



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1052 OF 2016

RAM SINGH

APPELLANT

VERSUS

THE STATE OF HIMACHAL PRADESH

RESPONDENT

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The appellant faced trial for having committed an offence punishable under Section 376 of the Indian Penal Code, 1860¹. The trial Court by its judgment dated 12.01.2010 acquitted him of the said offence after finding the prosecution evidence insufficient to convict him. The Division Bench of the Himachal Pradesh High Court², however, overturned his acquittal and by judgment dated 03.06.2016 convicted him. The appellant was sentenced to undergo rigorous imprisonment for a period of ten years with fine of ₹50,000/-. In default, he was to further undergo simple

¹ For short, 'the Penal Code'

² For short, 'the High Court'

imprisonment for a period of six months. Hence, this appeal.

2. As per the prosecution case, the appellant was residing with one Jaidev Sharma since both were serving together. On 28.06.2009, it was alleged that the appellant committed rape on the daughter of the informant, who was aged about four and a half years. When the victim returned home, her mother found that there were bloodstains on her clothes. The informant washed the victim's clothes and gave her a bath. The informant, thereafter, called her husband as well as her father after which the First Information Report³ came to be lodged at 17.45 hours on the same day. An offence was registered and investigation was undertaken. On its completion, a charge-sheet was filed against the appellant and he was charged of having committed an offence punishable under Section 376 of the Code. The appellant denied the charge and was, accordingly, tried. The prosecution examined nine witnesses while the defence of the appellant was of complete denial.

3. The trial Court after examining the depositions of PW1-Jaidev Sharma, who was the uncle of the victim, PW2-the mother

³ For short, 'FIR'

of the victim and PW3-the victim herself, found that their depositions did not inspire confidence considering various discrepancies therein. The trial Court further found that as per the medical report, the victim did not suffer any injury and this, according to the learned Judge of the trial Court caused a dent in the case of the prosecution. After considering the entire evidence on record, the trial Court acquitted the appellant.

4. On an appeal being preferred by the State of Himachal Pradesh, the High Court was of the view that the inconsistencies that weighed with the trial Court were not very material. On the contrary, the evidence led by the prosecution was sufficient to bring home the guilt of the appellant. On that basis, the acquittal of the appellant was reversed and he was convicted for the offence punishable under Section 376 of the Code.

5. Ms. Sonam Gupta, learned counsel appearing for the appellant submitted that the High Court was not justified in reversing the acquittal of the appellant without taking into consideration the well reasoned judgment of the trial Court. Referring to the prosecution evidence in detail, it was submitted that the contradictions therein could not be brushed aside as being

minor in nature. Referring to the FIR and the subsequent version of PW1 to PW3, it was submitted that said witnesses had tried to improve upon the case after the medical report indicated absence of any injuries on the victim. She also referred to the report of the State Forensic Science Laboratory⁴ to indicate that even after applying the Benzidine test, no blood or semen was detected either on the clothes of the victim or from the *chatai*-Exhibit P-1 and *baithak*-Exhibit P-2 that were seized from the alleged site of occurrence. To substantiate this contention, the learned counsel relied upon extracts from the Indian Journal of Modern Research and Reviews to highlight the credibility of the Benzidine test. It was, thus, submitted that overlooking the nature of jurisdiction to be exercised while considering an appeal against acquittal, the High Court proceeded to convict the appellant despite the weak nature of evidence. It was prayed that the judgment of the High Court be set aside and the appellant be acquitted from the accusation.

6. Per contra, Mr. Vaibhav Srivastava, learned Additional Advocate General supported the conviction of the appellant.

⁴ For short, 'FSL'

According to him, the High Court rightly found that the trial Court had failed to appreciate the prosecution evidence in its proper perspective. The victim having deposed and narrated the alleged incident, there was no reason to disbelieve her statement. The medical evidence on record would not override the ocular evidence brought on record by the prosecution. The High Court was justified in coming to the conclusion that the judgment of the trial Court was perverse and, hence, it rightly interfered with the judgment of acquittal. He, thus, submitted that there was no merit in the appeal and it ought to be dismissed.

7. We have heard the learned counsel for the parties at length and with their assistance, we have also gone through the records of the case. We have, thereafter, given thoughtful consideration to the submissions as urged.

8. At the outset, it would be necessary to refer to the material evidence brought on record by the prosecution to bring home the guilt of the appellant. Perusal of the FIR dated 28.06.2009 lodged by the mother of the victim indicates that her brother-in-law Jaidev Sharma was residing near her house. The appellant was also residing with Jaidev Sharma. The informant's daughter aged about

five years insisted on going to the house of Jaidev Sharma despite being told not to go. Her daughter, however, went there at about 08.30 a.m. and returned back after half an hour. When the informant took her for having a bath and started removing her clothes, she started weeping. On being asked, she stated that she was sexually assaulted by the appellant. The informant stated that there were bloodstains on the *pajama* of her daughter and, hence, she washed the same. She, thereafter, informed her husband as well as her father. She further stated that later on the appellant had called her on her mobile phone and was seeking forgiveness. It is thereafter that the said report was lodged at about 17.45 hours on that day.

9. The victim was then taken for medical examination at 09.05 p.m. on the same day. She was examined by Dr. Asha Negi, PW4. On local examination as per Exhibit PF, she noted that there was no sign of any injury, inflammation, redness, bruising or laceration on the body of the victim. There was no evidence of any seminal stain or blood and that her hymen was intact. It was stated that the final report would be given after obtaining an expert opinion of a gynaecologist. In her deposition, she stated that the final opinion

was given on 05.09.2009 concluding that there was no evidence to suggest that penetration had taken place. She further stated that redness, in case of penetration in the case of a child of a tender age, would persist for twenty-four hours after a sexual assault. In her cross-examination, she stated that if a girl child was subjected to sexual intercourse by a grown-up man, she would suffer some injury on her body. However, in the present case, she stated that there was no injury found.

10. The Investigating Officer⁵, PW9 after inspection of the spot had recovered a *chatai*-Exhibit P-1 and *baithak*-Exhibit P-2 from the house of the appellant. He further stated that the mother of the victim produced her clothes being Exhibits P-3 and P-4, which were her salwar and shirt. All these items were sealed and thereafter sent for forensic examination. The report of the FSL dated 29.08.2009 is at Exhibit PW9/B. The result of the said test is as under:

“RESULT

The exhibits/cuttings were subjected to biological and serological analyses in the laboratory. ‘Benzidine test’ was performed to detect the presence of blood. The species of origin was determined by the gel-diffusion technique. Acid phosphatase test and microscopic examination were carried out for the detection of semen. On the basis of aforesaid examination, result was as under:

(1) Blood and semen was not detected on exhibit-1a (chatai/mat),

⁵ For short, ‘the IO’

exhibit-1b (bethaku), exhibit-2a (salwar, xxxxxx), exhibit-2b (shirt, xxxxxx), exhibit-3 (underwear, Ram Singh), exhibit-4 (glans swab, Ram Singh), exhibit-5 (public hair, Ram Singh), exhibit-10a (vaginal slide, xxxxxx), exhibit-10b (vaginal swab, xxxxxx) and exhibit-11 (pajami, xxxxxx).

(2) Blood was not detected on exhibit-7a (underwear, Ram Singh) and exhibit-7b (vest, Ram Singh). Human semen was found on these exhibits.

(3) Human blood was found in exhibit-6 (blood sample, Ram Singh)."

11. When the aforesaid material relied upon by the prosecution is taken into consideration, it becomes clear that as per the FIR, the mother of the victim has referred to blood being found on the clothes of the victim immediately after she returned from the house of the appellant and has also referred to the act of sexual intercourse. The victim was asked various questions when she appeared as PW3. She too is firm with the stand that there were bloodstains on her clothes. Her clothes at Exhibits P-3 and P-4 were subjected to a 'Benzidine test' at the FSL to detect the presence of blood thereon. Similarly, Acid Phosphate test and Microscopic Examination were also carried out for the detection of semen. The final report of the FSL, however, indicates that there was no blood detected on the clothes of the victim or the undergarment of the appellant.

12. At this stage, it would be necessary to refer to the submission made on behalf of the appellant as regards conduct of 'Benzidine

test' for detecting the presence of blood. As per the Indian Journal of Modern Research and Reviews, Volume 2 Issue 6, June 2024 it has been opined in the studies conducted that blood presence could be detected by the 'Benzidine test' till the tenth washing, irrespective of detergent use. It is only after multiple washings that the efficacy of Benzidine in detecting bloodstains could be questioned. In 'A Textbook of Medical Jurisprudence and Toxicology' by Modi, 28th Edition it has been stated that negative results in a screening test are reliable and negative areas on any article need not be examined further to avoid wastage of time.

13. When the version of the informant, PW2 and the victim, PW3, who state about presence of bloodstains on the clothes of the victim is considered along with the preliminary medical examination of the victim conducted within twelve hours of the incident and the final report of the Medical Officer⁶, the presence of any injury on or near the private parts of the victim is not found. The MO was clear in her statement that she could not find injury, whatsoever, on the body of the victim when she was examined within twelve hours of the alleged incident. Absence of any blood

⁶ For short, 'MO'

on the clothes of the victim as well as on the undergarment of the appellant after the garments were subjected to the 'Benzidine test' as per the FSL report is a relevant factor, which cannot be ignored. Thus, when the oral statements of PW2 and PW3 are considered along with the Final Medical Report and the report of the FSL, a grave doubt is created about the version of PW2 and PW3 as regards injury on the body of the victim and bloodstains on the clothes of the victim. The prosecution evidence neither indicates any injury to the private parts of the victim nor trace of any blood on her clothes.

14. According to the prosecution, a *chatai*-Exhibit P-1 and *Baithak*-Exhibit P-2 were recovered from the house of the appellant. According to the IO, the same were seized since the appellant had committed sexual intercourse on the same. These items were also subjected to examination at the FSL. The report, however, states that neither blood nor semen was detected on these two items. It is further noted that as per the victim, she was raped by the appellant on the cot on which Jaidev Sharma used to sleep. According to the IO, during the course of investigation he noted that the alleged sexual act was committed by the appellant

in the kitchen of the house. However, he further stated that there was no cot or bed in the kitchen. He reiterated that even the victim told him that the alleged incident took place in the kitchen. Absence of any cot or bed in the kitchen as admitted by the IO, again raises a doubt as regards the place of occurrence, especially as the victim states that the alleged incident took place on the cot on which Jaidev Sharma used to sleep.

15. Considering the aforesaid evidence that was brought on record, the trial Court found that in view of various material discrepancies, the depositions of PW1 to PW3 did not inspire confidence. Various other contradictions were also noted on the basis of which the learned Judge of the trial Court held that the prosecution had failed to prove the charge against the appellant. He was, therefore, acquitted. The High Court, however, was of the view that the contradiction with regard to the place of occurrence was not very material. It proceeded to accept the evidence led by the prosecution but without referring either to the Final Medical Report or the report of the FSL. In our view, the entire prosecution evidence would have to be taken into consideration before arriving at any conclusion. When the deposition of prosecution witnesses

is considered along with the Final Medical Report as well as the report of the FSL, a serious doubt is created as to the version of PW2 and PW3. Since inception, it was the stand of PW2 and PW3 that there were bloodstains on the clothes of the victim and the victim stated that she had experienced pain as a result of the alleged sexual act of the appellant. The medical examination conducted within twelve hours of the alleged occurrence, however, belies the presence of any injury whatsoever on her body. The opinion of the MO at the preliminary examination stands confirmed by the Final Medical Report. In addition, the report of the FSL rules out the presence of blood and semen on the clothes of the victim. Traces of semen on the undergarment of the appellant, by itself, is not found relevant in these circumstances.

16. We, therefore, find that the learned Judge of the trial Court had rightly acquitted the appellant of the said accusation. The High Court, in our view, failed to refer to the medical reports as well as the report of the FSL while overturning the acquittal of the appellant. We do not find the material on record sufficient to hold that the prosecution has proved its case beyond reasonable doubt. The material in that regard falls short and it, in fact, creates a

serious doubt about the version of the prosecution. We are, therefore, inclined to restore the judgment of the trial Court after setting aside the judgment of the High Court.

17. Accordingly, for the aforesaid reasons, the judgment of the High Court dated 03.06.2016 passed in Criminal Appeal No.351 of 2010 is set aside. The appellant is, thus, acquitted of the offence punishable under Section 376 of the Penal Code. Presently, the appellant is on bail. His bail bonds stand cancelled.

18. The Criminal Appeal is allowed in aforesaid terms.

.....**J.**
[**UJJAL BHUYAN**]

.....**J.**
[**ATUL S. CHANDURKAR**]

NEW DELHI,
AUGUST 11, 2026.