

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 49 of 2002
Date of decision: 31.05.2011

State of H.P.	Appellant.
	Vs.	
Chain Singh alias Shenu	Respondent.

Coram

The Hon'ble Mr. Justice R.B. Misra, J.

The Hon'ble Mr. Justice V.K. Sharma, J.

¹ Whether approved for reporting?

For the appellant: Mr. R.K. Sharma, Sr. Additional Advocate General.
For the respondent: Mr. Ashwani K. Sharma, Advocate.

Justice R.B. Misra, J *(Oral)*

The present criminal appeal has been preferred after leave to appeal has been granted, under Section 378 (3) Cr.P.C., in reference to the impugned judgment, dated 10.8.2001, passed by the Sessions Judge, Una, acquitting the respondent-accused for the alleged involvement for the offences, under Sections 342 and 376 IPC read with Sections 511 and 452 IPC in reference to FIR No. 38/2001 dated 8.3.2001.

2. The prosecution case is that the prosecutrix aged about 37 years, being mentally ill was residing with her sister Kamlesh Kumari (PW-2) at village Bagga Barota in Tehsil Amb. The complainant, Kumari Shobha Rani (PW-1), the daughter of Smt. Kamlesh Kumari, made a statement Ext. PA on 8.3.2001 before Investigating Officer Madan Lal (PW-5) to the effect that on 7.3.2001, she had gone to her Industrial Training Institute for training at Una as usual along with her mother and returned in the evening at about 6.30 p.m. and straight way came to her house, whereas, her mother stayed back in the local market at Nehrian for purchases. When Kumari Shobha Rani (PW-1) reached her house, she noticed the door bolted from inside and on knocking it was not

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

opened. So, she peeped inside the room through a window and noticed the accused-respondent present in the room and also noticed that Salwar of the prosecutrix was open. Therefore, she went and called Sat Pal (PW-3) from the neighbour, who after coming got the room opened. It was further stated that the accused had committed rape upon the prosecutrix. The matter was reported to the police when formal FIR Ext. PD was registered by ASI Yash Pal and after investigation, the accused was charged for the aforesaid offences.

3. In order to prove its case, prosecution examined as many as six witnesses, whereas, the accused through his statement under Section 313 Cr.P.C. denied the prosecution case.

4. PW-1 Sobha Rani in her endeavour to support the prosecution case has re-iterated the prosecution version. However, PW-1 stated that on her asking, the accused had stated that he had not done anything as he had gone inside the room without any purpose. PW-1 in her cross-examination has stated that the victim-prosecutrix gets pension of Freedom Fighter from the UCO Bank Nehru. The prosecutrix collects the pension herself, however, the bank officials were not knowing about the mental illness of the prosecutrix. Younger sister of PW-1 is a student of College. She was not present at that time. PW-1 has further stated that her younger brother aged about 16 years was also not present in the house at the relevant time. All the rooms of the house are interconnected with doors and three rooms of house have doors from outside and at the relevant time Mairi fair was going on and that the house of PW-1 is 50 meters from the main road leading to Mairi. As per testimony of PW-1, the prosecutrix sometimes goes out to answer the call of the nature, but sometimes she passes stool here and there and PW-1 had to manage it. As per testimony of PW-1, her mother had told that the

accused had come to her house three days earlier also and the police might have recorded this fact in Ext. PA.

5. PW-2 Kamlesh Kumari is the elder sister of the victim prosecutrix. In her endeavour to support the prosecution case, she has stated that when she reached the spot, PW-1 told her that the accused was found inside the room of the prosecutrix and that the Salwar of victim-prosecutrix had been removed by him. PW-1 had called Sat Pal on the spot. The accused wanted to run away from the spot but was caught by Sat Pal and PW-2. As per testimony of PW-2, the victim-prosecutrix is matriculate. She fell mentally ill in the year 1985. She gets pension from the UCO Bank Nehri but she puts her thumb impression and PW-2 is the guardian of victim-prosecution.

6. PW-3 Sat Pal has stated that he has a meat shop at Nehrian which is 25-30 feet away from the house of Kamlesh Kumari and he was called by PW-1 Shobha Rani at about 6/6.30 p.m. and told that some body was present in her house. Accused ran away from the spot by the time PW-3 reached there. PW-3 has also stated in cross-examination that PW-1 had told him that her Mausi was also inside the room and that one person was also there. There are two doors in that room. One room was bolted from inside and the accused ran away from the other door. PW-3 in his cross-examination has further stated that he saw the accused running away from the spot. However, he has not seen the accused inside the room and that he did not see the Salwar of the prosecutrix open. PW-3 had seen the accused on that day for the first time and not supported the prosecution case.

7. PW-4 Dr. S.K. Verma examined the accused-respondent. PW-5 ASI Madan Lal investigated the case and arrested the accused, visited the spot and prepared the site plan Ext. PE. He got the accused

and the victim-prosecutrix medically examined. As per testimony of PW-5, he did not record the statement of the prosecutrix as she was mentally ill and that she speaks irrelevant and PW-5 did not get the prosecutrix medically examined from any Psychiatrist to know her mental condition. During investigation, PW-5 came to know that the accused was beaten up by the people and had suffered some injuries due to such reason.

8. PW-6 Dr. Aruna Mehta, Medical Officer medically examined the victim-prosecutrix in Zonal Hospital, Una and had issued MLC Ext. PG. The prosecutrix was also medically examined by Dr. Ashok Verma at Zonal Hospital, Dharamshla and MLC Ext. PH was issued by him. As per opinion given on Ext. PH based on clinical and chemical examination, there was no evidence to suggest that the prosecutrix had been subjected to sexual intercourse.

9. On analysis of prosecution witnesses and materials on record, it was noticed that the medical opinion revealed that the possibility cannot be ruled out that the victim-prosecutrix was subjected to sexual intercourse. PW-1 though had observed the accused running away from the room, however, has not observed the misdeed of accused. PW-2 had stated on hearing the narration of incident by PW-1. PW-3 had seen running away the accused and had not seen anything else. However, PW-3 is stated to have been apprehended the accused as per testimony of PW-1 though PW-3 did not support the prosecution case. As per testimony of PW-5, statement of the victim-prosecutrix could neither be recorded nor was she examined by the psychiatrist to know about the status of her mental illness. No endeavour was made by learned trial Court to get the statement of the victim-prosecutrix recorded.

10. Keeping in view the medical opinion, uncorroborated testimony of PW-1 and analysis of prosecution witnesses, learned

Sessions Judge has rightly acquitted the accused from the offences under Sections 342 and 376 IPC read with Sections 511 and 452 IPC. In our considered view the prosecution has miserably failed to bring home the guilt to the accused beyond any reasonable doubt. There is no scope of any interference in the judgment of the trial Court, therefore, the appeal being devoid of any merit, is dismissed.

(R.B. Misra)
Judge

(V.K. Sharma)
Judge

May 31, 2011
(cr)