
(2001) 01 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 505-DBA of 1994 and Criminal Revision No. 463 of 1994

State of Haryana

APPELLANT

Vs

Ram Partap and Kulwant Kaur

RESPONDENT

Date of Decision : 11-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114
Penal Code, 1860 (IPC) — Section 34, 354, 376

Citation : (2001) 2 RCR(Criminal) 767

Hon'ble Judges : H.S. Bedi, J;A.S. Garg, J

Bench : Division Bench

Advocate : Mr. L.D. Mehta,A.A.G, for the Appellant; Mr. R.S. Ghai and Mr. Vinod Ghai, for the Respondent

Judgement

Harjit Singh Bedi, J.—This judgment will dispose of a matter arising out of F.I.R. No. 114 dated June 1, 1989 (hereinafter called as the "F.I.R.") registered u/s 354 of the Indian Penal Code at Police Station, Thanesar against accused Ram Partap and Ram Singh and complaint case No. 18/C/89 filed by Kulwant Kaur against the two accused, which were disposed of together vide the impugned judgment.

2. About 15-20 days prior to May 29, 1989 (as per the version given in the complaint) accused Ram Partap had advised PW-2 Kartar Singh, the husband of prosecutrix PW-1 Kulwant Kaur, to obtain a loan in respect of a shop. On that day, at about 2.00 P.M. accused Ram Partap visited Kartar Singh's house and found Kulwant Kaur present there and he asked her to accompany him for putting her thumb impressions on the loan papers, which were available with the Secretary. Kulwant Kaur, however refused to accompany Ram Partap as her husband was away from home and told him that her husband alone would make an application for loan. Ram Partap thereafter went away but returned a short while later and told Kulwant Kaur that the Secretary was present in his Chaubara

and as he was scheduled to leave shortly, it would be better that she put her thumb impressions on the papers failing which the proposed loan would be cancelled. He further told her that it would not make any difference if the loan papers were thumb marked by her instead of her husband. On this fear and assurance, Kulwant Kaur accompanied Ram Partap to his Chaubara and found accused Ram Singh also sitting there and that both of them had been consuming liquor whereas the Secretary was not present. On seeing this, Kulwant Kaur made an attempt to return on which accused asked her to put her thumb impressions on the papers and while she was doing so, Ram Singh bolted the door from inside. Kulwant Kaur also made an attempt to shout but she was gagged and over-powered by the accused, and she was raped by both the accused and in the process she also received some injuries on her breast and hand. She thereafter left the Chaubara while weeping and abusing the accused and as she was returning, she came across PW-3 Shamsheer Singh, a Member of the Panchayat and one Sant Ram, who inquired as to what had happened and she told them about the incident. After PW-2 Kartar Singh returned to his house in the evening, Kulwant Kaur narrated the incident to him but Kartar Singh was reluctant to report in order to keep the matter quiet. However, on the next evening, certain residents of the village, including Shamsheer Singh and Sant Ram, convened a panchayat, which was attended by many respectables of the village including Paras Ram, Teja Ram, Phool Singh and the two accused. The accused confessed their guilt. As by that time the entire village had come to know about the occurrence, a decision was also taken to lodge a report with the police the next day. On May 30, 1989, Kulwant Kaur and Kartar Singh went to Police Station, Pipli to lodge the F.I.R. but the police declined to register the same without verifying the facts. The matter was thereafter brought to the notice of the Superintendent of Police, Kurukshetra, who advised them to go to the police station the next day. Kulwant Kaur accordingly went to the police station and her thumb impressions were taken on some blank papers by the Station House Officer, who assured her that the accused would be arrested. She was also advised to come the next day for her medical examination and when she did so, no examination was carried out and the accused not arrested. Kulwant Kaur and Kartar Singh then moved applications before the Deputy Commissioner, Kurukshetra and the Home Minister, Haryana but without any result. Kulwant Kaur alongwith her husband also visited Civil Hospital, Kurukshetra independently for her medical examination but the medical officer declined to do so in the absence of any request from the police. Kulwant Kaur thereafter came to know that instead of registering a case of rape, the police had registered a case u/s 354 of the Indian Penal Code against the two accused vide FIR No. 114 dated June 1, 1989. She thereupon filed a complaint in the Court of the Additional Chief Judicial Magistrate, Kurukshetra on June 15, 1989. On the filing of the complaint, the report of the police was called for and the accused were summoned to face trial u/s 354 read with Section 34 of the Code vide order dated March 8, 1990. Kulwant Kaur thereafter preferred a criminal revision before the Additional Sessions Judge, Kurukshetra that a case under Sections

376/34 of the Code had also been spelt out and that the accused ought to have been charged for that offence as well and on the revision being allowed, a charge u/s 376(g) of the Code was also framed.

3. The prosecution in support of its case, examined PW-1 Kulwant Kaur, the prosecu-trix; PW-2 Kartar Singh, the husband of the prosecutrix; PW-3 Shamsher Singh aforesaid and PW-4 Phool Singh, a witness to the alleged extra-judicial confession.

4. The accused were examined u/s 313 of the Code of Criminal Procedure and they denied the allegations levelled against them. Ram Singh accused stated that Kulwant Kaur was a woman of low character and she had been paid by Teja Ram to make the allegations against them as he had been defeated by him to the election to the office of Sarpanch. Ram Partap accused stated that he had been implicated on account of his close friendship with Ram Singh and that he was not in the village on May 29, 1989. The accused also examined DW-1 Roshan Lal in their defence, who deposed that Ram Singh, Sarpanch had attended a meeting with the Additional Deputy Commissioner, Kurukshetra on May 27, 1995 and he also produced a certified copy of certificate, Ex. DC, to prove the fact; DW-2 Ravinder Singh, Clerk of the D.C.'s office, who brought the file pertaining to case No. 40 of village Haripur dated May 29, 1989 and produced the copy of application, Ex.DD. and the order of the Sub Divisional Magistrate, Ex.DD/1 made thereon; DW-3 Faqir Chand, Clerk of Sh. Amar Singh, Advocate, who proved the application, Ex.DD, and stated that the same had been drafted at the instance of Ram Partap at 10.00 A.M. On that day, DW-4 Sub Inspector Deep Chand, who stated that Kulwant Kaur had never visited the police station prior to June 1, 1989 and during investigation it had been found that there was no merit in the allegations made by her; DW-6 Janak Raj, who deposed that Teja Ram had been defeated by Ram Singh in the election of Sarpanch and that Kulwant Kaur, a woman of loose character, had been used by Teja Ram, Shamsher Singh, Mohan Lal and others to involve Ram Singh in a false case and to get him suspended and that his house adjoined that of Ram Partap and he and his family had not noticed anything unusual happening in Ram Partap's house on that day.

5. The trial Court observed that it would be difficult for a woman, howsoever dissolute she may be, to make a false allegation of having been raped at the instance of somebody else and this broad principle would have to be kept in mind in taking a decision. The Court then noticed that there were three different versions of the incident that had come on record; firstly Ex.DA dated June 1, 1989, the statement given by the prosecutrix to Inspector Deep Chand on the basis of which, F.I.R. No. 114 dated June 1, 1989 for an offence punishable u/s 354 of the Indian Penal Code had been registered and in that statement the fact that she had met Shamsher Singh or anybody else while she was returning home was not found mention. The Court observed that this application had", however, been disowned by her as she had stated that she had signed only blank papers before the police officer. It was also observed that in Ex.DA, the date of

occurrence had been changed to May 29, 1989. The Court also noticed that the next version was in the letter Ex.C-1, dated May 13, 1989 addressed by Kulwant Kaur to the Deputy Commissioner, Kurukshetra, in which the allegations similar to the ones made in Ex.DA, had been made and again there was no reference to the fact that she had told Shamsher Singh or any body else about what had transpired and that this application too had been disowned by Kulwant Kaur at the time of her cross-examination in the Court when she stated that she had not made any such application. The Court then observed that the complaint dated June 15, 1989 had also not been exhibited or otherwise proved as she had denied the authenticity of this document as well and this was a factor which completely dislodged the prosecution story. In this background, the trial Court went into the evidence and concluded that there were many discrepancies in the ocular version and though the prosecutrix was stated to have been injured in the course of offering resistance but she had not been medico-legally examined and that the explanation that the doctor had refused to do so could not be accepted and even as per her saying, she visited the office of Superintendent of Police, Kurukshetra and made strenuous efforts to otherwise get a case registered against the accused but no higher officer had been informed that she was not being medico-legally examined. The Court further observed that it appeared from the evidence on record that Shamsher and Teja Ram had been instrumental in implicating the accused as there was definite evidence, which showed the intense and bitter rivalry between the accused and Shamsher etc. The plea of alibi put up by Ram Singh had also been found to be proved by the evidence of DW-1 Roshan Lal, who stated that Ram Singh had attended a meeting in the office of the Additional Deputy Commissioner on May 27, 1989. Likewise the Court also observed that the accused had examined Faqir Chand, clerk of Sh. Amar Singh, Advocate, who deposed that on May 29, 1989 an application (Exh.DD) had been drafted by his counsel and presented in the Court of the Sub Divisional Magistrate and an order (Exh.DD/1) had been passed thereon, which had been proved by Ravinder Singh (DW-2) and in this application it had been clearly stated that Shamsher Singh etc. had threatened to involve him in a false case. The Court accordingly acquitted the accused of the charges.

6. Hence this appeal at the instance of State of Haryana and Criminal Revision No. 463 of 1994 by the complainant. Both these matters are being disposed of by this common order.

7. We have gone through the evidence with the help of the learned counsel for the parties.

8. It is true, as has been noticed by the trial Judge, that a woman would not normally be used as a tool to implicate somebody in a false case of rape, as it would reflect adversely on her reputation as well but unusual circumstances do often surface. In the case before us, we find that three different versions had come up before the Court and in all three versions, a different story had been projected. It is also significant that the prosecutrix herself disowned the three

documents that had been produced in the Court when she stated that as far as complaint dated June 1, 1989 is concerned, it had been created by Sub Inspector Deep Chand on the blank papers on which she had put her thumb impression and a case u/s 354 of the Indian Penal Code had thereby been registered. She also disowned the authenticity of the complaint, Ex.C-I, allegedly sent by her to the Deputy Commissioner, Kurukshetra as also the complaint dated June 15, 1989 on the basis of which, a case u/s 376(g) of the Code had been registered. We also find that in the entire episode, the primary involvement is that of Shamsheer Singh (PW-3) and that a finding has come that it was on the asking of Teja Singh that the story had been created. We also find that the plea of alibi of Ram Singh of May 27, 1989 and May 29, 1989, the two dates on which the rape was alleged to have been committed, has been proved by the defence evidence. On both these dates Ram Singh had been away to Kurukshetra and not in the village at the time when the incident had allegedly happened.

9. We do find that the honour and chastity of a woman must be steadfastly maintained but at the same time, if a doubt is created that an attempt had been made to falsely implicate an innocent person, the benefit must go to the accused and the presumptions resting on Section 114A of the Evidence Act can be said to have been discharged. We are, therefore, of the opinion that in the light of the facts as found by the trial Court, as also mentioned above in the preceding paragraphs, such a doubt does creep in. We are further of the opinion, as held by the Supreme Court in *Ashok Kumar Vs. State of Rajasthan*, that interference is an appeal against acquittal would be called for if the judgment under reference was perverse or based on a misreading of the evidence. We find no such flaw in the judgment before us.

10. We, therefore, find no merit in the appeal and the revision. Both are accordingly dismissed.

11. Appeal and revision dismissed.