

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 129 of 2000
Reserved on : 20.6.2007
Decided on 29th June,2007

State of H P

Appellant

Versus

Dev Raj

Respondent

Coram:

The Hon'ble Mr.Justice Surinder Singh.J.

Whether approved for reporting ?¹ No

For the appellant : Mr. V.K.Verma, Additional Advocate General.

For the Respondent Mr Rakesh Jaswal, Advocate.

Surinder Singh, J.

The respondent was put on trial before the learned Chief Judicial Magistrate, Sarkaghat, District Mandi, under Section 354 of the Indian Penal Code in Police Challan No.48-I/97(6-II/97). After completion of the trial, the respondent-accused was acquitted vide a detailed judgment dated 21.10.1998.

2. The State-appellant has felt aggrieved by the impugned judgment and has filed the instant

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ? yes*

appeal before this Court on the ground that the learned trial court has not appreciated the prosecution evidence in its right perspective but at the same time has sought unrealistic standard to evaluate the direct and cogent evidence on record. Further that the complainant has categorically established the offence charged against the respondent, which is corroborated by her son Sanju (PW-2). Mere statement of the complainant was sufficient to prove the guilt of the accused which was free from any embellishment.

3. This court vide order dated 6.4.2000 granted leave to appeal. Now the matter has been finally heard.

4. Shri V K Verma, learned Additional Advocate General, has vehemently argued that the evidence on record proves the guilt of the respondent-accused for the offence charged and the learned trial court did not give due weightage which it deserved. Shri Verma has also taken pains to go through the evidence in its entirety and ventilated that the impugned judgment of acquittal deserves reversal.

5. On the other, Shri Rakesh Jaswal, learned counsel for the respondent-accused while supporting

the impugned judgment has urged that the findings resulting into acquittal, recorded by the learned trial court are borne out from the evidence on record, which are legally and factually correct.

6. I have given due consideration to the rival contentions and have meticulously scanned the evidence.

7. It is an admitted fact that the complainant had also instituted same type of complaint against one Chhitru Ram. In that case in the similar way she has introduced her another son, as an eye witness. Smt. Judhya Devi was examined as PW-1 in that case and certified copy of her statement is Ex.DC. Said Chhitru Ram was acquitted vide judgment Ex.DB dated 25.6.1991 by the Sub Divisional Judicial Magistrate, Sarkaghat. Further, the testimony of the complainant deserves to be scrutinized closely in view of the fact that one Sh. Amar Nath (now deceased) was having a X-ray plant in front of the Sub Divisional Civil Hospital, Sarkaghat, and as per Sanju (PW-2) the complainant and her family had cordial relations with him even at times he had been lending money to her. Said Amar Nath is alleged to have strained relations with the respondent, who was a X-ray

Technician in the Hospital. Amar Nath was the scribe of the complaint Ex.DA which was addressed to various authorities including the Chief Minister. When the complainant was confronted with sum of the substance containing allegations against the respondent she denied having been dictated to said Amar Nath which fact goes to show that Amar Nath was over-jealous to implicate the respondent with the aid of the complainant. Against this background the testimony of the complainant is required to be approached and appreciated.

8. In short, the allegation against the respondent as put forth by the prosecution is that the complainant was advised X-ray of her stomach. Respondent was working as Technician. He called the complainant inside the room. Her son when entered the room was pushed out of the room and door was closed. Thereafter, the complainant was laid on the X-ray table and the respondent started untying the string of her Salwar. On this she cried and shouted at the respondent that did he not have his sister or mother in his house but thereafter she was X-rayed and came out, where two ladies were sitting to whom she did not know. She went to M.O. Incharge but he was not there. When examined as

PW-1 she has stated that she was alone while being X-rayed and the moment she came out from the X-ray room she complained the matter to Gulaba Ram her co-villager but he was not examined. Inder Singh (PW-4), who was a fourth class employee in the hospital, has not supported her version. Rather in the cross-examination conducted by the respondent he has alleged that the complainant was a vagrant lady, even SI Lal Chand (PW-5) has admitted that during the investigation of this case he came to know from the Panchayat that the complainant was a quarrelsome lady which fact has been corroborated by DW-4 Vijay Kumar, President of the Gram Panchayat and according to him the Panchayat had earlier passed a Resolution (Ex.DB) against her. Further the complainant is alleged to have been molested in the X-ray room, which is adjacent to the room of duty Doctor. His door opens towards the X-ray room, as admitted by the complainant. Had there been any scream, the duty Doctor and the two ladies sitting outside the room would have heard the same. But none of them were examined nor stated anything about the alleged incident; only her son Sanju has stated that he heard the cries and many persons gathered there. But this fact is un-

substantiated. In the X-ray register, produced in defence, Balak Ram (DW-3) was the next person to be X-rayed, who denied about any sort of such incident.

8. There is no cogent material or record to lend assurance to the version of the complainant. Dr. Mohidner Singh (DW-2), who happened to be Incharge of the said Hospital, has stated that the complainant did not come to him on the day of the alleged incident. However, on 5.8.1996 she had made a complaint, which was found to be incorrect.

9. In the totality of the circumstances, it has been rightly concluded by the learned trial court that the evidence of the complainant does not inspire confidence and there is no cogent and reliable evidence to sustain the conviction.

10. In my considered opinion the view taken by the learned trial court is not inconsistent with the evidence on record. It is settled law that if there are two views, from the evidence on record, the view favourable to the accused shall have to be taken into consideration and in appeal innocence of the accused does not get diluted. Thus, on the reappraisal of the evidence on record, I do not

find anything worth interference in the impugned judgment. Accordingly, the appeal is dismissed.

11. The respondent is discharged of the bail bonds, entered upon by him at any stage, during the proceedings of the case.

June 29, 2007
(D)

(Surinder Singh), J.