

(2012) 11 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 132 of 2005

Deepak Sood

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 294, 354, 509

Citation : (2013) 1 ShimLC 16

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : Anoop Chitkara, Ms. Divya Sood and Mr. Shivendra Singh, for the Appellant; A.K. Bansal, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Surinder Singh, J.—The present petition has been directed by the petitioner, hereinafter to be referred as "the accused", against the order of the learned Additional Sessions Judge (Fast Track Court), Shimla, whereby the appeal against his conviction and sentence passed by the learned trial Court in Criminal Case No. 264/2 of 1999 on 28.1.2002, for the offences punishable under Sections 294, 354 and 509 of the Indian Penal Code, was dismissed. In short, the prosecution story as emerges from the evidence on record, can be stated thus. Late Shri Bakshi Ram had four sons, namely DW-7 Onkar Sood, father of the accused, Parmod Sood, husband of the complainant, Subhash Sood and Ishwar Dass. He died leaving behind the landed property consisting of houses, shops and coal-companies etc. in Shimla. Thereafter partition took place on 10.12.1994 amongst his legal heirs. Shimla Coal Company fell in the share of Onkar Sood and Punjab Coal Company in the share of Parmod Sood. Some were not satisfied with the shares allotted to them, which ignited litigation mainly between Parmod Sood and DW 7 Onkar Sood.

2. Complainant Lilly Sood is the wife of Parmod Sood, the real aunt of the

accused. The Punjab Coal Company which fell in the share of Parmod Sood is located adjacent to the National Highway near bus-stand, opposite to taxi Union office at Shimla on the path leading to Lalpani area.

3. It is alleged that on 11.9.1999 at about 9.00 a.m., when the complainant was opening the shutters of aforesaid shop, the accused used obscene language to her. On that day her husband was away to Chandigarh to attend some marriage. Again on 15.9.1999 when she was standing in the front of her shop-cum-office, the accused is alleged to have repeated the same obscene language. When she desisted him not to do such activities, he told her that he could do whatever he liked and would see her later. On this, she wrote complaint Ext. PW1/A addressed it to the Superintendent of Police, Shimla, which was marked to SHO, Sadar Shimla for necessary action and report, on the basis of which FIR Ext. PW3/A was lodged under the aforesaid Sections. Police visited the spot, prepared the site plan Ext. PW3/D of the alleged place of incidence and recorded her supplementary statement as well as the statement of her son PW-2 Vivek Sood, prepared the challan and presented in the Court for trial of the accused.

4. The accused was accordingly charge-sheeted for the offences aforesaid to which he pleaded not guilty and claimed trial.

5. The prosecution examined the complainant and her son, besides examining other formal witnesses. The accused was also examined u/s 313 of the Code of Criminal Procedure. While denying the circumstances which were found attended upon him, he stated that the complainant party was in litigation with them for the last about 15-16 years. Even they are not in the visiting terms in the houses of each others. He pleaded innocence and alleged false implication. Further that on 11.9.1999 he was not present on the spot as he had been attending his father in I.G.M.C., Shimla who was hospitalized for the heart-ailment.

6. To prove his defence, he examined his father DW-7 Onkar Sood, DW-5 Shri Puran Chand Sharma, Clerk of I.G.M.C., Shimla to prove the discharge-slip Ext. DW5/A and plea of alibi; and also other witnesses with respect to the previous litigation and some of the judgments/orders were placed on record. The learned trial Court disbelieved the plea of alibi as projected, but however while relying upon the statements of complainant and her son convicted and sentenced the accused as aforesaid, which was maintained in appeal, hence the present revision petition.

7. Shri Anoop Chitkara, learned Counsel for the accused vehemently argued that the Courts below misdirected themselves by ignoring the previous history of litigation inter-se the complainant party and the accused, and wrongly put implicit reliance on the statements of the complainant and her son, which are falling short of requisite standard of proof. He also pointed out the variations in the initial statement of the complainant and also the improvements made by her son in their statements, are nothing but an attempt to secure conviction and tarnish the image of the accused. Further according to him, the learned trial

Court had only appreciated the evidence on technical grounds without looking into the other aspect of the case which has caused miscarriage of justice.

8. Contra, Shri A.K. Bansal, learned Additional Advocate General, supported the impugned judgment of conviction and sentence of the learned trial Court and its confirmation by the appellate Court below and submitted that there is no illegality and impropriety in the impugned judgments, as such the revision petition merits dismissal.

9. I have given my thoughtful consideration to the rival contentions of the parties and have carefully and meticulously analyzed legality and propriety in the light of the evidence on record. In my opinion, both the Courts below have misdirected themselves while ignoring the material contradictions and improvements in their statements.

10. The documentary evidence placed on record consisting of judgments Ext. DX, DX2, DX1/C, DX3, DX4 to DX8, D-9 and DX11. It speaks volumes of the litigation inter-se the parties. Though, the previous long litigation is not enough to discard the statements of the complainant and her witness, but it requires to be examined properly and closely against the aforesaid background and also in the light of the fact that the complainant is the wife of Shri Pramod Sood real uncle of the accused.

11. Legally the endeavour of the Judge/Court should be to find out the truth and the truth is the basis of justice delivery system for which the Judge is required to discern it from the very story projected by the prosecution evidence and the documents placed before it in the light of the arguments advanced. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. Therefore, the contradictions, embellishments, improvements and the background facts are required to be analyzed in the light of the legal proposition as the presumption of innocence is recognized as a human right subject to the statutory exceptions in India which cannot be wished away.

12. Therefore, in an attempt to discern the truth, I proceed to examine the creditworthiness of the prosecution witnesses, for the offences charged.

13. The prosecution seeks corroboration to the statement of complainant from her son Vivek Sood (PW-2), but surprisingly his name does not find mentioned in the complaint (Ext. PW1/A) which is stated to have been written by her to the Superintendent of Police, but that alone does not mean that her testimony is to be thrown out altogether from consideration. What is important is whether the statements of the complainant as well as her son are worth inspiring confidence. The complaint Ext. PW1/A is general in nature and she did not mention therein about the language used and the acts committed by the accused, but when examined in the Court she stated that the accused pressed her breast and used obscene words. This is, in my opinion, definitely an improved version. The learned trial Court opined that these allegations were not required to be

necessarily made in the complaint but held that it was the duty of the Investigating Officer to put explanatory questions to the complainant to elucidate the details. But however, the complainant in this case is not a witness of tender age and that the Investigating Officer is required to elucidate everything from her. It was for the complainant to clearly state about the incident in plain and unambiguous words more particularly when she had herself written the complaint. As PW 1 she had stated so many things against the accused regarding which there is not even a fleeting reference in the complaint. Her version also becomes doubtful when she stated that after the alleged incident before making the complaint to the police she also complained to the father of the accused, which stands falsified from the discharge-slip proved by DW 5 Puran Chand Sharma on record, which shows that the father of the accused Onkar Sood (DW-7) remained hospitalized in I.G.M.C., Shimla with effect from 6.9.1999 to 11.9.1999 and he did not say that such a complaint was made by the complainant to him in the hospital or at home nor any such suggestion has been put to him in his cross-examination. Further, her version is not corroborated in material particulars with respect to the incident she stated to have made a complaint to Constable Rajinder Singh at bus-stand, who was posted there. Whereas PW-3 HC Ravinder Singh stated that no complaint was made by the complainant before him nor any reference had come during investigation with respect to Constable Rajinder Singh as aforesaid, who is alleged to have visited and recorded any statement of the complainant. The complainant in her cross-examination has denied the facts of long litigation inter-se the accused-party and her husband, which otherwise she was supposed to know and are proved on record by certified copies of the judgments/orders mentioned above. This apart, lot of complaints was sent by the complainant's husband to the various authorities for taking action against the father of the accused. He had also filed civil suit against the father of the accused and the perusal of all the certified copies of said documents shows that the husband of the complainant did not succeed in any case. The complainant being the wife of Pramod Kumar had deliberately suppressed these material facts. The very reluctance of the complainant to admit the proved facts goes to show the extent of vindictiveness which perpetuated against the accused.

14. The statement of PW 2 Vivek Sood also suffers from the same vice. He appears to have been unnecessarily dragged in such an unpleasant litigation being son to corroborate the story of his mother. No cogent explanation has been offered by not mentioning his name in the complaint as the eye witness. He was also confronted with his statement recorded u/s 161 of the Code of Criminal Procedure wherein the alleged facts stated by him did not find mentioned anywhere. At any rate, the reliance upon the deposition of a witness who has made such a material improvement in his version is wholly unsafe and requires its independent source for corroboration against the above background facts. The versions given by the aforesaid witnesses before the Court and to the police are quite in variation. Therefore, these contradictory versions, on which the

conviction was passed by the learned trial Court and upheld in appeal is not safe. The omissions/improvements aforesaid are of very vital character which affect the credibility of the witnesses being unreliable.

15. On analyzing the evidence, I find that the Courts below misinterpreted and misconstrued the evidence on record thereby committed illegality.

16. The learned Additional Advocate General argued that when the complainant was of such a close relation of the accused why she had preferred to make a complaint against the accused putting her prestige at stake.

17. True it is that a woman will not prefer to put her character and the reputation of family at stake even to take revenge to implicate the accused falsely may not be wrong, but it cannot be applied universally. Each case has to be determined on the test ground of the factual matrix thereof. By-experience we can say that there are many cases even the decisions of the Apex Court wherein it was found that even the charges of rape were falsely advanced with oblique motive. Therefore, in the instant case the intention to square vendetta by the complainant cannot be ruled out. Thus, the judgments of conviction and sentence passed by the learned trial Court and its affirmation in appeal, both are not sustainable, hence set aside. The revision petition is allowed, consequently, the accused/petitioner stands acquitted from the charges against him by giving him the benefit of doubt. The fine amount, if any, deposited by the accused, be refunded to him forthwith. The bail bonds furnished by the accused stand discharged forthwith.