

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

Cr. Appeal No. 168 of 1994

Reserved on.: 25<sup>th</sup> February, 2009.

**Date of Decision:** 28<sup>th</sup> February, 2009

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State of H.P.

...Appellant.

**Versus.**

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Mohinder Singh.

...Respondent.

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*Coram:*

*The Hon'ble Mr. Justice Deepak Gupta, Judge.*

*The Hon'ble Mr. Justice V.K.Ahuja, Judge.*

Whether approved for Reporting? No.

**For the appellant:**

**Mr. Rajesh Mandhotra, Deputy Advocate  
General.**

**For the Respondent:**

**Mr. Bimal Gupta, Advocate.**

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**Per Deepak Gupta, J.**

This appeal by the State is directed against the judgement of the learned Sessions Judge, Solan dated 11.3.1994 passed in Sessions Trial No.6-S/7 of 1993 whereby he acquitted the accused of having committed offences punishable under Sections 376 and 376/511 IPC but has convicted him for committing an offence punishable under Section 354 IPC. The learned trial Court sentenced the accused to undergo imprisonment till rising of the Court and to pay fine of Rs.500/-.

It would be pertinent to mention that when this matter came up for hearing on 26.3.2008 this Court was prima facie of the view that the sentence awarded by the learned trial Court is ridiculously on the lower side. Therefore, notice was issued to the accused through his counsel that the punishment may be enhanced. On receipt of the notice, Shri Bimal Gupta put in appearance and in terms of Section 377(3) of the Cr.P.C. has argued that the respondent deserves to be acquitted.

Brief facts giving rise to the case are that the prosecutrix lodged an F.I.R. Ext.PC with the Police Station Dharampur on 10.10.1992. In this F.I.R. it was alleged that on the previous day i.e. on 9.10.1992 when the prosecutrix was returning from village Joharji to her own village after purchasing house hold articles she met the accused near village Dhar Patial. The accused allegedly caught hold of the prosecutrix and made her lie down on the ground. When the prosecutrix attempted to shout he gagged her mouth. He caught hold of the 'Nara' of the Salwar which the prosecutrix wearing and pulled it with a jerk and resultantly the same broke. He thereafter removed the Salwar from the legs of the prosecutrix. He then opened his own trouser and tried to commit rape on the prosecutrix. She, however, managed to press his testicles and raised an

alarm. On this, the accused released her. The prosecutrix then managed to run away from the spot. She left her Salwar and the other items which she had purchased at the spot itself. Thereafter, she reached the house of Banti wife of Amru in village Dhar Patial. She narrated the incident to Banti and her younger sister Kanta. Kanta then went to the spot and brought back the salwar and other articles left behind by the prosecutrix. The prosecutrix then obtained another Nara from Banti and then put on her Salwar. She allegedly suffered some injuries on the upper side of her right hip and on the abdomen and back of the waist due to pulling of the 'Nara' of the Salwar. According to her she also received some internal injuries. Thereafter Amru, husband of Banti, escorted her to her house where the prosecutrix narrated the entire incident to her husband and Shri Laju, member of the Panchayat. She stated that the accused wanted to outrage her modesty by committing rape on her.

On this report being lodged, the police swung into action. Statements of the witnesses were recorded. The prosecutrix was got medically examined from Dr. Radha Chopra, PW-1. After completion of the investigation challan was filed. The accused was summoned. He was charged for having committed an offence punishable under Section 376 read with Section 511 IPC. The prosecutrix thereafter

examined Dr. PW-1 Radha Chopra and PW-2 Dr. S.C.Jaswal. The prosecutrix was examined as PW-3. In her examination-in-chief she repeated the same story and alleged that the accused had attempted to rape her. However, during cross-examination she considerably changed her case and stated that the accused had actually committed the sexual act with her forcibly and against her Will and consent. According to her, the accused took 10 to 15 minutes to commit the sexual intercourse.

In view of the statement of the prosecutrix, the charge against the accused was re-cast and on 23.7.1993 he was charged with having committed an offence punishable under Section 376 IPC. The accused pleaded not guilty. Thereafter, PW-1 Dr. Radha Chopra and the prosecutrix was re-examined. According to the prosecutrix due to shame and to protect her honour and the honour of her family she had not disclosed at the time of the lodging of the F.I.R.Ext.PC the fact that the accused had committed sexual intercourse with her. She also stated that she had told her husband and other witnesses including Banti and Laju Ram about the said incident.

Smt. Banti was examined as PW-4. She feigned ignorance about the entire incident. She was declared hostile and cross-examined by the prosecution. She

admitted that the accused is her nephew. She denied that any incident had taken place in her presence.

PW-6 Kishan Datt is the husband of the prosecutrix. According to him, the prosecutrix had told him that she had been raped by the accused. He states that Amru had called him from the jungle. He then called the ward-member Laju Ram and the entire incident was narrated to the Laju Ram. Then they went to the house of Pradhan Bhagat Ram. Next day, he and Laju Ram accompanied the prosecutrix to the Police Station Dharampur. According to this witness, both he and Laju Ram had told the police that they had been informed by the prosecutrix that the accused had committed sexual intercourse with her. However, this is not reflected in their statements recorded by the police.

Laju Ram was examined as PW-7. According to him, Kishan Datt called him from his house at about 2.30 p.m on 9.10.1992. When he reached the house of Kishan Datt, Amru was also there. The prosecutrix had informed this witness that when she was returning from Joharji the accused had met her and tried to rape her. The prosecutrix raised an alarm and Banti came to the spot. Thereafter, Amru escorted to her home. They then went to the house of Bhagat Ram Pradhan and narrated the incident to him. Then they went to the house of Hari Kishan, Sarpanch. Then

they went to the Police Station. On the basis of this evidence the learned Sessions Judge acquitted the accused of having committed an offence punishable under Section 376 IPC but found him guilty of having outraged the modesty of the prosecutrix.

We have heard Shri Rajesh Mandhotra learned Deputy Advocate General for the State and Shri Bimal Gupta learned counsel for the respondent-accused.

The law by now is well settled that in a case of rape the accused can be convicted even on the sole testimony of the prosecutrix. There is, however, a caveat that the testimony of the prosecutrix should be reliable and should inspire confidence.

Here we are dealing with a prosecutrix who in her report to the police and in her examination-in-chief in Court on oath had not stated a word that she had been raped. Her entire case was that the accused had attempted to rape her. Suddenly, during cross-examination she changed her version and stated that she had been raped. The prosecutrix is a grown up married woman. Her explanation is that she did not tell the police that she had been raped in order to protect her honour. This explanation cannot be accepted in view of the fact that according to the prosecution she had told about the rape to her husband, to

the Panchayat Member Laju, to the Pardhan Bhagat Ram and to the Sarpanch Hari Kishan. If she could narrate this incident to all these persons why could she not narrate the same to the police. Her husband and Laju were present in the police station when her statement was being recorded. Even if the prosecutrix was feeling shy, nothing prevented them from telling the police the actual fact. Admittedly, the statements of these two witnesses were recorded under Section 161 Cr.P.C. The husband has been confronted with his statement and he states that the police may not have recorded his statement correctly. As far as Laju is concerned, he even in Court does not state that the prosecutrix told him that she was raped by the accused. In such circumstances, it cannot be said that the statement of the prosecutrix is reliable and the same does not inspire confidence. Therefore, the version of the prosecutrix requires corroboration.

The statement of the prosecutrix is not supported by Banti. According to the prosecution, Banti was the first person the prosecutrix met after the incident. Amru who allegedly escorted the prosecutrix from his house to her house and in whose presence she narrated the incident to her husband and Laju was not even cited as a witness by

the prosecution. Kanta, sister of Banti, has been given up as having been won over.

Shri Bimal Gupta, learned counsel for the accused has urged that in fact the conviction of the accused is totally illegal and against the evidence on record. He submits that in view of the provision of Section 377(3) the accused is entitled to challenge his conviction once notice of enhancement of sentence has been issued to him.

On perusal of the entire evidence we find that we cannot place reliance on the statement of the prosecution. She is not at all supported by Banti Devi, who turned hostile. Amru and Kanta have not been examined by the prosecution. The statement of the husband also shows that he has made many improvements in his statement while appearing in Court. According to Laju they had all gone to the house of Pardhan Bhagat Ram and thereafter to the house of Hari Kishan Sarpanch. However, the husband does not make any mention that they had gone to the house of Shri Hari Kishan. No doubt, the husband has stated that they went to the house of Bhagat Ram but this fact did not find mention in his statement recorded by the police. As far as the prosecutrix is concerned she also makes no mention of meeting Hari Kishan. Even Bhagat Ram, Panchayat Pardhan has not been examined.



Keeping in view the evidence on record and the discussion made here-in-above, it is apparent that both the prosecutrix and her husband are trying to falsely implicate the accused. Firstly, they charged him of having committed an offence of attempt to rape but during the course of the trial they changed their allegations to those of actual rape. These statements are totally unreliable. Once we do not believe these statements, the accused cannot be convicted even for an offence under Section 376 read with Section 511 IPC or Section 354 IPC. The whole story cannot be believed. We accordingly dismiss the appeal filed by the State and set-aside the judgement of the learned Sessions Judge convicting the accused under Section 354 IPC and acquit the accused. Bail bonds furnished, if any, are ordered to be discharged.

**( Deepak Gupta ), J.**

**28.02.2009**  
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**( V.K.Ahuja ). J.**