



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No. 460 of 2017.

Decided on: 24.7.2019.

Jatinder Kumar

.....Appellant.

Versus

State of H.P.

.....Respondent.

Coram

**The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.**

*Whether approved for reporting?*¹ Yes.

For the appellant

: Mr. Dinesh K. Thakur, Advocate.

For the respondent

: Mr. Narender Guleria, Addl. Advocate General.

Dharam Chand Chaudhary, J, (Oral).

Appellant Jatinder Kumar (hereinafter referred to as the accused) is convict. He has been convicted for the commission of offence punishable under Section 376 IPC and has been sentenced to undergo simple imprisonment for a period of 10 years and to pay a sum of Rs. 20,000/- as fine.

2. He allegedly subjected none else but his mother 75 years of age to sexual intercourse. As per the application Ext. PW-1/A made by the prosecutrix to the police of Women Police Station Dharamshala, District Kangra on 15.7.2015, at 9:00 AM, the accused locked her in his own room. He opened her salwar forcibly and did

¹ *Whether the reporters of the local papers may be allowed to see the Judgment? yes.*

wrong act with her. When she raised alarm, the mason, namely, Bahadur and a lady worker, namely, Rekha (PW-4) came there. They made efforts to open the door from outside but of no avail. At that very time, her daughter-in-law Chandresh Kumari (PW-10) (alleged wife of the accused) came there. She asked the accused to open the door. On this, he opened the same. Her grandson Rahul (PW-5) called her daughter Sangeeta (PW-9) over telephone to their house. Sangeeta (PW-9) reached there and after that the prosecutrix accompanied by Sangeeta (PW-9) and daughter-in-law Chandresh Kumari (PW-10) went to Women Police Station Dharamshala. On the basis of the statement Ext. PW-1/A, FIR Ext. PW-15/A was recorded. The investigation was taken in hand by PW-15 S.I. Kiran Bala, the then Station House Officer, Women Police Station Dharamshala.

3. The victim PW-1 was taken to Zonal Hospital, Dharamshala. PW-15 S.I. Kiran Bala made application Ext. PW-15/B for medical examination of PW-1. She was examined by Dr. Jyoti Gupta (PW-11) and issued MLC Ext. PW-11/A. PW-1 also handed over two parcels addressed to RFSL, Dharamshala. PW-15 S.I. Kiran Bala had deposited the same with PW-6 HC Satya Devi, Women Police Station Dharamshala. The inspection of the place of occurrence was conducted. Mattress covers (Ext. P-2 and P-3) were taken into possession from the room where the prosecutrix was assaulted sexually vide recovery memo Ext. PW-1/B in the presence of PW-8

Jawahar Lal and PW-2 LHC Anjana. Spot map of the place of occurrence Ext. PW-15/C was prepared. The proceedings were photographed vide DVD Ext. B-1.

4. On finding evidence against the accused, he was arrested. The application Ext. PW-15/D was made for his medical examination. He was medically examined by PW-12 Dr. Satish Kanwar. MLC Ext. PW-12/A was issued by the Doctor and supplied to the I.O.

5. On 16.7.2015, the statement Ext. PW-16/C of the prosecutrix was got recorded under Section 164 Cr.P.C. in the Court of PW-16 Ms. Shikha Lakhpal, JMIC, Court No. 2 Dharamshala. On 17.7.2015, the alleged victim of the occurrence had produced her shirt (Ext. P-5), which was taken into possession vide recovery memo Ext. PW-1/C in the presence of Sangeeta (PW-9) and lady Constable Ramna Devi (PW-3). On the identification Ext. PW-8/A of the spot by the accused, the spot map Ext. PW-15/E was prepared. The photographs Ext. C-1 to C-3 were also clicked allegedly with official camera. The statement Ext. PW-15/F of Rekha (PW-4) was allegedly recorded as per her version. On application Ext. PW-14/A submitted to PW-14 Savita Devi, Secretary Gram Panahayat Sakoh, birth certificate of the victim Ext. PW-14/B and that of the accused Ext. PW-14/C and abstract of the Family Register Ext. PW-14/D were obtained. The parcel containing clothes of the victim were sent to

RFSL, Dharamshala for analysis. The result Ext. PW-13/A was procured. The final opinion of the doctor Ext. PW-11/B was also obtained.

6. On completion of the investigation, PW-15 S.I. Kiran Bala had prepared the final report and presented in the Court.

7. Learned Trial Judge, on appreciation of the report filed by the police and the documents annexed thereto and on prima-facie finding a case under Section 376 IPC made out against the accused has framed the charge against him accordingly. He, however, pleaded not guilty to the charge. The prosecution, therefore, examined 16 witnesses in all in support of its case against the accused.

8. The material prosecution witnesses, as noticed hereinabove, are the victim/complainant herself (PW-1), labourer Rekha (PW-4), Rahul (PW-5) grandson of the prosecutrix, PW-8 Jawahar Lal her son-in-law, Sangeeta (PW-9) her daughter and daughter-in-law Chandresh Kumari (PW-10). The remaining prosecution witnesses PW-2 LHC Anjana is a witness to the recovery of Mattress covers (Ext. P-2 and P-3) whereas PW-3 LC Ramna Devi is a witness to the recovery of Shirt (Ext. P-5) of the prosecutrix. PW-6 HC Satya Devi is MHC who has been examined to prove the prosecution case qua deposit of the case property with her in the malkhana. PW-7 HHC Karan Singh had taken the case property to RFSL, Dharamshala vide RC No. 24/21. He deposited the same in

the laboratory and handed over the receipt on RC to PW-6 MHC Satya Devi. PW-11 Dr. Jyoti Gupta has medically examined the prosecutrix whereas PW-12 Dr. Satish Kanwar has examined the accused. PW-13 Dr. Surinder Kumar Pal is Asstt. Director Biology and Serology, RFSL Dharamshala. He has proved the report Ext. PW-13/A. PW-14 Savita Devi, is the Secretary Gram Panahayat Sakoh. She issued the date of birth certificate Ext. PW-14/B and Ext. PW-14/C and also the abstract of pariwar register Ext. PW-14/D. PW-15 S.I. Kiran Bala is the I.O. in this case. She has investigated the case in the manner as discussed hereinabove. PW-16 Ms. Shikha Lakhpal, JMIC, Court No. 2 Dharamshala has recorded the statement Ext. PW-16/C of the prosecutrix under Section 164 Cr.P.C.

9. The accused in his statement recorded under Section 313 Cr.P.C. has denied all the incriminating circumstances appearing against him in the prosecution evidence either being wrong or for want of knowledge. He, however, opted for not producing any evidence in his defence. Learned trial Judge, on appreciation of the evidence and hearing learned Public Prosecutor as well as learned defence counsel concluded that the prosecution has proved its case against the accused beyond all reasonable doubt. He has, therefore, been convicted and sentenced as pointed out at the very outset.

10. The appellant-accused has assailed the impugned judgment on the grounds inter alia that the same is against law and

also facts of the case. Learned trial Judge has misread and misappreciated the evidence produced by the prosecution, therefore, a grave injustice has been caused to him on account of such an approach on the part of learned trial Court. The findings allegedly have been recorded on assumptions, presumptions without there being cogent and convincing evidence available on record in support of it. The testimony of the witnesses does not inspire any confidence. The independent witnesses otherwise had also not supported the prosecution case and rather turned hostile. The findings of conviction as such are based on hypothesis, conjectures and surmises. The medical evidence is not suggestive of that the prosecutrix was subjected to sexual intercourse. The impugned judgment, therefore, has been sought to be quashed and set aside.

11. Sh. Dinesh K. Thakur, Advocate, learned counsel representing the appellant-convict has vehemently argued that the present though is a case of no evidence, however, irrespective of it, learned trial Court has recorded the findings of conviction against the accused. According to learned counsel, the present is a case of non-application of mind by learned trial Judge. The entire approach of learned Court below is stated to be whimsical, capricious and farfetched. The contradictions and inconsistencies/improvements in prosecution evidence which according to learned counsel goes to the very root of the prosecution case have been erroneously ignored. The

prosecutrix herself has contradicted her version in the application Ext. PW-1/A and while in the witness-box as PW-1 on all material aspects. Rekha (PW-4) and Rahul (PW-5), both have turned hostile and not supported the prosecution case at all. PW-10 Chandresh Kumari, daughter-in-law (wife of accused) is highly doubtful because as per her own version, she never solemnized marriage with the accused and rather she is the wife of someone else. Therefore, according to the learned counsel, the findings of conviction in this case could have not been recorded in any manner, whatsoever.

12. Mr. Narender Guleria, learned Addl. Advocate General though has repelled the arguments addressed on behalf of the accused and also argued that own statement of the prosecutrix supported by Chandresh Kumari (PW-10) and other material available on record is sufficient to bring the guilt home to the accused, however, failed to satisfy the conduct of the prosecutrix who herself contradicted her statement Ext. PW-1/A on all material aspects and that of Rekha (PW-4) and Rahul (PW-5), who turned hostile to the prosecution case. Learned Addl. Advocate General has also failed to satisfy us that the present is not a case of two possible views.

13. It is in this backdrop and also the evidence available on record, we have to ascertain the truth and for that reappraisal of the prosecution evidence is required.

14. The very first version of the prosecution case finds mention in the application Ext. PW-1/A made by the prosecutrix to the police of Women Police Station, Dharamshala. Though, she did not disclose the date, however, it is 15.7.2015 mentioned in Ext. PW-1/A itself recorded on the day of occurrence itself. According to her, at 9:00 AM, the accused took her inside the room, bolted the same from inside and opened her salwar. Thereafter, he subjected her to sexual intercourse. She raised alarm. The mason and labourer, namely Bahadur and Rekha (PW-4) working there had come and tried to get the door opened, however, the accused did not open the door. At that very time, her daughter-in-law Chandresh Kumari (PW-10) came there. She asked the accused to open the door. He opened the door. Her grandson Rahul (PW-5) informed her daughter Sangeeta (PW-9) over telephone in the house of her in-laws. Sangeeta (PW-9) came there and she accompanied by her as well as her daughter-in-law Chandresh Kumari (PW-10) visited the Police Station. On the application Ext. PW-1/A, FIR Ext. PW-15/A was recorded under Sections 342 and 376 IPC against the accused in Women Police Station Dharamshala. The charge against him has, however, been framed for the commission of the graver offence i.e. under Section 376 IPC.

15. Now, if coming to the prosecution evidence, the prosecutrix while in the witness-box taking "U" turn from the

statement Ext. PW-1/A, she made to the police has stated that at 9:00 AM, Bahadur, a mason and Rekha (PW-4), a labourer were working in their house which was under construction. The accused told his son Rahul (PW-5) to prepare Tea for them. Her daughter-in-law Chandresh Kumari (PW-10) also went upstairs. The accused came to her room. He told her for withdrawal of Rs. 10,000/- . He bolted the room from inside. The labourer Rekha (PW-4) bolted the same from outside. The accused thereafter subjected her to sexual intercourse. She raised alarm. Chandresh Kumari (PW-10) came there and asked the accused to open the door. The accused had opened the door. It is Chandresh Kumari (PW-10) and Rekha (PW-4) who informed her daughter Sangeeta and son-in-law PW-8 Jawahar Lal about the incident through the cell phone of Rahul (PW-5). PW-8 Jawahar Lal and Sangeeta (PW-9) reached in her house at 2:00 PM. She narrated the incident to her daughter Sangeeta (PW-9) and thereafter went to Police Station accompanied by Chandresh Kumari (PW-10) here daughter-in-law, Sangeeta (PW-9) and PW-8 Jawahar Lal. She lodged the complaint Ext. PW-1/A.

16. The scrutiny of complaint Ext. PW-1/A and the above stated statement of the complainant while in the witness-box as PW-1 amply demonstrate that she has contradicted the contents of the complaint Ext. PW-1/A. She rather improved her earlier version while in the witness-box. The statement that the accused asked his

son Rahul (PW-5) to prepare Tea for the mason and labourer and her daughter-in-law Chandresh Kumari (PW-10) went upstairs, the accused entered in her room and asked for withdrawal of Rs. 10,000/-, nothing of the sort is there in the complaint Ext. PW-1/A. Even as per the complaint, he took her inside his room and bolted the same from inside, whereas, the labourer Rekha (PW-4) bolted the same from outside. When she raised an alarm as per her version in the complaint, Rekha (PW-4) and Bahadur the mason came there and made efforts to get the door opened. She, however, has not stated so while in the witness-box and rather it is her daughter-in-law Chandresh Kumari (PW-10) who got opened the door of the room. As per the complaint Ext. PW-1/A, Sangeeta (PW-9) was called by Rahul (PW-5) by making call to her in-laws house through his cell phone, however, while in the witness-box, it is Chandresh Kumari (PW-10) and Rekha (PW-4) who have called Sangeeta (PW-9) by making call through cell phone of Rahul (PW-5). Such inconsistencies/improvements and contradictions in the evidence as has come on record by way of own testimony of the victim and the complaint Ext. PW-1/A she made to the police goes to the very root of the prosecution case and it is difficult to believe that the alleged sexual assault on the prosecutrix was made by the accused in the manner as claimed by the prosecution.

17. PW-4 Rekha Devi has not supported the prosecution case though as per her version around 9:30 AM - 10:00 AM when she was working along with Bahadur in the upper floor of the house, they heard accused and his mother shouting. She, however, did nothing on hearing their noise nor she went down to the ground floor. She expressed her ignorance as to where the accused was at that time and where was his mother. She also expressed her ignorance as to what the accused did with his mother. She has been cross-examined at length by learned Public Prosecutor, however, nothing material lending support to the prosecution case could be elicited and rather the suggestions that on 15.5.2015 (it should have been 15.7.2015) while on work with Bahadur, the accused started quarrelling with his mother and dragged her inside the room, bolted the same from inside and that she heard the cries and screams of the mother of the accused from inside the room, irrespective of denied being wrong lead to the only conclusion that the accused and his mother quarreled with each other. The suggestion that she and Bahadur tried to get the door opened but the accused did not open the same has also been denied being wrong. She has also denied that Chandresh Kumari (PW-10) came there and tried to get the door opened and that it is after sometime, the accused opened the door and his mother came out while crying and terrified. She has also denied that the accused had committed rape with her.

18. When further cross-examined by learned defence counsel, she tells us that the accused and his mother used to stay in the house along with Rahul (PW-5) and the wife of the accused. In one portion of the house Santosh Kumari, the sister of the accused was also residing separately. The other portion of the house of the accused was with his mother. It is admitted by this witness that the accused, his mother and sisters used to fight oftenly. The money for payment to them was being given by the prosecutrix to the accused and it is he who used to make the payment thereof to them. After the incident, it is the prosecutrix who had been making payment of their wages to them. She expressed her inability to tell as to who had been crying in the house of the accused.

19. Therefore, the close scrutiny of the evidence as has come on record by way of testimony of Rekha (PW-4) lead to the only conclusion that she has not supported the prosecution case qua the prosecutrix was taken inside the room by the accused, bolted the same from inside whereas by this witness from outside and thereafter the accused subjected her to sexual intercourse. She has also not supported the prosecution case qua she along with Bahadur tried to get the door opened. Though, as per her testimony, the accused, his mother and his sister used to fight with each other, obviously on account of the property disputes as is the plea raised by the accused in his defence.

20. PW-5 Rahul Kumar has also not supported the prosecution case. According to him, either on 15th July or 14th July, 2015, labourer Rekha (PW-4) asked him around 10:00 -10:30 AM to make a call through his cell phone to his Bua (Aunt) Sangeeta (PW-9). He dialed the number of his Bua and handed over the cell phone to Rekha (PW-4). It is Rekha (PW-4), who talked over cell phone with his Bua. Later on, she came to their house along with her husband around 12:30 PM. His testimony in cross-examination that after the construction work of house started, his father (accused), grandmother (the prosecutrix) and Bua, Sangeeta (PW-9) used to quarrel with each other and that his Bua Sangeeta (PW-9) had been asking for her share in the property and that this alone was the cause of quarrel in their house, again substantiate the plea the accused raised in his defence. He, while admitting that Rekha (PW-4) told him to call his Bua Sangeeta (PW-9) in view of the quarrel in the house and that he went to the lintel to Rekha (PW-4) to speak to his Bua corroborate the testimony of Rekha (PW-4) to the extent that Sangeeta (PW-9) was called in view of accused and his mother quarreled with each other by making call to her through cell phone of Rahul (PW-5). Therefore, the statement of Rahul (PW-5) again a witness examined by the prosecution is also not suggestive of that accused subjected the prosecutrix to sexual intercourse. There remains only the sole

testimony of the prosecutrix qua assaulting her sexually by the accused which, as already discussed, hardly inspires any confidence.

21. The recovery of the mattress covers (Ext. P-2 and P-3) though stand proved from the testimony of PW-8 Jawahar Lal, none else but the son-in-law of the prosecutrix and PW-2 LHC Anjana, however, they both are interested witnesses being closely related to the prosecutrix and police official, respectively. Otherwise also, the recovery thereof is of no consequence for the reason that semen or blood could not be detected thereon. It is highly doubtful that the prosecutrix was subjected to sexual intercourse on the mattress of which the covers (Ext. P-2 and P-3) pertain.

22. The recovery of the shirt of the prosecutrix Ext. P-5 even if is believed to be true, is again of no consequence for the reason that blood and semen was not detected thereon also when chemically analyzed in the FSL. The shirt, as per the version of PW-3 LC Ramna Devi, was produced by the prosecutrix before the police in her presence and in that of Sangeeta (PW-9) and taken into possession vide recovery memo Ext. PW-1/C. PW-9 Sangeeta, however, belies the prosecution case in this regard because she has admitted in her cross-examination that this shirt was given to her by the prosecutrix and it is she who handed over the same to the police in the Police Station after two days. Therefore, it is doubtful that the shirt was

produced before the police by the prosecutrix and taken into possession in the manner as claimed by the prosecution.

23. If coming to the evidence as has come on record by way of testimony of PW-8 Jawahar Lal, the son-in-law of the prosecutrix and her daughter Sangeeta (PW-9) and if it is believed that they had come to the house of the prosecutrix, it is doubtful that PW-8 Jawahar Lal was apprized about the incident by Rekha (PW-4) over cell phone because Rekha (PW-4) while in the witness-box has denied the suggestion to this effect given to her by learned Public Prosecutor. No doubt, according to her, Rahul (PW-5) connected the cell phone of his Bua and handed it over to her to speak, however, she could not speak anything beyond "Hello-Hello". Therefore, the testimony of PW-8 Jawahar Lal that Rekha (PW-4) talked on his cell phone and told that the accused had dragged the prosecutrix inside the room and bolted the same from inside and also that the prosecutrix was crying is not proved on record. Otherwise also, even if it is believed that any such call was received by this witness over his cell phone, no information was given to him that the accused has assaulted the prosecutrix sexually and the alleged information given to him is confined only to an assault/quarrel between the accused and the prosecutrix. Since Sangeeta (PW-9) was apprized by PW-8 Jawahar Lal about the information whatever he received over his cell phone and as nothing has come in his statement that Rekha (PW-4) told him about the

prosecutrix was assaulted by the accused sexually also, therefore, there was no occasion to Sangeeta (PW-9) to have stated while in the witness-box that her husband told her about the accused committed rape also on the prosecutrix. Her testimony to this effect, therefore, beyond the information, whatsoever was given to her husband PW-8 Jawahar Lal over his cell phone cannot be believed to be true. The possibility of she and her husband have engineered the story in connivance with the police to implicate the accused falsely on account of property dispute cannot be ruled out. Interestingly enough, Santosh, the another daughter of the prosecutrix was residing in other portion of that very house, therefore, there was no occasion to have informed PW-8 Jawahar Lal and Sangeeta (PW-9) to come to the house of the prosecutrix. There was no occasion to have waited for their arrival there till 2:00 PM because Santosh Kumari, the another daughter of the prosecutrix and her daughter-in-law Chandresh Kumari (PW-10) were present there. Had the incident been taken place in the manner as claimed by the prosecution, they both could have accompanied the prosecutrix to Police Station and lodged the FIR. There being no explanation as to why it was not done, the story has been fabricated to register the case falsely against the accused at the behest of PW-8 Jawahar Lal and Sangeeta (PW-9) in connivance with the police. The statement of PW-8 Jawahar Lal in his cross-examination that he had put his signature on parcel Ext. P-1 in

which cover of mattresses were sealed in the Police Station, lead to the only conclusion that recovery was not effected on the spot as claimed by the prosecution. He has expressed his ignorance as to where he had put his signatures on the recovery memo Ext. PW-1/B and PW-8/A. This also casts doubt qua the recovery made in this case.

24. PW-9 Sangeeta in the very first sentence of her cross-examination has admitted that on being asked she had taken the shirt of her mother to the Women Police Station, Dharamshala on the next day of lodging the complaint. She also admitted having put her signature on the recovery memo Ext. PW-1/C in the Police Station. There is, therefore, no question of the prosecutrix produced the shirt (Ext. P-5) before the police. As per the prosecution case, Chandresh Kumari (PW-10) is the wife of the accused. The prosecutrix has also mentioned Chandresh Kumari (PW-10) as her daughter-in-law. However, surprising enough Sangeeta (PW-9) while in the witness-box has expressed her ignorance as to since when Chandresh Kumari (PW-10) was residing in their house at Sakoh. Not only this, but as per her further version Chandresh Kumari (PW-10) is not married to the accused and she was staying with him without marriage. Later on, she abandoned the company of the accused. Chandresh Kumari (PW-10) while in the witness-box also tells us that she was not married with accused or stayed with him in his house at Sakoh for 5-

6 months. Though, she has supported the prosecution case qua the accused locked his mother inside the room and on hearing cries when she made the accused to open the door, the prosecutrix came out while crying and perturbed, she told that the accused had committed rape on her inside the room. She, in her cross-examination, however, falsified the statement so made in her examination-in-chief because in the very first sentence it is stated by her that on the day of occurrence, she was at the place of her parents at Dhadhoon. Her testimony that Rekha (PW-4) informed over telephone daughter and son-in-law of the prosecutrix, PW-8 and PW-9 to come to Sakoh is also false because Rekha (PW-4) could not speak beyond "Hello-Hello" when the cell phone was handed over to her by Rahul (PW-5). Therefore, this part of the statement of Chandresh Kumari (PW-10) also inspires no confidence.

25. The close scrutiny of the evidence as has come on record by way of testimony of PW-8 Jawahar Lal, Sangeeta (PW-9) and Chandresh Kumari (PW-10), as discussed hereinabove lead to the only conclusion that they are liars. PW-8 Jawahar Lal and Sangeeta (PW-9) may be interested in the success of the prosecution case on account of their demand for property belonging to the prosecutrix and the property dispute with the accused. Had nothing of the sort as claimed by the prosecution been taken place, the another daughter of the prosecutrix, namely, Santosh Kumari admittedly residing in other

part of the same house would have come forward to support the prosecution case. She has neither been associated nor cited as a witness by the prosecution to the reasons best known to it.

26. Interestingly enough, the medical evidence is not suggestive of that the prosecutrix was assaulted sexually, MLC Ext. PW-11/A, no doubt records the alleged history of rape, however, by whom, nothing finds mention therein. Normally, in a rape case, the name of the accused is also being reflected by the Medical Officer, while mentioning history in the MLC. The doctor, no doubt, tells us that the name of accused may have been disclosed to her, however, now she could not recollect as to who was the accused nor she mentioned the same in the MLC. The non-mentioning of the name of the accused in the MLC also casts doubt on the prosecution story. Otherwise also, on clinical examination, Dr. Jyoti Gupta (PW-11) could not form any opinion about the alleged sexual assault committed upon and the final opinion was left open to be given on the receipt of the report of FSL.

27. Now, if coming to the report Ext. PW-13/A, proved by PW-13 Dr. Surinder Kumar Pal, blood and semen was not detected on the covers of mattresses, shirt of the prosecutrix, her pubic hair, smegma swab of the accused and his pubic hair. Semen was also not detected in the vaginal slides of the deceased. Though, semen was detected on the underwear of the accused, however, not the blood.

PW-11 Dr. Jyoti Gupta, on having gone through the report Ext. PW-13/A has given the final opinion Ext. PW-11/B. According to her, on the basis of the report, it cannot be commented upon whether the intercourse/rape had occurred. The present to us, is a case where the scientific investigation conducted do not reveal that the prosecutrix was subjected to sexual intercourse because blood and semen was not detected on the covers of mattresses, shirt of the prosecutrix, her pubic hair, smegma swab of the accused and his pubic hair. Even the semen was not detected in vaginal slides of the prosecutrix. Had she been subjected to sexual intercourse, keeping in view that the prosecutrix was examined medically on the same day, if not blood, the semen stains were bound to appear on the above exhibits analyzed chemically in the laboratory. The semen stains, no doubt were detected on the underwear of the accused. He being a young man, the presence of such stains on his underwear should not be construed to conclude that such stains occurred as he subjected the prosecutrix to sexual intercourse. The medical evidence, therefore, is also not suggestive of that the prosecutrix has been subjected to sexual intercourse by the accused. The evidence, as has come on record by way of testimony of PW-14 Savita Devi, Secretary, Gram Panahayat Tangroti Khas, is immaterial for the purpose of this case because there is no dispute qua the age of the prosecutrix and that of the accused and also that they both being mother and son in

relation were residing in the same house. The evidence as has come on record by way of evidence of official witnesses PW-6 HC Satya Devi and PW-7 HHC Karan Singh, would have been used as link evidence, had the prosecution been otherwise able to prove its case against the accused beyond all reasonable doubt for the reason that PW6 HC Satya Devi has supported the prosecution case qua the deposit of case property with her and she after having made the entries qua the same retained it in her safe custody in the malkhana. Later on, she sent the case property to RFSL, Dharamshala through PW-7 HHC Karan Singh. PW-7 HHC Karan Singh has supported the prosecution case qua taking the case property to the laboratory and depositing the same there. PW-15 S.I. Kiran Bala is the I.O. Though, as per her testimony, it has come in the investigation she conducted that the accused subjected the prosecutrix to sexual intercourse, however, in view of the reappraisal of the prosecution evidence hereinabove, the investigation conducted in this case cannot be said to be fair and impartial. This witness rather to the reasons best known to her has implicated the accused in this case falsely knowing fully well that the relationship of the accused and the prosecutrix being son and mother was very delicate.

28. PW-16 Ms. Shikha Lakhanpal was posted as JMIC, Court No. 2, Dharamshala at the relevant time. She has proved the statement Ext. PW-16/C made by the prosecutrix before her under

Section 164 Cr.P.C. The statement Ext. PW-16/C is a piece of evidence and not the conclusive evidence. It, therefore, lies ill that the recording of this statement by the Magistrate is only to establish the charge against the accused.

29. True it is that the accused has not produced any evidence in his defence, however, the trend of cross-examination of the witnesses conducted by learned defence counsel makes it crystal clear that the property dispute was the sole cause of framing him in this case falsely. The plea so raised by him in his defence even finds support from the testimony of Rahul (PW-5) and also Rekha (PW-4). In his statement recorded under Section 313 Cr.P.C. also, he has stated that the prosecution witnesses have deposed falsely against him due to property dispute. Otherwise also, it was for the prosecution to have proved its case against the accused beyond all reasonable doubt. The prosecution, however, has failed to do so.

30. In view of what has been said hereinabove, the prosecutrix and accused seems to have quarreled with each other, may be on account of money required for ongoing construction work, because as per own version of the prosecutrix, the accused asked for withdrawal of Rs. 10,000/-. Since property dispute was there and Sangeeta (PW-9) may also be asking for her share in the property, therefore, taking undue benefit of the situation and knowing fully well that nothing of the sort happened, the allegations not only serious

but heinous in nature, have been leveled against the accused qua rape of his own mother by him forgetting the sensitivity of such relations and repercussions of the allegations so raised in the society at large. Neither the I.O. nor the Public Prosecutor have applied the mind and tried to satisfy themselves qua the authenticity and genuineness of allegations so raised and for that matter, learned trial Judge has also failed to apply her mind and swayed by passion believing erroneously that the offence has been committed against a woman.

31. As a matter of fact, all duty holders i.e. the Investigator, Prosecutor and of course, the Adjudicator were expected to be more cautious and deal with this matter by observing all care and caution and circumspection because the allegations of rape were against none else but the son of the prosecutrix. The allegations of rape are not always correct and sometimes levelled falsely also due to variety of reasons. The apex Court in ***Ranjit Hazarika Vs. State of Assam, (1998) 8 SCC 635*** has held that the statement of prosecutrix cannot be universally and mechanically applied to the facts of every case of sexual assault, as in its opinion, in such cases, the possibility of false implication can't also be ruled-out. Similar was the view of the matter taken again by the apex Court in ***Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and another, (2003) 3 SCC 175.*** While placing reliance on this judgment and the law laid down by the

Apex Court in the judgment supra, this Court in **Criminal Appeal No. 481 of 2009** titled **State of Himachal Pradesh V. Negi Ram**, decided on 27th May, 2016 has held as under:

“15. Therefore, the legal position as discussed supra makes it crystal clear that irrespective of an offence of this nature not only grievous but heinous also, the Court should not be swayed merely by passion and influence only on account of the offence has been committed against a woman and rather keep in mind the cardinal principle of criminal administration of justice, that an offender has to be believed to be innocent unless and until held guilty by the Court after satisfying its judicial conscience on the basis of given facts and circumstances of each case as well as proper appreciation of the evidence available on record.”

32. It is worth mentioning that as per the ratio of the Apex Court in **State of Punjab vs. Gurmeet Singh & ors., AIR 1996 SC 1393**, the own statement of the prosecutrix if inspires confidence is sufficient to bring guilt home to the accused. The present, however, is a case where the statement of the prosecutrix inspires no confidence. She rather has contradicted the prosecution case and while in the witness-box improved her earlier version on all material aspects. The mental agony and trauma, the accused has suffered on account of such heinous allegations leveled against him falsely and subsequently on account of his conviction one can imagine very well.

The trial Court, however, has failed to appreciate the same and also the evidence available on record in its right perspective. The impugned judgment, being the result of misreading and misappreciation of the prosecution evidence and based upon conjectures, surmises and hypothesis, therefore, cannot be said to be legally and factually sustainable by any stretch of imagination. The same, therefore, deserves to be quashed and set aside and the accused acquitted of the charge framed against him.

33. For all the reasons hereinabove, this appeal succeeds and the same is accordingly allowed. Consequently, the impugned judgment is quashed and set aside. The accused is acquitted of the charge framed against him under Section 376 IPC. He presently is undergoing sentence, therefore, if not required in any other case, be set free forthwith. The release warrant be prepared accordingly. The fine amount as imposed upon the accused, if deposited, shall be refunded to him against proper receipt.

(Dharam Chand Chaudhary),
Judge.

July 24, 2019

{karan-}

(Jyotsna Rewal Dua),
Judge.

High