marry her. It was only when he (accused) turned down the proposal that the case was lodged. He also states that Longu Ram and Nargya Chhering demanded Rs. 10,000/- after the alleged incident and since he failed to make this payment a false case was got registered against him. The Trial Court after going through the entire evidence convicted the accused and sentenced him as aforesaid. The accused has filed the present appeal.

5. I have heard Sh. Vinay Thakur, learned Counsel for the appellant and Sh. J.S. Guleria, learned Law Officer for the respondent-State.

6. Mr. Vinay Thakur, states that the conviction of the accused is bad and the judgment of the learned Trial Court is liable to be set-aside on the following grounds:

(1) That the statement of the prosecutrix does not inspire confidence and her statement without corroboration cannot be used to convict the accused;

(2) That there is un-explained delay in lodging the FIR;

(3) That the medical evidence does not indicate that there is any rape; and lastly(4) That there is confusion with regard to the date of occurrence.

7. On the other hand Mr. J.S. Guleria, states that as per the law laid down by the Apex Court a conviction in a case of rape can be based solely on the evidence of the prosecutrix if it inspires confidence. According to Mr. Guleria, in this case there is sufficient material to show that the prosecutrix is not telling any lies. He further supports the judgment of the Trial Court.

CONTENTION NO. 1:

8. As far as the first contention of the appellant is concerned, by now the law is very well settled that conviction for rape can be based solely on the statement of the prosecutrix if it inspires confidence unless there are other compelling reasons to seek corroboration. With regard to this point a number of authorities have been cited before me at the Bar. I need not refer to all the authorities since the Apex

Court in its latest decision in State of H.P. v. Asha Ram : 2005 CriLJ139 , has succinctly laid down the law as follows:

5. ...It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused were her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

9. The question which then arises is as to whether the statement of the prosecutrix inspires confidence and can be relied upon. Before referring to the statement, at the very outset it must be pointed out that the prosecutrix belongs to a very remote area of Himachal Pradesh. She is illiterate. She cannot speak Hindi. In fact she cannot even speak Kinnauri which is a local dialect prevalent in the District of Kinnaur. From the material on record it is apparent that she speaks a mixture of Kinnauri, Kullavi and Hindi. It has also come on record that she is a widow and though she is not deaf she is definitely hard of hearing. I thought it proper to set-out these facts because one must appreciate her evidence in the light of the fact that she is a rustic rural woman not well versed with dates or the niceties of law. Even for a State like Himachal which is mainly pastoral and backward the prosecutrix belongs to an extremely remote corner of the State.

10. The prosecutrix appeared as PW-5. She stated that she had lost her husband about 3 years back. She alongwith her daughter was going to collect Dhoop in the area of Pasha Kanda. When she reached Mooling the accused met her. He was

on a mule. He placed her daughter on the mule. Thereafter, he dragged the prosecutrix towards a slopy area where grass was growing. He pushed the prosecutrix and she fell down. He then untied the string of her salwar and raped her. According to her some blood and white fluid came out from her private part. Thereafter, the accused pushed the daughter off the mule and ran away with the mule. The prosecutrix states that she shouted and cried when she was being raped. She struggled but the accused over-powered her. She states that her plastic bangles also broke on the spot during the struggle. At this stage it would be pertinent to reproduce the observations made by the Trial Court regarding the demeanour of the witness while making this part of the statement:

(From appearance the witness appears to be a weak and tortured person. While deposing she is gesturing violently regarding sexual intercourse and also weeping repeatedly by raising her arms).

11. The witness says that thereafter she went alongwith the daughter towards her destination and collected Dhoop and then returned to her house and then went to the Police Station alongwith her brother Nargya Chhering. She was taken to hospital for medical examination. Thereafter, the police party took her to the scene of the occurrence where her brother was also present. Pieces of broken bangles were recovered. She identified the pieces of the bangles (Exts.P-2 to P-5) to be the same which she was wearing at the time of occurrence. She also identified the salwar Ext.P-6 which she was wearing at the time of occurrence. She further states that she narrated the facts of the occurrence to Dolma wife of the accused and Ram Lai at Pasha where she stayed on the night of the occurrence and after returning home she had narrated the facts to her 'Bhabhi', According to her she returned on the day next to the date of occurrence and on that very evening her brother also returned to her village.

12. She has been cross-examined at length. According to her there were number of other persons from other villages collecting Dhoop at Pasha Kanda. She also states that when she narrated this incident to Dolma a number of other persons were there. She further states that though normally they spend a number of days together for collecting Dhoop she returned the very next day. On the night of the

date of the occurrence she stayed at Pasha Kanda with one Ram Lai who was camping there with his family. She was cross-examined in detail with regard to the place of occurrence and the distance to which the accused dragged her physically. A question was put to her as to how the accused over-powered her. Her answer and the observations of the Court are very relevant and reproduced below:

He over powered me from hand and legs. (The witness while deposing is quite agitating and in high temper though like a troubled person she is expressing her feeling voluntarily).

13. A suggestion was also put to her that she did not wear bangles and the bangles did not belong to her and belonged to someone else. She denied this suggestion. The Trial Court then observed as follows:

(The pieces of bangles have been put around the wrist of the witness and they appear to be of the size of her wrist and they are not smaller in size).

She denied the suggestion put to her that the accused did not meet her nor the occurrence took place. She also denied the suggestion that she used to joke around with the accused and was trying-to compel the accused to marry her and since the accused failed to do so she got a false case registered against him. The observations of the Court made with regard to the demeanour of the witness while answering the aforesaid two observations are relevant and extracted hereunder:

(After being given the said suggestion the witness has started gesturing violently and has stated that the accused person has dishonoured her. MERI IZZAT KHARAB KI HAI).

(While being faced with the foregoing suggestion the witness has reacted violently and stated that she could touch her nose anywhere and that the accused person has forcibly spoiled her IZZAT. She has also started weeping and shedding tears violently).

14. In my opinion, the testimony of the prosecutrix itself in the present case is absolutely true and inspires confidence. She had no reason to falsely implicate the accused. The case set-up by the accused that he has been falsely implicated

because the prosecutrix was compelling him to marry her is not believable. The statement of the witness and her demeanour which has been recorded by the learned Trial Court inspires confidence. It shows that this witness has told the truth and has not told any lies. She has given a straight forward version like a simple villager without trying to pad it or add any falsehood.

15. Though according to me corroboration was not needed there is sufficient corroboration also in the present case. PW-6 Nargya Chhering has stated that he had gone to Daya Kanda for digging out Dhoop. When he was returning home, Longu Ram met him near Mooling and informed him about the occurrence and told him that his sister had been raped by accused Basant Ram. When he reached home he found that his sister had already informed his wife about the incident. According to him, he heard about the incident on the day next to the day of the occurrence. On the following day he went to the house of the Pradhan to lodge the complaint. Thereafter, he took his sister to Police Post, Kafnu where he was asked to go to Police Station, Bhabhanagar and there he made a complaint Ext.PE. In further examination he has stated that his sister and he returned on the same day and he went to the police station on the 3rd day. He admits that he is illiterate and the complaint was not written by him but was written by the Pradhan of the Panchayat.

16. Kesarmani, sister-in-law of the accused appeared as PW-7 has also supported the prosecution version. In her cross-examination she states that the occurrence took about 2 years back and she does not remember the month. She however states that it was the month of 'Ashahd'. She further states that the dates mentioned by the police are correct.

17. PW-8 is Longu Ram. According to him, sometimes in the month of July when he was going to Pasha Kanda the prosecutrix was returning from there alongwith her daughter. She told him that the accused had raped her on the previous day. The witness states that as the prosecutrix is his cousin he did not ask her the details and advised her to return to her village. Thereafter, he met her brother Nargya Chhering and informed him about the incident. In cross-examination he states that he had met Ganga Devi and Nargya Chhering on 15.7.1995 and not

16.7.1995 as recorded in the police record.

18. The evidence of these witnesses lends adequate support to the prosecution case.

CONTENTIONS 2 & 4:

19. These two contentions can be taken up together. According to Mr. Vinay Thakur, there is un-explained delay in lodging the FIR and also there is confusion with regard to the date on which the occurrence occurred. The FIR admittedly has been lodged on 18th July, 1995. According to PW-5 the FIR was lodged on the basis of written complaint Ext.PE. This complaint is not signed by the prosecutrix but is signed by her brother PW-6. As already noted above PW-6 is illiterate. In this complaint it is mentioned that the incident took place on 14th July, 1995. He further states that he returned on 16.7.1995 when Longu Ram informed him that he had met her sister. Thereafter, the complaint was lodged on 18.7.1995.

20. The Apex Court in State of H.P. v. Gian Chand : 2001 CriLJ2548 , has observed as follows:

Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the First Information Report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

21. Mr. Vinay Thakur has relied upon a judgment of the Apex Court in State of Karnataka v. Mapilla P.P. Soopi : 2004 CriLJ44 . In my opinion, this judgment is not at all applicable since all that has been said in the said judgment is that undue delay in lodging the complaint without any explanation has also contributed to the doubt in the prosecution case.

22. Mr. Vinay Thakur, has also cited a case titled *Devinder Singh and Ors. v. State of H.P.* 2004 SCC (Cri) 185, in support of his contention that since there was delay, therefore, the prosecution case could not be believed. This judgment is on totally different facts. In that case it stood proved that for 6 days the prosecutrix had not narrated the incident to anyone and the FIR was lodged after six days. The present case is totally different. In the present case first of all the rape took in a remote area from where the prosecutrix had to walk back to her home, then because of illiteracy she alongwith her brother went to Pradhan and thereafter went to the Police Station. The entire chain of events has been explained and there is no unexplained delay.

23. In fact the Apex Court in *State of H.P. v. Shree Kant Shekari* : 2004 CriLJ4232 , held that even a delay of six months stood explained. The observations of the apex Court in para 3 are very apposite and read as follows:

3. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in *Bodhisattva Gautani v. Subhra Chakraborty* the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

24. The Apex Court further dealt with the question of delay in para 18, which reads as follows:

18. The unusual circumstances satisfactorily explained the delay in lodging of the First Information Report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the First Information Report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the First Information Report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa*.

25. As observed above, the prosecutrix and her family are totally illiterate and belong to a very remote area. Dates of the Gregorian calendar obviously have no meaning for them. It is quite obvious that these dates have been inserted either by the police or by other persons. Even otherwise I find that the delay in this case, if any, is only of one day. According to the prosecutrix the incident occurred on 14th and she returned to her home on 15th, her brother either returned on the same date or on the next day. Thereafter, on the next day obviously they did not come to the Police Station and went to the Pradhan of the Panchayat and on the next day come to the Police Station. The FIR at the earliest could have been lodged on 16th or 17th. The mere fact that it has been lodged on 18th is not a sufficient ground to set-aside the conviction. In fact it appears that the incident occurred on 15th. The prosecutrix and her brother returned on 16th. They went to the Pradhan and the police post at Kafnu on 17th and finally to Police Station at Bhabhanagar on 18th. In any event for the reasons given by the prosecutrix and her witnesses and the

fact that they belong to a very remote area the prosecution has sufficiently explained the delay. Similarly, the confusion in the dates is not so much of the making of the prosecutrix or her family but due to the laxity in police investigation as is apparent from the way in which the case has been handled rather mishandled by the police.

26. This case shows total insensitivity and callousness on the part of the police while handling a case relating to such a serious offence. I must record with dismay my displeasure with regard to the casual manner in which such a grave offence was handled by the Police. The prosecutrix and her brother admittedly went to the Police Station on 18th July, 1995. The complaint was with regard to an offence under Section 376 IPC. A woman had been ravished and sexually abused but the police took the matter extremely lightly. The Investigating Officer did not even think it proper to record her statement on the said day. PW-10 Duni Chand SI who was SHO of Police Station, Bhabhanagar on 18.7.1995, when examined in Court, stated that he could not give any reason for his omission in recording the statement of the prosecutrix. In reply to a Court Question he further stated that when he recorded the case diary on 18.7.1995 nothing was mentioned therein with regard to the reason for the delay in reporting the matter. He further states that the prosecutrix was present but her statement was not recorded on 18.7.1995 and was only recorded on 27.7.1995. Furthermore the Sub-Inspector did not even deem it fit to investigate the matter himself. He handed-over the investigation of such a serious offence to Head Constable Bhajan Singh. This shows total lack of responsibility by Sub-Inspector Duni Chand in the discharge of his duties. In fact it was total callousness and negligence on his part. The insensitivity of this official to such a dehumanizing and heinous offence committed on the prosecutrix is as serious an offence as the rape itself. It reflects a serious attitudinal problem. If this is how the police is to behave no woman would be safe in this country.

27. Another important aspect to be noticed is that this SHO admits that on 19.7.1995 Head Constable Bhajan Singh interrogated Chhering Dolma wife of the accused. She disclosed to the police that the prosecutrix had indeed complained to her that she had been subjected to sexual intercourse by the accused. Even the statement of Chhering Dolma was not recorded. No reason or justification for this

omission was given. The accused was present at Bhabhanagar at 10.15 a.m. on 18.7.1995. There is no explanation as to why her medical examination was done on 20.7.1995 i.e. two days later. PW-9 Bhajan Singh states that on 26.7.1995 he went to the scene of occurrence. Why no investigation was done from 18.7.1995 till then is not explained by him also. In reply to a Court question he states that he did not record the statement of the prosecutrix under Section 161 Cr.P.C. on 26.7.1995 when she identified the pieces of bangles because he could not understand what she was speaking. Admittedly PW-1 Bhag Chand, PW-2 Ram Lai had joined the investigation on the said date. PW-6 was also present. Despite these people being present, the head constable did not deem it fit to record the statement of the prosecutrix. It is thus clear that the delay, if any, is not on the part of the prosecutrix but more on account of the negligence of the police.

CONTENTION NO. 3:

28. The last contention raised by Mr. Vinay Thakur is that as per the medical evidence of PW-3 Dr. Sonam Negi there is no evidence that the prosecutrix had been subjected to recent sexual intercourse. Dr. Sonam Negi had examined the prosecutrix on 20th July, 1995 at about 4.30 p.m. She recorded that the prosecutrix could not talk or speak properly but was walking normally. She found scratch marks present on the body of the prosecutrix. There were scratches on the breast area and near the nipples and some on the back and shoulders. The doctor opined that there were signs of struggle but there was nothing suggestive of 'recent vaginal penetration'. She further stated that the scratches may be 5 to 6 days old but she could not tell the exact period since the possible duration of injuries had not been indicated in the medico legal report. To a specific question put to her by the Public Prosecutor she replied that there was nothing suggestive of 'recent sexual intercourse' and by recent she meant 3 or 4 days. The medical examination and the medico legal report shows that even the doctor treated the matter in a very casual manner and not with the seriousness it deserved. In cross-examination she further states that her opinion that there was no vaginal penetration was based on the presumption that the victim having become a widow about a year back had no occasion to have sexual intercourse. She states that her opinion may be read in light of the said presumption. She has however admitted

that in order to ascertain whether a woman is habitual of having sexual intercourse two fingers are inserted in the vagina and in the present case it is not clear whether she did this or not.

29. The medical evidence may not be very satisfactory but on the other hand it does not show that there was no rape at all. The medical evidence in the present case by itself may not be sufficient to prove that there was a rape but on the other hand it also does not show that the prosecutrix was not subjected to sexual intercourse.

I am constrained to observe that even the medical expert who examined the prosecutrix did not display due care and caution while performing her official duty. She failed to mention the duration of injuries observed by her on the person of the prosecutrix. Secondly her observation that there is nothing suggestive of recent vaginal penetration is based on the presumption that since the prosecutrix was a widow there was no occasion for her to indulge in the act of sex. A medical expert is not supposed to make any such sort of hypothetical assumption. Despite this I find that the scratch marks on the back and especially on the breast area of the prosecutrix indicate that there was some struggle. In any event the accused has not set up a case of consensual sex. The medical evidence cannot over-rule the positive evidence of the prosecutrix.

30. Mr. Vinay Thakur, has relied upon a judgment *Devinder Singh and Ors. v. State of H.P.* (supra) wherein the Apex Court held that the medical evidence did not support the prosecution case. In my opinion, the facts in that case were different. Though it was alleged that the prosecutrix has been raped by 5-6 persons not even one injury mark found on her body. In the present case scratch marks were found on the body of the accused especially on the breast area and back.

31. The Apex Court in *State of H.P. v. Lekh Raj and Anr.* : 2000 CriLJ44 , has held that even the absence of dead or mobile spermatozoa in the vagina of the prosecutrix is not sufficient to hold that she was not subjected to sexual intercourse. The Court further went on to hold that if the prosecutrix is believed to be truthful witness in her deposition no further corroboration is required.

32. In the present case the version of the prosecutrix inspires total confidence. It is supported by other material evidence. The learned Trial Court rightly convicted the accused of having committed an offence under Section 376 IPC. Keeping all these facts in view, I am of the opinion that there is no merit in the appeal of the accused and the same is dismissed.

33. Before parting with the case I must however observe that as already detailed above, the police acted in a highly negligent manner. In fact one could venture so far as to say that the police made all attempts to scuttle the prosecution case and it is only because of the fact that the prosecutrix stood her ground and withstood the assault in her cross-examination that conviction could be recorded. I must appreciate the role of the Trial Judge who recorded the evidence and the demeanour of the witness which has gone a long way in doing justice and reaching the truth. He played the role of a socially sensitized Judge and approached the case with requisite sensitivity required in such like matters. The role of the Doctor, a medical expert, is also not without blemish. The way she conducted the examination and prepared the medico legal report leaves much to be desired. In case the medical experts and the police behave in such a fashion it will indeed be difficult to obtain conviction in any case and persons accused of serious offences will be able to go scot-free.

34. Lastly I must observe that though a copy of the judgment was sent to the District Magistrate, Kinnaur in compliance to the provisions of Section 365 Cr.P.C., it appears that the District Magistrate took no note of the serious observations made by the Trial Court with regard to the manner in which the case was mis-handled by the police and no action was taken by him. His behaviour and his lack of initiative in this respect also has to be condemned.

35. A copy of this judgment be sent to the Chief Secretary, Director General of Police and Principal Secretary (Health) to the Government of Himachal Pradesh so that it is conveyed to all that in future the police investigation should be proper and the doctors must see that the medical opinion and reports are properly recorded. The Chief Secretary shall also ensure that appropriate departmental action is taken against the erring police officials especially Sub-Inspector Duni

Chand (PW-10).

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