
(2011) 12 SHI CK 0058

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 37 of 2006

Satish Kumar Tuli

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 353, 354, 506, 509

Citation : (2011) 12 SHI CK 0058

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, Judge

1. The petitioner has been convicted and sentenced by both the Courts below for offences punishable under Sections 353, 354, 506-I and 509 IPC. He has assailed judgment dated 6.1.2006 passed by learned Additional Sessions Judge, Solan in Criminal Appeal No. 3-K/10 of 2005 affirming judgment dated 29.3.2005/4.4.2005 passed by Judicial Magistrate 1st Class, Kandaghat (Camp at Solan) in Criminal Case No. 1-S/2 of 2000 sentencing the petitioner for simple imprisonment for six months for offence punishable u/s 353 IPC, rigorous imprisonment for six months for offence punishable u/s 354 IPC and fine of Rs. 1,000/-. In default of payment of fine to undergo simple imprisonment for one month, simple imprisonment for three months for offence punishable u/s 506-I IPC and simple imprisonment for three months for offence punishable u/s 509 IPC. The substantive sentences awarded to run concurrently. The sentence in case of non-payment of fine shall run independently.

2. The prosecution case, in brief, is that PW-1 Harbans Rani got registered FIR Ex.PW-1/A. It has been alleged that PW-1 in March-April, 1996 read matrimonial advertisement given by the petitioner in "Indian Express". She gave her particulars to the petitioner, who started sending letters to her. The letters were

not decent. The complainant opted to write a letter to petitioner through her mother not to trouble her. The petitioner despite this continued to send obscene letters to the petitioner.

3. The complainant sent letters to the officer of the petitioner for departmental action against petitioner. The department took some action against the petitioner, who started insisting PW-1 that his job had been adversely affected, if PW-1 would send a favorable letter to his department through Collector Solan, the punishment given to the petitioner by his department would be made good. PW-1 refused to send such letter but petitioner time and again made telephonic calls to PW-1 and threatened her that either she should give in writing as demanded by him or he would see the complainant.

4. It has been alleged that on 9.9.1999 for obtaining favorable letter from the complainant, the petitioner reached the office of the complainant at about 2.30 p.m. and asked the complainant why she was not giving him the required letter since the complainant was likely to be the wife of the petitioner. The petitioner forcibly caught the arm of the complainant, who tried to save herself. The shirt of the complainant just above the breast was also torn. The petitioner caught the complainant from her breasts and started pulling her out. The petitioner thus obstructed the complainant, caused mental torture to the complainant by writing obscene letters and also outraged her modesty. The complainant was saved from the clutches of the petitioner by PW-3 Chiranji Lal and Ami Chand Sharma employees of the same office in which the complainant was serving.

5. The letters allegedly written by the petitioner were taken into possession during investigation. The opinion of the handwriting expert was obtained. On completion of investigation, the challan was submitted in the Court. The petitioner was charged for offences punishable under Sections 353, 354, 506, 509 IPC. He pleaded not guilty and claimed trial. The prosecution has examined nine witnesses and produced some documents. The statement of petitioner was recorded u/s 313 Cr.P.C., he pleaded his innocence. He did not lead any evidence in defense. On conclusion of trial, the petitioner was convicted by the learned trial Court as noticed above. The appeal filed by the petitioner has also been dismissed by the learned Additional Sessions Judge, hence revision.

6. I have heard the learned counsel for the parties and have also gone through the record. The learned counsel for the petitioner has submitted that the two courts below have misconstrued and misinterpreted the evidence on record and have erred in convicting and sentencing the petitioner. He has prayed for setting aside the impugned judgment and acquittal of the petitioner. The learned Assistant Advocate General has submitted that the two courts below have properly appreciated the material on record and has prayed for dismissal of the revision.

7. PW-1 Harbans Rani has stated that she had been working in D.C. Office, Solan since the year 1981. In the year 1996 she read matrimonial advertisement in the

"Indian Express" and had written letter to S.K. Tuli. After 2-3 letters, she refused to marry him, but he continued to write her obscene letters. He also made telephone calls to her. In order to harass her, he came to Solan. She was fed up with the letters and phone calls of the petitioner. She made a written complaint to the department of the petitioner and the petitioner was punished. The petitioner thereafter intensified his misbehavior towards her and stated that his job has been adversely affected. He asked her to write a letter to his department that she is the wife of the petitioner and inadvertently she had written the letters, this would help him in service.

8. On 9.9.1999 petitioner came to her office and asked from her letter in writing. He abused her and threatened to kill her. He physically man-handled her and in this process her shirt was torn from the front. The petitioner caught hold of her from her breasts and started pulling her out. She was rescued by Chiranji Lal and Ami Chand Sharma, employees working in the same office. She met the Superintendent of Police, who told her to report the matter at Police Station. Thereafter she lodged FIR Ex.PW-1/A. The torn shirt and letters were taken into possession vide memo Ex.PW-1/B, the letter is Ex.PW-1/C and the shirt is Ex.P-1.

9. In cross-examination, she has stated that she had taken the torn shirt along with her on the same day at Police Station and the shirt Ex.P-1 was shown to the police on 9.9.1999, but shirt was not taken into possession by the police on that date. The shirt was taken into possession by the police next day. The petitioner could not be apprehended on the spot as he fled away from the spot. She raised hue and cry. Ex.PW-1/C letter was delivered to her in the year 1999 in August or September. On receipt of letter she reported the matter to the police but she does not know whether any action was taken by the police or not. She never called the petitioner at Solan. She did not receive injury on her person. The petitioner pulled her by holding her shirt and in this process shirt was torn. She has denied the suggestion that she called the petitioner at Solan and he has been falsely implicated in the case.

10. PW-2 Shyam Lal has stated that in his presence specimen handwritings of petitioner Ex.P-2 to Ex.P-15 were taken. PW-3 Chiranji Lal has stated that he had been working as Head Clerk in D.C. Office, Solan since 1.3.1996, PW-1 was working in his branch. On 9.9.1999 the petitioner came in the office and he had some talk with PW-1, immediately he came in rage and he started man-handling. The petitioner pulled Harbans Rani as a result of which shirt of PW-1 was torn. He intervened and petitioner was pushed out. The shirt was taken into possession vide memo Ex.PW-1/B, the shirt is Ex.P-1. In cross-examination, he has stated that petitioner asked Harbans Rani to give in writing that they have compromised the matter. The petitioner pulled the shirt from near the neck.

11. PW-4 Dharam Chand has proved copy of appointment letter Ex. PA of Harbans Rani. PW-7 ASI Dharam Singh has partly investigated the case. PW-8 HC Balbir Singh has also investigated the case partly. He has stated that shirt was taken into possession on 10.9.1999 which was torn below the armpit. PW-9

Dr. Ravinder Sharma has stated that Q-1 to Q-17 on Ex.PW-1/C and S-1 to S-14 which are Ex.P-2 to Ex.P-15, mark A-1 to mark A-6 which are Ex. PB. Ex. PC, Ex. PD, Ex. PE reveal characteristic in writing habits indicating their common authorship.

12. The petitioner in his statement u/s 313 Cr.P.C. in reply to the question that he started sending obscene letters to the complainant has stated that those were not obscene letters, those were expressions of love as she was talking with him in the same way. In answer to the specific question that on 9.9.1999 he (petitioner) came to the office of the complainant and asked her to give a letter to him, he has stated that he was called by the complainant that she would give letter in writing. The petitioner regarding specimen writings Ex.P-2 to Ex.P-15 has not denied that these writings were taken in presence of PW-2 Shyam Lal. The petitioner regarding letter Ex.PW-1/C has stated that he was writing in the same manner as complainant was writing to him. He has stated that he has been falsely implicated by the complainant in connivance with the police.

13. Ex.PW-1/A is the FIR, Ex.PW-1/C is the letter. Ex. PA is the appointment letter dated 10.4.1981 of Harbans Rani. The petitioner in his statement u/s 313 Cr.P.C. has not denied that he did not visit the office of complainant on 9.9.1999. In answer to question No. 11, he has stated that he was called by the complainant. The petitioner has also not denied writing of letter Ex.PW-1/C to the complainant. In answer to question No. 21, in his statement he has stated that he used to write in the same manner as the complainant used to talk to him. The petitioner has also not denied that on 9.9.1999 complainant was working in the office of D.C. Office, Solan.

14. The limited questions now left are whether the petitioner on 9.9.1999 had outraged the modesty of the complainant and threatened her, the complainant being government servant obstructed her from discharging her duties and whether letter Ex.PW-1/C is obscene. The prosecution case against the petitioner is that complainant came in contact with him in response to matrimonial advertisement published by him in the "Indian Express". The complainant responded to the advertisement but she did not like the alliance in view of uncultured conduct of the petitioner on telephone and in letters. The petitioner however continued to harass the complainant on telephone and by writing obscene letters. The complainant reported the matter to the authorities of the petitioner, he was punished. The petitioner wanted the letter of withdrawal of the complaint from complainant for submitting the same to his department for using the same in the departmental action which was taken against the petitioner. The petitioner ultimately reached Solan on 9.9.1999 and misbehaved with the complainant, obstructed her from performing official duties and threatened her.

15. The complainant has fully supported her case. She has stated that petitioner man-handled her, asked her to stand on the chair, caught her from her breasts, pulled her out and in the process even her shirt was torn. It has been submitted on behalf of the petitioner that there is no unanimity in the statements of the

witnesses regarding the tearing of the shirt. It has been stated that one witness has stated that shirt was torn from front, the other witness has said that it was torn from front in oblique direction, third witness has stated that shirt was torn under the armpit. These are minor variations and petitioner cannot take benefit of these minor variations. The fact remains that all these witnesses have said that shirt of the complainant was torn when she was pulled by the petitioner. The complainant has specifically stated that petitioner abused her and threatened to kill her and caught hold of her from her breasts when he man-handled her. There is no reason to disbelieve the statement of complainant.

16. PW-3 Chiranjilal, Head Clerk has stated that petitioner man-handled the complainant. The learned counsel for the petitioner has submitted that entire story of very presence of the petitioner in the office of the complainant on 9.9.1999 is false. He has submitted that it is very strange that when petitioner allegedly misbehaved with the complainant then why he was not overpowered and caught then and there by the employees and colleagues of the complainant. PW-1 complainant has stated that she raised hue and cry and after misbehaving and man-handling her petitioner ran away from the spot.

17. The petitioner has not denied his presence in the office at the relevant time in his statement u/s 313 Cr.P.C. The learned counsel for the petitioner has submitted that recovery of shirt Ex.P-1 is highly doubtful. He has submitted that shirt was allegedly recovered on 10.9.1999 whereas according to complainant she took the shirt Ex.P-1 along with her while reporting the matter to the police. It has come in the statement of PW-1 that she took the shirt Ex.P-1 along with her when she reported the matter at the Police Station. After the registration of the case, it was the duty of the Investigating Officer to take into possession shirt immediately but if shirt Ex.P-1 was not taken into possession by the Investigating Officer on 9.9.1999 when complainant took that shirt with her, then petitioner cannot take benefit of lapse of the Investigating Officer. It is nobody's case that complainant was not wearing the shirt Ex.P-1 at the relevant time. The contents of letter Ex.PW-1/C have not been denied by the petitioner in his statement nor he has taken the stand that this letter was not written by him to the complainant. The letter Ex.PW-1/C ex-facie is obscene. At the time of hearing of the revision, submissions were not made on the point of conviction and sentence u/s 509 IPC and it has been so recorded in the *judgment* order of the day when the revision was heard.

18. The two Courts below have recorded a finding of fact that petitioner has committed offences punishable under Sections 353, 354, 506-I and 509 IPC. The view taken by the two Courts below emerges from the evidence on record. In revision, re-appreciation of the evidence is not permissible. It has not been shown that the two Courts below have relied inadmissible evidence or ignored material evidence in convicting and sentencing the petitioner. There is no merit in the revision.

19. As a result of above discussion, the revision fails and is accordingly

dismissed, the bail bonds of petitioner are cancelled. The petitioner is directed to surrender immediately to serve out the sentence imposed.