

State of H.P. Vs. Parma Nand

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Court : Himachal Pradesh

Decided On : Jul-25-1994

Reported in : 1995CriLJ3786

Judge : Bhawani Singh, Actg. C.J. and; Lokeshwar Singh Panta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 342 and 376; ;Code of Criminal Procedure (CrPC) - Sections 154 and 313

Appeal No. : Cri. App. No. 306 of 1987

Appellant : State of H.P.

Respondent : Parma Nand

Advocate for Def. : Yoginder Paul, Adv.

Advocate for Pet/Ap. : Shyama Dogra, Dy. Adv. General

Disposition : Appeal dismissed

Judgement :

Bhawani Singh, Actg. C.J.

1. Accused Uggar Singh and Parma Nand were tried for offence under Sections 342/376 of the Indian Penal Code before the trial Court. By decision of February 28, 1987, they were acquitted. This judgment has been assailed by the State

through this appeal. It survives only against accused Parma Nand since the other accused (Uggar Singh) has died. The facts of the case may now be stated briefly.

2. One Jalmu Ram, Peon in the office of Executive Engineer, Electricity Board, Kumar House, Shimla, assured the prosecutrix and her father that he would secure the post of a Peon to the prosecutrix by talking to the Executive Engineer. Accordingly, on March 16, 1986, the prosecutrix came to Shimla with Amar Singh (god-brother) and met Jalmu Ram in the office of Executive Engineer where she was told that the Executive Engineer was not in the office and the matter would be discussed with him the next morning. For the night she was taken by him alongwith Amar Singh to a residential quarter which he claimed to be his. There, he cooked meals. In the meanwhile, accused Uggar Singh and Parma Nand, present there, started taking liquor alongwith jalmu Ram and Amar Singh. After some time, the accused administered two-three glasses of liquor to the prosecutrix forcibly. Accused Parma Nand broke the kerosene lamp that was lit in the room. Amar Singh was thrown out of the room. When the prosecutrix attempted to get out of the room, she was thrown on the cot by accused Parma Nand. The door was bolted from inside by the other accused, her 'Salvar' and underwear were removed. Accused Uggar Singh had sexual intercourse with her forcibly followed by accused Parma Nand while Amar Singh kept crying outside the room.

3. The police was informed telephonically that some mischief was going on in the quarters of Kumar House. It reached the scene of occurrence soon but by that time the accused had left the room. The statement of the prosecutrix was recorded under Section 154, Criminal Procedure Code by Sub Inspector Ram Lal. The underwear of the prosecutrix lying there and the bed-sheet which covered the bed where the prosecutrix was raped, were taken into possession. The accused and the prosecutrix were subjected to medical examination. The underwear of accused Uggar Singh and pants of accused Parma Nand were also taken into possession by the police. About the accused, the opinion of the Doctor was that they were capable of performing sexual intercourse and the underwear of accused Uggar Singh bore mark of semen. As to the prosecutrix, the opinion of the doctor was that she was used to sexual intercourse but there were no marks of violence on or around the external genitalia nor semen stains on clothes nor tenderness or

redness around the external genitalia. There was no bleeding per vagina on internal examination, no hymen ruptured, caruculae hymeenealis was present. Vagina admitted two fingers easily. There was one linear abrasion over the left cheek extending upto middle of the lower lip. Vaginal smear did not show any sperm.

4. The accused denied their involvement in this case. They pleaded false implication. Specifically, accused Parma Nand has stated in his examination under Section 313, Criminal Procedure Code that it was he who had informed the police about this occurrence in the quarters and he has been involved by the prosecutrix for the reason that he had exposed the same.

5. The trial Court has rejected the prosecution case. For doing so, it came to the conclusion that no offence had been proved against the accused. No offence under Section 376, Indian Penal Code had been committed on the person of the prosecutrix by any of the accused and the statements of the prosecutrix and other witnesses of the prosecution were absolutely contradictory and inconsistent. In case the prosecutrix was subjected to sexual intercourse, the facts pointed out that she was a consenting party to it. So was her act of taking liquor. In order to scrutinise the correctness of the findings of the trial Court, the matter has been examined by us carefully. Learned counsel for the parties read the evidence extensively.

6. It is undeniable that the prosecutrix came to Shimla on March 16, 1986 with Amar Singh to meet Jalmu Ram to secure appointment in the office of Executive Engineer, Electricity Board, Kumar House. The evidence points out that she met Jalmu Ram in the office of Executive Engineer wherefrom she was taken by him to his quarter. The prosecution has tried to prove that Jalmu Ram took her to a quarter which was, in fact, of Uggar Singh. There, Jalmu Ram prepared food, consumed liquor with the two accused and Amar Singh and then left the place for attending his duty, whereafter, the prosecutrix was subjected to sexual intercourse by the accused as narrated by her, but the fact that she was taken to the house of Uggar Singh, is wrong. Jalmu Ram had told the prosecutrix to stay in his quarter for the night so that the matter of employment with the Executive Engineer could

be discussed the next morning and she was taken to a quarter. There is no evidence of discussion between Uggar Singh and Jalmu Ram pointing out that Uggar Singh desired Jalmu Ram to take the prosecutrix to his quarter, therefore, the prosecutrix could not be taken to some-one else's quarter. Secondly, Jalmu Ram is not expected to go to Uggar Singh's house and start cooking meals; thirdly, the prosecutrix has admitted that she was taken to only one quarter, that quarter was obviously of Jalmu Ram. Why the scene is shifted from the quarter of Jalmu Ram to the quarter of Uggar Singh, the answer to this question is none other than this that Uggar Singh was to be involved in this case, therefore, the bedsheet and his underwear were taken into possession by the police. Uggar Singh was a married man and was living with his family, therefore, availability of semen stain in his underwear was not an abnormal feature in the case. So far as accused Parma Nand is concerned, he has explained that he has been involved in this case simply because he happened to inform the police and the prosecutrix turned hostile to him.

7. It has been admitted by Sub-Inspector Ram Lal (PW-9) that the Head Constable and the Constable who had come from the police station, told him on his enquiry that a telephonic message had been received at the police station that some row was going on in the Kumar House. He did not enquire as to at what time the telephonic message had been received at the police station and he did not know if that telephonic message had been sent to the police station by accused Parma Nand and that this accused was with him at the site and he was led to the quarter in question by this accused. It is, therefore, a fact that the police came to the premises on receiving the telephonic information. The explanation of accused Parma Nand is also that it was he who had informed the police about the happening at the site, thus, his explanation appears to be correct and his involvement in the case may be for the reasons stated by him.

8. So far as the commission of crime is concerned, we have the medical evidence completely eliminating the commission of rape on the prosecutrix by the accused. Dr. Mrs. N. Shandil (PW-2) has also stated in her cross-examination that:

'Inactive spermatozoae remain present in the vagina for 15 days approximately but active sperms can remain in vagina for 2-3 days only. It is correct to suggest that when there is a complaint by a lady that she has been subjected to rape by two persons one after the other, the inactive sperm must be present in the vagina within a period of 15 days also because in such a case the seminal discharge of one man must have entered the vagina.'

9. Other factors excluding the commission of crime by the accused and militating against the truthfulness of the prosecution story are also that the scene of crime was shifted to the house of Uggar Singh and that the Investigating Officer did not take into possession the liquor bottles and the glasses used for taking the liquor. This is undoubtedly a serious omission and the reason cannot be other than that the incident has not at all taken place. To buttress this conclusion, there is another serious omission of the Investigating Officer eliminating the commission of crime. Why the accused and the prosecutrix were not taken for medical examination soon after the commission of crime which was delayed by about twelve hours, is all the more surprising. Timely medical examination would have revealed whether the accused and the prosecutrix had consumed the liquor as alleged by the prosecution.

10. When the above factors are taken into consideration, the prosecution story appears to be totally baseless and the allegation of the prosecutrix a white lie. In these circumstances, it is hardly possible to say that the prosecutrix was subjected to rape by the accused as alleged by her. The trial Court has already discussed various factors of the case quite comprehensively. It cannot be said that the evidence has not been correctly appreciated by the trial Court before acquitting the accused in this case.

11. The result of the aforesaid discussion is that there is no merit in this appeal and the same is, therefore, dismissed.