
(1999) 12 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 167-DBA of 1991

State of Punjab

APPELLANT

Vs

Chatinder Pal Singh @ Honey

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Citation : (2000) 1 AICLR 551 : (2000) 2 RCR(Criminal) 29

Hon'ble Judges : V.M.Jain, J and Jawahar Lal Gupta, J

Advocate : S.S. Dhaliwal, T.P.S. Mann, Advocates for appearing Parties

Judgement

V.M. Jain, J.

1. State of Punjab has filed the present appeal against the acquittal of respondents in a case under Sections 376, 366, 363 and 306 IPC by Additional Sessions Judge, Ropar vide judgment dated August 24, 1990.

2. The FIR, Exhibit PD3 in this case was recorded on July 29, 1989 at 9.30 p.m. in Police Station Mohali under Sections 363 and 376 IPC on the basis of statement Exhibit PD made by Kumari Poonam (since deceased) recorded by Head Constable Bishnu Dutt in PGI Chandigarh at 1.30 p.m. on July 29, 1989. In the said document it was alleged by Kumari Poonam (since deceased) aged about 16 1/2 years that she was a student of 9th class in Senior Secondary School, Mohali and that on that day i.e. on July 29, 1989 at about 10.15 a.m. she had committed suicide by putting kerosene oil on her clothes and putting the same on fire on account of misbehaviour by accused Honey who was resident of H.No. 112, Phase II, Mohali. It was alleged that on July 17, 1989 when she was going to the school at about 7.00 a.m. alongwith her brother Anil, on the way Honey accused met them and he asked her to accompany him, failing which he would not spare her brother and out of fear she went with him and he took her to Rose Garden, Chandigarh in an Ambassador car. It was further alleged that on the previous day i.e. July 28, 1989, in the same manner she was coming to the school at about 7.00 a.m. alongwith her brother Anil and her friend Rajni when accused Honey alongwith two others whom she could recognise met them in

white coloured Ambassador car and they made her brother Anil sit in the said car and told her that if she wanted her brother then she should sit with them and out of fear she sat in the car and they also made Rajni sit in the said car. Thereafter they took them to a hotel in Sector 22, Chandigarh and there they forcibly committed rape with her and thereafter they left them at Mohali at about 1.00 p.m. on that day. It was further alleged that thereafter she had told the entire occurrence about these two dates to her mother. It was further alleged that on that day i.e. July 29, 1989, the said boy i.e. Honey came to their house and rang the door bell and went away after giving a signal to her and at that time there was no one else in the house. Her mother had stopped her from going to the school. It was alleged that she put herself on fire as she had been defamed in the eyes of the public and it was useless to live. She further alleged that on hearing her cries another tenant Darshan Singh who was residing in the adjoining room came there and he put off the fire and he also called her mother and thereafter they brought her to PGI Chandigarh where she was under treatment. She further stated that she had put herself on fire because of the earlier incident concerning Honey accused and hence accused Honey and his friends were responsible for the same. This statement Exhibit PD was recorded by Head Constable Bishnu Dutt in the presence of PW3 Dr. A.S. Bawa. Further, Head Constable Bishnu Dutt recorded the statement Exhibit PD of Kumari Poonam after obtaining opinion Exhibit PC/1 of Dr. A.S. Bawa about the fitness of Kumari Poonam to make the statement.

3. After recording the said statement, HC Bishnu Dutt sent the same to Police Station Mohali as the case pertained to the said police station. Thereafter, ASI Avtar Singh of Police Station Mohali moved an application before the SDM for making necessary arrangements to record dying declaration of Kumari Poonam from a Magistrate. Thereupon, Shri P.K. Sharma, Executive Magistrate, Chandigarh was deputed for this purpose. Shri P.K. Sharma moved application Exhibit PH to the Doctor in charge about the fitness of Kumari Poonam and the doctor on duty declared her fit to make the statement at 7.30 p.m. on July 29, 1989 vide endorsement Exhibit PH/1. Thereafter Shri P.K. Sharma, Executive Magistrate recorded the statement Exhibit PJ of Kumari Poonam at 8.10 p.m. on July 29, 1989 in PGI Chandigarh in English. In the said statement, it was stated by Kumari Poonam that she was a student of 9th class in Government Senior Secondary School, Phase II, Mohali and that some days back a boy named Honey residing in H.No. 112, Phase II Mohali had met her and he had threatened her that if she would not accompany him, he would beat and lift her brother and at that time accused Honey was accompanied by two other boys of his age while she was accompanied by her friend Rajni. It was further alleged that they got frightened and accompanied them and they took them in a van to some place which she did not know and at that time accused Honey raped her and the other boy called Longowal raped her friend Rajni. It was further alleged that about 23 days back, those persons again threatened them and took them to a hotel in Sector 22 in a car and they raped her and her friend Rajni and dropped them

near their house at about 10.30 a.m. It was further alleged that on that day i.e. on July 29, 1989 accused Honey made 23 rounds of her house on a motorcycle and blew horn and she got irritated from all that had happened. She asked her parents to get her certificate back from the school as she did not want to continue her studies and on her insistence they went to the school and she had asked them to bolt the door from outside which they did. She further stated that at that time her grandmother was present in the house. She further stated that she took kerosene bottle and match box and went into the bath room where she sprinkled oil all over her body and put her on fire. She further stated that her grand mother and one person from nearby house threw water on her and they took her to hospital. She further stated that the make of accused's motor cycle was Hero Honda.

4. On July 31, 1989 Kumari Poonam expired due to the burn injures. The offence under Section 306 IPC was also added as a result thereof. During investigation of the case the police recorded the statements of Kumari Rajni and Anil Kumar aforesaid. The statements of Kumari Rajni and Anil Kumar under Section 164 Cr.P.C. were also got recorded before the Magistrate. The medicolegal examination of Kumari Poonam was conducted on July 29, 1989 while the post mortem examination was conducted on July 31, 1989. The medicolegal examination of Kumari Rajni was conducted on August 14, 1989. As a result of the investigation, all the 4 accused were arrested in this case. After the completion of the investigation, the challan was put in the Court against all the 4 accused.

5. All the 4 accused were charged under Sections 366, 376, 363 and 306 IPC. In support of its case prosecution examined as may as 17 witnesses. Thereafter the statements of accused under Section 313 Cr.P.C. were recorded in which they denied the prosecution allegations against them and stated that they were innocent and were falsely implicated in this case. However, they did not lead any evidence in their defence.

6. After hearing both sides and after perusing the record, the learned Additional Sessions Judge, Ropar acquitted all the 4 accused of the various charges framed against them vide judgment dated August 24, 1990. This judgment of the learned Additional Sessions Judge has been assailed by the State of Punjab by filing the present appeal against the acquittal.

7. We have heard learned counsel for the parties and have gone through the record.

8. The learned counsel appearing for the appellant State submitted before us that even though PW13 Anil Kumar and PW15 Rajni had not supported the case of the prosecution with regard to the involvement of the accused in the crime, yet conviction of the accused could be based on the basis of dying declaration Exhibit PD and PJ made by Kumari Poonam before Head Constable Bishnu Dutt and Shri P.K. Sharma, Executive Magistrate respectively. It was submitted that

the learned trial Judge erred in discarding the dying declarations Exhibit PD and PJ. On the other hand the learned counsel appearing for the accused respondents submitted before us that no reliance whatsoever can be placed on the dying declarations Exhibit PD and PJ on account of various discrepancies/contradictions. It was further submitted that two views were possible and one in favour of the accused was taken by the trial Court and it was not a perverse view and as such this Court should not interfere with the order of acquittal passed by the learned trial Court.

9. In this case both PW13 Anil Kumar and PW15 Kumari Rajni had not supported the case of the prosecution and were declared hostile. PW13 Anil Kumar aged 14 years while appearing in the witness box deposed that Poonam (deceased) was his sister and that she was a student of 9th class and Rajni PW was a friend of Poonam and she was also a student in the same school. He stated that they all 3 used to go for tuition together. He stated that about 7 months back (his statement was recorded on March 27, 1990) on the 17th of the month, he, Rajni and Poonam were going to their school when a car stopped near them and the car had 3 passengers. He did not know who was driving the car and none of the accused present in Court was driving the car at that time. He further stated that he was made to sit in the car and those persons threatened his sister and asked her to sit in the car otherwise they would kill him whereupon Poonam and Rajni also boarded the car and they were taken to Chandigarh in that car. But he could not tell the place where they were taken. He further stated that all those 3 persons committed forcible sexual intercourse with Poonam and Rajni. They also threatened them saying that if they would disclose that fact they would be killed. He further stated that on the 28th of the same month when Rajni, Poonam and he were going to the school, a car came there, driven by someone he did not know and that car was carrying 4 persons including the driver but he could not tell their names. He stated that the accused present in the Court were not those persons. He stated that he was pushed into the car and they threatened Poonam and Rajni that they should also get into the car otherwise he would be killed whereupon they both boarded the car and they were driven to Chandigarh but he could not tell the house number. He stated that he was made to sit in an adjoining room while the girls were taken to another room by those persons and when they came out they were crying. He stated that they again threatened them not to disclose that incident to anyone. He stated that on the next day Poonam set herself on fire and later died. When PW15 Rajni aged 15 years appeared in the witness box, she stated that she knew Poonam (deceased) and they used to study in the same school and Anil PW also used to study in the same school and they used to go to the school together. She, however, stated that at no occasion she had accompanied Poonam nor she was ever abducted by any person. She stated that rape was never committed upon her. She further stated that she did not know the accused and had never met them. She was declared hostile by the learned Public Prosecutor.

10. From a perusal of the above, it would be clear that so far as Kumari Rajni is

concerned, it was a case of total denial so far as the evidence in Court is concerned. With regard to PW13, Anil Kumar, he had deposed about the two incidents wherein persons had taken Poonam (deceased) and Rajni with them and had committed sexual intercourse with them forcibly, but he failed to identify any of the accused as the culprits. Thus on the basis of the statements of these witnesses, the accused could not be held guilty. Then we are left with the two dying declarations Exhibit PD and PJ.

11. Both the statements viz Exhibit PD and PJ have been detailed by us above. A perusal of the two statements would show that both these statements were contradictory to each other on almost all material points. In the statement Exhibit PD recorded by Head Constable Bishnu Dutt, Kumari Poonam had stated that accused Honey had taken her to Rose Garden at the time of first incident. However, in the statement Exhibit PJ recorded by Shri P.K. Sharma, Executive Magistrate, it was stated by Kumari Poonam that she and her friend Rajni were taken to some place where Honey had raped her while Longowal had raped her friend Rajni at the time of first incident. So far as second incident is concerned, in the statement Exhibit PD recorded by Head Constable Bishnu Dutt, it was stated by Kumari Poonam that second incident took on the previous day i.e. July 28, 1989 and that at that time accused Honey was accompanied by two other persons whom she could recognise and that they were taken to a hotel in Sector 22 Chandigarh where rape was committed upon her forcibly. However, in the statement Exhibit PJ recorded by Shri P.K. Sharma, Executive Magistrate, it was stated by Kumari Poonam that about 23 days back those boys took them to a hotel in Sector 22 and raped her and her friend Rajni. With regard to the suicide as well both the statements are contradictory to each other inasmuch in the statement Exhibit PD she had stated that on the day of occurrence the same boy had come to her house and after ringing the bell, he had given her a signal and went away and at that time there was none else in the house. However, in the second statement, Exhibit PJ, she stated that accused Honey made 23 rounds of her house on a motorcycle and blew horn and at that time her grandmother was also present in the house.

12. From a perusal of the above it would be clear that no reliance could be placed on the two dying declarations Exhibit PD and PJ for holding the accused guilty in this case. This is especially so when these dying declarations stand contradicted by statement of PW13, Anil Kumar with regard to the manner of occurrence. According to PW13, Anil Kumar, brother of Kumari Poonam (deceased) there were three persons in the car with regard to the first incident and they had taken them to a place where all three of them had committed forcible sexual intercourse with Poonam and Rajni. As referred to above, this part of the statement of Anil Kumar is altogether different from the two statements made by Poonam with regard to the first incident.

18. With regard to the second incident it was stated by Anil Kumar PW13 that there were 4 persons in the car and they took them to a house in Chandigarh

where he was made to sit in an adjoining room while the girls were taken to another room by those persons and when they came out they were crying. Again this statement of Anil Kumar is different from the two statements made by Poonam even with regard to the second incident. Regarding the third incident, PW13, Anil Kumar is not a witness. Thus PW13, Anil Kumar has contradicted the two dying declarations of Kumari Poonam on all material points. Furthermore, PW15 Kumari Rajni has also contradicted the two dying declarations of Kumari Poonam by deposing that no such occurrence had taken place and she was never raped and/or abducted by the accused.

19. In 1998(2) Recent Criminal Reports 314, *State of Haryana v. Mahabir* a Division Bench of this Court was considering a State appeal against the acquittal. After noticing the law laid down by their Lordships of the Supreme Court in the case reported as 1996(3) Recent Criminal Reports 188, *Ramesh Babulal Doshi v. State of Gujarat* and 1996(3) Recent Criminal Reports 223, *Dhanna etc. v. State of Madhya Pradesh* it was held by the Division Bench of this Court that where two views are possible, one held by the trial Court for acquitting the accused and the other for convicting the accused, the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial Court. It was further held that unless the conclusions of the trial Court drawn on the evidence on record are found to be unreasonable perverse or unsustainable, the High Court should not interfere with the order of acquittal.

20. Keeping in view the law laid down by their Lordships of the Supreme Court and taking into consideration the facts of the present case, in our opinion, it could not be said that the view taken by the trial Court was in any way unreasonable, perverse or unsustainable. That being so no interference is possible in this appeal.

21. For the reasons recorded above, finding no merit in this appeal the same is dismissed.