

Harpal Singh and Another

Vs

State of Himachal Pradesh

Criminal Appeal No. 273 of 1975

(Syed M. Fasal Ali, A. D. Kpshal JJ)

14.11.1980

JUDGMENT

S. MURTAZA FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Himachal Pradesh. The appellants have been convicted under Section 376 of the Indian Penal Code and sentenced to rigorous imprisonment for four years each. The central evidence in the case consists of the testimony of Saroj Kumari, the girl who is said to have been raped by the appellants and another who was acquitted by the trial Court. The occurrence, according to the prosecutrix, took place on the night intervening August 20 and 21, 1972. The first information report was lodged on August 31, 1972. The complainant had given reasonable explanation for lodging it after ten days of the occurrence. She stated that as honour of the family was involved, its members had to decide whether to take the matter to the court or not. It is not uncommon that such considerations delay action on the part of the near relations of a young girl who is raped. The prosecutrix has narrated her story before the Committing Magistrate as well as Sessions Judge. Leaving aside minor contradictions here and there her testimony is consistent. Both the High Court and the Sessions Judge have believed it and it is corroborated by the evidence of her own brother and father to whom she has related the details of the occurrence without delay after she was rescued.

2. Mr Hardy laid emphasis on the circumstances that no injury was detected on the private parts of the girl and that she was found to have been used to sexual intercourse and argued that it was a case of sexual intercourse by consent. This argument will be of no avail to the appellants if once it is proved that the girl was below 16 years of age, because in that case the question of consent becomes wholly irrelevant.

3. In the instant case the prosecution has proved the age of the girl by overwhelming evidence. To begin with, there is the evidence of Dr Jagdish Rai (PW 14) who is a radiologist and who, after X-ray examination of the girl found that she was about 15 years of age. This is corroborated by Ex. PF, which is an entry in the admission register maintained at the Government Girl's High School, Samnoli (wherein the girl was a student) and which is proved by the Headmaster. That entry states the date of birth of the girl as October 13, 1957. There is yet another document, viz., Ex. PD, a certified copy of the relevant entry in the birth register which shows that Saroj Kumari, who according to her evidence was known as Ramesh during her childhood, was born to Lajwanti wife of Daulat Ram on November 11, 1957. Mr Hardy submitted that in the absence of the examination of the officer/Chowkidar concerned who recorded the entry, it was inadmissible in evidence. We cannot agree with him for the simple reason that the entry was made by the concerned official in the discharge of his official duties, that it is therefore clearly admissible under Section 35 of the

Evidence Act and that it is not necessary for the prosecution to examine its author. From whatever angle we view the evidence, the conclusion is inescapable that Saroj Kumari was below 16 years of age at the time of the occurrence. Accordingly we agree with judgments of the courts below and see no merit in this appeal which is dismissed.

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