



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 207 of 2016  
Decided on: May 23, 2017

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Manjit Singh .....Appellant  
Versus  
State of Himachal Pradesh ...Respondent

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Coram  
Hon'ble Mr. Justice Sandeep Sharma, Judge.  
Whether approved for reporting<sup>1</sup>? Yes.

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For the Appellant: Mr. Lalit Kumar Sehgal, Legal Aid Counsel.

For the Respondent: Mr. Ramesh Thakur, Deputy Advocate General.

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**Sandeep Sharma, J. (Oral)**

Instant appeal filed under Section 374 (2) CrPC is directed against judgment dated 6.7.2015 passed by the learned Additional Sessions Judge, Hamirpur (HP) Circuit Court Barsar, in Sessions Trial No. 05 of 2014, whereby present appellant-accused ('accused', hereafter) has been convicted for the commission of offence punishable under Sections 376, 452 and 506 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of ₹20,000/-, for the commission of offence under Section 376 IPC, in default of payment of fine, to further undergo rigorous imprisonment, for one year, to undergo rigorous imprisonment for two years and to pay a fine of ₹1,000/- for the commission of offence punishable under Section 452 IPC, and, in default of payment of fine, to further undergo simple imprisonment, for three months, and, to undergo rigorous imprisonment, for two years and to pay a fine of ₹1,000/-, for

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Whether reporters of the Local papers are allowed to see the judgment?

the commission of offence under Section 506 IPC, in default of payment of fine, to further undergo, simple imprisonment, for three months.

2. In nutshell, case of the prosecution is that on 2.5.2014, prosecutrix alongwith her husband, approached Police Station Barsar, wherein application Ext. PW-1/A was filed stating that on 30.4.2014, at about 12.30 pm, she was alone in the house, since her husband and brother-in-law, had gone out for some work, whereas her mother-in-law and father-in-law had gone to her parents' house to see her ailing mother. As per prosecutrix, at about 12.30 pm, accused entered her house and called her brother-in-law (Devar) by name. Prosecutrix replied that he was not at home. Accused forcibly entered the room, where prosecutrix was resting and bolted the door from inside.

3. Prosecutrix asked the accused that why he was bolting the door. He pushed her on the bed and thereafter opened his clothes. Prosecutrix tried to raise hue and cry but her mouth was gagged by the accused with his hand. Later on, accused untied string of her *Salwar* and committed rape upon her. As per prosecutrix, after committing rape, accused threatened her that in case she disclosed anything about the incident to anyone, she would be finished. Subsequently, in the evening, prosecutrix narrated the incident to her mother, who further disclosed same to her in-laws. On the next day, when husband returned, she narrated the incident to him and thereafter, they went to the Police Station for reporting the matter.

On the basis of aforesaid application having been filed by the prosecutrix, FIR, Ext. PW-12/A was registered. After completion of investigation, *Challan* was presented in the court of Judicial Magistrate 1st Class Barsar, who thereafter committed the case to the court of learned Sessions Judge, Hamirpur. The learned trial Court being satisfied that prima facie case for commission of offences under Sections 376, 452 and 506 IPC exists against accused, framed charges against him under aforesaid provisions, to which accused pleaded not guilty and claimed trial.

4. Learned trial Court, on the basis of evidence adduced on record by the prosecution, convicted the accused vide judgment dated 6.7.2015 and held the accused guilty of having committed offence punishable under Sections 376, 452 and 506 IPC and sentenced him as per description given herein above. In the aforesaid background, accused approached this Court, in the instant proceedings, seeking his acquittal after setting aside judgment of conviction recorded by the court below.

5. Mr. Lalit Kumar Sehgal, learned legal aid counsel for the accused, while inviting attention of this Court to the impugned judgment passed by the learned trial Court vehemently argued that same is not sustainable in the eye of law, as the same is not based upon correct appreciation of evidence adduced on record by the prosecution, as such same deserves to be set aside. Learned counsel representing the accused strenuously argued that a bare perusal of judgment passed by learned trial Court suggests that evidence led on

record by the prosecution has not been read in right perspective, as a result of which, erroneous findings have come on record, to the detriment of the accused, who admittedly is innocent person and has been falsely implicated in the case. Learned counsel representing accused, with a view to substantiate aforesaid arguments, made this Court to travel through statement of the prosecutrix PW-1, to demonstrate that no reliance, if any, could be placed upon the same, because, bare reading of same suggests that there are material contradictions in the same. Learned counsel while making this Court to peruse statement of PW-1, forcefully contended that there is no explanation that why alarm, if any, was not raised by the prosecutrix, since it is admitted case of the prosecution that there are 50-60 houses near the house of the prosecutrix, where allegedly accused committed rape upon her. Learned counsel for the accused also invited attention of this Court to the opinion of the Doctor, as well as statement of PW-4, Dr. Sunita Galoda, who admitted that on examination, no injury was noticed on the person of the prosecutrix, rather, PW-4 Dr. Sunita Galoda categorically admitted that she did not notice any mark of violence on the body of the victim. With the aforesaid submissions having been made by the learned counsel representing the accused, he prayed that the present appeal may be accepted and accused be acquitted of the charges framed against him, under Sections 376, 452 and 506 IPC, after setting aside the impugned judgment.

6. Mr. Ramesh Thakur, learned Deputy Advocate General, supported the impugned judgment. Mr. Thakur, with a view to refute the aforesaid contentions having been made by the learned counsel representing the accused, vehemently argued that there is no illegality or infirmity in the judgment of conviction recorded by the Court below, as the same is based upon correct appreciation of evidence adduced on record by the prosecution. While inviting attention of this Court to the impugned judgment of the court below, Mr. Thakur, contended that the prosecution has proved its case beyond reasonable doubt and as such no fault, if any, can be found with the judgment of trial Court, which otherwise appears to be based upon correct appreciation of evidence adduced on record. While refuting aforesaid contention having been made by the learned counsel representing the accused, Mr. Thakur contended that though there are no contradictions in the statements of prosecution witnesses, but even if, for the sake of arguments, it is presumed that there are contradictions, even then by no stretch of imagination, same can be termed to be major contradictions, which could compel the court below to take contrary view. Mr. Thakur, further contended that though no mark of violence on the body of the prosecutrix was found during medical examination, but, as per report of the Doctor, sexual intercourse had taken place. In the aforesaid background, Mr. Ramesh Thakur, Deputy Advocate General, prayed that the present appeal may be dismissed being devoid of merits.

7. I have heard the learned counsel for the parties and gone through the record carefully.

8. During proceedings of the case, this Court solely with a view to ascertain the genuineness and correctness of the submissions having been made by the learned counsel representing the parties, vis-a-vis impugned judgment of conviction, recorded by the Court below, carefully perused the impugned judgment, as well as evidence adduced on record by prosecution, perusal whereof compelled this Court to re-examine and re-appreciate entire evidence, especially statement of the prosecutrix (PW-1). Otherwise also, apart from PW-1, all the witnesses adduced on record, could be termed to be hearsay witnesses because, none of them had an occasion to witness the alleged incident, at the first instance, rather, they came to know of the incident after being told by the prosecutrix. Hence, this Court would only be examining statement of PW-1, prosecutrix, while ascertaining correctness of the allegations having been leveled against the accused.

9. PW-1 (prosecutrix) deposed before the Court below that she was married to Baljeet Singh (PW-3) about two months prior to the date of incident. On 30.4.2014, she was alone in her in-laws' house, as her mother-in-law and father-in-law had gone to village Dain, to see her mother, who was suffering from illness. Her husband and *Devar* (brother-in-law) namely Chhotu had gone in connection with work. At about 12.30 pm, accused called her *Devar* by name, on which she replied that nobody was in the house, on which accused

came inside the room and bolted the door and closed the window. As per prosecutrix, he pushed her on the bed, causing injury on the rear of her head and accused thereafter opened his clothes and then broke string of her *Salwar*. Appellant then committed rape upon prosecutrix. Prosecutrix tried to raise hue and cry but accused gagged her mouth with his hand. Prosecutrix tried to save herself but could not succeed. Appellant committed rape upon her and threatened her with dire consequences, in case, she disclosed incidence to anybody. At about 4:00 pm, when her mother came to her house alongwith her in-laws, she disclosed the entire incident to her mother-in-law, who further disclosed the same to her father-in-law. On that day, her husband did not come home and came on next day, when she disclosed entire incident to him. On 2.5.2014, prosecutrix alongwith her husband went to PS Barsar to report the matter. Police got the prosecutrix medically examined at RH Hamirpur. However, in her cross-examination she stated that she had disclosed to the police that when accused entered inside, she got up from the bed but he pushed her on bed, as a result of which, she received injury on the backside of head. (Confronted with statement Ext. PW-1/A, wherein it is not so recorded). Similarly, prosecutrix admitted in the cross-examination that she had disclosed to the police that accused had also closed the window and he broke string of her *Salwar*. (Confronted with Ext. PW-1/A, wherein it is not so recorded.) Apart from above, in her cross-examination, prosecutrix categorically admitted that there are houses of Gurbax, Dharmu son

of Bakshi, Ranjit, Mansha Ram and Gorakh Ram, near her house. She also admitted that they resided with their families in the house. Prosecutrix further admitted in her cross-examination that there are about 50 houses in the village Ropru, which are near her house. Most importantly, she admitted that there are two rooms in their house, which have *Jalidaar* doors. As per prosecutrix, accused bolted the *Jalidaar* doors. Self stated that she had only disclosed the manner in which accused bolted the door from inside. As per prosecutrix, when accused entered the room, she was standing in the room and accused gave her a push prior to bolting the room. It is not understood, when accused had gone to bolt door from inside, what prevented prosecutrix from entering another room, rather statement of prosecutrix suggests that she remained at that place only.

10. In the examination-in-chief, prosecutrix categorically stated that while accused entered the room, she was resting on bed, whereas, in her cross-examination, she stated that when accused entered the room, she was standing in the room, and thereafter, accused gave her push, prior to bolting the room. Prosecutrix has also admitted that accused opened his pants and underwear and, while doing so, she was standing on the floor and thereafter he opened her clothes with one hand and, with the other, he had caught hold of her. Aforesaid statement /admission having been made by the prosecutrix does not appear to be reliable, because, had she intended to save herself from the clutches of accused, she could have pushed the accused, who as per her own version, was taking off

his clothes. Rather, it has come in the statement of the prosecutrix that her clothes were opened by the accused and thereafter, it took 5-10 minutes to commit rape upon her. It has also come in the statement of the prosecutrix that she did not give any teeth bite and scratches with her nails to the accused.

11. After having carefully examined the statement of PW-1, this Court has serious doubt with respect to correctness of the statement having been made by the prosecutrix, especially, in view of the fact that there is no resistance, as such, on the part of prosecutrix. It has specifically come in the statement of the prosecutrix that there are windows opening towards common path, adjacent to the house of prosecutrix. But, there is no explanation rendered on record by the prosecutrix that why did not she raise alarm. Prosecutrix in her statement only stated that since her mouth was gagged by the accused, she was unable to raise hue and cry. Aforesaid statement having been made by the prosecutrix is not trustworthy, especially in view of her own statement that accused removed his clothes with one hand, whereas he caught hold of her with the other hand. If, aforesaid version as given by the prosecutrix is taken to be correct, she had ample time to raise alarm. Apart from above, prosecutrix herself stated that accused, after removing his clothes also removed clothes of prosecutrix but, interestingly, there is no struggle, if any, made by the prosecutrix, to save herself from the clutches of accused. Even after alleged sexual intercourse, which took place at about 12.30 pm, prosecutrix chose to remain silent till five in the

evening, when allegedly she disclosed the incident to her mother-in-law.

12. Perusal of statement of PW-4, Dr. Sunita Galoda, Medical officer, RH Hamirpur, who, on the application Ext. PR-4/A, conducted medical examination of the prosecutrix opined that on examination, no marks of injury anywhere on the person of prosecutrix were found.

She has stated as under:

“On examination, young married woman for last two months. Vital stable. No mark of injury anywhere over the person.

Local Examination:

No injury anywhere over genitalia. Pubic hair already trimmed. No foreign hair seen. Person is menstruating from 01.05.2014. No vaginal pad kept but bleeding present at introitus. Hymens torn with old healed tears.”

13. PW-4, while admitting that she has issued MLC Ext. PW-4/B, further admitted that she had given final opinion, on the basis of physical examination and no semen was detected on shirt, *Salwar*, vaginal smear, slides and swabs. PW-4, further concluded that during physical examination, as detailed in MLR Ext. PW-4/B, sexual activity had taken place. In her cross-examination, she specifically admitted that she did not notice any mark of violence on the body of victim.

She further admitted in her cross-examination that it is correct to suggest that semen will appear on the mattress, on which husband-wife are having physical relations. It has also come in her cross-examination that she had given opinion about sexual activity having taken place, on clinical observations, that there was healed old tears of hymens.

14. Careful perusal of aforesaid statement having been made by PW-4, Dr. Sunita Galoda, further renders the story as narrated by the prosecutrix unreliable and untrustworthy. As far as findings with regard to sexual activity having taken place, is concerned, it may be noticed that prosecutrix in her cross-examination admitted that one night prior to the alleged incident, prosecutrix had sexual intercourse with her husband, as such, no weightage could be given to the opinion rendered by PW-4, with regard to alleged sexual activity noticed by her during medical examination.

15. Though, this Court, after having carefully gone through the statement of prosecutrix as well as opinion having been rendered by Dr. Sunita Galoda, PW-4, sees no occasion to examine/ analyse other witnesses adduced on record by prosecution, but, deems it fit to take note of the fact that the prosecutrix PW-1, as well as other prosecution witnesses categorically admitted the suggestion put to them that they have prior enmity with the accused. Prosecutrix categorically admitted in her cross-examination that cases between her in-laws and accused are pending in the Courts.

16. After, having carefully perused impugned judgment of conviction recorded by the court below, this Court is constrained to observe that there is no discussion /analysis of evidence adduced on record by the prosecution vis-a-vis stand taken by the accused in his statement recorded under Section 313 CrPC, wherein, he claimed that he has been falsely implicated. Apart from above, it is not understood, from where learned trial Court, while holding accused

guilty of offence under Section 376 IPC, came to the conclusion that medical evidence adduced on record by prosecution corroborates version put forth by the prosecutrix, rather, this Court, after having carefully perused medical evidence, vis-a-vis statement of prosecutrix has no hesitation to conclude that learned trial Court has miserably failed to appreciate evidence in its right perspective, as a result of which, erroneous findings have come on record. In the medical evidence, only finding has come that sexual activity has taken place but that was not sufficient to connect the accused with the alleged incident of rape, especially in view of candid admission having been made by the prosecutrix that one night prior to the alleged incident, she had sexual intercourse with her husband.

17. Similarly, this Court is in disagreement with the reasoning given by the learned trial Court while considering arguments of learned counsel for the accused that in the absence of signs of struggle, case at its best, could be termed that of consent. Finding given by the court below that since incident took place inside room, on mattress, no signs of struggle were found on the person of prosecutrix, is also without any basis and can not be accepted at all. It also appears that the case law relied upon by the learned counsel representing the accused, which was apparently applicable to the facts of the case, was not taken into consideration. It appears that learned Court below, instead of deciding the case strictly on the basis of evidence adduced on record by prosecution, got swayed by

emotions and held accused guilty of alleged offence, on the basis of insufficient evidence.

18. This Court, after having carefully perused evidence available on record, has no hesitation to conclude that impugned judgment of conviction recorded by learned Court below is based upon evidence, which by no stretch of imagination, could be termed to be sufficient to hold accused guilty of having committed the alleged offence. Apart from above, there is no evidence led on record by the prosecution which could render accused liable for conviction under other Sections i.e. Sections 452 and 506 IPC.

19. Hon'ble Apex Court in **Dinesh Jaiswal versus State of M.P.**, AIR 2010 SC 1540, has held that sole testimony of prosecutrix is not sufficient to base conviction, some corroboration for the same is also required. It is held as under:

4. We have heard the learned counsel for the parties at length. We find that this case is rather an unusual one. The fact that the appellant was in the house of the prosecutrix is admitted on both sides. The prosecution story that the appellant a young man of 31 years had been overpowered by a much older woman is rather difficult to believe. The injuries received by the appellant are given below :-

1. Parted wound, whose shape is 1.5 c.m. X 1/5 c.m. on the right side of the hand.
2. Swelled injury, whose shape is 1.5 c.m. X 1 inch, which is on the upper side of the right hand.
3. Swelled injury, whose shape is 1/2" X 1/2", which is on the elbow of the left hand.

The injury of accused are given below :-

1. Parted wound, whose shape is 1 = inch X 1/2 c.m. X 1 c.m. on the middle of the head.
2. Parted wound, whose shape is 1" X 1/2 c.m. X 3 m.m. on the front side of the head.
3. Parted wound, whose shape is 1/2" X 1/2" c.m. X 3 m.m. on the right of the head.

4. Swelled injury, whose shape is 1/2" X 1/2".
5. Swelled injury, whose shape is 1" X 1/2" on the chin.
6. Two central incisors tooth and right canine tooth of upper jaw were broken and the enamles were swelled.

Injury No. 6 is a grievous one. As per the prosecutrix she had caused these injuries to the appellant during the time of rape and thereafter that the accused had caused her three minor injuries as well whereas the case of the appellant is that he had gone to her house to recover his cow and in a quarrel that followed both had received injuries. In any case as the investigating officer had not verified the statement of the appellant some corroboration for the prosecutrix's story was required. As already mentioned, her son Babulal and Shivbalak, a relative, who had reached the place of incident, were both declared hostile and did not support the prosecutrix. We find that even her husband Sampat who had accompanied her to the police station to lodge the report did not come into the witness box and the doctor was also unable to confirm the factum of rape."

20. This Court, in **Kishori Lal versus State of H.P.**, 2012 (3) Shimla Law Cases 1382 has held as under:

"7. As already stated above, the learned trial Court did not find complicity of Shakuntla Devi wife of the accused in facilitating the alleged crime as such she was acquitted. In the instant case, the statement of the prosecutrix is of a prime importance. As a matter of fact, the very story in its inception, as introduced by the prosecutrix, causes doubt in her version that the wife of the accused had facilitated the alleged offence by nobody else than her husband which statement has to be taken with a pinch of salt. Further, in her statement it is alleged that in the scuffle, her clothes were torn which were taken into possession vide memo Ext. PW1/A but there is no reference therein that her clothes, i.e., salwar/ underwear were torn. Even the shirt which is specifically alleged to have torn was neither produced before the police nor to the doctor to lend credence to her statement. Surprisingly, the salwar and the underwear aforesaid were taken into possession on 29.7.2008, i.e., after about 20 days of the alleged incident.

8. I am aware of the fact that the corroboration to the statement of the prosecutrix is not sine qua non nor the corroboration is essential. The rule, which as per the cases decided by the apex Court has hardened into one of law but that the necessity of corroboration, as a matter of fact, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge. The only rule of law is that this rule of prudence must be present to the mind of the Judge and be understood and appreciated by him. There is no rule of practice that there must, in

every case, be corroboration before a conviction can be allowed to stand. 9. In the instant case, the testimony of the prosecutrix cannot be taken as a gospel truth on its face value. There is no mark of scuffle either on her body or alleged torn shirt which has not been produced. The medical evidence does not corroborate her version. She stated before the Court that on the day of the alleged incident, she was menstruating. But according to the doctor, she started menstruating on the next day of the alleged occurrence makes her version doubtful. Further, the blood stains on the trouser and the underwear of the prosecutrix are attributable to the menstrual period. There was no injury what to speak of the bleeding injury on the genital of the prosecutrix to give support to her version. 10. Further, the prosecutrix is stated to have gone to the police station on 10.7.2008 itself along with her father-in-law and Ajay Kumar to lodge the report but the perusal of the FIR shows that it was not lodged on 10.7.2008 but on 11.7.2008 at 11.05 am.

11. The prosecutrix stated that when she was being ravished by the accused, she raised hue and cry but it has come on record and also shown in the site plan that where the prosecutrix was allegedly raped, immediately abutting to that room and even adjacent thereto, tenants have been residing. The place was not secluded or isolated from other inhabited area. In case of hue and cry, the neighbours would have come for her rescue. Further the brother-in-law of the prosecutrix is a Clerk of an Advocate at Amb, he must be in know of the effect of delay in FIR. The police station is also not too far. The distance of the police Station is only 3 furlong, as stated by PW3 Gurdev Singh, from the place of the alleged incident. In this background, it is not understood as to why they took two days in lodging the FIR and why the torn shirt was not produced by the prosecutrix which could have afforded material evidence against the accused.

12. Having gone through the entire record and having heard the learned counsel for the parties, in my considered view, the case of the prosecution does not stand established beyond reasonable doubt. Accused in the inherent probabilities, as is emerging in the statement of the prosecutrix, stands not connected with the alleged offence charged. These facts appear to have been slipped from the mind of the learned trial Court while assessing the statement of the prosecutrix.”

21. Further this Court in **State of H.P. versus Mano alias Man Singh alias Nareshu**, 2011 (1) Shimla Law Cases 392, has held as under:

“15. On analysis of the prosecution witnesses and materials on record, we notice that in statement of victim prosecutrix, recorded under Section 161 Cr.P.C., (Ex.PB), there is no mention that the accused had asked her to accompany him for taking the peaches, on the contrary, it has been recorded that the accused asked the victim prosecutrix to come with him

to the maize fields and when she refused, accused put his hand on the mouth of the victim prosecutrix and forcibly took her to the maize fields. In view of the testimony of PW.1, (victim prosecutrix) she was taken to maize fields on the pretext of taking peach fruits and the children, namely, Bhoti, Sonu, Anju and Dogri, were present when the accused took the victim prosecutrix with him, however, they were neither examined by the prosecution nor named in the list of the witnesses. As per prosecution, when victim prosecutrix started weeping, accused took out a dagger and kept it on the neck of the victim prosecutrix and threatened her in case she would disclose the incident to anybody, she would be killed. Such part of the statement of the victim prosecutrix when confronted with (Ex.PB), there is no mention about the dagger in possession of the accused/respondent. Even PW.9A Krishan Chand, in his cross-examination, has stated that the victim prosecutrix had not stated him that accused had threatened her by putting a knife on her neck.

16. The rape was alleged to have been committed on the victim prosecutrix in the fields, where the victim prosecutrix might have suffered injuries on her parts of the body, but in cross-examination the victim prosecutrix had referred only one injury on her left eye, and such injury does not find mention in MLC (Ex.PL) or in statement of the doctor Mrs. Madhu Kaushal (PW.8). So much so, PW.8 in her testimony has stated that entire body of the victim prosecutrix was examined but no sign of struggle was found and no semen stains were found in the vagina genitalia. PW.8 had also not noticed injury on the left eye of the victim prosecutrix. Such contradiction, also makes the prosecution case weak.”

22. This Court, in **State of H.P. versus Sarwan Kumar, 2014 (2) Shimla Law Cases 1039**, while holding statement of prosecutrix to be unreliable, has held as under:

“14. Prosecutrix (PW-1) is a married lady. She was examined by Dr. Pushpabali Raizada (PW-11), who as per MLC (Ext. PW-11/B) opined possibility of sexual assault not to be ruled out. Significantly, Doctor admits that no marks of injuries were found on the body of the prosecutrix. The alleged offence took place in the night intervening 26th – 27th August, 2006 and the prosecutrix was got medically examined on 1.9.2006. Significantly, as per version of Doctor (PW-11) prosecutrix

had disclosed to her that she had been locked up in the room “by an unknown person” who “forcibly tried to sexually harass her”.

15. Having minutely examined the statement of prosecutrix we find the same not to be inspiring in confidence. Apart from the fact that she contradicts herself, also we find each of the prosecution witnesses to have contradicted themselves, on material facts, rendering the prosecution version to be doubtful and not to have been proved beyond reasonable doubt. 16. In her examination in chief, prosecutrix (PW-1) states that in the middle of night, accused entered her house by forcibly opening the door of her house. With one hand he caught her from the neck and with the other hand opened the string of her salwar. Since her neck was throttled, she could not raise any hue and cry. Against her wishes accused sexually assaulted her. After the act was over her sister-in-law Smt. Pushpa Devi (PW-4) entered the room. Seeing her, accused fled away. Next day her husband came and the matter was reported to the Panchayat. They were advised to report the matter to the police. From the admissions made by the prosecutrix in Court, we do not find her version of forcible sexual assault to be inspiring in confidence.

16. In her examination in chief, prosecutrix (PW-1) states that in the middle of night, accused entered her house by forcibly opening the door of her house. With one hand he caught her from the neck and with the other hand opened the string of her salwar. Since her neck was throttled, she could not raise any hue and cry. Against her wishes accused sexually assaulted her. After the act was over her sister-in-law Smt. Pushpa Devi (PW-4) entered the room. Seeing her, accused fled away. Next day her husband came and the matter was reported to the Panchayat. They were advised to report the matter to the police. From the admissions made by the prosecutrix in Court, we do not find her version of forcible sexual assault to be inspiring in confidence”

23. This Court in **State of H.P. versus Ramu**, 2014 (3) Shimla Law Cases 1222 has also held that:

“16. Version of the prosecutrix that she was subjected to rape inside the hut and in the Khud, to our mind, does not inspire confidence. She admits that she was residing in a cluster of Jhuggis, which were fully occupied and people were residing there. Yet it has not come on record that she resisted the acts of the accused. On any one of the occasions, she could have easily reported the matter to the neighbours. She admits that after she was subjected to rape, she went with her parents to Patiala, which is a far of place from Nalagarh. Assuming that she was living under fear of threat from the accused, she could have conveniently disclosed such fact to her parents/relatives at Patiala, which for reasons best known to her, she did not do so. Also she admits to have stayed with her brother-in-law for quite some time, yet she did not disclose such fact to him or to her sister. Her version of the accused having threatened her and sexually assaulted her in the Khud and Jhuggi is only an improvement for it does not find mention in her previous statement (Ex.PW.1/A) with which she was confronted. Thus, we do not find the testimony of the prosecutrix to be worthy of credence, inspiring in confidence or even partly believable. Prosecutrix through her version cannot be able to establish the case set up against the accused. Testimony of the parents of prosecutrix also does not advance the case of prosecution any further.”

24. In **State of H.P. versus Krishan Lal**, 2014 (3) Shimla Law Cases 1308, this Court held that:

“16. According to PW-4 (prosecutrix), accused had come to her house alongwith Rajinder Kumar. Rajinder asked for *Pattals*. She had told them that she had only 200 *Pattals* and more *Pattals* could be supplied by her *Jethani*, Sukh Dei. They insisted her to accompany them to the house of Sukh Dei. She boarded the scooter driven by Rajinder and went towards the house of Sukh Dei. On the way, Rajinder alighted from the scooter. Thereafter, she was driven on scooter by accused for some distance. Thereafter, she was raped. It is apparent that prosecutrix has accompanied accused voluntarily. According to the prosecutrix, Rajinder knew the house of Sukh Dei. If Rajinder knew the House of Sukh Dei, she was not supposed to go with him. House of Kamla Devi was situated near her house. House of Sukh Dei was only 300 feet by road. She could raise hue and cry. Her version that she was dragged to a distance of 150 feet and her mouth was gagged, can not be believed. She was

an adult lady and could easily resist the advances of the accused. According to the FIR, after the incident, she went to the house of Kamla Devi, her *Jethani* and narrated the incident to her. However, while appearing as PW-4, she has categorically deposed that she put on her *Salwar* and came to her house. From there she went to the house of Kamla Devi. In the FIR, it is stated that she escaped from the accused and went towards jungle. She was raped in the jungle. However, when she appeared as PW-4, she deposed that accused dragged her to a distance of 150 feet and then committed rape in Khadyater."

25. Evidence discussed herein above is sufficient to hold that in given facts and circumstances, two views are possible in the present case and as such present, accused is entitled to the benefit of doubt. In the present case, prosecution story does not appear to be plausible/ trustworthy and as such same cannot be relied upon. In this regard, I may refer to the judgment passed by the Hon'ble Apex Court reported in **State of UP versus Ghambhir Singh**, AIR 2005 (92) SCC 2440, where Hon'ble Apex Court has held that if on the same evidence, two views are reasonably possible, the one in favour of the accused must be preferred. The relevant paragraph is reproduced as under:-

"6. So far as Hori Lal, PW-1 is concerned, he had been sent to fetch a basket from the village and it was only a matter of coincidence that while he was returning he witnessed the entire incident. The High Court did not consider it safe to rely on his testimony because his evidence clearly shows that he had an animus against the appellants. Moreover, his evidence was not corroborated by objective circumstances. Though it was his categorical case that all of them fired, no injury caused by rifle was found, and, only two wounds were found on the person of the deceased. Apart from this PW-3 did not mention the presence of either PW-1 or PW-2 at the time of occurrence. All these circumstances

do create doubt about the truthfulness of the prosecution case. The presence of these three witnesses becomes doubtful if their evidence is critically scrutinized. May be it is also possible to take a view in favour of the prosecution, but since the High Court, on an appreciation of the evidence on record, has recorded a finding in favour of the accused, we do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. It is well settled that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred.”

26. Consequently, in view of discussion made herein above, the present appeal is allowed. Judgment dated 6.7.2015 passed by the learned Additional Sessions Judge, Hamirpur (HP) Circuit Court Barsar, in Sessions Trial No. 05 of 2014 is set aside. Appellant is acquitted of the offences under Sections 376, 452 and 506 IPC. He is ordered to be released forthwith, if not required by the police in any other case. Fine amount, if any, deposited by the accused be also refunded to him.

27. Registry is directed to prepare and send the release warrant of the accused, to the quarter concerned, forthwith.

**(Sandeep Sharma)  
Judge**

May 23, 2017  
(Vikrant)