

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1151 of 2007 (O&M)

Date of decision: 09.09.2015

Dharampal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Arun Luthra, AAG, Haryana
for the State.

Jitendra Chauhan, J.

By filing the present criminal revision, the petitioner has assailed the judgment dated 04.07.2007, vide which, the learned Addl. Sessions Judge-II, Jind, upheld the judgment dated 13.07.2004 and order of sentence dated 14.07.2004, passed by the learned Sub Divisional Judicial Magistrate, Narwana, whereby, the petitioner was convicted under Section 354 of the Indian Penal Code (for short 'IPC') and sentenced to undergo RI for a period of one year and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo RI for two months.

The brief facts of the case as per para No.2 of the judgment of trial Court are as under:-

“On 12.07.1999, a police party headed by ASI Dharambir was present at Sunderpura chow. Complainant Birmati wife of Ramesh Kumar, lodged a complaint with ASI Dharambir. It was stated by complainant that she is permanent resident of village Dohana Khera. On 12.07.1999 at about 4 pm, she along with her sister Murti wife of Pala Ram were going towards their fields. When they reached in front of the house of accused Dharampal son of Amar Singh, he came of his house and uttered the words “tumhara rehru ka rasta to hamne band karwa diay hain. Manas to chahe to rasta khula sakte hain.” Thereafter accused Dharampal caught hold of her right hand. He also caught hold of her breast with his other hand and asked her to go inside his house. She along with her sister Murti raised a noise whereupon Sunil @ Leela son of Ram Kumar and her sister in law (jethani) came at the spot and rescued her from the hands of the accused. Accused Dharampal fled away from the spot. While leaving the spot, he also threatened that he will insult her as and when he met her alone. It was further stated by the complainant that accused assaulted her with an intention to outrage her modesty. On this complaint, FIR was registered. After completion of necessary investigation, challan was presented in the Court.”

On commitment, the accused/petitioner was charged sheeted under Section 354 IPC, to which he pleaded not guilty and

claimed trial.

In support of the case of prosecution, it examined PW-1 Birmati, complainant, who narrated the entire sequence of the prosecution story, how and in what manner the alleged occurrence took place;

PW-2 Murti had also toed the lines as stated by PW-1, Birmati;

PW3, Pala Ram stated that accused caught hold the hand and breast of the complainant. He reached the spot after about half an hour and further stated regarding lodging of complaint with the police.

PW-4, ASI Dharambir deposed regarding complaint given by the complainant and the investigation being carried out by him.

The statements of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, he did not not led any evidence in defence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/petitioner, as stated hereinbefore.

Feeling aggrieved against the judgments of both the Courts below, the instant revision was filed by the accused/petitioner

which was admitted on 17.07.2007. The sentence of accused/petitioner was suspended on 24.09.2007.

The learned counsel for the petitioners has contended that the trial Court as well as the appellate Court have erroneously passed the impugned judgments/orders, without appreciating the evidence on record. The petitioner has been made to suffer for his efforts to get the tubewell removed from the panchayat land, illegally installed by Ramesh Kumar, husband of the complainant which is fully established on record, due to which the husband of the complainant suffered an approximate loss of Rs.2 lacs. Therefore, the learned counsel has contended that the whole proceedings against the petitioner are motivated with the purpose to settle the score for getting them evicted from the grabbed panchayat land.

The learned counsel has further submitted that there are material contradictions in the statement made by the complainant, PW-1 Birmati, wherein she has specifically stated that she went to the police station at 1.30 pm, whereas the occurrence took place at 4 pm while she was going to the fields to collect fodder on the way in a busy thoroughfare while her sister PW-2, Murti, was also present. As per the statement of PW-1, Birmati, complainant, she did not suffer any injury whereas as per the deposition of PW-2, Murti, the complainant Birmati suffered injuries on her hand and her clothes were blood smeared. The learned counsel has further contended that

the other two eye witnesses Ramrati, sister in law and Sunil @ Leela, son of brother in law of the complainant were not examined by the prosecution. There were material contradictions with regard to reporting the matter to the police. As per the testimonies of PW-1, Birmati, she along with Pala went to the police station, where her statement Ex.PA was recorded by the SHO, whereas as per the testimony of by PW-4 ASI Dharambir, the statement Ex.PA of the complainant Birmati was recorded at Sunderpura Chowk, where Birmati and Pala met him. Therefore, the learned counsel has contended that the entire story has been concocted by the complainant due to the previous enmity to defame the petitioner.

On the other hand, the learned State counsel argued that the prosecution has duly proved its case beyond the shadow of reasonable doubt. The contradictions pointed out by learned counsel for the petitioner are minor in nature. There is consistency with regard to the role of the petitioner in outraging the modesty of the complainant. The version of the complainant has been duly corroborated by PW-2, Murti, who was with the complainant at the time of alleged incident. The petitioner/accused has rightly been convicted by the trial Court. He supported the judgment of the Court below and prayed for dismissal of the instant revision petition.

This Court has heard the arguments of learned counsel for the parties and has carefully gone through the record of the case.

As per record, the occurrence in the present case took place at 4 pm, whereas as per the the statement of PW-1, Birmati, the complainant, she had reported the matter to the police at 1.30 pm in the police station and lodged the complaint against the petitioner. Further, as per PW-4 ASI Dharambir, the statement of complainant Birmati was recorded when he was present at Sunderpura chowk.

There are material contradictions in the statements of PW-1 and PW-2 with regard to the injuries suffered by the complainant. As per the version of complainant, she had not suffered any injury, whereas PW-2, Murti who was accompanying the complainant at the time of the alleged incident, has emphasized that the injuries were suffered by the complainant and blood was oozing out from the injuries. However, neither any MLR was carried out nor the blood smeared clothes were recovered by the police. It is also seen from the record that PW-1, Birmati and PW-2, Murti had asserted that there was a previous enmity between the petitioner and the husband of the complainant, regarding installation of tubewell in the panchayat land on account of the complaint made by the petitioner. The said tubewell was got removed and the husband of the complainant suffered a loss to the extent of Rs.2 lacs.

The contradictions with regard to the time of occurrence, the place of lodging of the complaint and the meeting with the police for the first time being different in space of time cannot be termed to

be trivial contradictions. In fact, these contradictions go to the root of the matter and indicates that the incident as projected by the prosecution lacks in veracity. The consistency with regard to the allegation of outraging the modesty by the petitioner has to be ignored in view of the inconsistency and material contradictions in the statements of the eye witnesses and in the absence of MLR of the complainant. The prosecution has failed to prove its case as projected and portrayed in the FIR.

In view of the foregoing discussion, the instant revision petition is allowed. The judgments of conviction and order of sentence of the Appellate Court as well as the trial Court are set aside. The petitioner is already on bail. Accordingly, the petitioner is acquitted of the charge levelled against him.

09.09.2015

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(JITENDRA CHAUHAN)
JUDGE