
(2013) 03 RAJ CK 0062

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 3812/12

Imran

APPELLANT

Vs

State of Raj. and Another

RESPONDENT

Date of Decision : 11-03-2013

Acts Referred:

Citation : (2013) 03 RAJ CK 0062

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—Both these petitions challenge the order dated 23.7.2012 passed by the Additional Sessions Judge No. 2, Deeg, District Bharatpur whereby the learned Judge has issued process u/s 319 Cr. P.C. against the petitioners, Imran and Jalish Khan @ Jalish Pradhan, and others for offence u/s 376 IPC. Hence, both these petitions are being decided by this common order. Briefly stated the facts of the case are that on 8.12.2010, one Nanga submitted a criminal complaint before the Judicial Magistrate, Kaman wherein he claimed that his niece, the prosecutrix in this case, aged about 16 years, was staying with him for the last two years. On 20.10.2010 between 4.00 to 5.00 PM, his niece and her aunt, Kamla, were coming back home after cutting some wood. As soon as they reached near B.K. Haryana Crusher Machine, they saw a white colour Marshal Car standing there. Nisar S/o. Ayyub, Maujuda S/o. Mutthhar, Nihal S/o. Dulla, Rahees S/o. Jallu, residents of Village Laharwadi, P.S. Punhana, District Mewat Nooh, Haryana, alongwith Islamuddin S/o. Saddiq, Chain son of unknown, were standing near the Car. These persons lifted his niece and threw her into the Car. When Kamla raised a hue and cry, Roopa and Mehmood rushed to their rescue. However, they could not stop the accused persons from escaping from the place. Kamla came back home and informed the family members. He and his family members went to the elders of the village in order to resolve the case. The elder members told him that since Israil's family members live in village Laharwadi, they will contact him. The elder members also asked the complainant not to file any report with the police. Israil was asked to contact the husband of

the Sarpanch of Village Laharwadi, Safi. Safi informed them that the accused Nisar, Maujuda, Nihal, Rahees were not in the village. Safi also promised that he will cooperate with them and will try to help them out. Subsequently, Safi called the elder members of the complainant's village, namely Mohammad Zahoor Khan, Ex-MLA, Kaman, Abdul Rahman and Razzak, the former Sarpanch. When they went to the Panchayat, the persons from Village Laharwadi such as, Jahaj Khan, Sheikh, Itmal, Majeed, Saleem, Vaheed, Hastu, Gaffur and Bhure Khan along with family members of Nisar and Maujuda were present at the Panchayat. These persons told the complainant and his family members that his niece is with them. But his niece is with the accused persons who are not in the village. They also promised him that they will try their level best to have the girl returned. They asked for 5-10 days time to do the needful. However, even subsequently these persons kept on delaying the matter unnecessarily. Again on 6.12.2010 the complainant was called to Village Laharwadi. Initially these persons promised to return the girl, but after waiting for two hours, they refused to do so. The complainant and his family members were informed that the girl has changed her religion, and has become a Muslim. Therefore, they will not return the girl to them. Thus, on 7.12.2010, the complainant went to the Police Station Kaman for lodging a report. But the police refused to register the FIR. Therefore, he has filed the criminal complaint before the learned Magistrate.

2. The said complaint was sent for investigation u/s 156(3) Cr. P.C. to the Police Station Kaman. Consequently, the police registered a formal FIR, namely FIR No. 25/11 for offence u/s 366 IPC. During the course of investigation, the prosecutrix was recovered. Due to her statement recorded under Sections 161 and 164 Cr. P.C., the offence u/s 376 IPC was added. After a thorough investigation, the police submitted a chargesheet only against Nisar and not against other accused persons named in the FIR.

3. During the trial, after recording testimony of five witnesses, namely Nanga (PW. 1), Mohd. Zahoor (PW. 2), Roopa (PW. 3), the prosecutrix (PW. 4), and Abdul Rahman (PW. 5), the prosecution submitted an application u/s 319 Cr. P.C. for taking cognizance against those who have been named by the prosecutrix, and yet have not been charge-sheeted by the police. By order dated 23.7.2012, the learned Judge issued process against Islamuddin, Maujuda, Chain, Raheesh and Nihal for offences under Sections 366, 368, 376 and 506 IPC, and issued process against Yakub, Imran, Anees, Jalish Pradhan and Aazam for offence u/s 376 IPC. He has also directed that since there is direction of the High Court that the trial pending against Nisar be completed within a period of two months, therefore a new case should be registered against the aforementioned persons against whom process has been issued. Hence, this petition before this court.

4. Mr. Biri Singh Sinsinwar, the learned senior counsel for the petitioner, Jalish Pradhan, has raised the following contentions before this court: firstly, the petitioner, Jalish Pradhan, happens to be the husband of the sitting MLA, Smt. Zahida Khan. Therefore, he is being falsely implicated in the present case due to

political rivalry. Secondly, falsity of the case is apparent from the fact that his name has not been mentioned in the FIR. Thirdly, the incident is alleged to have occurred on 20.10.2010, yet the complaint was not filed till 8.12.2010 i.e. after an inordinate delay of more than one and a half months. The inordinate delay casts a doubt about the veracity of the story narrated by the prosecutrix. Fourthly, that the prosecutrix had already married Nisar. This is apparent from a petition filed by Nisar and by the prosecutrix before the Punjab & Haryana High Court wherein they prayed for protection against the complainant in the present case. Fifthly, the prosecutrix is an unreliable witness. For, in her cross-examination, she has denied the fact that she ever filed a petition before the Punjab & Haryana High Court. Lastly, there is no likelihood that the petitioner would be convicted on the basis of testimony of such an untrustworthy witness. Therefore, the impugned order deserves to be quashed and set aside.

5. Adopting the arguments made by Mr. Biri Singh, Mr. Ashvin Garg, the learned counsel for the petitioner Imran, has contended that like Jalish Khan, even Imran has not been named in the FIR.

6. On the other hand, Mr. Deen Dayal Sharma, the learned counsel for the prosecutrix, and Mr. G.S. Fauzdar, the learned Public Prosecutor for the State, have contended that the FIR was lodged by the prosecutrix's uncle, Nanga. Thus, he had named only those who had kidnapped the prosecutrix. After all, Kamla had witnessed the occurrence and had come and told him about the names of those who had kidnapped his niece. Therefore, it is not surprising that the petitioners have not been named in the FIR. However, subsequently both in her statement given u/s 161 and u/s 164 Cr. P.C., and in her testimony, the prosecutrix has described the ordeal that she underwent in the hands of the petitioners. She has clearly claimed in her testimony that the petitioners, Jalish Pradhan and Imran, had ravished her. Moreover, she has also claimed that Islamuddin, Maujuda, Chain, Rahees and Nihal had not only abducted her, but had committed rape upon her.

7. Secondly, although in the application filed by the prosecution a prayer had also been made that process should be issued against Arshad, Saddam, Hameed, Farooq, Ashok and Deen Mohammad, but the learned Judge has not issued process against them. For, according to the learned Judge, sufficient evidence does not exist against them for any offence. Thus, according to both the learned counsel, the learned Judge has objectively passed a legally valid order. Hence, this court ought not to interfere with the same.

8. Heard the learned counsel for the parties and perused the material available on the record.

9. Admittedly, the complaint was filed by the prosecutrix's uncle, Nanga. Obviously, on the date of filing of the complaint, the prosecutrix had not been recovered. Therefore, naturally, Nanga would have narrated the facts as known to him till then. Thus, he had limited his story to mere kidnapping by the named

accused persons. It is only after the investigation had commenced, and after the statements of the prosecutrix were recorded under Sections 161 and 164 Cr. P.C. that the offence u/s 376 IPC was added by the police. Hence, the first contention raised by the learned senior counsel that the name of Jalish Pradhan has not been mentioned in the FIR, thus it casts a doubt about the story of the prosecution, is misplaced.

10. Although, it is too early for this court to express its opinion about the inordinate delay in filing of the complaint by Nanga, suffice it to say that prima facie, Nanga does explain the inordinate delay in his complaint. This court refrains itself from expressing anything further. For, the impact of delay on the case of the prosecution has to be assessed by the trial court after a thorough trial.

11. As far as the trustworthiness of the prosecutrix is concerned, the learned Judge has considered both her statement recorded u/s 164 Cr. P.C., as well as her testimony recorded before the trial court. Both in her statement u/s 164 Cr. P.C. as well as in her testimony, she has clearly stated that Jalish Pradhan had twice committed rape upon her. She has also described the manner in which she was raped by him. Similarly, she claims that Imran had ravished her at a house belonging to Islamuddin. She had further claimed that "Islamuddin's house is not like a house, but almost like a prostitute's den where all the bad people come". Thus, the prosecutrix clearly alleges rape against both the petitioners.

12. The learned Judge has also noticed the fact that the petition allegedly filed by Nisar and the prosecutrix has never been exhibited by the defence. Moreover, even the order passed on the said petition has also not been exhibited by the defence while cross-examining the prosecutrix. Therefore, the petitioner cannot rely upon these documents in order to question the trustworthiness of the witness.

13. In the case of State of U.P Vs. Chhoteylal, , the Hon''ble Supreme Court has observed as under:-

The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Indian society is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix, the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind, as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the

victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

14. Therefore, the contention that the prosecutrix in naming Jalish Pradhan due to political rivalry is clearly unacceptable.

15. The allegations leveled by the prosecutrix are, indeed, a grave one. She alleges that for a period of five months she was repeatedly subjected to rape by different persons including the petitioners. She has been consistent in her statement recorded under Sections 161, 164 Cr. P.C. and in her testimony recorded by the trial court. Even after a grueling examination, she has not been shattered as a witness. Moreover, on the basis of her testimony, Nisar has already been convicted by the judgment dated 25.9.2012 by the trial court. Hence, the trial court has relied upon the testimony of the prosecutrix in order to convict the co-accused Nisar. Thus, there is no reason to doubt the veracity of her testimony at this juncture.

16. In catena of cases, the Hon"ble Supreme Court has opined that the power u/s 319 Cr. P.C. is a vast one. Therefore, it should be used sparingly. It should be invoked when the court is of the opinion that chances of conviction of the accused persons are likely. Considering the fact that the prosecutrix has been consistent in her statement and in her testimony, considering the ordeal she has undergone at the hands of the accused persons, considering the courage she has shown in the trial court by speaking freely and frankly about the agony endured by her, prima facie, there is sufficient evidence which shows the grave possibility of a conviction in the present case.

17. Although the learned counsel for the petitioner Imran has also claimed that his name is not mentioned in the FIR, but as noted above, the FIR was not lodged by the prosecutrix. Since Imran enters the story after the prosecutrix kidnapping, obviously Nanga, the complainant, was not in a position to name him while filing the criminal complaint. Therefore, lack of his name in the FIR does not buttress his case that he has been falsely implicated in the present case.

18. Lastly, the learned Judge has not passed a perfunctory order. Instead, he has minutely examined the statement of the prosecutrix, u/s 164 Cr. P.C., and her testimony before the court, and has considered the relevant case law in order to reach his conclusion. Hence, the impugned order is legally valid. For the reasons stated above, this court does not find any illegality and perversity in the impugned order. The petitions are, hereby, dismissed. The stay applications are also dismissed.