

Hari Ram Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Apr-04-2002

Reported in : 2002CriLJ3532

Judge : R.L. Khurana and; M.R. Verma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 176, 201, 376 and 506; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 154 and 313; ;Evidence Act - Section 27

Appeal No. : Crl. A. No. 544 of 2000

Appellant : Hari Ram

Respondent : State of H.P.

Advocate for Def. : M.C. Mandhotra, Addl. A.G.

Advocate for Pet/Ap. : Anup Chitkara, Adv.

Judgement :

W.B. Verma, J.

1. This appeal is directed against the judgment dated 7-7-2000 passed by the learned Additional Sessions Judge, Solan whereby appellant/accused (hereafter referred to as 'the accused') had been convicted under Sections 376 and 506 of

the Indian Penal Code and has been sentenced to life imprisonment and fine of Rs. 20,000/- and in default of payment of fine to undergo simple imprisonment for one year under Section 376 of the Indian Penal Code, and to simple imprisonment of two years and fine of Rs. 5,000/- and in default of payment of fine to undergo simple imprisonment for six months under Section 506 of the Indian Penal Code.

2. The case of the prosecution against the accused, in brief, is that the prosecutrix (PW-1) was studying in 4th standard in Primary School, Kem Wali in the year 1999. On the asking of the accused, the prosecutrix along with Nisha (PW-11), Reena, Pushpa Devi (PW-12) and Gurdeep had gone to Nand on 5-10-1999 to attend the tournament. On 6-10-1999 at about 7-00 p.m. when the prosecutrix along with other girls was present in the room where they were to stay for the night, the accused came there and took the prosecutrix with him to a lonely room on the pretext of 'Gidha'. The accused shut the door of the room and asked the prosecutrix to open the string of her 'Salwar' which she refused to do. Therefore, the accused himself opened the string of the 'Salwar' of the prosecutrix, laid her down and committed rape on her. The accused threatened the prosecutrix not to divulge the occurrence to anyone failing which he would slap her. When the prosecutrix was returning to the room meant for the stay of the girls, a teacher Veena met her on the way who enquired from her as to from where she was coming. The prosecutrix informed her of the rape committed on her by the accused. One Sarwan Singh (PW-6), another teacher, at that time was standing on the ground and enquired from her as to what had happened. The prosecutrix narrated the occurrence to him also and she was assured by Veena and PW-6 that they would deal with the accused. On the next morning, the prosecutrix divulged the occurrence to Reena. Pushpa Devi (PW-12), Jasbir Kaur and Raj Kumari, Jasbir Kaur and Raj Kumari assured the prosecutrix that they would make enquiries from the accused about the occurrence and asked the prosecutrix to wash her 'Salwar' which was bloodstained. On returned home, the prosecutrix on 9-10-1999 narrated the occurrence to her mother. Uncle of the prosecutrix Mohinder Singh (PW.3) also came to know of the occurrence. Statement of the prosecutrix under Section 154 of the Code of Criminal Procedure Ext. PW-27/A regarding occurrence was recorded by S.H.O. M.P. Baam (PW-35) on the basis of which FIR. Ext. PW-27/B was recorded at Police Station. Ramshehar and the

investigation in the matter followed. The prosecutrix was got medically examined from Kavita Mahajan, Medical Officer (PW-21) on 11-10-1999 at 4-15 p.m. in CHC Nalagarh. The MLC regarding such examination is Ext. PW-21/A showing that no external marks of injury were seen on the person of the prosecutrix but vulva was oedematous and congested, discharge per vaginum was present - White in colour and hymen was ruptured. The opinion given by PW-21 is that sexual assault had occurred and the radiological age of the prosecutrix was 9 to 12 years. The opinion given by PW-21 about the age of the prosecutrix is based on the opinion Ext. PW-32/F which had been given by B.K. Bhardwaj, Radiologist (PW-32). The shirt and the 'Salwar' the prosecutrix was wearing at the time of the occurrence but. had washed on 7-10-1999, were taken in possession by the police vide memo. Ext. PC. Copies of the various records regarding appointment of the accused as a teacher, leave applications and the record relating to the admission of the prosecutrix in the school etc. were also taken in possession. Statement of the accused Exr. PW-14/A was recorded under Section 27 of the Evidence Act regarding the identity of the place of occurrence which the accused allegedly identified vide memo. Ext. PH. Police also took in possession the communication addressed by the accused to Kendriya Adhyaksh Panjehra admitting therein the maltreatment meted out to the prosecutrix and tendering apology for his acts of misconduct. Birth certificate of the prosecutrix Ext. PW-22/A showing the date of birth of the prosecutrix as '10-2-1988' was also taken in possession. The accused was also got medically examined and was so examined by Sandeep Narula. Medical Officer (PW-33). MLC. issued by him is Ext. PW-33/A and as per his opinion Ext. PW-33/B, the accused was capable of performing sexual intercourse. On physical examination of the accused, two scratch abrasions and a bruise were found on his person. However, no mark of external injury on the genital part was found. Sample of the pubic hair and swab was taken and was handed over to the police for further action. The shirt and 'Salwar' of the prosecutrix taken in possession vide memo. Ext. PC, were sent to the State Forensic Science Laboratory for chemical analysis and on such analysis, blood or semen was not found on the said clothes.

3. After collecting the material and recording the statements of the witnesses, the Officer Incharge, Police Station Ramshehar submitted a charge-sheet against the

accused under Sections 376 and 506 of the Indian Penal Code, against Raj Kumari under Section 201 of the Indian Penal Code and against Sada Ram, Dev Prag, Gian Singh, Sarwan Singh, Jasbir Kaur and Veena Chauhan under Section 176 of the Indian Penal Code. Sada Ram, Jasbir Kaur, Veena Chauhan and Sarwan Singh against whom a charge under Sections 201 and 176 of the Indian Penal Code was framed by the trial Court, were discharged by this Court vide its order dated 19-4-2000 passed in Criminal revision Petition Nos. 35, 36, 37 and 38 of 2000. A charge under Section 376 and 506 of the Indian Penal Code was framed against the accused and a charge under Section 201 and 176 of the Indian Penal Code was framed against Dev Prag, Gian Singh and Raj Kumari.

4. To prove the charge against the accused the prosecution examined as many as 35 witnesses. Statement of the accused and his co-accused were recorded under Section 313 of the Code of Criminal Procedure wherein the incriminating evidence against them was denied. The accused further claimed to be innocent and that he has been falsely implicated in the case. Similar stands were taken by his accused. The accused led defence evidence and examined Pola Ram (DW-1),

5. On the basis of the material on record, the learned trial Judge acquitted the aforesaid co-accused of the charge against them but convicted and sentenced the accused as aforesaid. Hence, this appeal.

6. We have heard the learned Counsel for the parties and have also gone through the record.

7. It may be pointed out at the very outset that it is not in dispute that the accused was on duty at the time of tournament being held in Primary School, Nand during the period 6-10-1999 to 8-10-1999. His being on such duty is admitted even by his own witness Pola Ram (PW-1) and is not denied by the accused either by way of suggestion to the material witness or in his statement under Section 313, Cr.P.C. Thus, his presence at the place of occurrence on the material date i.e. 6-10-1999 is not in dispute.

8. The prosecutrix (PW-1) has stated that she had attended that tournament and her statement in this behalf is corroborated by the testimony of Shanti Devi (PW-

2), the mother of the prosecutrix, that the prosecutrix had gone to attend the said tournament on 5-10-1999 and returned on 9-16-1999. The statement of the prosecutrix about her attending the tournament during the aforesaid period at Nand is further corroborated by the statements of Kumari Nisha (PW-11) and Kumari Pushpa Devi (PW-12). It has not been suggested to any of these witnesses that the prosecutrix did not attend the tournament on the aforesaid dates nor the accused had denied the presence of the prosecutrix at Nand to attend the tournament. Thus, in view of the aforesaid statements, the presence of the prosecutrix at Nand on 6-10-1999, the date of occurrence, is also not in dispute.

9. The prosecutrix has clearly and unambiguously stated that on 5-10-1999 she went to Nand School for tournament along with other girls, namely, Nisha (PW-11), Reena, Pushpa (PW-12) and Gurdeep and the accused took them there being their Class teacher. On 6-10-1999 at 7 p.m. when the prosecutrix after taking the meals had returned to the room where the girl students were staying, accused took her to a room on the pretext of Gidha. That room was at some distance from the room where the girls were staying. She has further stated that the accused after taking her to the said room bolted the door from inside and asked her to open the string of her Salwar which she refused to do. Therefore, the accused himself opened the string of her 'Salwar', laid on her and penetrated his penis in her vagina whereby the blood started oozing out of her vagina. After committing the sexual intercourse, the accused told her not to disclose the incident to anybody otherwise she would be slapped and then he sent her to her room and himself went somewhere else. She has further stated that she divulged the occurrence to a few of the teachers also who assured her of making enquiry from the accused and that on the next day she disclosed the occurrence to the other girl students who were staying in the room. After returning home she had not disclosed the occurrence to her mother because of the threat given by the accused but on enquiry by her mother (PW-2) she disclosed the occurrence to her.

10. By now it is well-settled that while appreciating the testimony of the prosecutrix in a rape case, the Court must remain alive to the fact that no self-respecting woman muchless an unmarried girl would come forward to make a humiliating

statement against her honour as in a rape case. Therefore, the Court should not find any difficulty to act on the testimony of the prosecutrix who is not an accomplice but victim of crime, and conviction can be based on her confidence inspiring and reliable statement. If for some reason the Court is hesitant to act on the sole testimony of the prosecutrix, it may look into other evidence which may lend assurance to her testimony.

11. There is nothing in the cross-examination of the prosecutrix which may create doubt about her trustworthiness and, truthfulness. There is no reason for her to falsely involve the accused in the crime. Thus, the statement of the prosecutrix is natural, consistent, confidence inspiring and reliable, and is further corroborated by other evidence on material particulars.

12. Shanti Devi (PW-2), the mother of the prosecutrix, has stated that when informed of the occurrence of rape by Mohinder Singh, her brother in law, she made inquiries from the prosecutrix who narrated the occurrence to her. Thus, she corroborates the statements of the prosecutrix regarding disclosing of the occurrence by the prosecutrix to her on her enquiry.

13. PW-11 (Nisha Kumari), one of the girls who had gone to attend the tournament with the prosecutrix, has fully supported the version of the prosecutrix regarding her taking away from the room by the accused, her return to the room after about one hour when she was 'in weeping condition' and that on the next day the prosecutrix told the girls including her that the accused had committed 'Bura Kaam' with her.

14. PW-12 Pushpa Devi, another companion of the prosecutrix, had been examined by the prosecution but she has not supported the prosecution version except that they had gone to attend the tournament and were staying in a room. However, she has stated that when they returned to the room after taking meals she slept, therefore, is not aware as to what happened thereafter. In view of this statement, the want of her supporting the prosecutrix on what happened after she had slept, is of no help to the accused.

15. Dr. Kavita Mahajan (PW-21) medically examined the prosecutrix and issued the medical certificate Ext. PW. 21/A. As per her opinion, the hymen of the prosecutrix was found ruptured and she was found to have been sexually assaulted.

16. PW-20 Dr. Amrish Kapoor re-examined the prosecutrix on a reference by PW-21 on 12-10-1999 and confirmed that the hymen of the prosecutrix was re-ruptured. Thus, the medical opinions lend corroboration to the statement of the prosecutrix.

17. It may be pointed out that no external injuries were found on the person of the prosecutrix at the time of her medical examination. Existence of external injuries on the person of a rape victim is suggestive of struggle and resistance from which absence of consent of the prosecutrix for the sexual act may be inferred. It is not the case of PW-1 that she struggled to get rid of the accused who had already closed the door of the room at a lonely place. Keeping in view the age of the prosecutrix and the fact that the accused was her teacher, she could not suspect or anticipate the sexual assault and appears to be an unsuspecting victim. Thus, non-existence of external injuries on the person of the prosecutrix is of no help to the accused. No blood or semen was found on the Kamiz and Salwar the prosecutrix was wearing at the time of occurrence. However, it is case of the prosecution that these clothes were got washed after the occurrence and is so stated by the prosecutrix. Therefore, non-existence of blood and/or semen stains on the said clothes is also of no help to the accused.

18. Dr. Sandeep Narula (PW-33) medically examined the accused on 16-10-1999 and on such examination issued MLC Ext. PW-33/B. As per his opinion, there was no evidence to suggest that the accused was incapable of performing sexual acts. The accused was further examined on 18-10-1999 at Nalagarh in the presence of medical specialist Dr. Sharad Gargya (PW-26) and on such examination the opinion Ext. PW-33/B has been given ruling out the impotency of the accused. This also lends credence to the prosecution version.

19. Swaran Singh (PW-6) has stated that accused Hari Ram admitted in writing that he had taken the girl and had done 'Bura Kaam' with the girl. The original writing about the confession of the accused, however, has not been produced and

placed on record, therefore, much reliance cannot be laid on this witness.

20. Shadi Ram (PW-9) has stated that the accused admitted in his presence that he had committed 'Kukaram/Bura Kaam/ Rape' with the girl. However, he has stated about this extra judicial confession at the time of the recording of this statement in the Court and not when his statement was recorded by the police. Therefore, much reliance cannot be laid on his testimony also.

21. Even if the evidence regarding extra judicial confession in the form of statements of PW-6 and PW-9 is ignored there is cogent, reliable and trustworthy statement of the prosecutrix duly corroborated by PW2, PW-11 and the medical evidence, as already discussed hereinabove.

22. The learned Counsel for the accused could not point out any contradiction, infirmity or flaw in these statements and the medical opinion which clearly establishes that the accused subjected the prosecutrix to sexual intercourse as is the case of the prosecution.

23. According to the prosecution, the date of birth of the prosecutrix is 10-2-1988. Thus, at the time of the occurrence she was a little more than 11 years of age. To prove this version the prosecution relies on the statement of PW-2 Shanti Devi, the mother of the prosecutrix, the entries in the Panchayat record and the School record. PW-2 Shanti Devi has stated that her daughter was 11 years of age. There is no suggestion in her cross-examination that at the material time the prosecutrix was aged 16 years or more and thus capable of giving consent to the sexual act.

24. Datta Ram (PW-16) has proved in evidence Ext. PW-16/B as true copy of the admission and withdrawal Register of the School in which the prosecutrix was studying. As per the relevant entry therein, the date of birth of the prosecutrix is 10-2-1988. In the cross-examination, he has stated that at the time of the admission an' admission form is submitted by the parent/guardian of the student wherein the age is mentioned and he had brought that record also. Ext. DC is the copy of such application and its enclosure wherein the date of birth of the prosecutrix has been given as 10-2-1988.

25. Surjit Singh (PW-22) has stated that he has prepared the certificate Ext. PW-22/A regarding the birth of the prosecutrix and has stated that it is correct according to the record. As per this certificate, the date of birth of the prosecutrix is 10-2-1988. Though in the cross-examination of this witness certain flaws regarding maintenance of certain entries in the Register, on the basis of which this certificate was issued, have been pointed out, but such discrepancies do not make much of the difference because these are not shown to have been manipulated after the registration of the case. Be it stated that even at the time of the admission of the prosecutrix her date of birth has been given as 10-2-1988 and is so mentioned in the School records and such entries have been made much before the date of occurrence.

26. As per the opinion about the skeleton age of the prosecutrix given by Dr. K.K. Bhardwaj, Radiologist (PW-32) radiological age of the prosecutrix in October, 1999 was between 9 to 12 years as per report Ext. PW-32/F. This date of birth of the prosecutrix is nowhere under serious challenge by way of suggestion to the contrary. Thus, on the basis of the above discussed evidence it can unhesitatingly and without any fear of error be said that at the time of occurrence age of the prosecutrix was a little more than 11 years but less than 12 years.

27. In view of the evidence discussed hereinabove, the learned Additional Sessions Judge has rightly held the accused guilty of the commission of offences punishable under Sections 376 and 506 of the Indian Penal Code therefore, the impugned order of conviction does not call for any interference by this Court.

28. The learned Counsel for the accused has contended that the sentence awarded to the accused is too harsh and disproportionate, therefore, it deserves to be reduced, moreso, when the accused is not shown to be a previous offender.

29. Punishment is the sanction of law imposed on the offender as a consequence of and incidental to his conviction. The main aim of punishment is prevention of offences and thereby protect the society. It is within the discretion of the convicting Court as to what punishment within the maximum provided by law must be awarded to the convict. But exercise of such discretion is a highly complex matter as the Court has to arrive at the quantum of sentence to be awarded keeping in

view various factors like aim and object of the penal laws, circumstances under which the offence is committed, nature of the offence, antecedents, character, age and background of the convict, and similar other considerations as may be warranted in the facts and circumstances of each case. Thus, the Court has to maintain a reasonable proportion between the offence committed and the punishment to be awarded so that the punishment may not appear either too harsh or inadequate.

30. In this case the accused is a teacher and is guilty of committing rape on his student aged about eleven years. To satisfy his lust he took advantage of his position and innocence of the victim. The offence committed by the accused involves moral turpitude. Therefore, most of the circumstances of the case warrant awarding of deterrent punishment to the accused. The only factor which can be said a mitigating circumstance is that the accused is a first offender and has no past criminal history. In view of this factor, the punishment awarded to the accused, in our view, is too harsh and disproportionate. Even ten years rigorous imprisonment and fine as imposed under Section 376 of the Indian Penal Code would be a sufficient deterrent and eye-opener and would meet the ends of justice. We are, therefore, of the view that sentence of imprisonment awarded to the accused under Section 376 of the Indian Penal Code deserves to be reduced accordingly. Other sentences awarded to the accused being adequate, do not call for interference.

31. As a result, this appeal is partly allowed to the extent that sentence of life imprisonment as awarded to the accused under Section 376 of the Indian Penal Code, is reduced to rigorous imprisonment for ten years and the fine, if recovered or as may be recovered, shall be paid to the victim/ prosecutrix. The appeal is accordingly disposed of.