

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1879-2008

Date of Decision:- 17.01.2017

Mehar Chand @ Kala

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

RITU BAHRI, J. (Oral)

Petitioner has come up in revision against the judgment dated 05.09.2008, passed by learned Additional Sessions Judge, Kurukshetra whereby the revisional Court has upheld the judgment dated 14.02.2008, passed by the learned Judicial Magistrate, whereby the petitioner has been convicted under Section 354 IPC.

Briefly the facts of the case are that on 02.07.2005, when SI Didar Masih was present on Sunarian Chowk, Babin along with HC Raj Kumar and C. Rajbir Singh on duty, one Suman Rani wife of Mahender Singh resident of Sultanpur came there along with her husband, her mother-in-law Banto Devi and Sarpanch Ram Parshad and she had made her statement Exh.PA that she is a housewife and having two children. Her

husband is a labourer. Mehar Chand @ Kala is teasing her for the past six months. On 01.07.2005, when her husband was away from his work and she was leaving from her house with a tokra of cow-dung at about 7.30/8.00 a.m., Mehar Chand caught hold of her from her arm and pulled her towards him with ulterior motives. Thereafter, tokra of cow-dung fell down and he pushed her from her breast on the ground and tried to pull her inside the house. On hearing of hue and cry, Som Nath came there and rescued her from Mehar Chand. Thereafter, the FIR was registered against the accused. The statement of the victim was recorded after thorough investigation. The challan was presented and copies of the documents were supplied to the accused. He was charged under Section 354 IPC, vide order dated 08.10.2005.

In order to substantiate its case, the prosecution examined ASI Didar Masih as PW1, Suman Rani as PW2, Surender Kumar as PW2, SI Subhash Chand as PW4, Som Nath as PW5, ASI Jaipal as PW6.

Suman Rani appeared as PW2 and stated that accused Mehar Chand caught hold of her arm and pulled her inside and pushed her from her breast on the ground and tried to outrage her modesty.

Som Nath, appeared as PW5 and stated that when complainant coming out of her house with cow-dung, accused Mehar Chand @ Kala caught her from her arm and breast. He reached there and saved her. The accused also pushed him and thereafter the accused ran away.

After the closure of the prosecution evidence, statement of the accused Mehar Chand under Section 313 Cr.P.C. was recorded and he stated that he has been falsely implicated in the present case. He has examined

Balak Ram as DW1 in defence.

Balak Ram appeared as DW1 and stated that there was a dispute between husband of the complainant and the accused with regard to installation of one motor in the fields of Mehar Singh. The parties have previous enmity and that is why a false case was got registered against the accused.

The rest of the witnesses of the prosecution i.e. PW1, PW2 and PW4 were formal witnesses. Consequently, the trial Court convicted the accused for committing an offence under Section 354 IPC.

On revision, the main ground taken by the petitioner that deposition of Som Nath, PW5, was an interested witness. While appearing as PW5, he stated that he had reached the spot after hearing the scream of the complainant whereas as per statement of complainant, she was rescued by said Som Nath. There was a material contradiction in the statements of the witnesses and he should be given the benefit of doubt. Moreover, there was a delay of 36 hours of lodging the FIR.

The revision Court has considered this aspect and has held that in the complaint Ex.PA the complainant had given series of acts committed by the accused for the last six months. Finally, the accused caught hold of her by her breast and laid her on the ground and thereafter a formal complaint was made to the police and complainant has stood the test of cross-examination and her testimony has gone unshattered. She was a married lady, having two children, husband and in-laws and there was nothing to show as to why the complainant would make a false accusation against the petitioner concerning her chastity. Even if testimony of Som Nath (PW5) is discarded, the testimony of the complainant PW2 is sufficient to sustain conviction of the petitioner and accordingly the revision

was dismissed.

After perusing the judgment of the Courts below, this Court is of the considered view that the judgment of conviction has rightly based on the allegations made in the complaint (Ex.PA) and the deposition of PW2 Sunita Rani. Accordingly, on merits the present revision petition is hereby dismissed.

Taking into consideration the fact that in the present case the incident relates back to 02.07.2005 and the petitioner has faced the criminal trial for 11 years. As per custody certificate dated 01.10.2008, the petitioner has not faced any other criminal trial and has not misused the concession of bail granted to him. He has already undergone 26 days of actual sentence, out of the substantial sentence of six months awarded to him.

Therefore, keeping in view the fact that the petitioner has faced the criminal trial for almost 11 years, his conviction period is being reduced to the period already undergone by him. However, he shall deposit a sum of ₹25,000/- before the trial, within a period of one month and the trial Court is directed to disburse the same to the complainant thereafter and send a compliance report to this Court, within a period of six months.

January 17, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No