



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.: 327 of 2007

Reserved on: 05.07.2016

Date of Decision: 11.07.2016

State of Himachal PradeshAppellant.

Vs.
Giri Raj alias Denny and othersRespondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting? Yes.

For the appellant: Mr. V.S. Chauhan, Addl. A.G., with Mr. Vikram Thakur and Mr. Puneet Rajta, Dy. A.Gs.

For the respondents: Respondents No. 1 and 2 are proclaimed offenders.

Mr. Naresh Kaul, Advocate, for respondent No. 3.

Ajay Mohan Goel, J. :

By way of the present appeal, State has challenged the judgment passed by the Court of learned Additional Sessions Judge (1), Kangra at Dharamshala in Sessions Case No. 58-N/2005 dated 24.05.2007 vide which, learned trial Court acquitted the accused for offence punishable under Section 376 (g) of the Indian Penal Code. Before proceeding further, it is pertinent to take note of the fact that there are three respondents in the present appeal and respondents No. 1 and 2

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

have been declared as proclaimed offenders by this Court vide order dated 26.02.2013. Accordingly, the present appeal is being heard qua respondents No. 3 Chhinder alias Chhindu.

2. Briefly, the case of the prosecution is that prosecutrix is suffering from mental disorder and on 31.05.2005, complainant Nek Mohammad and one Kalu Ram were on duty as Chowkidars from 8 p.m. till 5 a.m. At about 12:30 a.m. during the intervening night of 31.05.2005/01.06.2005, the said persons were performing their patrolling duty at Gandhi Bazaar. One Shri Bishamber, R/o Raja Ka Talab called the complainant and informed that there was a lady crying from the side of tank. The complainant and Kalu Ram went towards the tank and they found the prosecutrix there with accused Gurmail alias Fauji and Giri Raj alias Denny and one other boy who was wearing ear rings. The said three persons were without their pants and under wears and the moment the complainant and Kalu Ram threw torch light, the boy who was wearing the ear ring ran away from the spot. However, accused Gurmail alias Fauji was lying there as his arm was fractured. The complainant and Kalu thereafter threw light inside the tank where the prosecutrix was found. There was no water inside the tank. One Dinesh alias Jatt went inside the tank and brought the prosecutrix out from the tank. Prosecutrix informed them that she had been raped and that her leg had been fractured. Complainant Nek Mohammad tied the string knot of trouser of the prosecutrix and Dinesh alias Jatt had picked up Gurmail alias Fauji, bundled him in his vehicle and took him away.

Kalu Ram picked up the prosecutrix on his back and took her to Bus Stand and then made her lie there on the bench. Thereafter, Kalu and the complainant left to their houses. The family members of the prosecutrix came to know about the said occurrence and on 02.06.2005 Hazari Ram, father-in-law of the prosecutrix came to the house of the complainant and made inquiries from him in this regard. Thereafter, he requested the complainant to accompany him to the Police Station. FIR Ex. PW 12/A was registered against the accused. The accused were arrested and the accused as well as the prosecutrix were got medically examined. During the course of investigation, one Chandni Guru Jassi Mahant, resident of Raja Ka Talab produced one ring Ex.-PA before the police which was taken into possession vide memo Ex. PW3/A. The said Chandni Guru Jassi Mahant stated that this ring was that of accused Chhinder. After completion of the investigation, police challaned the accused persons for having committed offence punishable under Section 376(g) of the Indian Penal Code. The challan was presented before the Court.

3. As a prima facie case was found against the accused, accordingly they were charged for the commission of offence punishable under Section 376(g) of the Indian Penal Code, to which they pleaded not guilty and claimed to be tried.

4. In order to substantiate its case, the prosecution in all examined 12 witnesses.

5. Dr. D.R. Riyal appeared as PW-1 and stated that in the year, 2005, he was posted as Medical Officer in C.H. Nurpur and on

06.06.2005, accused Chhinder was produced before him for conducting his medical examination. On examination of Chhinder, vide M.L.C. Ex. PW1/A, he opined that the said accused was found fit to perform sexual intercourse.

6. Dr. Ashutosh appeared as PW-2 and stated that he had conducted the medical examination of accused Giri Raj and Gurmail vide MLCs. Ex. PW2/B and Ex. PW2/CV and as per his opinion, both of them were capable of performing sexual intercourse.

7. Complainant Nek Mohammad stepped into the witness box as PW-3 and stated that besides being an agriculturist, he was also Panchayat Chowkidar for the last 35-40 years. He was the Watchman of bazaar. He performed his duties as a Bazaar Watchman from 8 p.m. till 5 p.m. The other Chowlidar with him was Kalu Ram, who is resident of Sukhar. He further deposed that on 31.05.2005, Kalu Ram was on duty with him. At about 12:30 a.m. during night when they were on patrolling duty at Gandhi Chowk/bazaar, one boy, s/o Master Bishamber, R/o Raja Ka Talab called them and informed that some lady was crying from the tank side. That boy also stated that he was checking electric tube light at that time. He has further deposed that tank was about 6 meters from the road in an orchard of mangoes. He and Kalu Ram went towards the tank and with torch light they found one lady there alongwith accused Fauji alias Gurmail, whose one hand was broken at the relevant time. Accused Giri Raj alias Denny was also there and the third person present there run away from the spot. PW-3 further deposed that he threw the torch

light towards him, but he could not identify him. All that he could see was that the third person was wearing an ear ring in his ear. All the three persons were naked at that time. He has further deposed that he saw accused Gurmail alias Fauji lying outside the tank and the lady was inside the tank. With torch light he saw that the said lady inside the tank was Savitri, who was mentally disturbed and quite often she was seen roaming around in the bazaar for the last many years. There was no water in the tank. He has further stated that no person by the name of Jatt came there and he and Kalu took out that lady from the tank. The trouser of the lady was tied by Kalu. The said witness was declared hostile as he has resiled from his previous statement and the prosecution was permitted to cross-examine him. In his cross-examination, he admitted that on 02.06.2005, he, Hazari Ram, Savitri Devi and Pushpa Devi went to the Police Station and lodged the FIR. He also admitted it to be correct that after recording the FIR, police read over the same to him and the contents thereof were admitted to be correct by him. He has denied the suggestion that Dinesh Jatt, driver had come at the water tank and that he had entered the water tank and tied the trouser of the prosecutrix and took the lady out of the tank. He denied the suggestion that on 07.06.2005, Chandni Guru Jassi had produced an ear ring of accused Chhinder before the Police in his presence and that from ear ring he had identified accused Chhinder on the night of occurrence was the same person who run away from the spot. Thus, the said witness has partially supported the case of the prosecution about the factum of

accused Gurmail and Denny being there in the tank with the prosecutrix. However, the remaining case of the prosecution has not been supported by the said witness.

8. Hazari Ram, father-in-law of the prosecutrix has entered into the witness box as PW-4. He has stated that Savitri Devi was mother of four children. After she gave birth to her fourth child, she was taken to hospital at Jawali for family planning operation and thereafter she lost her mental balance. He also stated that she was not mentally fit for last 20 years and on account of this, she was found roaming around in the bazaar and roads and some time, she also visited her house. She talks irrelevant and she had fits. He has further deposed that on 02.06.2005, he went to Raja Ka Talab for purchasing some household articles. There one Subash, Pradhan told him that Nek Mohammad, Chowkidar had told him that Savitri Devi had been raped during the intervening night of 31.05.2005 and 01.06.2005. On receipt of the said information, he immediately went to the house of Nek Mohammad where Nek Mohammad revealed everything to him about the occurrence of the event. Nek Mohammad told him that two persons had committed rape with Savitri Devi in a tank which was 6 feet deep. One of the rapists was disclosed by him as Fauji and other was disclosed as Denny and third person had been apprehended by the police itself. He also deposed that after arrest of these three persons, in the Police Station they had disclosed in his presence that they had raped Savitri Devi. He has further deposed that all the accused persons were working in the house of Jassi.

9. PW-5 Piara Ram has deposed that he had gone to Police Station alongwith Puran Singh and remained associated with the police. SHO had shown him ear ring, which was given to him by Chandni Guru Jassi Mahant and the same was sealed by SHO in a match box, which was taken into possession vide memo Ex. PW3/A. He has further deposed that the ear ring was identified by Nek Mohammad and thereafter he and Puran Chand had signed the said memo.

10. Rakesh Kumar (PW-6) has stated that on 31.05.2005, a Maha Yagya was conducted at the back of his house, which was to last up to 08.06.2005. He was deputed by the villagers to keep an eye on this function. He was checking the light in front of his gate. At that time, two Watchmen were crossing from site. He told them that he had heard some noise coming from a distance of about 100 meters. He has further deposed that there were orchard, service station and shop towards the side from where noise was coming. He further deposed that later on after the arrival of the police, he came to know that some lady had been raped.

11. PW-7 Puspa Devi has stated that Savitri Devi was her mother-in-law and she was mentally unstable for last many years. Savitri used to come to the house and some time, she kept on wandering on the roads. She has further deposed that she was told by her father-in-law that her mother-in-law had been raped and he asked her to accompany him to the Police Station. She further deposed that she, Hazari Ram and her mother-in-law had gone to the Police Station.

12. PW-8 HC Ramesh Chand is a formal witness, who has deposed with regard to depositing of parcels containing the case property with him in the Malkhana register as well as the sending of the said parcels by him to FSL, Junga through Constable Sudershan Singh for chemical analysis.

13. PW-9 Sudershan Singh has deposed that MHC Ramesh Chand handed over five parcels and two envelopes which were deposited by him at FSL, Junga vide R.C. No. 113/21 on 16.05.2005. On his return, he handed over the RC to MHC.

14. PW-10 Chandani Guru Jassi Mahant has deposed that she was residing in Raja Ka Talab for the last 15 years with her Guru Jassi Mahant. Accused Chhinder is from her illaqua and he is just like her brother. He was residing with her for the last 15/16 years. Chhinder goes out with her to the houses of other person wherever function is organized. They receive offerings in lieu of this. She has further deposed that they wear ear rings on such occasions. She further deposed that once her ear ring had fallen in the house of a person where they had gone for getting something and the other ring was with her. She has denied the suggestion that she had given one ear ring to accused Chhinder and that he used to wear it.

15. PW-11 Dr. Nishu Priya has deposed that she was posted as Medical Officer in Civil Hospital, Nurpur from March 2005. On 02.06.2005, she medically examined Savitri Devi and she issued MLC Ex. PW11/A. She further deposed that as per her medical opinion, the

prosecutrix was having third degree UV and was used to sexual intercourse and after receipt of medical examination, the final opinion had been given by her which is Ex. PW11/C and according to which, there was no evidence of recent sexual intercourse.

16. Inspector Nathu Ram has deposed as PW-12 and he has stated that FIR Ex. PW12/A was written by MHC as per the version of the complainant and thereafter it was signed by him. He also deposed that he moved an application Ex. PW11/A for the medical examination of the prosecutrix. He has also stated that he recorded the statements of the witnesses as per their versions. He has further stated that report of Chemical Examiner Ex. PX was received by him and thereafter he prepared the challan and presented the same in the Court for trial. In his cross-examination, he has stated that he had not moved any application to the Medical Officer to know the mental state of the prosecutrix. He has denied the suggestion Nek Mohammad was admitted in the hospital on 01.06.2005 and 32 bottles of glucose had been administered to him. He has self stated that Nek Mohammad was admitted in the hospital on 02.06.2005 and discharged on 04.06.2005. He has admitted the suggestion that he had gone to the house of Chandani Guru Jassi, but he has denied that he had brought the ear ring from her house. He has admitted it to be correct that identification parade of accused was not conducted by him.

17. This is the entire evidence which was produced on record by the prosecution in order to substantiate its case. Learned trial Court on

the basis of the said material produced on record by the prosecution, concluded that the prosecution had not been able to prove its case against the accused especially in view of the fact that PW-11 Dr. Nishu Priya has stated that as per her final opinion, there was no evidence of recent sexual intercourse with the prosecutrix. Accordingly, learned trial Court concluded that from the evidence on record, it becomes clear that there is no evidence of rape of the prosecutrix by the accused. Accordingly, it held that the prosecution had not been able to bring home the guilt of the accused for offence punishable under Section 376(g) of the Indian Penal Code. Learned trial Court thus acquitted the accused.

18. Feeling aggrieved by the said judgment passed by the learned trial Court, the State has preferred the present appeal. It was strenuously argued by the learned Additional Advocate General that the judgment of the learned trial Court was perverse and not sustainable in law. Mr. Chauhan argued that the conclusions arrived at by the learned trial Court were not borne out from the records of the case and the learned trial Court had erred in coming to the conclusion that the prosecution had not been able to prove its case against the accused. As per Mr. Chauhan, the prosecution had successfully proved on the basis of material placed on record that the prosecutrix was mentally unstable lady and she had been raped by the accused. On these grounds, he stated that the judgment passed by the learned trial Court was liable to be set aside and the accused deserved to be convicted for offence with which they were charged.

19. Mr. Naresh Kaul, learned counsel appearing for respondent No. 3, on the other hand, has argued that there is neither any infirmity nor any perversity with the judgment which has been passed by the learned trial Court. Mr. Kaul argued that in the present case, the identity of respondent No. 3 was not proved at all. He further submitted that there was no independent witness who corroborated the story of the prosecution and further it was evident from the deposition of PW-11 Dr. Nishu Priya that the prosecutrix has not been subjected to any sexual intercourse as alleged by the prosecution. Accordingly, he argued that there was no merit in the appeal filed by the State and the same was liable to be set aside.

20. Before proceeding further, we may take note of the fact that in the present case, there is no eye witness, therefore, it is a case of circumstantial evidence.

21. At this stage, it is relevant to take note of the judgment of the Honble Supreme Court on circumstantial evidence in **Vijay Thakur Vs. State of Himachal Pradesh**, (2014) 14 Supreme Court Cases 609, relevant paras of which are quoted below:

“18. It is to be emphasized at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused

person, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

19. In Mani v. State of Tamil Nadu, (2008) 1 SCR 228, this Court made following pertinent observation on this very aspect:

“26. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case....”

20. There is a reiteration of the same sentiment in Manthuri Laxmi Narsaiah v. State of Andhra Pradesh, (2011) 14 SCC 117 in the following manner:

“6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence.”

21. Likewise, in Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724, this Court observed as under:

“24. In a most celebrated case of this Court, Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185) “(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

22. Thus, the salient points which have been carved out by the Hon'ble Supreme Court in the case of circumstantial evidence, on the

basis of which the guilt of the accused can be brought home are as under:

- “(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established;*
- (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (iii) The circumstances should be of a conclusive nature and tendency;*
- (iv) They should exclude every possible hypothesis except the one to be proved; and*
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

23. The Hon’ble Supreme Court in **Sangili alias Sanganathan** Vs. **State of Tamil Nadu**, (2014) 10 Supreme Court Cases 264 has held as under:

“15. To sum up what is discussed above, it is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. In the present case, we find, in the first instance, that the appellant was roped in with

suspicion that it was a case of triangular love and since he also loved PW-3, he eliminated the deceased when he found that the deceased and PW-3 are in love with each other. However, we are of the view that this motive has not been proved. The evidence of last seen is also not established. Father of the deceased only said that the deceased had received a call and after receiving that call he left the house. In his deposition, he admitted that he had not seen the appellant before and he did not recognize his voice either. Therefore, he was unable to say as to whether the phone call received was that of the appellant. Proceeding further, we find that the deceased was not seen by anybody after he left the house. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

16. In *Mani v. State of Tamil Nadu*, (2009) 17 SCC 273, this Court made following pertinent observation on this very aspect:

“26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case....”

There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of Andhra Pradesh*, (2011) 14 SCC 117 in the following manner:

“6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit

thereof. We are of the opinion that the present is in fact a case of no evidence.”

17. *Likewise, in Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724, this Court observed as under:*

“24. In a most celebrated case of this Court, Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185) “(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established; (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

24. In these circumstances because it is a case of circumstantial evidence, this Court has to satisfy its judicial conscience as to whether by way of circumstantial evidence produced on record by the prosecution, it

has been able to link the commission of the offence with the accused or not.

25. As per the case of the prosecution, the alleged occurrence of the incident was intimated to complainant Nek Mohammad and Kalu Ram by son of Bishamber, R/o Raja Ka Talab. The son of Bishamber, i.e. Rakesh Kumar has entered into the witness box as PW-6. The complainant has entered into the witness box as PW-3. Rakesh Kumar has deposed that on the fateful night, he heard some noise coming from a distance of about 100 meters from the side where there was an orchard, service station and shops etc. and he disclosed this fact to two Watchmen who were crossing from that site. PW-3 Nek Mohammad has deposed that on the fateful night PW-6 told him that some lady was crying from the tank side. The second Watchmen, namely Kalu has not been examined by the prosecution. PW-6 Rakesh Kumar has not mentioned in his statement that he informed the Watchman that he heard the noise of a lady crying from the tank side. Thus, there is contradiction between the statement of PW-6 and PW-3 as to what was actually reported to the complainant by PW-6.

26. Further, as per the case of the prosecution, when the two Watchmen reached the spot, they found three persons with the prosecutrix, out of which one ran away. One Dinesh alias Jatt came there who went inside the tank and took the prosecutrix out from the tank on his lap. The prosecutrix thereafter told them that she had been raped and her leg had been fractured. Complainant tied the string knot of the

trouser of the prosecutrix and Dinesh alias Jatt picked Gurmail bundled him in his vehicle and took him away. Prosecutrix was taken back to the Bus Stand by Kalu Ram.

27. This version of the prosecutrix is not supported by the complainant, i.e. PW-3. Not only this, surprisingly the prosecution has not produced Dinesh alias Jatt in the witness box. In this view of the fact that there is variation in the statements of PW-3 and PW-6 and further neither Kalu nor Dinesh alias Jatt have been produced in the witness box by the prosecution, the version put forth by the prosecution with regard to the alleged occurrence of the event gets shrouded with doubts.

28. Now coming to the deposition of father-in-law of the prosecutrix PW-4 Hazari Ram, he has stated that on 02.06.2005, he went to Raja Ka Talab for purchasing some household articles and there one Subash Pradhan met him and told him that Nek Mohammad had told him that Savitri Devi had been raped during the intervening night of 31.05.2005 and 01.06.2005. The said witness has been confronted with the statement which he had made to the police, in which statement, it is not so recorded that Subhash, Pradhan told PW-4 that he had been told by Chowkidar Nek Mohammad that daughter-in-law of PW-4 was raped on the fateful night. In fact, what has been recorded in the statement of PW-4 made under Section 161 of Cr. P.C. is that Subhash Pradhan told him that his daughter-in-law had been raped by some people and thereafter he went to the house of Chowkidar Nek Mohammad. The prosecution incidentally has not examined the said Subhash Pradhan

also. Nek Mohamad has not supported the version of the prosecution and he has been declared as hostile witness. According to PW-4, he, Nek Mohammad, prosecutrix and his daughter-in-law went to the Police Station and thereafter the FIR was got registered.

PW-7 Pushpa Devi in her statement has deposed as under:

“I, Hazari Ram and my mother-in-law had gone to the Police Station. I don't know any other person.”

29. Thus, as per PW-7, Nek Mohammad did not accompany them to the Police Station. In our considered view, both PW-4 and PW-7 are interested witnesses as they are closely related to the prosecutrix. Therefore, their statements have to be read very carefully in order to conclude whether they inspire any confidence and whether they are trustworthy so as to be made basis for the conviction of the accused.

30. In our considered view, the statements of these witnesses as well as other prosecution witnesses, especially the complainant do not inspire confidence. There are too many improvements and contradictions in the statements of these persons. Normally Court does expect variations keeping in view the fact that much time elapses between the occurrence of the event, recording of statements under Sections 154 and 161 Cr. P.C. and the witnesses thereafter deposing in the Court of law. However, in this case, the contradictions are glaring.

31. Another important and factual aspect of the matter is that according to the prosecution, the prosecutrix was mentally unstable,

however, strangely the prosecution has not got the prosecutrix medically examined to establish this fact on record. PW-12 Inspector Nathu Ram has stated that no application was moved for forming Medical Board so as to ascertain the mental state of the prosecutrix. Now, in this background, when we peruse the statement of PW-11 Dr. Nishu Priya and the MLC issued by her, both shatters the case of the prosecution.

PW-11 has categorically stated as under in her stated in the Court:

“After receipt of report of Chemical Examiner, the final opinion has been given by me which is Ex. PW11/C, according to which there was no evidence of recent sexual intercourse.”

32. Further, a perusal of Ex. PW-11/C demonstrates that the final medical opinion given by PW-11 is as under:

“....Hence, there is no evidence of recent sexual intercourse/.....as per the chemical analysis report. Report has been signed by Chemical Examiner to the Govt. of Himachal Pradesh.”

33. Another important aspect of the matter is that the identity of respondent No. 3 has also not been established beyond reasonable doubt by the prosecution. PW-12 has admitted in his cross-examination that no identification parade of the accused was conducted by him. There is no material on record to suggest that the complainant or the other Chowkidar present with him had identified respondent No. 3 at the spot. The said respondent has been arrayed as accused on the basis of the

alleged recovery of ear ring. The alleged recovery of ear ring has also not been established beyond reasonable doubt by the prosecution. Chandani Guru Jassi Mahant has not supported the story of the prosecution. Though the said witness was declared as hostile, but in her cross-examination, the prosecution has not been able to elucidate anything relevant to further the cause of the prosecution.

34. Therefore, it is evident from the discussion held above that the prosecution has not been able to link the accused/respondent No. 3 with the commission of the offence. The chain of circumstances is totally incomplete and it cannot be said on the basis of material produced on record by the prosecution that the case against respondent No. 3 stood proved by the prosecution beyond reasonable doubt.

35. Further, a perusal of the judgment passed by the learned trial Court reveals that all these aspects of the matter have been minutely gone into by the learned trial Court and thereafter on the basis of the appreciation of material on record, learned trial Court has come to the conclusion that the prosecution has not been able to establish its case against the accused beyond reasonable doubt. We do not find any perversity or infirmity with the findings so recorded by the learned trial Court. In our considered view also, on the basis of the material produced on record by the prosecution, it has not been able to prove beyond reasonable doubt that respondent No. 3 was guilty of the offence alleged against him. Accordingly, the judgment passed by learned trial Court in

this regard qua respondent No. 3 is upheld and the present appeal qua respondent No. 3 is accordingly dismissed.

(Rajiv Sharma)
Judge

(Ajay Mohan Goel)
Judge

July 11, 2016
(bhupender)

High Court of H.P.