Supreme Court of India
Puran Chand vs State Of H.P on 23 April, 1947
Author: G S Misra
Bench: T.S. Thakur, Gyan Sudha Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1708 OF 2010

PURAN CHAND .. APPELLANT

VERSUS

STATE OF H.P. ..RESPONDENT

J U D G M E N T

GYAN SUDHA MISRA, J.

1. This appeal was going unrepresented as no one had appeared for the appellant to contest the matter. We, therefore, in the interest of justice, appointed an Amicus Curiae to represent the case of the appellant and assist the Court in reaching to a just conclusion.

2. Having heard the counsel for the parties and on perusal of the material on record, we have noted that this appeal is directed against the judgment and order dated 29.09.2009 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.52/2009 whereby the appeal preferred by the appellant was dismissed by the High Court. Consequently, the conviction of the appellant under Section 376 read with Section 506-I of the Indian Penal Code was upheld and the sentence of seven years imposed on the appellant/accused alongwith a fine of Rs.5,000/- in default of which he had to undergo simple imprisonment for a period of one year under Section 376 IPC and further to undergo simple imprisonment for three months under Section 506-I IPC, was confirmed.

3. The case of the prosecution which led to the conviction and sentence of the appellant emerges out of the FIR No.186/2006 which was registered at Police Station Nahan by the prosecutrix/the victim girl aged 17 years who suffered the offence of rape at the instance of the appellant. She has stated in the FIR that on 20.08.2006 at about 12.30 p.m., she had taken her goats for grazing in the forest at a distance of about ½ k.m. from the village. She was sitting alone on a foot path, at about 2 p.m. when somebody caught hold of her from her back and then she found out that it was the accused-appellant who had forcibly caught hold of her. She enquired the reason for holding her to which the accused did not respond. The appellant thereafter physically abused her body specially the chest portion removed her clothes made her lie on the ground and inflicted sexual assault by committing rape on her. In panic, she raised alarm but none came to her rescue or for help. The accused-appellant after raping her left the place and threatened her that in case she disclosed the incident to anyone, she will have to pay for the consequence of disclosing the incident. It has been stated by the victim-girl that on account of this fear, she did not disclose this incident to her parents

for several days but she remained tense on account of trauma that she had been suffering due to the heinous incident. However, the tension that brewed in her mind, increased so much that on 02.09.2006, she attempted to commit suicide by consuming some poison and she became unconscious after which she was admitted into the Hospital at Dadahu and then shifted to Nahan and finally to the PGI, Chandigarh. On regaining her consciousness, she disclosed the incident to her parents and brother Ramesh Chand. She was discharged from PGI, Chandigarh on 10.09.2006 and thereafter she reported the case at Police Station Nahan.

4. The prosecutrix/victim girl was then subjected to medical examination and the case was investigated by PW-9 ASI Jagdish Chand. The accused was arrested on 12.09.2006 and on completion of investigation, chargesheet was submitted in the Court of learned Chief Judicial Magistrate, Nahan who committed the case vide order dated 19.05.2007 for trial.

5. In support of the case of victim girl, the prosecution examined 11 witnesses and also produced documentary evidence. The accused was also examined under Section 313 Cr.P.C. who denied the prosecution case and took the plea that the witnesses have deposed against him due to previous enmity. However, the learned Session Judge on a scrutiny of the evidence and on conclusion of the trial, convicted and sentenced the accused as noted above.

6. The appellant preferred an appeal before the High Court of Himachal Pradesh at Shimla against the judgment and order of the Trial Court, wherein he reiterated his defence version that he had been falsely implicated in the case due to previous enmity with the victim's family and the learned Sessions Judge had not appreciated the evidence properly and in correct perspective. It was therefore urged that it was not a case where conviction should have been recorded on the basis of sole testimony of the prosecutrix so as to convict him as there is unexplained delay in lodging the FIR. It was also contended that the medical evidence belies the case of the prosecution and it was sought to be explained that the prosecutrix was suffering from the fear of compartmental examination in which she had to appear which was to commence in September 2006 and out of fear of examination, the prosecutrix has consumed poison and not for the reason that she had been allegedly raped by the accused.

7. The learned single Judge of the High Court however did not feel persuaded to interfere with the judgment and order of conviction and, therefore, upheld the conviction and sentence imposed on the appellant by the trial Court. The appellant therefore has preferred this appeal assailing the judgment and order passed by the concurrent judgment and order of the trial court and the High Court.

8. The learned Amicus Curiae representing the appellant practically repeated the submissions which had been advanced before the trial Court and the first appellate court and urged that the appellant has been falsely implicated in the present case which was lodged by the victim's family due to previous enmity. He urged that the defence story to the effect that the girl attempted suicide due to the alleged rape is not correct as she might have done it on account of the examination fever which must have led her to consume poison. It was further submitted that there was a delay of 22 days in lodging the FIR against the appellant as the alleged occurrence took place on 20.08.2006 at about 2

p.m. but the FIR was registered on 11.09.2006. It was further contended that there is nothing in the statement of the victim girl about the nature of injuries which she sustained on her right leg and chest at the time when the alleged rape was forcibly committed on her. It was further added that it is not clear from the evidence that the injuries with the prosecutrix has stated in her cross-examination to have sustained on her right leg and chest would in normal course come in medical examination conducted after 21 days of the alleged incident. Therefore, the prosecution/the victim girl cannot be permitted to take benefit of the statement of the prosecutrix that some injuries were caused on the person and those injuries were not noticed by the Doctor and reflected in the medical report.

9. It was still further contended that the Courts should not act on the solitary evidence of the prosecutrix and it should be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

10. The counsel for the respondent-State however supported the reasons relied upon by the High Court as also the Sessions Court for upholding the conviction and took us to the evidence led by the prosecution viz. PW-2 Daulat Ram-father of the victim girl who stated that when the prosecutrix became unconscious on consuming poison, they took her to the Hospital at Dadahu and from there she was taken to Nahan and then to PGI, Chandigarh where she remained admitted till 10.09.2006. The victim girl on regaining consciousness at PGI, Chandigarh was asked by the witness PW1 - father and his son-brother of the victim girl as to why she had consumed poison to which the prosecutrix stated that on 20.08.2006, the accused had committed rape on her in the Jungle and he had threatened her not to disclose the incident to anyone and as she could not bear the suffering and trauma of the incident, she consumed poison as she was feeling ashamed due to the offence committed upon her by the accused. After discharge from PGI, Chandigarh on 10.9.2006, FIR was lodged and the witness PW2- Daulat Ram - father of the girl was subjected to cross-examination on this aspect at the stage of trial but he withstood the same by stating that there was no civil litigation with the family of the accused so as to implicate the accused falsely. PW-3 Ramesh Chand – brother of the girl corroborated the statement of the victim prosecutrix and PW-2 Daulat Ram – Father as to the date and time when the prosecutrix disclosed the fact that the accused – appellant committed rape upon her. PW-4 Prem Pal, Panchayat Sahayak had proved the birth certificate and stated that as per record, the date of birth of the victim girl is 06.01.1987 indicating that she was a minor on the date of the incident.

11. PW-5 Dr. Nirmala Vaish who had examined the victim girl had deposed that before examining the prosecutrix-victim, she narrated the history which was noted down by the Doctor. The Doctor further deposed that there was no fresh evidence, bleeding or tear or scratch over the vulva outside and inner mucosa. There was slightly reddened area over outer mucosa lower side which could be due to discharge not likely a tear or injury to mucosa. The Doctor further recorded that hymen of the girl was intact. There was no evidence of any forceful action on the other parts of the body. The victim girl was thereafter subjected to radiologist for x-ray for ascertaining her age and was sent to ultrasonography for pelvic problem as also dental surgeon for the determination of her age. The Doctor further noted that the attempt of rape could not be proved because of examination done after 21 days of the occurrence. Extensive cross-examination was done on the question as to whether the

offence of rape could be held to have been proved when there was no evidence regarding the offence of rape specially when the hymen of the girl was intact. The other evidence in regard to proof of age of the prosecutrix was also adduced including matriculation examination certificate of the victim girl showing her date of birth as 06.11.1987 and other evidence relating to her entry into the various Hospitals where she had been admitted.

12. We have taken note of and considered all the arguments advanced by the counsel for the appellant in support of the plea, that the incident in fact did not happen at all and the FIR was registered merely due to enmity. In this respect, the most important evidence assailing the prosecution case is the evidence of the doctor in which serious infirmities have been pointed out by the defence. However, on a close scrutiny of the deposition of PW-5 Dr. Nirmala Vaish, all the courts below have taken note of the fact with respect to non rupture of hymen that it is not clear from the statement of the doctor PW-5 which could reveal or prove that on actual examination, she found the hymen of the prosecutrix intact. Thus, reliance placed on behalf of the appellant-accused that the hymen of the victim girl was intact could not be accepted by the High Court and in view of the time gap between the sexual assault and the examination of the prosecutrix, the medical report of the prosecutrix not reflecting sexual act is not of much significance, as per the view taken by the Courts below. The prosecutrix victim has stood the test of cross examination as she has specifically stated that the accused forcibly committed sexual assault/rape on her against her wish on 20.08.2006. The defence however has tried to rely on the medical report in order to create a doubt about the actual assault on the victim girl.

13. While we have noted that the Doctor has not categorically denied the rupture of hymen of the victim girl, we also take note of the fact that the version is supported by other attending circumstances and evidence adduced by the prosecution through the victim girl which is supported by her father and brother. Even if we were to doubt the prosecution version due to alleged infirmity in the medical evidence, it cannot be overlooked that the case of this nature will have to be examined with the aid of the accompanying circumstantial evidence in order to test the veracity of the prosecution case. The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.

14. In fact, in an incident of this nature where a doubt is sought to be created by the defence relying upon the lacuna in the medical evidence which could not establish the incident in view of non-committal statement of the doctor regarding the hymen being intact, the prosecution version cannot be brushed aside totally and will have to be judged by the other attending circumstances brought on record. The defence no doubt has taken the plea that the girl had attempted suicide due to the examination fear and not on account of the rape alleged to have been committed on her but the same does not stand the test of scrutiny. This defence version, in our view, is not worth placing reliance for the victim girl immediately on regaining consciousness had narrated the story to the Doctor, father and her brohter at which stage it was not possible to indulge in concoction of the story of this nature in such a mental state. It is equally not possible to overlook or ignore the trauma that the victim girl must have suffered for 22 days after the sexual assault/rape committed on her

specially when she could not divulge the incident to anyone. We find the defence of the appellant extremely unworthy of reliance so as to demolish the version of the prosecutrix supported by circumstantial evidence. The version of the victim girl who was suffering the trauma of rape and was provoked to take the extreme step of consuming poison, cannot be doubted ignoring even the fact that a girl would put herself to disrepute and go to the extent of supporting her parents to lodge a false case merely due to some enmity with the family of the accused putting her honour at stake in a precarious mental state. In fact, we are prone to infer with reason that if the prosecution had an intention of really planting a false story of rape, it is highly improbable that they would have created a story having a huge time gap between the date of incident and the date of lodgement of the FIR leaving the scope of weakening the prosecution case. If it were a well thought out concocted story so as to lodge a false case, obviously the prosecution would not have taken the risk of giving a time gap of more than 20 days between the incident and the lodgement of the FIR. This clinching circumstantial evidence demolishes the defence version and inspires much confidence in what has been stated by the victim girl.

15. In fact, at this stage, the amendment introduced in the Indian Evidence Act, 1872 in Section 114-A laying down as follows is worthwhile to be referred to:-

> "Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause
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> (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub- section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent." Section 114-A no doubt addresses on the consent part of the woman only when the offence of rape is proved but it also impliedly would be applicable in a matter of this nature where the victim girl had gone to the extent of committing suicide due to the trauma of rape and yet is sought to be disbelieved at the instance of the defence that she weaved out a concocted story even though she suffered the risk of death after consuming poison.

If this were to be accepted, we fail to understand and lament as to what is the need of incorporating an amendment into the Indian Evidence Act by incorporating Section 114A which clearly has been added to add weight and credence to the statement of the victim woman who suffers the offence of rape and a claustrophobic interpretation of this amended provision cannot be made to infer that the version of the victim should be believed relating merely to consent in a case where the offence of rape is proved by other evidence on record. If this view of the matter is taken into account relying upon the amended Section 114-A of the Indian Evidence Act which we clearly do, then even if there had been a doubt about the medical evidence regarding non rupture of hymen the same would be of no consequence as it is well settled by now that the offence of rape would be held to have been proved even if there is an attempt of rape on the woman and not the actual commission of rape. Thus, if the version of the victim girl is fit to be believed due to the attending circumstances that she was subjected to sexual assault of rape and the trauma of this offence on her mind was so acute

which led her to the extent of committing suicide which she miraculously escaped, it would be a travesty of justice if we were to disbelieve her version which would render the amendment and incorporation of Section 114A into the Indian Evidence Act as a futile exercise on the part of the Legislature which in its wisdom has incorporated the amendment in the Indian Evidence Act clearly implying and expecting the Court to give utmost weightage to the version of the victim of the offence of rape which definition includes also the attempt to rape.

16. In the instant matter, in view of the evidence led by the witnesses, supported by the circumstantial evidence, the prosecution version is fit to be relied upon brushing aside the theory of improbability of the offence and holding the prosecution case proved beyond reasonable doubt, leading to the conclusion that the incident in fact did happen in the manner in which it has been described by the victim girl who was only 17 years and hence a minor at the time of the incident supported by the medical evidence which although might be somewhat weak, gains strength from other attending circumstantial evidence wherein there is no missing link in the chain of events.

17. In view of the aforesaid scrutiny and analysis of the evidence on record, we find no substance in this appeal and hence uphold the conviction and sentence imposed on the appellant. Accordingly the appeal is dismissed.

..... J.

(T.S. Thakur) .....J.

(Gyan Sudha Misra) New Delhi April 23, 2014
