

The State of Himachal Pradesh

v.

Rajesh Kumar @ Munnu

(Criminal Appeal No. 2097 of 2014)

20 February 2025

[Surya Kant* and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court acquitting the accused u/ss.376 and 452 IPC.

Headnotes[†]

Penal Code, 1860 – ss.376 and 452 – Rape – Non-allowance of medical examination by prosecutrix – Delay in lodging FIR – Trial court convicted the accused-respondent for forcibly committing sexual intercourse with the prosecutrix, however, acquitted by the High Court due to glaring lacunae in the prosecution case – Interference:

Held: Interference not called for – Mother of the prosecutrix declared hostile – Father of the prosecutrix made evasive statements and failed to explain the delay in reporting the matter – Unexplained delay in lodging FIRs commonly considered fatal to the prosecution's case – On facts, delay was never acknowledged and necessary benefit of such omission must accrue to the accused – Non-allowance of medical examination by an alleged rape-victim raises negative inferences against them – Prosecutrix and her parents themselves never fully cooperated with the medical staff during the medical examination, adversely impacting the credibility of their version of events – Furthermore, no good reasons can be ascribed to the complete lack of assistance that the complainants tendered to the authorities, apart from their contradictory stances before the court – Also, High Court's invariable conclusion that the prosecutrix was not mentally unsound – Except where this Court finds that the conclusion drawn by the High Court is based upon a complete misreading of the evidence on record, or where its conclusions

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are so perverse that the same cannot be sustained, then only might a judgment of acquittal warrant interference – On facts, the High Court microscopically examined the entire evidence before firmly opining that the accused deserves the benefit of the doubt. [Paras 7-10, 12, 13]

Case Law Cited

Ramdas v. State of Maharashtra (2007) 2 SCC 170; *Parminder Kaur v. State of Punjab* [2020] 6 SCR 508 : (2020) 8 SCC 811; *Fateh Chand v. State of Haryana* (2009) 15 SCC 543; *State of Uttar Pradesh v. Chhotey Lal* [2011] 1 SCR 406 : (2011) 2 SCC 550; *Assessment of the Criminal Justice System in Response to Sexual Offences, In re* (2020) 18 SCC 540; *Dola v. State of Odisha* (2018) 18 SCC 695; *Sham Sunder v. Puran* [1990] 1 Supp. SCR 662 : (1990) 4 SCC 731; *Ramaniklal Gokaldas v. State of Gujarat* [1976] 1 SCR 251 : (1976) 1 SCC 6; *Gosu Jayarami Reddy v. State of Andhra Pradesh* [2011] 9 SCR 503 : (2011) 11 SCC 766; *State of Uttar Pradesh v. Dharmendra Singh* [1999] 3 Supp. SCR 52 : (1999) 8 SCC 325 – referred to.

List of Acts

Penal Code, 1860.

List of Keywords

Rape; Forcible sexual intercourse; Prosecutrix not cooperating in medical examination; Glaring lacunae in prosecution case; Hostile witness; Evasive statements by prosecution witness; Delay in lodging FIR; Unexplained delay fatal to prosecution case; Medico-legal certificate; Benefit of omission by prosecution to accused; Non-allowance of medical examination by rape victim; Complete misreading of evidence; Judgment of acquittal warrant interference; Prosecutrix not mentally unsound.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2097 of 2014

From the Judgment and Order dated 01.03.2012 of the High Court of H.P. at Shimla in CRLA No. 8 of 2009

Supreme Court Reports**Appearances for Parties**

Advs. for the Appellant:

Vikrant Narayan Vasudeva, Sarthak Chiller, Rohit Lochav.

Advs. for the Respondent:

Jogy Scaria, Mrs. Beena Victor, Ms. M. Priya, Ashwani Kumar Soni.

Judgment / Order of the Supreme Court**Judgment**

Surya Kant, J.

1. The instant criminal appeal is directed against the impugned judgment dated 01.03.2012 passed by a Division Bench of the High Court of Himachal Pradesh, whereby the criminal appeal preferred by the respondent had been allowed. The High Court, while acquitting him under Sections 376 and 452 of the Indian Penal Code, 1860 (in short, the “IPC”), has set aside the judgment and order of the Trial Court dated 02.01.2009, holding the respondent guilty of the aforementioned offences with a sentence of 10 years of rigorous imprisonment.
2. We have heard learned counsel for the State at a considerable length. The record has been perused.
3. The prosecution case is that on 13.08.2007, the prosecutrix (PW-10) through her father lodged FIR No. 346/2007 under Sections 452 and 376 of IPC at Police Station Sadar Hamirpur against the accused-respondent. It was alleged therein that when her parents (PW-8 & PW-9) had gone to the hospital for purchasing medicines around noon, the respondent came to the *varandah* of her house and asked for a match box. Finding her alone, the accused allegedly caught her from the arm and took her inside the room. Thereafter, he forcibly committed sexually intercourse with her. This incident was apparently narrated by the prosecutrix to her parents when they returned, who subsequently lodged the FIR.
4. The prosecutrix was medically examined by Dr. Sunita Galodha (PW-7) at Regional Hospital, Hamirpur, where she was found to be of unsound mind as she did not cooperate in her medical examination.

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As the factum of sexual intercourse could not be ascertained, the prosecutrix was further referred to the RPMC Hospital at Tanda (Dharamshala) for the opinion of their Gynecologist and Psychiatrist. However, the father of the prosecutrix did not allow for any medical examination to happen. Nevertheless, the initial vaginal swab collected by the police was sent to Forensic Science Laboratory for medical analysis.

5. The Trial Court on the basis of examination of prosecution evidence, consisting of 14 witnesses besides statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, convicted him under Sections 452 and 376 of IPC; and sentenced him to undergo rigorous imprisonment for 10 years, besides the requisite fine.
6. Against this, the respondent preferred an appeal before the High Court, which has been allowed *vide* the impugned judgment. The High Court has succinctly demonstrated some of the glaring lacunae in the prosecution case, which even the learned State counsel before us, is unable to satisfactorily justify. We say so for the reasons set out below.
7. The present case is one where the mother of the prosecutrix (PW-9) entered the witness box and unfortunately did not support prosecution case. She completely denied that any occurrence, similar to the one described in the FIR, ever took place. She was, accordingly, declared hostile and cross-examined by the Public Prosecutor. Of course, nothing material could be extracted from her cross-examination.
8. The father of the prosecutrix (PW-8) also entered the witness box, and it is an admitted fact that he, too, made evasive statements, largely restricted to the narration of the events preceding the trial. We may note at this junction, that his statement fails to explain the delay in reporting the matter, and the lodging of the FIR. While he submitted that he reported the alleged incident to the police as soon as he was apprised of the same, we are constrained to note that the such assertion does not inspire much confidence. We say so, keeping in mind the statement made by Nirmala Devi, Pradhan of Gram Panchayat (PW-1), who simply deposed that the father of the prosecutrix came to her house after three days of the incident, i.e. on 13.08.2007, and informed her about the occurrence. She then advised him to report the matter to the police, he finally went and

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lodged the police report. While it is trite law that unexplained delay in lodging FIRs is commonly considered fatal to the prosecution's case,¹ we observe that in the instant case the delay was never even acknowledged – much less explained. Thus, it is our considered opinion that the necessary benefit of such an omission must accrue to the accused-respondent.

9. The other significant evidence on record comprises the statement of Dr. Sunita Galodha of Regional Hospital of Hameerpur, who issued the medico-legal certificate (Ext.PW7/B) based on the Chemical Examiner's Report (Ext.PW6/A). The High Court has referred to the statement of Dr. Sunita Galodha and both the above-mentioned reports *in extenso*, in paragraph 10 of the impugned judgment, which reads as under:

“10. Each case has to be determined on its own circumstances and law laid down by the Apex Court with regard to delay has to be applied to the given facts. Coming to the medical evidence, we find that prosecutrix was examined by Dr. Sunita Galodha (PW-7) who issued MLC (Ex.PW7/B) based on the chemical examiner's report (Ex.PW6/A). This witness found that prosecutrix was having a normal gait. There were no marks of injury on any part of her body. Clothes which she was wearing had been washed and changed. However, when it came for physical examination of her private parts, prosecutrix did not co-operate. She did not allow even a tip of a little finger to be inserted inside her vagina. Also no blood or semen was found on her private parts or the vaginal swab. Since prosecutrix resisted physical examination, including that of hymen, this witness could not give any final opinion about the commission of sexual intercourse. The report of the Forensic Science Laboratory also does not link the accused to the alleged crime. Semen was not found on the clothes of the prosecutrix or the vaginal swab. Eventually the ground that blood & semen was

¹ Ramdas v. State of Maharashtra, (2007) 2 SCC 170; Parminder Kaur v. State of Punjab, (2020) 8 SCC 811; Fateh Chand v. State of Haryana, (2009) 15 SCC 543; State of Uttar Pradesh v. Chhotey Lal, (2011) 2 SCC 550.

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not found on the pubic hair & vaginal slides of Veeja Kumari. Blood in track was found on swab, but semen could not be detected on exhibit. Further, the opinion regarding occurrence of act, as asked in police docket cannot be given as the girl has been- referred to RPMC, Dharamshala.”

10. The afore-extracted portions make it amply clear that the prosecutrix and her parents themselves never fully co-operated with the medical staff, thereby adversely impacting the credibility of their version of events. It is a well-settled proposition of law that non-allowance of medical examination by an alleged rape-victim raises negative inferences against them.² We cannot *ascribe* any good reason to the complete lack of assistance that the complainants tendered to the authorities, apart from their contradictory stances before the Court. We are further doubtless in this regard as the High Court, while discussing the prosecutrix’s testimony, has come to the invariable conclusion that she was not mentally unsound – given that she was able to clearly comprehend the question and answer during the cross-examination.
11. As regard to the age of the prosecutrix, she has categorically admitted as has been otherwise proved that she was 19 years old at the time of the alleged occurrence. The prosecution has not opposed this factum as well.
12. We are cognizant of the jurisdictional limitations that normally restrict interference in settled criminal appeals,³ especially wherein the High Court has acquitted the accused. It is equally well-established that save and except where this Court finds that the conclusion drawn by the High Court is based upon a complete misreading of the evidence on record, or where its conclusions are so perverse that the same cannot be sustained, then only might a judgment of acquittal warrant interference. On the contrary, in the instant case the High Court has microscopically examined the entire evidence

2 Assessment of the Criminal Justice System in Response to Sexual Offences, In re, (2020) 18 SCC 540; Dola v. State of Odisha, (2018) 18 SCC 695.

3 Sham Sunder v. Puran, (1990) 4 SCC 731; Ramaniklal Gokaldas v. State of Gujarat, (1976) 1 SCC 6; Gosu Jayarami Reddy v. State of Andhra Pradesh, (2011) 11 SCC 766; State of Uttar Pradesh v. Dharmendra Singh, (1999) 8 SCC 325.

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before firmly opining that the present accused-respondent deserves the benefit of the doubt.

13. Consequently, we refuse to interfere with the judgment of acquittal passed by the High Court. The appeal is, accordingly, dismissed.

Result of the case: Appeal dismissed.

[†]Headnotes prepared by: Nidhi Jain