

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No.52 of 2015
Date of Decision: 14.08.2026**

Sher Singh		Petitioner
	Versus	
State of Himachal Pradesh		Respondent

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the Petitioner: Mr. Virender Singh Rathore, Advocate.

For the Respondent: Mr. Rajan Kahol, Additional Advocate General with
Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, J. (Oral)

Instant criminal revision petition filed under Sections 397 and 401 Criminal Procedure Code, lays challenge to judgment dated 09.01.2015 passed by the learned Additional Sessions Judge-II, Shimla, H.P., Camp at Rohru, in Criminal Appeal No.15-R/10 of 2014/2011, affirming the judgment of conviction and order of sentence dated 31.05.2011/04.06.2011 passed by the learned Judicial Magistrate First Class, Court No.1, Rohru, District Shimla, HP, in Case No. 6/2 of 1998, whereby the court below, while holding the petitioner-accused (hereinafter "**accused**") guilty of having committed offence punishable under Section 354 of Indian Penal Code, convicted and sentenced him to undergo rigorous imprisonment for a period of one year; to pay fine to the tune of Rs.1,000, and in default to undergo simple imprisonment for a period of 3 months.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that complainant, namely Smt. Shanta Devi (PW-1) filed an application under

Section 156(3) Cr.P.C (PW1/A) before the learned Judicial Magistrate First Class, Court No.I, Rohru, H.P., alleging therein that she is a resident of Village Betiyani, whereas accused Sher Singh belongs to Village Baagi (Theoti), Tehsil Chirgaon, District Shimla, HP. She alleged that on 14.11.1997 at about 05:00 p.m, while she was cutting grass and grazing bulls in her fields at place Khalinaal, accused suddenly came there from Chirgaon side under influence of liquor and caught hold of her by the neck and attempted to outrage her modesty. She alleged that though she tried to save herself, but accused also tore her clothes and when she raised alarm for help, two persons, namely Vinod Kumar and Yashpal, came on the spot and rescued her from the clutches of the accused. She alleged that during scuffle, she lost her golden nose pin and earrings worth Rs.1,000. She alleged that though at first instance, she visited Police Post, Chirgaon, on 15.11.1997 and submitted a written complaint, but no action was taken by the police and as such, she approached court below by way of an application under Section 156(3) Cr.P.C. Pursuant to directions issued in the aforesaid application (Ext. PW1/A), police registered an FIR (PW5/A) against the accused.

3. After completion of investigation, police presented *challan* in the competent court of law, which subsequently, being satisfied that prima facie case exists against the accused under Section 354 of Indian Penal Code, proceeded to frame charge against him under aforesaid provision of law, to which he pleaded not guilty and claimed trial.

4. Prosecution, with a view to prove its case, examined as many as five witnesses, whereas accused, in his statement under Section 313

Cr.P.C, denied the case of the prosecution in toto and claimed himself to be innocent. However, despite sufficient opportunities, accused failed to lead any evidence in defence.

5. Learned trial court, on the basis of evidence adduced on record by the prosecution, vide judgment/ order dated 31.05.2011/04.06.2011, held accused guilty of having committed offence punishable under Section 354 of Indian Penal Code and accordingly convicted and sentenced him as per description given herein above.

6. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence recorded by the court below, accused preferred an appeal under Section 374 of Code of Criminal Procedure before the learned Additional Sessions Judge-II, Shimla, HP, Camp at Rohru, but the same was dismissed vide judgment dated 09.01.2015. In the aforesaid background, accused has approached this court in the instant proceedings, praying therein for his acquittal after setting aside the judgment of conviction and order of sentence recorded by court below.

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

8. Precisely, the case of the accused, as has been highlighted in the grounds of the petition and further canvassed by Mr. Virender Singh Rathore, learned counsel for the accused, is that learned Additional Sessions Judge-II, Shimla, HP, while upholding the judgment of conviction and order of sentence, failed to appreciate the evidence in its right perspective, as a result thereof, findings to the detriment of the accused, who has been falsely implicated, have come to fore. He submitted that

there are material contradictions and inconsistencies in the statements made by the material prosecution witnesses and as such, same could not have been made basis for recording the judgment of conviction and order of sentence against the accused. Mr. Rathore, learned counsel representing the accused, argued that there was a delay of eight days in lodging the FIR, and no plausible explanation for the said delay was ever rendered on record. He further submitted that if the statement of the complainant is read in conjunction with the statements made by the other witnesses, the story put forth by the prosecution becomes highly doubtful.

9. To the contrary, Mr. Anish Banshtu and Mr. Ravi Chauhan, learned Deputy Advocate General(s), representing the respondent-State, while refuting the aforesaid submissions made on behalf of the accused, vehemently argued that both the courts below have appreciated the evidence in its right perspective and there is no scope of interference. They submitted that version put forth by the complainant, while deposing as PW-1, has been duly corroborated by the material prosecution witnesses, i.e. PW2, PW-3 and PW-4. They submitted that since statements of the prosecution witnesses came to be recorded after 2 years of date of occurrence, minor contradictions, if any, in their version with regard to incident, may not be fatal to the case of prosecution, rather, to ascertain the guilt, if any, of the accused, this Court is required to appreciate the evidence in its entirety, which clearly establishes the guilt of the accused. They submitted that otherwise also, while exercising revisional jurisdiction, this Court has very limited jurisdiction to re-appreciate the evidence, especially when both the courts below have returned concurrent findings.

They further submitted that there was no delay of eight days, as claimed by the accused, rather there was a delay of only three days, which had been sufficiently explained.

10. Since question of limited jurisdiction under Section 397 Cr.P.C has been raised, this Court at first instance deems it fit to deal with the same. True it is that this Court has a very limited jurisdiction under Section 397 of the Cr.PC, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the Courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case **"State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri"** (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

11. True it is that the Hon'ble Apex Court in **Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241**; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is

not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal Court in its judicial process or illegality of sentence or order.

12. It clearly emerges from the record that on 14.11.1997, alleged incident happened, but written complaint under Section 156(3) Cr.P.C came to be lodged on 17.11.1997 that too on the pretext that at first instance, complainant had lodged report with the Police Chowki Chirgaon, but since no action was taken, complainant was compelled to lodge complaint under Section 156(3) Cr.P.C in the competent Court of Law, seeking therein direction to SHO of the Police Station concerned to lodge FIR against the accused. Though this Court finds that after three days of alleged incident, an application under Section 156(3) Cr.P.C came to be filed, seeking therein direction to lodge FIR against the accused at the behest of the complainant, but no material worth credence ever came to be adduced on record to prove the factum, if any, that at first instance, complainant had attempted to lodge complaint at Police Station Chirgaon.

13. HC Pratap Singh (Investigating Officer), while deposing as PW-5, categorically admitted, in his cross-examination, that no complaint was ever filed by the complainant with regard to alleged incident prior to lodging of complaint on 14.11.1997 under Section 156(3) Cr.P.C before the competent Court of Law.

14. At this stage, it is also appropriate to take note of statement made by PW-3, Jog Nath, husband of the complainant. This witness stated that for approximately six to seven days, complainant was unable to come

out of the house after the alleged incident. Aforesaid version of him is totally contrary to the claim of the complainant that at first instance, she made an attempt to lodge FIR at Police Station Chirgaon. If the complainant was unable to move out of the house, as came to be stated by her husband, there was no occasion, if any, for her to visit the Police Station Chirgaon. Though it is a matter of record that on 17.11.1997, an application under Section 156(3) Cr.P.C came to be filed at the behest of the complainant to the Magistrate of the area concerned for issuance of direction to Police Station concerned to lodge FIR, but as per statement of PW-3 Jog Nath, complainant, after the alleged incident, was unable to come out of house after for almost six to seven days.

15. Complainant, while appearing as PW-1, deposed on oath that about two years back, while she was cutting grass in her field located at Village Betiyani at about 5:00 p.m., accused came to the field and caught hold of her by her neck and breast. She further deposed that she tried to rescue herself and in that process, her shirt was also torn. She further deposed that in the meanwhile, persons, namely, Vinod and Yashpal, came on the spot and rescued her from the clutches of the accused. She deposed that blood started oozing out from her nose, her golden nose pin and silver earrings were also lost during the scuffle. She stated that the accused caught hold of her with a view to outrage her modesty and also pulled her salwar. She deposed that Vinod and Yashpal took her to her house and thereafter she filed an application (PW-1/A) in the Court. While stating that police visited the spot and took her shirt into possession vide memo (PW-1/B), she further deposed that she moved an application before the Court

after three days of the occurrence as the road was closed due to flood. She deposed that at the time of alleged incident, her husband had gone to cast his vote at Chirgaon, who returned in the night and thereafter she narrated the entire incident to her husband. In her cross-examination, she admitted that it was dark, when the accused caught hold of her. She deposed that Village Betiyani is situated about 2 miles away from the spot. She stated that two houses were located near the spot at a distance of 10 to 12 feet, but no one was present in those houses as they had gone to cast their votes. She stated that Vinod and Yashpal, residents of Village Betiyani, were going through the path, which is at a distance of about 200 to 300 meters from the spot. She stated that on the next day of occurrence, she visited Police Post Chirgaon, but police officials did not take any action, and due to this reason, she filed complaint in the Court. While stating that there was abrasion on her neck, which was noticed by the Police, she admitted that she was not medically examined. She denied the suggestion that the accused had neither caught hold of her by her neck or breast nor pulled her salwar, and she was deposing falsely because the accused did not have cordial relations with her husband. She denied the suggestion that witnesses Vinod Kumar and Yashpal were related to her on the ground that they belonged to the Rajput community. If the version put forth by the aforesaid witness is read in its entirety, there are material contradictions with regard to attempt, if any, made by the complainant to lodge report at Police Station Chirgaon immediately after the incident. In her examination-in-chief, she categorically stated that after three days of alleged incident, she filed a complaint to the Magistrate of the area concerned under Section

156(3) Cr.P.C against the accused, whereas in her cross-examination, she stated that on the next day of occurrence, she visited Police Post Chirgaon, but police officials did not take any action. Though aforesaid version of her is in total contradiction to the version put forth by PW-5 Pratap Singh (Investigating Officer), but even otherwise, her aforesaid version is falsified from her own statement given in examination-in-chief.

16. PW-2 Vinod Kumar deposed that while he was coming from Chirgaon after purchasing household articles, he heard some noise and thought that someone might be quarreling. He deposed that before he could reach the spot, he saw that accused had made complainant lie on the field and she was trying to rescue herself from the accused. He deposed that he caught hold of the accused from his arm and questioned him as to what he was doing and thereafter accused ran away from the spot. He deposed that shirt of the complainant was torn and blood was oozing from her nose. He deposed that when he asked the complainant as to what had happened, she narrated that the accused had attempted to rape her, and when she told the accused that she will disclose the entire incident to her husband, he attempted to kill her. He deposed that at that time, person namely Rajpal was also accompanying him, who also visited the spot along with him. However, aforesaid Rajpal was never examined. During his cross-examination, he stated that spot, where occurrence took place, was at a distance of about 300 meters from the path, through which they were going. In response to a Court question that whether the spot was about 1 Km away from the path, aforesaid witness replied that it might be so. However, he denied that no noise could be heard from the place where he

was going. He deposed that he had made a statement before the police similar to one made by him in Court. He admitted that he had not narrated before the police that accused was also pressing breast of the complainant. He denied that accused used to work as a labourer with his father. He denied that accused was not having cordial relations with his father for last 7 to 8 years, as he was deposed falsely to take revenge from him.

17. PW-3 Sh. Jog Nath, husband of complainant, deposed that on 14.11.1997, he had gone to Chirgaon for hearing the election results and two persons from his village, namely, Ram Chander and another person, whose name he did not know, told him that Sher Singh had attempted to commit rape upon his wife. He deposed that Vinod and Yashpal also met him at Chirgaon, who disclosed him that they rescued his wife from the accused. He stated that when during the night, he returned to his house, then his wife narrated the entire incident to him. He deposed that on the next day, they visited police post and reported the matter, but no action was taken. Thereafter they went to Rohru and lodged the present case. In his cross-examination, he admitted that Ram Chander and another person from his village had met him at Chirgaon at about 6:00 p.m. and S/Sh. Vinod and Yashpal had also met him at the same time. He further admitted that he did not disclose the incident to the members of the Panchayat or to any other person of the village. In response to a Court question as to why he had lodged the present complaint when the police party had visited the spot on 21.11.1997, he stated that the complaint was first filed before the Court and thereafter the police visited the spot. He stated that his wife remained confined to bed for 6-7 days and did not go anywhere during that

period. He denied that he was having dispute with the accused for the last 6-7 years. He feigned ignorance that accused was not having good terms with Bhagwan Dass, with whom he had good relations.

18. If the version put forth by the aforesaid witness is read in its entirety, it clearly reveals that he was not present on the spot, rather entire incident was disclosed to him by the persons, namely, Ram Chander, Vinod Kumar and Yashpal. Interestingly, this witness stated that Vinod Kumar and Yashpal (PW-4) also met him at the same time. If his statement is read in its entirety, it reveals that person, namely, Ram Chander had met him at Chirgaon at 6:00 p.m., meaning thereby, Vinod Kumar and Yashpal also met him at Chirgaon at 6:00 p.m. If the statements of Yashpal and Vinod Kumar are read in conjunction with the statement of PW-1, it emerges that at the time of alleged incident, Vinod Kumar and Yashpal were going back to their Village Betiyani from Chirgaon. Once these persons had already reached Village Betiyani, there was otherwise no occasion for them to meet Sh. Jog Nath at Chirgaon. Another person, namely Ram Chander, who allegedly met PW-3 Jog Nath at Chirgaon, never came to be examined. Similarly, version put forth by this witness that at first instance, they visited Police Station Chirgaon, is totally contrary to version put forth by the complainant in her examination-in-chief, wherein she stated that after three days of incident, they lodged a complaint under Section 156(3) Cr.P.C.

19. PW-4 Yashpal, while stating that he was working as a domestic servant of Sh. Vidya Nand, resident of Village Betiyani, deposed that on 14.11.1997, he along with Vinod Kumar was returning from Chirgaon to

Betiyan and at about 5:00 p.m., when they reached near Village Betiyani, they heard cries of a lady, and when they reached the spot, he saw that accused had caught hold of the complainant from her arm and had made her lie on the ground and the accused was also pressing her breast with one hand. He deposed that they rescued the complainant from the accused and thereafter accused ran away from the spot. While stating that complainant was weeping, he deposed that she told that accused was trying to outrage her modesty. He also stated that complainant also narrated that her golden nose pin had been lost somewhere. He stated that at about 10 to 12 p.m., a police official called him and Vinod Kumar, and they visited Police Post Chirgaon on 21.11.1997, where police recorded their statements and at that time, complainant Shanta Devi was also present. During his cross-examination, he stated that accused Sher Singh was not known to him, and he had seen him for the first time on the date of the alleged incident. He further stated that they had seen the quarrel from a distance of about 100 metres and Village Betiyani was situated about 1 kilometre from the spot. He also stated that the field where the occurrence took place was adjoining to a path. He stated the button of the shirt of the complainant was broken, it was also torn, and string was also broken. He stated that he had disclosed the occurrence to the police, but his statement was not read over to him. He stated that he was not aware whether the family of the complainant had cordial relations with Vidya Nand. However, he admitted that Shanta Devi used to visit the house of Vidya Nand. He denied that Vidya Nand had tutored him to depose in favour of the complainant Smt. Shanta Devi. He admitted that on that day,

he had travelled by bus along with the husband of the complainant, however, he denied that the husband of the complainant had paid his bus fare. If the testimony of the aforesaid witness is read in its entirety, juxtaposing version put forth by PW-1 Shanta Devi and PW-3 Jog Nath, this Court has no hesitation to conclude that there are material contradictions and inconsistencies with regard to the distance of the path from the field where the alleged incident took place, as well as with regard to the alleged disclosure of the incident by PW-2 and PW-4, Vinod Kumar and Yashpal, to the husband of the complainant, PW-3 Jog Nath.

20. As has been noticed herein in above, versions put forth by the complainant, PW-3 Vinod Kumar and PW-4 Yashpal, clearly reveal that alleged incident took place at about 5:00 p.m. and during that time, both Vinod Kumar and Yashpal were present in the fields near path going to Village Betiyani, but as per version put-forth by PW-3 Jog Nath, he was apprised with regard to incident at about 6:00 p.m. by Vinod Kumar and Yashpal at Chirgaon, whereas aforesaid witnesses have categorically stated that while they were returning from Chirgaon to their Village Betiyani at 5:00 p.m., they witnessed the complainant being assaulted by a person, namely Sher Singh. If aforesaid persons were already in Village Betiyani and had an occasion to witness the incident, it is not understood, who were those Vinod Kumar and Yashpal, who at about 6:00 p.m. disclosed to PW-3 Jog Nath that his wife had been assaulted by the accused.

21. Similarly, this Court finds that complainant, while getting her statement recorded, nowhere alleged that accused had made her to lie on the field, rather she simply stated that accused came from behind, caught

hold of her neck and pressed her breast, whereas PW-2 and PW-4 deposed that when they reached spot of occurrence, accused had made the complainant lie on the ground and was pressing her breast.

22. Interestingly, PW-4, Yashpal, in his cross-examination, admitted that he had come to the Court with the husband of the complainant and his relations with Shanta Devi and her husband were very cordial. It has also come in the statement of the complainant PW-1 Smt. Shanta Devi that there were houses situated at a distance of about 10-20 metres from the spot, but it is not understood that why no person residing in those houses, situated at a distance of merely 20 metres, heard the cries, if any, raised by the complainant. As per story of the prosecution, PW-2 Vinod Kumar and PW-4 Yashpal, who were at a distance of 300 meters from the spot, heard the cries of the complainant.

23. Though at this stage, Mr. Ravi Chauhan, learned Deputy Advocate General, attempted to state that as per version put forth by the complainant (PW-1), no one was present in houses, which were at a distance of 10 to 12 meters, as all of occupants had gone to cast their votes, but this Court is not impressed with the aforesaid explanation rendered on record, because bare perusal of statement made by PW-5 nowhere suggests that he, after having reached spot, ever made any attempt to associate a witness from the houses which were only at a distance of 10 to 12 meters from the spot. Had Investigating Officer made any effort to examine the persons residing in the houses, which were at a distance of 10 to 12 meters from the place of occurrence, prosecution would have been in a better position to prove its case against the accused.

No doubt, version put forth by the complainant in such like cases is sufficient to conclude guilt, if any, of the accused, but if the careful reading of the statement made by the complainant juxtaposing statements made by other witnesses creates suspicion and doubt with regard to correctness of her version, same is required to be taken into consideration with utmost care and caution, while establishing guilt of the accused.

24. In the case at hand, taking note of statement made by PW-3 Jog Nath, husband of the complainant, who categorically stated that at about 6:00 p.m., on the date of alleged incident, PW-2 Vinod and PW-4 Yashpal, met him at Chirgaon, version put-forth by PW-2 Vinod and PW-4 Yashpal that they at about 5:00 p.m. on the date of alleged incident, after having heard cries of the complainant, went to the field and found that accused was assaulting the complainant, becomes doubtful.

25. Once as per PW-3 Jog Nath, persons, namely, Vinod Kumar and Yashpal, were at Chirgaon at 6:00 p.m., it is not understood how they could be present at 5:00 pm. at Village Betiyani. Moreover, these persons, while deposing before Court, categorically stated that while they were returning from Chirgaon to their village Betiyani, they witnessed the aforesaid incident, meaning thereby, they attempted to prove that at the time of alleged incident, they had already returned to their village from Chirgaon, whereas such version of them is in total contradiction to the statement made by PW-3 Jog Nath, who claimed that factum of his wife being assaulted by the accused came to his knowledge through persons, namely, Vinod Kumar, Yashpal, and Ram Chander. Ram Chander never came to be examined. There is another aspect of the matter that

complainant nowhere stated in her statement that attempt, if any, was ever made by the accused to rape her, but interestingly, PW-2, PW-3, PW-4 attempted to state that accused, while outraging the modesty of the complainant, also attempted to rape her.

26. Having scanned the statements of all the material prosecution witnesses as have been taken note hereinabove, this Court is fully convinced and satisfied that there are material contradictions and inconsistencies in the prosecution evidence.

27. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in **C. Magesh and others versus State of Karnataka (2010) 5 Supreme Court Cases 645**, wherein it has been held as under:-

"45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:- (SCC p.704, para 14)

"14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so," hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the

evidence of all the witnesses and thereby satisfying the test of consistence in evidence amongst all the witnesses.”

28. Consequently, in view of the discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, the same is allowed. Impugned judgments of conviction and order of sentence dated 09.01.2015 and 31.05.2011/04.06.2011, passed by the Courts below are quashed and set-aside and the accused is acquitted of the charge framed against him under Section 354 of the IPC. Interim order, if any, is vacated. Bail bonds, if any, are discharged.

The petition is disposed of along with pending applications, if any.

(Sandeep Sharma)
Judge

August 14, 2026
(sunil)