

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-533-SB-2004

Date of Decision: 22.02.2018

Nand Lal

.....Appellant

Versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K. Arora, Advocate
for the appellant.

Mr. Rahul Rathore, DAG, Punjab.

ANITA CHAUDHRY, J

The appellant has been convicted under Section 452 and Section 354 IPC and has been sentenced to undergo RI for 2 years along with a fine of Rs.500/- under Section 452 IPC and to rigorous imprisonment for 1 ½ years along with a fine of Rs.500/- under Section 354 IPC both the sentence were to run concurrently. The Additional Sessions Judge had tried and convicted the appellant in a complaint case.

Following facts emerge from the record:-

A complaint was filed in the Court on 25.05.2001. The allegations made by the complainant were that the accused was her husband's friend. Six months earlier he had got himself photographed with her in connivance with a photographer while attending a function. She did not come to know of it then but the photograph was used to blackmail her and he wanted to develop illicit relations.

Narrating the incident, which occurred on 18.05.2001, the complainant had stated that she was home about 1-1.30 p.m. and her husband has gone to the fields for labour work. The accused entered her house armed with a air gun. On seeing her alone, he started grappling with her, lifted her and threw her on a cot and raped her without her consent when she raised alarm she was gagged and her *dupatta* was stuffed in her mouth. She had stated that the string of salwar was broken and her shirt was torn. She was abused and he claimed that he would keep her as his wife and also threatened to kill her if the incident were narrated to anyone. It was further disclosed that while the accused was raping her, her mother-in-law and her devar-Het Ram and some villagers came and on seeing them, the accused fled away. Her husband returned in the evening and the incident was narrated to him. The matter was reported to the police on the same day. They also sent a telegram to the Senior Police Officer and to the Chief Justice of the High Court. It was claimed that the police failed to take action on the complaint and therefore the complaint was filed in the Court of Sub Divisional Magistrate, Fazilka.

Preliminary evidence was recorded and the accused was summoned.

Charge was framed under Sections 376/452 and 506 IPC. The prosecution examined Birma, her Devar, her mother-in-law and Charan Singh. The accused in his 313 statement denied the incriminating evidence and stated that he used to run a Karyana shop and the prosecutrix had been purchasing goods from him and she owed money and she did not want to pay that amount and therefore she had filed the false complaint.

The trial Court believed the statement of the prosecutrix so far as the charges under Sections 354 and 452 IPC were concerned but rejected the statement of the victim with respect to the charges under Section 376 IPC. It found her version to be improbable and the details are given in Para 12 and 13 of the judgment.

I have heard both the sides.

Learned counsel for the appellant has submitted that the story put forward by the complainant is concocted and it is improbable that there was no one in the street and could a man enter the house in broad day light and commit rape, when dever and mother-in-law live in the same house though there is a partition wall just 6 feet high. It was urged that the mother-in-law turned hostile as she did not support the prosecution version and she had not seen the accused committing rape. It was urged that the other two persons had only seen a person running in the street and the statement of the complainant had been disbelieved with respect to rape. It was urged that there are contradiction in the statement of witnesses and there is no explanation as to why they had not gone to the hospital or to the police the same day. It was urged that Het Ram (PW-3) had stated that they had gone to the police station at about 4.00 pm and the police had registered the case and had arrested the accused and he remained in custody for 10 days but the complainant could not show that any complaint of rape had been given to the police nor its copy was produced and the complaint had been filed on 25.05.2001. It was urged that the entire statement is falsehood. Referring to the statement of Charan Singh, he urges that there was a Dharamshala in front of the complainant's house and people usually sit there during the day and if the complainant was crying for help, there would have been some

persons who would have chased and caught hold of the accused. It was urged that the trial Court had disbelieved the story of rape and it should have rejected the entire statements as the evidence was neither convincing nor believable and full of improbabilities.

The State counsel supported the judgment of the trial Court and had urged that the statement of the victim was rightly accepted and no woman would make a false complaint and no evidence was led by the accused to show that he was running a Karyana shop.

The complaint mentions that the accused had managed to get himself photographed with her about 6 months ago with the help of a photographer. The complainant had disclosed that he was wanting to be intimate with her and entered her house around 1 p.m. In the Court the complainant made a different statement. She stated that the photograph had been taken about 5/10 days prior to the occurrence. She had stated that she did not make any complaint to the police that he was using the photographs nor she had approached any member Panchayat. She stated that her husband had approached a member Panchayat who had requested the accused to return the photographs but he refused. The police did not recover any photograph.

The complainant in her cross-examination had accepted the fact that the accused was running a karyana shop. She had stated that the accused was married and had 3 children. She had stated that her eldest child was 8 years old. She had deposed that her Uncle Arjun lives on one side of her house while her devar and mother-in-law live in the house on the other side with a partition wall in between. She had stated that Jogi – Uncle of the accused, has a Karyana Shop in front of their house and people usually visit

that shop to make purchases. She stated that she did not know whether the accused was carrying a toy gun or a real gun. She stated that the accused called out her husband's name from outside and when she disclosed that he was not in, that he entered the house.

The trial Court has disbelieved the testimony of the complainant so far the as the allegations of rape are concerned, it noted that there was no medical evidence nor the matter was promptly reported to the police. The complainant failed to even go to the hospital for her medical. The complainant failed to produce the copy of the complaint given to the police. She was mainly relying upon telegrams given to the Senior Officers but only the postal receipt is available. The complaint filed in the Court is typed and was filed through a lawyer. The complainant had access to the legal recourse and had approached the Court within 8 days. What is surprising is as to why a written complaint could not be given to the police and why no medical was done? The trial Court had rightly rejected the statement of the complainant with respect to the allegations of rape.

On going through the statements of Charan Singh and Het Ram it becomes clear that the house of the complainant is in a busy area. The neighbouring houses are occupied by her own family members. The 8 year old son of the complainant was present in the house, he was not confined. He did not even run out nor the relatives staying close saw or heard anything. It makes the version improbable. No one had caught the accused running way though the witnesses claim that they heard the shrieks and the cries of the complainant. The witnesses had made a false statement when they had stated that the police had registered the FIR and the accused had been detained for 10-12 days. The prosecution could not produce any

evidence in this regard.

According to the complainant her mother-in-law was the first person who reached there. Her statement makes an interesting reading. She stated that she was sitting in her house when she heard some noise. She stated that accused grappled with her daughter-in-law and when she reached the house of the daughter-in-law she did not see the accused as he had already run away and she did not see anything else. That is the only statement made by her. She did not see any torn clothes. The complainant came out immediately and she was wearing clothes. The trial Court had doubted that version because if the string of the Salwar had been broken, she could not have come out of the house immediately wearing the same set of clothes.

The story put forward by the complainant and her witnesses is not convincing nor probable. The complainant and her husband is said to have contacted a member Panchayat with respect to the photographs. There was no reason why they did not contact the Member Panchayat and seek help when police was not cooperating. There are serious contradictions in the statements of the witnesses with respect to the time when they had gone to report the matter to the police. It is easy to make allegations but is difficult to prove. The trial Court should have rejected the entire statement in entirety when it found that the allegations of rape were false. The complainant had a reason to make a complaint. The evidence led by the accused appears to be more probable. The complainant had admitted that the accused was running a karyana shop. Probably she owed some amount and was not paying which led to a dispute.

The appeal is allowed. The conviction and sentence passed by the trial Court are set aside and the accused is acquitted.

(ANITA CHAUDHRY)
JUDGE

February 22, 2018
ps-I

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No