

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 220 of 2010

Judgment Reserved on: 24.6.2015

Date of Decision : August 17, 2015

State of Himachal Pradesh

...Appellant

Lekh Ram

...Respondent

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P. S. Rana, Judge.

Whether approved for reporting? Yes.

For the appellant : Mr. Ashok Chaudhary, Addl. Advocate General with Mr. V. S. Chauhan, Addl. A.G. and Mr. J. S. Guleria, Asstt. A.G. for the appellant-State.

For the respondent : Mr. R. L. Chaudhary, Advocate for the respondent-accused.

Sanjay Karol, J.

Assailing the judgment dated 5.10.2009, passed by the learned Sessions Judge, Solan, Himachal Pradesh, in

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

Sessions Trial No. 1-NL/7 of 2009, titled as State of Himachal Pradesh vs. Lekh Ram, whereby respondent-accused stands acquitted, State has filed the present appeal under the provisions of Section 378 of the Code of Criminal Procedure, 1973.

2. It is the case of prosecution that M/s Unichem Laboratories had two guest houses at Baddi. Accused Lekh Ram was posted as a Security Guard at Guest House No. 80. Jai Parkash (PW-6) while being posted as an Administrative Officer was occupying the top floor of the guest house, whereas remaining two stories were used for the visiting guests. Sudarshan Paridha (PW-4), husband of the prosecutrix (PW-3) also employed as a cook by the said Company was posted at the adjacent guest house owned by the Company. On 30.8.2008 when Jai Parkash left for Shimla, accused went to the house of Sudarshan Paridha and asked him to send his wife i.e. the prosecutrix to the house of Jai Parkash for cleaning the utensils and washing clothes. Consequently prosecutrix went to Guest House No. 80. While she was washing the clothes, accused after entering the room forcibly subjected her to sexual

intercourse. Prosecutrix resisted his overt acts as a result of which he sustained injuries on his nose and ear. After the incident, by freeing herself, prosecutrix reported the incident to Sudarshan Paridha, who in turn confronted the accused with the same. Two officers of the employer company visited the spot and the matter was reported to the police. F.I.R. 143/2008, dated 30.8.2008 (Ext. PW-4/A) was registered at Police Station Baddi, Distt. Solan, H.P., against the accused under the provisions of Sections 376, 342 and 506 of the Indian Penal Code. Investigation was got conducted by ASI Tapinder Kumar (PW-10). Prosecutrix was got medically examined from Dr. Neeraj Rajan (PW-5) who issued MLC (Ext. PW-5/B) and opined that possibility of recent sexual activity could not be ruled out. Accused was also got medically examined from Dr. Naveen Kataria (PW-7) who issued MLC (Ext. PW-7/B). Report of the State Forensic Science Laboratory, Junga (Ext. PX) was obtained. Investigation revealed, complicity of the accused in the alleged crime, hence challan was presented in the Court for trial.

3. Accused was charged for having committed offences punishable under the provisions of Sections 376, 342 and 506 of the Indian Penal Code, to which he did not plead guilty and claimed trial.

4. In order to prove its case, in all, prosecution examined ten witnesses and statement of the accused under Section 313 Cr. P.C. was also recorded, in which he took the following defence:

"PW-4 has taken loan of Rs.6,000/- from me and when I asked for returning loan, he threatened me that he will involve me in a false police case. I took it lightly, but thereafter I was called in Police Station and false case has been registered against me and so the prosecution witnesses have deposed against me."

The injuries found on his body are attributed as a result of beatings given by the police.

5. Court below acquitted the accused for the reason that prosecution could not prove its case, beyond reasonable doubt. Hence the present appeal.

6. We have heard Mr. Ashok Chaudhary, learned Addl. Advocate General ably assisted by Mr. V. S. Chauhan, learned Asstt. A.G. and Mr. J. S. Guleria, Asstt. A.G., on

behalf of the State as also Mr. R. L. Chaudhary, learned counsel for the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offences.

8. In *Prandas v. The State*, AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

“(6) It must be observed at the very outset that we cannot support the view which has been

expressed in several cases that the High Court has no power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.C. in an appeal from an order of acquittal has been stated in – ‘Sheo Swarup v. Emperor’, AIR 1934 PC 227 (2) at pp.229, 230 (A), in these words:

“Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice.” ”

High
Court
of
Karnataka

9. Dr. Naveen Kataria (PW-7) who examined the accused observed two scratch marks on the left side of face of the accused. The injuries were recent. As per the Doctor, such injuries could have been sustained as a result of beatings. No injuries were found either on the private parts or any other portion of body of the accused.

10. Dr. Neeraj Rajan (PW-5), upon examination, found no injuries on the body of the prosecutrix. Also no signs of struggle were found on the body of the prosecutrix. The Doctor opined possibility of recent sexual intercourse not to be ruled out for the reason that "*semen was found on pubic hair (exhibit -2b) and petticoat (exhibit-1d) of the prosecutrix*".

11. It be also observed that despite medical advise, DNA profiling was not got done by the police. Why so? no explanation is forthcoming. The scientific evidence only proves that semen was found on the petti-coat of the prosecutrix. But then, whether it was that of the accused or not, has not been conclusively proved on record and the possibility of the same being that of the husband of the

prosecutrix has not been ruled out. This was necessary in view of medical opinion that if on a previous night, prosecutrix had had sex with her husband, chances of such stains found on her clothes and pubic hair are likely to be there. This factor acquires significance in view of admission made by the prosecutrix of having sex with her husband the previous night.

12. Though these factors render the prosecution case to be doubtful, however all this may not render version of the prosecution to be false for it is a settled principle of law that even in the absence of any corroborative evidence, scientific/medical or otherwise, if testimony of the prosecutrix is otherwise inspiring in confidence, it would be sufficient to hold the accused guilty.

13. We shall first deal with the testimony of Sudarshan Paridha (PW-4) who states that on 30.8.2008 J.P. Thakur had sent a message through the accused that prosecutrix be sent to the guest house for cleaning and doing other jobs. At about 8.30 a.m. he left the prosecutrix at guest house No. 80 and went for his work at the adjacent guest house No. 91. After about an hour and half,

prosecutrix came weeping and informed that while she was washing clothes, accused ravished her. He confronted the accused, who not only denied but dared him to take action. Immediately thereafter, he telephonically informed the officers of his employer and two officers namely Ranbir and Sikka came to the guest house to whom clothes stained with semen were shown. The matter was reported to the police and F.I.R (Ext. PW-4/A) registered.

14. We do not find his version to be inspiring in confidence. This we say so for the reason that accused was not an employee of M/s Unichem Laboratories. He was employed by a third agency and discharging duties as a security guard at the guest house. Now why would the witness send his wife to the guest house on the asking of a third person particularly when he admits of not being asked by J.P. Thakur for sending the prosecutrix to the guest house? Most significantly he admits that entry of ladies is not permitted in any of the guest houses. There is no evidence of the accused being on duty at the time of the alleged offence. Also it is not his case that accused used to stay in the guest house or stealthily entered for committing

the crime. It is also not his case that even on an earlier occasion, either on the asking of J.P. Thakur or otherwise, prosecutrix had visited the guest house and cleaned the utensils or washed clothes.

15. Jai Parkash (PW-6) does not state that he had desired the prosecutrix to come and clean the guest house or wash utensils/clothes. In fact he admits that at the time of the incident other guests of the Company were also residing in very same guest house, which fact also stands admitted by Sudarshan Paridha. It is not that either the Company or J. P. Thakur had been utilizing services of the prosecutrix for doing such menial jobs. Now if women were not allowed in the guest house, then where is the question of Sudarshan Paridha leaving the prosecutrix alone, in the guest house for doing such menial jobs.

16. Prosecutrix can only understand and speak in Oriya language, as such, her statement, in court, was got recorded through the translator Manoj Biswal (PW-2).

17. Prosecutrix (PW-3) states that on 30.8.2008, at about 8 – 9 P.M. her husband left her in the guest house as she was required to wash clothes. What work accused used

to do in the guest house and on whose asking she came there, she does not disclose. All that she states is that accused who was present in the guest house asked her to wash clothes. When she went to the bath room, he lifted her, laid her on the bed and after closing the door and opening her blouse sexually assaulted her. While doing so, he lifted her sari and petti-coat. In anger, she scratched his ears and nose. With the completion of act, by opening the door, she went to her husband and narrated the incident. She states that when confronted by her husband, accused denied having committed any illegal or indecent act. Her husband brought the matter to the notice of two officers of the Company. The matter was reported to the police who seized bed sheet (Ext. P-1), her clothes i.e. sari (Ext. P-2), blouse (Ext. P-3), Petti-coat (Ext. P-4) and bra (Ext. P-5) which were sealed with seal impression 'Y'.

18. We do not find the version of the prosecutrix to be inspiring in confidence at all. Prosecutrix is not an employee of the Company. It is not that in the past she had been visiting the guest house and/or cleaning the area under occupation of Jai Parkash. The alleged incident took

place at 9.00 a.m. Prosecutrix admits that the guest house where her husband is working is just near the place of crime. Also there are residences closeby. Significantly she never shouted or cried for help. Why so? remains unexplained. Her cries would have invited attention of the other residents.

19. Her version that she resisted the alleged acts of the accused by giving scratch marks does not inspire confidence at all, for we find defence taken by the accused, of having been beaten by the police, to have been probablized in the instant case. Surprisingly there are no marks of injury on her body. Further witness states that accused bodily lifted her, laid her on the bed and thereafter he opened her blouse. Significantly none of her clothes were torn, nor any scratch marks found either on private parts or any other part on her body. Signs of struggle are also absent. If the accused had applied force, in natural course, it would not have been possible for him to have opened the blouse without any resistance. There was no threat or intimidation to her life.

20. Also there is material contradiction in her statement with regard to handing over of her clothes to the police. She is categorical that the bed sheet and her clothes, so stained with semen were collected by the police from the guest house, which version stands belied by Dr. Neeraj Rajan (PW-5), who in fact handed over the clothes of the prosecutrix to the police in the hospital, which fact stands admitted by the police officials.

21. Further her testimony is full of improvements and embellishments. She was confronted with her previous statements (Ext. D-1 and Ext. PW-2/A) wherein it is not recorded that accused lifted her from the back and laid her on the bed; that accused had asked her to wash clothes; accused bolted the door from inside and after the incident she unbolted the same and ran away from the spot. Significantly, in Court, for the first time, she states that her son was with her. It has come on record that she has two children. Now why would she keep only one child with her is not clear from the record.

22. In the backdrop of the aforesaid discussion we find that examination of Ranbir and Sikka, who were called

to the spot was relevant as they would have only revealed the exact events which took place on the spot. Presence of the prosecutrix, in the guest house would have been testified only by them. She is not even aware of the number of rooms in the guest house. Then how is it that she was able to go to that portion of the guest house which was under occupation of Jai Parkash. In fact, we have doubt about her presence in the guest house. Also it has not come on record as to which employer of the accused had deputed him to guard the guest house on the date and time of the incident. Posting of the accused at the guest house, at the relevant time, remains unproved. None other than the prosecutrix has sought to prove the presence of the accused. Defence taken by the accused stands suggested to the witnesses.

23. Thus it would be absolutely unsafe to solely rely upon the testimony of the prosecutrix for holding the accused guilty of the charged offences. Prosecution evidence cannot be said to be reliable and believable.
24. Having perused the testimony of the prosecution witnesses on record it cannot be said that prosecution has

been able to prove its case, beyond reasonable doubt, to the effect that accused wrongfully confined the prosecutrix in the guest house of M/s Unichem Laboratory and thereafter raped her and also threatened her with dire consequences, by leading clear, cogent, convincing and reliable material on record.

25. The Court below, in our considered view, has correctly and completely appreciated the evidence so placed on record by the prosecution. Prosecution witnesses cannot be said to be inspiring in confidence or worthy of credence. It cannot be said that the judgment of trial Court is perverse, illegal, erroneous or based on incorrect and incomplete appreciation of material on record resulting into miscarriage of justice.

26. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad*, (2010) 1 SCC 94, since it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the

accused has resulted into travesty of justice, no interference is warranted in the instant case.

For all the aforesaid reasons, present appeal, devoid of merit, is dismissed, so also pending applications, if any. Bail bonds, if any, furnished by the accused are discharged. Records of the Court below be immediately sent back.

**(Sanjay Karol),
Judge.**

**(P. S. Rana),
Judge.**

August 17, 2015 (PK)

High
Court