

STATE OF HIMACHAL PRADESH

v.

PREM SINGH

(Criminal Appeal No. 44 of 2002)

NOVEMBER 11, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for the appellant- State and learned counsel for the respondent (hereinafter referred as to as the 'accused').

2. On the allegation that the respondent had sexually ravished PW- 1 and had outraged the modesty of not only P W- 1, but of several other girl students of the school where the respondent was a teacher, law was set in motion. The respondent was further charged for commission of offences relating to threatening the prosecutrix with dire consequences in case she disclosed the incident to somebody else. The accused faced trial for offences punishable under Sections 376, 354 and 506 of the Indian Penal Code, 1860 (in short 'the IPC').

3. The learned Addl. Sessions Judge, Mandi, Himachal Pradesh found the accused guilty of all the offences, sentenced him to undergo rigorous imprisonment for ten years', six months' and six months' respectively. In appeal, the High Court set aside the judgment of conviction and sentence and directed acquittal of the respondent.

4. In support of the appeal, learned counsel for the appellant-State submitted that the reasons indicated by the High Court are indefensible. The High Court has treated delay in lodging the FIR in a case involving rape, to be similar to that involving other offences. Additionally, it was submitted that the evidence of P W- 1, the prosecutrix has been lightly brushed aside.

5. In response, learned counsel for the respondent- accused submitted that not only there was inordinate delay in lodging the FIR,

but also, the fact that the prosecutrix claimed to have told her mother and a teacher about the alleged incident at the first instance and, thereafter, there was total silence of nearly two years, casts doubt on the authenticity of the prosecution version. In any event, it is submitted, that the offence punishable under Section 376 I PC is not made out.

6. So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction. Additionally, we find that the prosecution has clearly established commission of offence punishable under Sections 354 and 506 I PC. So far as the offence punishable under Section 376 I PC is concerned, the basic ingredients are set out in Section 375 I PC. On a reading of the evidence of the prosecutrix, we find that a case of rape has not been established so far as the respondent is concerned.

7. That being the position, we allow the appeal of the State to the extent that the respondent is convicted for offences punishable under Sections 354 and 506 I PC. The sentences are two years' and six months' rigorous imprisonment respectively. It is stated that the appellant has suffered more than that period of custody. If that being so, he need not surrender to custody,. The appeal is allowed to the aforesaid extent.