

The State of H.P. Vs. Jarnail Singh

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Court : Himachal Pradesh

Decided On : Jul-07-2009

Reported in : 2010CriLJ192

Judge : Deepak Gupta and; Surinder Singh, JJ.

Appellant : The State of H.P.

Respondent : Jarnail Singh

Advocate for Def. : Shri. Ajay Sharma

Disposition : Appeal dismissed

Judgement :

Surinder Singh, J.

1. The challenge has been made in this appeal against the judgment of acquittal passed in Sessions case No. 6/94 (93), on 17.6.1994, by the learned Sessions Judge under Sections 363, 366 and 376 of the Indian Penal Code.

2. Sh. Rajesh Mandhotra, learned Deputy Advocate General vehemently argued that the findings of the learned trial court are based on conjecture and surmises, as the same are contradictory to the material on record, particularly with respect to the age of the prosecutrix, which otherwise stood proved by leading a cogent evidence by the prosecution and also that the learned trial court also wrongly

concluded that the prosecutrix was a consenting party. It is further argued that if the case of the prosecution is seen and examined in the right perspective, there are reasons and grounds to convert the acquittal into conviction.

3. Shri Ajay Sharma, learned Counsel for the respondent while supporting the impugned judgment strenuously argued that the version given by the prosecutrix does not inspire confidence. She has materially improved and deviated from the main case thereby causing a dent in the prosecution case and the prosecutrix in all probability has been proved to be more than 18 years and a consenting party.

4. We have considered the rival contentions of the parties in the light of the evidence produced. At the very outset, on the reappraisal of the evidence on records we would like to say that the judgment of the learned trial court cannot be faulted on any of the grounds put forth by the learned Deputy Advocate General.

5. In short, the case of the prosecution, which emerges from the prosecution evidence is that the father of the prosecutrix was working at Chandigarh. She along with her brother and other sisters was residing with her grand father PW-1 Harbans Singh.

6. On 15.8.1992 there was a 'jagrata' in the house of Yog Raj, a co-villager of the complainant. During the night at about 9 p.m, the prosecutrix went to attend the 'Jagrata' but did not return till next morning when the persons assembled for 'Jagrata' had dispersed. Thus Harbans Singh started searching for her with the aid of co-villagers. During the search it came to the light that respondent was also missing from his house. During the previous night the cousin of Jarnail Singh too was noticed in the village roaming about, on his scooter. Therefore, Harbans Singh entertained suspicion on them and lodged the report Ext. P-A with the police.

7. The police, during investigation worked on the clues and came to the conclusion that Jarnail Singh had allured the prosecutrix to accompany him. Thus she took her spare cloths with her and joined the company of respondent. During the same night, both of them went to a raised platform erected in the fields to guard the crops, which is locally called as 'Tan', where the respondent is alleged to have

committed sexual intercourse with her. In the morning around 3.30 p.m., she was taken by the respondent to 'Dhanpur' and then to Amb via Una and from Amb, she was taken to 'Bawa Badbhag Singh' in a bus. The respondent told her that both of them would stay in the house of his relatives. She accompanied him on foot to village 'Snoh' It is alleged that respondent insisted upon her to marry him but she refused. It is further alleged that during the intervening night of 16/17 August, 1992, respondent committed rape on her at village 'Snoh' in the house of Hans Raj where they were staying.

8. From there on 18.8.1992 the Police recovered the prosecutrix from the company of the respondent. The memo Ext. P-B was prepared to this effect. On the same day, her cloths were taken into possession vide memo Ext. P-C. The underwear of the respondent was also taken into possession vide memo Ext. P-D.

9. The prosecutrix was got medically examined on the same day at 3.10 p.m. The doctor found the old healed tear of the hymen. The doctor also took her clothes into possession which were sealed and handed over to the police. The vaginal swab was also taken. The prosecutrix was also handed over to the complainant Harbans. Her statement Ext. P-E under Section 164 of the Code of Criminal Procedure, was also recorded, before the Magistrate. The respondent was arrested and medically examined. He was found fit to perform sexual intercourse.

10. During the investigation of this case, police took into possession the School Leaving Certificate Ext. P-F and photocopy of the entry of the birth register from the Panchayat concerned. The site plan Ext. P-M, of the place of recovery was also prepared.

11. After the receipt of the forensic science report Ext. P-K, challan was presented in the court for the trial of the respondent.

12. During the investigation, respondent was granted bail.

13. Finding a prima facie case, the respondent was charge-sheeted for the aforesaid offences, to which he pleaded not guilty and claimed trial.

14. To prove its case, prosecution examined its witnesses and the respondent was also examined under Section 313 of the Code of Criminal procedure. He denied the circumstances appearing against him. When called upon to enter into his defense, he did not lead any evidence.

15. At the end of the trial, respondent was acquitted, which is under challenge.

16. It is a settled law that to prove the heads of the charges against the accused under Sections 363 and 366 of the Indian Penal Code, one of the essential ingredients to be proved by the prosecution is that the prosecutrix, at the time of her alleged kidnapping was below 18 years of age. To prove the age of the prosecutrix, the State relied upon the statement of the prosecutrix (PW-2), PW-5 Pishori Lal, Head Teacher , PW-7 Surjit Kumar, Secretary of the Gram Panchayat, the copy of School Leaving Certificate Ext. PF and the photocopy of the Register of birth and death Ext. P-H pertaining to the concerned Gram Panchayat.

17. The prosecutrix stated her date of birth 19.1.1976 and according to her she had studied up to 5th standard in Government Primary School 'Panuana'. In her cross- examination she stated that her elder sister Kanta Devi was aged about 22 years and was married 3/4 years back, from the date of her examination in the court on 17.5.1994. Younger to her is her brother aged about 19 years and her sister Saroj younger to him is about 17/18 years and the prosecutrix was the youngest of all.

18. PW-5 Pishori Lal, the head teacher posted in Government Primary School Panjwana was examined to prove the school leaving certificate Ext.PF. According to him as per record, prosecutrix was admitted in the School on 19.4.1982. The School Leaving Certificate Ext. P-F was issued by him on 21.8.1992 i.e. after the alleged incident. He further stated that as per admission Register, her date of birth is 9.1.1976. He also stated that birth certificate of the Panjwana was on a separate paper attached with the admission form. But unfortunately neither the admission form nor the birth certificate which was a primary evidence were produced and proved during the trial of the case.

19. Further, the prosecution sought the assistance from the statement of PW-7 Surjit Kumar Secretary Gram Panchayat Balliwal to prove the birth entry Ext. P-H which is in Urdu language. The photocopy of the relevant page (Ext.PH) of birth register was placed on record. In one of the column of entry with respect to the prosecutrix besides 9.1.1976 the another date 15.12.1975 also finds mentioned which is not signed or initialed by any one. Further, according to the witness the said entries did not contain the serial numbers. He also admitted that the entries with effect from 6.1.1976 on words are with the same pen and ink. We have noticed that there are two more entries of dates after 9.1.1976 which are 13.12.1975 and 14.12.1975. PW7 was not able to tell why these dates were mentioned. He also admitted that this register did not bear any certificate of the issuing authority. According to him none of the entries are in his hand, but were in the hands of Tarsem Singh the then Secretary of the Panchyat who is alive, but it is not understandable as to why he was not examined and was withheld by the prosecution.

20. In view of the above contradictions appearing in the statement of this witness with respect to the dates of birth of the prosecution, his testimony also does not inspire confidence. Significantly, the said witness also could not explain as to how the entries with respect to dates 13/14-12-1975 13/14-12-1975 had simultaneously appeared after the entries made on 9.1.1976 which in fact should have preceded to the year 1976. All these entries with respect to the birth and deaths were reported by the Chowkidar of the Panchyat. He was also not examined the date of supplying information has also not been recorded in the said Register.

21. Further it is pertinent to mention here that PW-7 aforesaid was examined by way of additional evidence and the said witness failed to state that Register in question was maintained in discharge of official duty in the Panchyat, therefore, no presumption could be attached to the entries made therein.

22. If the entries aforesaid were made the basis for the entry in the School record at the time of admission of the prosecutrix then the document (Ext.PF) loses its importance altogether and is of no consequence.

23. In fact, it is the record of admission of a student containing the age of the student or an attested copy thereof which may carry presumption to its correctness, if it is proved that the age as recorded in the school records came into being at the instance of the person expected to know the correct age of the student which fact is missing in this case.

24. Since the primary evidence has been withheld and the School Leaving Certificate Ext. P-F issued by PW-5 aforesaid cannot be said to be a reliable piece of evidence and the copy of the Panchayat Ext. P-H with respect to the birth can also not be connected with the birth of the prosecutrix, thus both the documents cannot be relied upon to prove the age of the prosecutrix .

25. Besides this the skeletal age of the prosecutrix was also not got ascertained. The parents of the prosecutrix were also not examined.

26. Her grand father PW-1 Harbans Singh, (complainant) although stated that the prosecutrix was aged about 16 years at the time of the alleged incident but in cross- examination he stated that father of the prosecutrix was married about 30/32 years back and the first child Kanta Devi was born after one year of such marriage and after two years Gulshan the second child took birth but he did not know the age between second and the third child Saroj. He further stated that after Saroj, Nek Chand was born and after a gap of 3-4 years Sushma was born but again changed the sequence that after Saroj, prosecutrix was born. If this statement is examined viz-a-viz the statement of the prosecutrix, the age of Kanta comes around 30 years at the time of the alleged incident and that of Gulshan the second issue comes to 28 years and after Saroj took birth after about 3-4 years then her age comes to 24 years and if his version with respect to birth of prosecutrix after 2-3 years of Saroj is calculated her age also comes to be more than 20 years or more at the relevant time.

27. Now the next question is whether the prosecution has been able to prove the alleged offences against the respondent.

28. PW-1 Harbans Singh with whom prosecutrix was residing suspected the respondent having fleeced the prosecutrix and lodged report Ext. P-A with the

police. According to him, the prosecutrix was recovered from village Naheria and not 'Sanoh' as alleged from the house, whose name he did not remember.

29. PW-3 Parkash, member of Gram Panchayat made also a important revelation that although the prosecutrix was recovered from the house of Hans Raj of village Snoh but she had refused either to go with the police or her grand father (PW1) and insisted upon to go with the accused respondent.

30. PW-9 Dr. Mrs. Chauhan did not find any mark of violence on the person of prosecutrix except that there was an old tear of the hymen.

31. The prosecutrix in her statement has substantially improved her version from the earlier statement recorded under Section 161 and also under Section 164 of the Code of Criminal Procedure recorded before the Magistrate. She stated that on 15.8.1992 at about 9 p.m. there was 'Akhara' in the house of Yog Raj of village Panjwana. When she was on her way to attend the said function, the respondent met her on the way. He took out the knife and put it on her neck and threatened to kill her in case, she raised a noise. He gagged her mouth with a piece of cloth and she got frightened. Thereafter she was taken to the fields on a raised plat form (TAN) and was raped. Her attempt to relieve herself from the clutches of the respondent did not yield any result. Both of them remained on the said raised plat form. She further stated that she was raped three times there but did not raise any noise as the respondent had threatened her to kill. Next morning, she was taken to Una in a Bus from there to Amb and thereafter to the house of Hans Raj in village Sanoh. She was kept there for two nights and on both nights she was raped. Thereafter police recovered her from the house of Hans Raj at about 5-6 a.m. Her grand father Harbans Singh was also accompanying them. Her cloths were taken into possession vide memo Ext. P-C.

32. In cross-examination, she stated that there were 15-20 houses in their Mohalla. She also stated that she had narrated everything to the police. She was confronted with her earlier statement Ext.DA recorded by the police. There was no mention about keeping the knife on her neck by the respondent and also about the alleged threatening and insulting her nor there was mention of gagging her mouth with a piece of cloth. According to her the cloth was tied around her neck covering

her mouth and it was removed on reaching 'TAN'. Even this part of her statement was also got cross-checked from her earlier statement Ext. D-A but there was not even a fleeting reference to this effect. She further stated that she did not make any statement to the police with respect to revisiting her house, collecting cloths and meeting the respondent in the street whereas this portion was found mentioned in the aforesaid statement. She also stated that she received the scratch on her back when she was raped by the respondent at the 'Tan' and little blood oozed out from her back when it came in contact with the 'baan' cot, over which she was ravished. She further stated that her private parts bled staining salwar therewith little blood also stained her shirt. This statement was not corroborated by the medical evidence. She further stated that she did not make any raise or voice at 'Dhanpur' nor make any complaint to any of the passengers in the bus as she was frightened. She also stated that she accompanied the respondent to village Sanoh on foot. According to her she had also made statement to the police that respondent offered to marry her and to provide job to her but this part of the statement did not find mentioned in her statement (Ext. D-A) made to the police. She further stated that with respect to keeping the knife on her neck, a mention was made in the statement Ext. P-E made to the Magistrate but this has no such reference in that statement.

33. Thus on reappraisal of the statement of the prosecutrix, we find lot of inconsistency, omissions, contradictions and material improvements in her version, which makes her testimony a suspect.

34. If her testimony is examined in the light of the statement of recovery witnesses PW-4 Milkhi Ram and PW-3 Prakash Chand coupled with the fact that the prosecutrix was having spare cloths with her which is also admitted by the Investigating Officer PW-10 Sansar Chand, the possibility of her tacit consent to accompany the respondent cannot be ruled out and further the statement of PW-3 Prakash Chand as discussed above also makes a serious dent in the prosecution case wherein he has stated that on her recovery by the police the prosecutrix had insisted upon to go with the respondent shows that prosecutrix have accompanied the respondent of her own free will and was a consenting party in the entire episode.

35. Therefore, for the reasons aforesaid, the prosecutrix is proved to be more than 18 years of age and a consenting party. The prosecution case as alleged lacks probity. Hence the offences charged were rightly held to be not proved by the learned trial Court in accordance with law. Therefore, the appeal sans merits and is accordingly dismissed.

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