

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr.Appeal No. 166 of 2001

Reserved on: 29.12.2007

Decided on: 31.12.2007

State of H P

Appellant.

Versus

Hari Dass

Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹? Yes.

For the appellant : Mr Som Dutt Vasudeva, Addl. Advocate General.

For the respondent : Dr.Lalit K. Sharma, Advocate.

Surinder Singh, J .

Heard and gone through the record.

In the instant appeal, the state has the acquittal of the respondents in a case punishable under sections 452, 354, 506 read with section 34 of the Indian Penal Code

In brief the prosecution is that the complainant Naina Devi was living alone in her house. On 27th February, 1998, after taking the meals, she went to her room and slept there. During the night she heard some knock on the door, on being asking he disclosed his name as Pappu, who happened to be her nephew. She opened the door and switched on the light. The respondent Hari Dass @ Pappu

Whether reporters of the Local papers are allowed to see the judgment? Yes.

entered inside her room, thereafter he bolted the door. On being asked as to what he was doing. On this he told that he had come to outrage her modesty. The co respondent Pyare Lal at that time was allegedly sitting her house. It is alleged that respondent Hari Dass embraced her and tore off her shirt. The string of her salwar was also opened and she was pushed on the cot. Though she has raised the alarm but no one came for rescue being a lonely place, then she picked up a *darat* to protect herself but it was snatched by respondent Hari Dass and he threatened to kill her but thereafter he fled away but while running he bolted the door from the outside. The complainant, in the morning requested Kanta Devi PW2 to unbolt the door of her room and disclosed the entire episode of the last night to her. Thereafter, she went to the police station and lodged the report Ex.PW4/A which culminated into the FIR PW6/E.

The Police visited the spot, prepared the site plan Ex.PW6/A and also took into possession the shirt and the salwar along with *darat* vide memo Ex. PA on 2.3.1998. After completing the investigation a challan was presented in the court.

On the above story the learned trial court found a prima-facie case against the respondent under the aforesaid sections, accordingly they were charge sheeted. The respondents pleaded not guilty and claimed trial.

To prove its case, the prosecution examined its witnesses but at the end of the trial, both the respondents were acquitted.

The learned Additional advocate General has argued that the testimony of the complainant was enough to sustain the conviction of the respondents but the learned trial court did not appreciate it in its right perspective.

I have critically examined the evidence on record and more specifically the statement of the complainant (PW4) in the light of her earlier version given to the police, which was reduced into writing as Ex.PW4/A, which was made basis for registering the FIR.

It is pertinent to note that in her earlier statement she had shown the presence of Pyare Lal who, according to her was sitting outside when Hari Dass entered her room but as PW4 she did not whisper even a single word against Pyare Lal. When she was confronted with her earlier statement to this effect, she stated that she had not mentioned the name of Pyare Lal at all to the police. Further according to her, next morning after the incident, she had reported the matter to the police and at that time her brother and uncle were also with her, but a perusal of rapat roznamcha Ex.PW4/A shows that this complaint was lodged by her not on 28.2.98 but on 2.3.1998 and do not show the presence of her brother and uncle. Further no explanation for the

delay was given by her when examined in the court. According to her, as mentioned in the report, she had disclosed the entire incident to her maternal uncle Ram Dittu but Ram Dittu given a totally divergent version involving both the respondents which is contrary to the version given by the complainant in the court.

Further according to the complainant, she had narrated the entire incident to Kanta Devi (PW2) in the morning but Kanta Devi when examined in the court did not utter even a word about it. Therefore, in these circumstance a dent is caused in her statement about the occurrence, as alleged by her. Even PW3 Rattan Lal did not specify the alleged misbehaviour alleged by the complainant, thus the version initially set by the complainant is shattered by her.

For the reasons aforesaid in my considered opinion, the statement of the complainant is shrouded by suspicious circumstances, more specifically when the respondent Hari Dass is her nephew and his defence is that there has been a boundary dispute with the complainant with respect to the land, as shown in the revenue record Ex.D-1 to D-3. In totality of circumstances, the testimony of the complainant does not inspire confidence and the respondents were rightly given benefit of doubt by the trial court.

Since the reasoning given by the trial court for the acquittal of the respondent is born out from the record, the judgment of acquittal calls for no interference. Accordingly, the appeal is dismissed.

December 31, 2007
(D)

(Surinder Singh), J.