

Sonu Kumar and Bal Krishan Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : Mar-29-2007

Reported in : 2007(2)ShimLC158

Judge : Surjit Singh and; Dev Darshan Sud, JJ.

Appellant : Sonu Kumar and Bal Krishan; arjun Singh, Kamlesh and Suresh Kumar

Respondent : State of H.P. and ors.; state of H.P.

Disposition : Appeal dismissed

Judgement :

Surjit Singh, J.

1. These five appeals are being disposed of together, as they arise out of one judgment, whereby appellants in all the five appeals stand convicted of offences, under Sections 452, 323 read with Section 34 and Section 376(g) of the Indian Penal Code. Even of the five appellants has been awarded the following sentences for the aforesaid offences:

(a) Under Section 452, 1.P.C. Rigorous imprisonment In default of payment for one year and fine of of fine to further Rs. 2,000/-. imprisonment for six months (b) Under Section 323, 1.P.C. Simple imprisonment for six months (c) Under Section 376 (g),

Rigorous imprisonmentl.P.C. for ten years and fine of -do-Rs. 5,000/

2. First the prosecution version may be noticed. The prosecutrix, aged 32 years, was married to a man, who was employed at a butcher's shop at Baijnath. Her husband fell ill and was perhaps rendered incapable of doing the job with the butcher. The prosecutrix approached the butcher for employing her son, who was then aged just eleven years, for doing odd jobs. The butcher offered to employ her son for grazing his sheep and goats on monthly salary of Rs. 700/-. On 3.6.2002 the prosecutrix took her son to the butcher's shop at Baijnath with the intention of leaving him there. Her son was required to take the sheep and goats to the forest by the employer immediately after they reached. The prosecutrix accompanied her son to the forest. They returned with the herd around five or six in the evening. By then the last bus going towards the village of the prosecutrix, had already left. The butcher offered that she could stay with her son in the upper storey of the shop for the night. She accepted the offer. Around 9.30 p.m., when the prosecutrix and her son were sitting in the room on the upper storey of the shop of the butcher, appellants Kamlesh, Arjun Singh and Suresh Kumar went there. They forcibly dragged the prosecutrix out of that room and when they reached the ground floor of the structure, two other appellants, namely Bal Krishan and Sonu joined them. One more person, named Chuni Lal, who too was tried alongwith the appellants, also joined them. The prosecutrix was forcibly carried to a nearby forest. She cried for help. One old lady, living nearby intervened, but she could not get her released. The son of the prosecutrix got so scared that he climbed a truck parked nearby and hid himself in the tool-box. Some-one informed the police telephonically. Soon the police reached the forest and over-powered two of the appellants, namely Kamlesh and Suresh and the sixth accomplice of the appellants, named Chuni Lal (who stands acquitted by the trial Court), when they tried to flee from the spot on seeing the police. Statement of the prosecutrix was recorded by HC Pawan Sharma, heading the police party that reached the spot. The prosecutrix besides narrating the details about her visit to Baijnath and having gone to the upper storey of the shop of the butcher for night stay and having then dragged and taken to the forest in the manner as summarised hereinabove, stated that those who committed the rape, were calling each other by the names of Bal Krishan, Arjun, Sonu, Kamlesh etc.

3. Police investigated the matter and filed the case against the present appellants and their acquitted accomplice Chuni Lal. The trial Court charged all the six for offences, under Section 452 read with Sections 34, 323 read with Sections 34, 376(g) of the Indian Penal Code and Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, because the prosecutrix was alleged to belong to a scheduled caste. All the accused pleaded not guilty to the charge. The trial Court then proceeded to try the case and ultimately convicted and sentenced the present five appellants as aforesaid, but acquitted their sixth accomplice Chuni Lal.

4. Appellants' plea is that they were not involved in the crime and have been implicated just on suspicion. Learned Counsel, representing the appellants, argued that there is no evidence on record establishing the identity of the appellants as the perpetrators of the crime.

5. Prosecution examined the prosecutrix as PW-1, her son Onkar Chand as PW-3, an old woman, named Gitan Devi, PW-4, who allegedly-trying to get the prosecutrix rescued from the appellants, D.R. Thakur, PW-7, the then Judicial Magistrate Baijnath, who conducted the test identification parade, police Head Constable Pawan Sharma, PW-15, who on the receipt of telephonic information at the Police Station about the incident went to the spot and over-powered three of the alleged rapists on the spot and recorded the statement, of the prosecutrix, under Section 154 of the Code of Criminal Procedure and ASI Chain Lal, PW-15 and Dy. S.P. Pritam Singh, PW-18, who conducted the investigation of the case. The police also examined lady doctor named, Bindu Sood, PW-19, who conducted the medicolegal examination of the prosecutrix and Dr. S.K. Sood, PW-2, who medically examined the appellants and their accomplice Chuni Lal with a view to ascertaining whether there were any injury marks on their persons and whether they were capable of performing sexual intercourse. All the five appellants to