

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

Cr. Appeal No. 221 of 1993

Date of decision: 30. 11. 2007.

State of H.P.		Appellant
	-VS-	
Durga Singh		Respondent

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹?

For the appellant	:	Mr. Som Dutt Vasudeva, Additional Advocate General.
For the respondent	:	Mr. Vinay Thakur, Advocate, vice Mr T.R.Chandel, Advocate.

Surjit Singh, J. (oral)

Heard and gone through the record. Respondent was sent up for trial for offences punishable under Section 354 and 316 of the Indian Penal Code, for allegedly assaulting a married women, who was in an advance stage of pregnancy, with an intent to outrage her modesty and also causing the death of the quick unborn child in the womb of the lady. The lady shall be referred to as "the prosecutrix" hereinafter.

Allegations on which the respondent was charged with and tried for the aforesaid offences may be noticed. Prosecutrix was present in her court yard on 5th March, 1986 when the respondent allegedly went there and embraced the prosecutrix and also tried to loosen the string of her salwar. He also allegedly put his hand on her breast. When the prosecutrix objected to the conduct of the

¹Whether reporters of the Local papers are allowed to see the judgment?

respondent, he allegedly threw her on the ground, hit her with a piece of stone Exhibit P1, which was lying nearby, on her head, abdomen and other parts of the body, as a result of which she sustained various injuries. Incident was noticed by Chander Pal (PW7) and Smt. Sewati Devi (PW18). Sewati Devi (PW18) took the prosecutrix to the verandah of her house. In the meanwhile, Digamber Dutt (PW8) reached there. He was apprised of the incident. Digamber Dutt sent the information to the husband of the prosecutrix, who was in a different village in connection with his job as a labourer. After some time, the husband of the prosecutrix arrived. Prosecutrix was taken to Govt. Dispensary Gumma, where she was attended upon by Dr. Narinder Kumar Mohindroo (PW3) who after doing the medical check up, referred her to Shimla hospital as she was in an advanced stage of pregnancy. Next day, the prosecutrix delivered a still born child. FIR was lodged at the Police Station on 6.3.1986 by the husband of the prosecutrix. Police conducted the investigation and challaned the respondent/accused, under Section 354 and 316 of the Indian Penal Code.

Trial Court concluded that the case was not proved beyond reasonable doubt and consequently acquitted the respondent. The State has filed the appeal challenging the order of acquittal.

We have perused the record and heard the learned Additional Advocate General. The story of the prosecutrix is not corroborated by any other witness. Even the Medical evidence does not corroborate her story. Her version is that she was hit on the head and abdomen by the respondent on 5.3.1986 and it was on that very day that she was assaulted by the respondent with intent to outrage her modesty. However, the evidence on record shows that she had sustained the injuries on her person prior to 5th March,

1986. She had been medically examined on 4.3.1986 by Dr. Narinder Kumar Mohindroo (PW3), who noticed the following injuries on her person:

- “1. There was contused lacerated wound on scalp in occipital region and depth was $\frac{1}{2}$ cm in size and one inch long.
2. There was a contused lacerated wound inside middle finger which was $\frac{1}{2}$ inch in size.
3. There was abrasion on left side of hip. I had issued medical certificate in respect of the said injuries Ext. PC is the said medical certificate which bears my signatures. Injury No.3 mentioned in Ext. PC, while in respect of remaining two injuries I had referred the patient to Ripon Hospital, Shimla. After I had received C-ray report it was found that injury No.4 was grievous because there was a fracture of middle phalanx of middle finger on right side, while injury No.1 remain simple. The duration of the injuries was less than six hours at the time of my examination. The kind of weapon used was blunt”.

The witness issued the Medico Legal Certificate Exhibit PC and as per the mention in the certificate, the history of the case was that the lady had been given beatings at 9.00 a.m. That means the injuries were caused to the prosecutrix on 4.3.1986.

When prosecutrix was admitted to the hospital on 5.3.1986, she did not complain of any injury, having been caused to her on that day or for that matter on the previous day. In fact, she went to General Dispensary at Gumma on 5.3.1986 from where she was referred to Ripon Hospital, Shimla for check up in relation to pain in the abdomen. Dr. Anita Sood (PW2) did not say that she had noticed any recent injury on any part of the body of the prosecutrix, leave alone the abdomen.

Post Mortem examination of the still born child was conducted by Dr. D.K. Ghosh (PW4). He could not reach any

definite conclusion as to the cause of the death of the child though he did say that the child died in the uterus itself.

Chander Pal (PW7) and Digamber Dutt (PW8) did not support the version of the prosecutrix. Even Sewati Devi (PW18) did not support the version of the prosecutrix, as narrated by her in the Court, as PW5. Sewati Devi (PW18) stated that the prosecutrix had been having illicit relations with Durga Singh and that the prosecutrix told her on the fateful day that when Durga Singh respondent was passing through her compound, he quarreled and scuffled with her and in the course of such scuffle, she fell down in the compound on a piece of stone and sustained injuries. Prosecution did not cross-examine this witness and, therefore, there should be no reason to dis-believe her testimony. It is this witness to whom the prosecutrix narrated the cause of pain in the abdomen for the first time. Other witnesses reached the spot later. Now the earliest version given by the prosecutrix to this witness is contrary to what was reported to the Police by her husband or what is testified by the prosecutrix in the Court. Prosecution very much relies upon the testimony of Sewti Devi because it chose not to cross examine her despite her having given a version contrary to the one given by the prosecutrix.

In view of the above discussion, the view taken by the trial Court cannot be said to be contrary to the evidence on record. Hence the appeal is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

November 30, 2007.
(bm)

