

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 215 of 2015

Reserved on 14.11.2024

Date of Decision: 27.11.2024

State of Himachal Pradesh

....Appellant

Versus

Shyam Lal & others

....Respondents

Coram

Hon'ble Mr Justice Vivek Singh Thakur, Judge.

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Appellant/State : Ms. Seema Sharma, Deputy Advocate General.

For the Respondents/ accused : Mr B.S.Chauhan, Senior Advocate with Mr Parveen Kumar Thakur, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 01.01.2015 passed by learned Special Judge, Bilaspur, District Bilaspur, H.P. (learned Trial Court)vide which the respondents (accused before the learned Trial Court) were acquitted of the

Whether reporters of the local papers may be allowed to see the judgment? Yes

commission of offences punishable under Section 120-B, 363, 366A & 376 of the Indian Penal Code (*in short IPC*) and Section 4 of Protection of Children from Sexual Offences Act, 2012 (*in short POCSO Act*).*(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the informant (PW-1) is the victim's father. The informant (PW-1) was married to the mother of the victim(PW-4) as per Hindu rites and customs. The victim was born on 26.12.1995. A son (PW-3) was also born to the informant and PW-4. The informant (PW-1) returned to his home on 26.04.2013 at around 8:00 p.m. when he was told by his wife (PW-4) that the victim was missing. The informant searched for the victim but could not trace her. He suspected that accused Shyam Lal had kidnapped the victim. The matter was reported to S.I.Mukesh Kumar (PW-30), who recorded the informant's statement (Ext.PW1/A) and sent it to the Police Station through Constable Jagar Nath (PW-18) for the registration of the F.I.R. F.I.R. (Ext. PW-30/G) was registered at the Police Station. S.I. Mukesh Kumar (PW-30) went to the house of the accused Shyam

Lal where his father was present. He searched the house of the accused in the presence of Rattan Lal, Dhani Ram (PW-7) and Sohan Lal. Note Book (Ext.P-2) containing the name of the victim, two love letters (Ext. P-3 and Ext. P-4) and one preterm kit (Ext.P-5) were found in the room. These articles were put in a cloth parcel and the parcel was sealed with six seals impression of seal 'V'. The parcel was seized vide seizure memo (Ext.PW7/A). S.I.Mukesh Kumar (PW-30) went to the informant's house where the informant produced one Nokia Mobile phone, which was handed over to him by his wife and which was taken by her from the victim. The mobile phone was put in a cloth parcel and the parcel was sealed vide with three seals impression of seal 'N'. The parcel was seized vide memo (Ext.PW-1/B). The call details record of the accused (Mark-X1) was obtained from the Telecom Provider. The location of the mobile phone (Mark X2) was also obtained. It was found that accused Shyam Lal had talked to victim and other co-accused from different locations at different times. The location of the mobile of the accused was found in Rohru. SI Madan Lal (PW-27) was told about the presence of the accused in his jurisdiction. SI Madan Lal (PW-27) found that the accused and victim were working in the orchard of Shanti

Swaroop (PW-12). He and L.C. Surindera went to the orchard, brought the accused and victim to the police station and handed them over to the police team led by HC Kishori Lal (PW-28) on their arrival. The victim was identified by her maternal uncle (PW-11) in the presence of Hari Singh (PW-5) and Constable Kamal Kishore (PW-20). Memo (Ext.PW-5/A) was prepared. The victim led the police to the orchard of Shanti Swroop (PW-12) and identified the temporary hut in the orchard. She disclosed that she was made to stay in the hut by accused Shyam Lal for about one week and he had raped her in the hut. A memo of identification (Ext.PW-11/A) and site plan (Ext.PW-28/A) were prepared. A bed was kept in the hut, on which a bed sheet was spread. The bed sheet was seized at the instance of the victim. It was sealed in a parcel with seal 'C' and seized vide memo (Ext.PW-2/C). Specimen seal (Ext.PW-20/A) was taken on a separate piece of cloth. The accused and victim were brought to the Police Station Barmana. Accused Sham Lal was arrested vide memo (Ext.PW-30/C). An application (Ext. PW-13/A) was made for the medical examination of the victim. Dr D. Bhangal (PW-13) conducted the medical examination of the victim and found that she had no marks of injury. She had sexual intercourse but the

time of its occurrence could not be given at the time of examination. Her clothes were preserved. MLC (Ext.PW-13/C) was prepared. Samples and clothes were handed over to LC Shabana (PW-26), who was accompanying the victim. She deposited them with MHC HC Dev Dutt (PW-24) on her return to the Police Station. An application (Ext.PW-14/A) was filed for the medical examination of the accused. Dr Deepak Thakur (PW-14) conducted the medical examination of the accused and found that there was nothing to suggest that the accused was incapable of performing sexual intercourse. He preserved the samples and handed them over to the police official accompanying the accused. He issued the MLC (Ext. PW-14/B). The statement of the victim was recorded by learned Chief Judicial Magistrate Bilaspur, H.P. Narayan Dass, father of the accused Anil Kumar, produced a mobile phone which was put in a cloth parcel and the parcel was sealed with three seal impressions of seal 'N'. The parcel was seized vide memo (Ext.PW-9/A). Specimen seal 'N' (Ext.PW18/A) was taken on a separate piece of cloth. Dinesh Kumar, brother of accused Karam Chand, produced a mobile phone which was identified by Karam Chand. The mobile phone was put in a cloth parcel and the parcel was sealed with three seal impressions of

seal 'T'. The parcel was seized vide memo (Ext.PW-9/A). Specimen seal impression 'T'(Ext.PW18/B) was taken on a separate piece of cloth and the seal was handed over to HC Yashwant Singh (PW-29). The victim was handed over to her parents vide memo (Ext.PW-4/A). The victim identified the spot from where she was abducted by accused Shyam Lal. A memo of identification (Ext.PW-2/B) and spot map (Ext.PW-30/F) were prepared. The case property was sent to FSL Junga for analysis and the result (Ext.PW13/B) was issued showing that blood and semen were not detected on the clothes and samples sent to the laboratory. Hair samples were identified as pubic hair of the victim and the accused but they were different from each other. The statements of the remaining witnesses were recorded as per their version. The victim was found to be a minor. Hence, the challan was prepared and filed before the learned Special Judge, Bilaspur, District Bilaspur, Himachal Pradesh (learned Trial Court).

3. The learned Trial Court charged accused-Shyam Lal with the commission of offences punishable under Sections 120B, 363, 366-A & 376 of IPC and Section 4 of the POCSO Act and co-accused Anil Kumar, Karam Chand, Dharam Pal and Inder

Singh with the commissions of offences punishable under Sections 120B, 363 & 366-A of IPC and Section 4 of the POCSO Act, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined thirty-one (31) witnesses to prove its case. PW-1 is the father of the victim and also the informant. PW-2 is the victim. PW-3 is the brother of the victim. PW-4 is the victim's mother. Hari Singh (PW-5) is the witness to the recovery of the victim. Kali Devi (PW-6) did not support the prosecution case. Dhani Ram (PW-7) is the witness to the search of the house of accused- Shyam Lal and the recovery of various articles from the house. Ram Lok (PW-8) proved that Inder Singh, one boy and one girl came to him. Narain Dass (PW-9) is the father of the accused and he handed over his mobile phone to the police. Het Ram (PW-10) did not support the prosecution case. PW-11 is the maternal uncle of the victim, who identified her at the time of recovery. Shanti Swaroop (PW-12) is the owner of the orchard who had given his hut to the accused and victim. Dr D. Bhangal (PW-13) conducted the medical examination of the victim. Dr Deepak Thakur (PW-14) conducted the medical examination of the accused. PW-15 is the grandfather of the victim. Jagdish Kumar (PW-16) and Dinesh Kumar (PW-17) did

not support the prosecution case. Constable Jagar Nath (PW-18) is the witness to the recovery of various articles. Constable Pardeep Kumar (PW-19) is the witness to the recovery of the matriculation certificate of the victim. Constable Kamal Kishore (PW-20) is the witness to the recovery of the victim and other articles from the hut. Constable Ranbir Singh (PW-21) is the witness to the recovery of various recoveries, SHO Parmod Chauhan (PW-22) arrested accused Karam Chand and Anil Kumar. Inspector Prem Singh (PW-23) prepared the challan. HC Dev Dutt (PW-24) was posted as MHC with whom various articles were deposited. Ram Lal (PW-25) was posted as Patwari who prepared Tatima of the spot. LC Shabana (PW-26) accompanied the victim to the police station and is the witness to various recoveries. S.I.Madan Lal (PW-27) was posted as Additional SHO and recovered the victim and the accused from the orchard of Shanti Swaroop (PW-12). HC Kishori Lal (PW-28) is the witness to various recoveries. HC Yashwant (PW-29) is the witness to the recovery of mobile phone. SI Mukesh Kumar (PW-30) conducted the investigation. Shashi Kumar (PW-31) produced the birth certificate of the victim.

5. The accused in their statements recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety

and claimed that they were falsely implicated in the case. No defence was sought to be adduced by the accused.

6. The learned Trial Court held that the birth certificate produced by the prosecution was not sufficient to establish that the victim was born on 26.12.1995. The victim was not subjected to a bone ossification test and the prosecution's version that the victim was minor on the date of the incident was not proved. The victim voluntarily accompanied the accused from her home to various places without raising any protest. This showed her consent. It was not proved that other accused had conspired with accused Shyam Lal to facilitate the kidnapping of the victim. Therefore, the accused were acquitted.

7. Being aggrieved from the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court has not properly appreciated the material on record. The testimonies of prosecution witnesses were discarded for untenable reasons. There was no enmity between the witnesses and the accused. It was wrongly held that the date of birth of the victim was not proved. The informant specifically stated on oath that the victim was born on 26.12.1995.

This statement was not shaken in the cross-examination and was duly corroborated by the record of Panchayat brought by Shashi Kumar (PW-31). Learned Trial Court had wrongly rejected his evidence. The victim specifically stated that accused Anil Kumar and Karam Chand accompanied them from the house of Shyam Lal to village Sarli and thereafter to Nalagarh. She also stated that Dharam Singh and Inder Singh accompanied them to Kunihar and thereafter to Rohroo. This was corroborated by the statement of Ram Lok (PW-8), who was running a shop at Rohroo. The conspiracy is to be proved by the circumstantial evidence and the evidence led by the prosecution was sufficient to establish the conspiracy. Learned Trial Court erred in ignoring this evidence and acquitting the accused. Hence, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. We have heard Ms Seema Sharma, learned Deputy Advocate General for the appellant-State and Mr B.S. Chauhan, learned Senior Advocate assisted by Mr Parveen Kumar Thakur, learned counsel for the respondents/accused.

9. Ms. Seema Sharma, learned Deputy Advocate General for the appellant/State submitted that the learned Trial Court erred in acquitting the accused. It was duly proved on record that the victim was born on 26.12.1995 and she was a minor on the date of the incident. The date of birth was specially asserted by the informant and the victim and there is nothing on record to doubt their version. Learned Trial Court erred in discarding the statements of the informant and the victim. This fact was also established by the Panchayat record. The consent of the minor is not relevant and the learned Trial Court erred in holding that the victim had voluntarily accompanied accused Shyam Lal. The other co-accused had accompanied the victim and accused-Shyam Lal and in this manner, they facilitated the commission of crime by accused-Shyam Lal. Therefore, it was prayed that the present appeal be allowed and the judgment of the learned Trial Court be set aside.

10. Mr. B.S. Chauhan, learned Senior Counsel submitted that the learned Trial Court had taken a reasonable view based on the evidence led before it. Merely accompanying a person cannot amount to conspiracy. Learned Trial Court had rightly held that the conspiracy was not proved beyond reasonable doubt. The age

of the victim was not proved to be 26.12.1995 as there are interpolations in the Panchayat record. Learned Trial Court had rightly rejected the Panchayat record. There is no infirmity in the judgment passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

11. We have considered the submissions made at the bar and have gone through the records carefully.

12. The present appeal is filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Mallappa v. State of Karnataka, (2024) 3 SCC 544: 2024 SCC OnLine SC 130* that an appeal against acquittal cannot be allowed merely on the difference of opinion. It was observed:

“25. We may first discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in

the exercise of appellate powers, there is no inhibition on the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The “*two-views theory*” has been judicially recognised by the courts and it comes into play when the appreciation of evidence results in two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of the innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. Therefore, when two views are possible, following the one in favour of the innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.

28. In *Selvaraj v. State of Karnataka* [*Selvaraj v. State of Karnataka*, (2015) 10 SCC 230: (2016) 1 SCC (Cri) 19]: (SCC pp. 236-37, para 13)

“13. Considering the reasons given by the trial court and on an appraisal of the evidence, in our considered view, the view taken by the trial court was a possible

one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri v. State of T.N.* [*Jagan M. Seshadri v. State of T.N.*, (2002) 9 SCC 639; 2003 SCC (L&S) 1494] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus: (SCC p. 643, para 9)

‘9. ... We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeals against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.’”

29. In *Sanjeev v. State of H.P.* [*Sanjeev v. State of H.P.*, (2022) 6 SCC 294; (2022) 2 SCC (Cri) 522], the Hon'ble Supreme Court analysed the relevant decisions and summarised the approach of the appellate court while deciding an appeal from the order of acquittal. It observed thus: (SCC p. 297, para 7)

“7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the

appellate court is of the view that the acquittal rendered by the trial court deserves to be overturned (see *Vijay Mohan Singh v. State of Karnataka* [*Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] and *Anwar Ali v. State of H.P.* [*Anwar Ali v. State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.* [*Atley v. State of U.P.*, 1955 SCC OnLine SC 51: AIR 1955 SC 807]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of Kerala* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412: 1998 SCC (Cri) 1320]).”

13. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

14. The prosecution relied upon the Panchayat record to prove the victim’s date of birth. Shashi Kumar (PW-31) stated that he had brought the original register, which showed that the victim was born on 26.12.1995 and entry was made on 28.12.1995. He stated in his cross-examination that there are cutting and overwriting on Serial Nos. 65 to 72. The entry was made at the instance of Jagdish Kumar, who had put the signatures but there was some overwriting. He further stated in his cross-examination that no application was available on record to enter

the name of the child. He volunteered to say that no such application is made for making the entry. He admitted that the original date of birth recorded in the Pariwar register was 26.12.1996 and it was corrected to 26.12.1995 on 06.03.2014. However, he could not say at whose instance the date of birth was changed. He did not know that the date of birth of the victim was 26.12.1993 and it was wrongly changed to 26.12.1995.

15. A perusal of a copy of the extract of birth register Ext. PW-3/A shows that there are interpolations in the entries. It appears that some other name was mentioned which was scored off and the name of the victim was substituted. Shashi Kumar (PW-31) admitted that there was an interpolation in the date of birth and the year 1996 was altered to read the year 1995. The entry was also recorded at the instance of some Jagdish. There is no evidence to show the relationship between the victim and Jagdish Kumar. Hence, the learned Trial Court had taken a reasonable view while holding that no reliance can be placed upon the entry made in the Pariwar register and had rightly discarded the same.

16. The prosecution relied upon the statement of the victim regarding her date of birth; however, a person cannot have any personal knowledge regarding his/her date of birth and the information provided by him/her regarding his/her date of birth is always based on the information supplied by others. Thus, the statement of a person regarding his/her date of birth is hearsay and inadmissible in evidence. Therefore, the statement of the informant will not assist the prosecution in proving her date of birth.

17. The prosecution has also relied upon the date of birth supplied by the informant. Learned Trial Court had rightly pointed out that he could not be trusted with the dates. He initially stated that he returned from his duty on 26.04.2013 and asked his wife about the victim. Statement (Ext.PW-1/A) was written on 21.04.2013 and the date given by the informant as 26.04.2013 when he made enquiries about the victim is incorrect. Further, he stated that he went to Police Police Namhol where he made a statement (Ext.PW-1/A), which is contrary to the statement made by S.I. Mukesh Kumar (PW-30), who stated that the informant met him at Namhol bazaar along with 2-3 relatives and made his statement (Ext.PW-1/A). A similar endorsement

was made in the statement(Ext.PW-/A). Thus, in these circumstances, the learned Trial Court was justified in rejecting the statement of the informant that the victim was born on 26.12.1995.

18. The prosecution has also relied upon a copy of the matriculation certificate Mark-B; however, it was not proved as per law and no reliance can be placed upon the same.

19. There is no other evidence showing the victim's date of birth and the learned Trial Court had rightly held that in the absence of the evidence regarding the victim's date of birth, the prosecution case that the victim was born on 26.12.1995 cannot be accepted.

20. Victim (PW-2) stated that she had gone to fetch water on 19.4.2013, when she received a telephonic call from accused Shyam Lal on the phone (Ext.P-1) which she was carrying with her. She was talking to accused Shyam Lal, when her brother came and saw her talking on the mobile. He demanded the mobile phone but she did not hand over the mobile phone to him. Her mother returned at about 2:30 p.m. Her brother told her mother about the mobile phone. Her mother slapped her and took the

mobile phone from her. She went to the house of her grandmother. She talked to the accused from the landline. The accused asked to her visit his house otherwise her parents would beat her. He also promised to marry her. She went and concealed herself in a Jungle (Forest). She went to the house of the accused at about 10-11 p.m. She met accused Shyam Lal his two friends, namely, Anil Kumar and Karam Chand. She, Shyam Lal, Anil Kumar and Karam Chand went to the house of accused Shyam Lal's sister. The accused brought the food from the house of his sister. They went to Nalagarh. She, Shyam Lal, Anil Kumar and Karam Chand stayed in the house of a cousin of Shyam Lal. They went to Kunihar where accused Dharam Pal and Inder Singh met them. Accused Anil Kumar and Karam Chand returned from Nalagarh. She, Shyam Lal, Dharam Pal and Inder Singh went to Rohroo by bus. She and Shyam Lal stayed in the rest house. She and Shyam Lal started working in an orchard. They stayed in a room constructed in the orchard for 6-7 days. Accused Shyam Lal did wrong act with her in the room during her stay in the orchard. The police took her and accused Shyam Lal to the Police Station. She stated in her cross-examination that she stayed in the house of Shyam Lal on 19.04.2013 for five minutes only. She admitted

that the sister of Shyam Lal also resided in that house. She admitted that she used to write letters to Shyam Lal. She admitted that she went from her home on her own. She volunteered to say that Shyam Lal had told her to visit his house in case she apprehended any danger from her parents. She admitted that she had gone to house of accused Shyam Lal due to above said facts. She used to write couplets in the letter.

21. The statement of this witness shows that she left the home on her own because she apprehended danger from her parents. She was caught with the mobile phone by her brother and was slapped by her mother. She immediately went to the house of her grandfather and called the accused. These circumstances show that she was acting on her own while leaving the house based on apprehension that she would be punished for possessing the mobile phone and talking to the accused.

22. Her grandfather (PW-15) stated that the victim visited his house at 2:30-3:00 p.m. and told him that she was beaten by her mother. He asked her to stay in the house as he had to go to harvest the wheat. When he returned the victim was not present in the home. The informant came to his house and he narrated the

incident to him. His statement also shows that the victim had visited his house and talked about the beatings given by her mother. Hence, in these circumstances, the learned Trial Court had rightly held that the victim had visited his home after she was beaten by her mother. She was acting on her fears and not on the persuasion of the accused.

23. The victim had accompanied the accused from his home to various places and did not make any complaint to any person. Shanti Swaroop (PW-12) stated that the accused introduced the victim as his wife and he offered them a job. He stated in his cross-examination that labourers engaged by him were happy and they used to go back after working in the orchard. This statement also shows that the victim never made any complaint about any rape committed upon her. It was laid down in *Koli Jaga Rana v. State of Gujarat, 1992 SCC OnLine Guj 274: 1992 Cri LJ 2080: 1992 Cri LR (Guj) 269* that where the victim had not complained to anyone about the rape, the same suggested consent. It was observed at page 2085:

“16..The learned Addl. Sessions Judge, in our opinion, committed a serious error in not applying the ‘probability test’ which is against the prosecution, viz. the conduct of the prosecutrix after the incident i.e. to remain in the field

up to 8 to 9 p.m. and to work in the field and not to narrate the incident even after going home to the neighbours or any other persons and not to narrate the story to Kunverben till the next day of her return to Ankolwadi. It will be the natural conduct of a prosecutrix on whom rape is committed to tell her mother immediately after returning to her house. Bena, the sister of the prosecutrix stated to her mother on the next day after she came to Ankolwadi and Vijaya narrated the incident to her mother only when Vijaya was asked by her. The fact that there are no injuries found on the person of the prosecutrix and also no tearing of clothes of the prosecutrix shows that there was no resistance whatsoever from the prosecutrix.”

24. A similar view was taken in *State of Maharashtra v.*

Subhash Sitaram Sangare, 2001 SCC OnLine Bom 1120: 2001 Cri LJ

4468: 2002 Bom CR (Cri) 218 wherein it was observed at page 4471:

“14. The most unnatural conduct on the part of the prosecutrix is not telling this incident of rape (?) to her own mother. It would have been but natural for Mangala to confide in her own mother, if such an untoward and traumatic incident had taken place, and it is very difficult to digest that a young virgin girl did not choose to confide in her own mother when such a shockingly traumatic incident took place in her life. This conduct of Mangala is absolutely unnatural and makes her deposition suspicious. Even PW 5 Indira's deposition to the effect that she did not know anything about the pregnancy of her daughter up to seven months is unbelievable. The defence of the accused as disclosed from cross-examination and the statement under Section 313 of the Code of Criminal Procedure, 1973 appears to be that the accused is a well-to-do person from a rich family, and Mangala and her mother wanted her to get married with the accused. Testing this defence on the touchstone of probabilities, and having considered the nature of the evidence given by the prosecutrix herself and

her mother, the defence cannot be said to be preposterous or something which is improbable. The story as given by the prosecutrix appears to be unconvincing and does not point to the accused as a rapist of Mangala. The learned Sessions Judge, therefore, was right in acquitting him. It cannot be said that his findings were unreasonable or perverse.”

25. Even in the Court the victim had not stated that the accused had sexual intercourse with her against her will. She only stated that the accused did a wrong act but omitted to mention that it was against her will.

26. Dr D. Bhagal (PW-13) has stated that as per the history given by the victim, she had herself asked the boy to take her out of her parental home as her parents had beaten her twice. She left her home on 19.04.2013 at about 8:00-9:00 p.m. and reached the house of Shyam Lal from where they went to the house of the sister of Shyam Lal and then to Nalagarh and then Rohroo. She told about the sexual relations with Shyam Lal 4-5 days back at her own will. Thus, the history given by the victim to the Medical Officer also does not mention the commission of any rape but merely that she had accompanied the accused voluntarily and had entered into sexual relations with the accused on her own.

27. It was laid down by the Hon'ble Supreme Court in *Shiv Pratap Singh Rana v. State of M.P.*, (2024) 8 SCC 313, that where the victim had accompanied the accused to various places without raising any hue and cry and she continued to maintain the relationship with the accused, the prosecution's version regarding the rape cannot be accepted. It was observed:

“32....If, indeed, she was under some kind of threat from the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that the appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra along with the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time, the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged.”

28. In the present case also, the victim had accompanied the accused to various places without any protest. She had not complained to any person and voluntarily resided with accused Shyam Lal. These circumstances showed the consent on the part of the victim and the learned Trial Court was justified in holding

that the relationship between the accused and the victim was consensual.

29. The victim had only stated that the other accused accompanied her to various places. Even, if this version is accepted to be correct, the same will not amount to any conspiracy. There is no evidence that the other co-accused aided accused Shyam Lal in any manner by accompanying him. Thus, the learned Trial Court had rightly held that the other accused cannot be held liable for conspiracy.

30. There is no evidence against other co-accused. Hence, the learned Trial Court had taken a reasonable view which could have been taken based on the evidence led before it and no interference is required with it while deciding the appeal against the acquittal.

31. No other point was urged.

32. In view of the aforesaid discussion, the present appeal fails and the same is dismissed.

33. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondents are directed to furnish bail bonds

in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondents/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

34. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith. Pending applications, if any, also stand disposed of.

(Vivek Singh Thakur)
(Judge)

(Rakesh Kainthla)
Judge

27th November, 2024
(ravinder)