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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/11/2018 21:03
I attest to the accuracy and
authenticity of this document

CRR-89-2007 (O/M)
Date of decision : 13.11.2018

Sumer Singh

..... Petitioner (s)

Versus

State of Haryana

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. N.S. Shekhawat, Advocate,
for petitioner.

Mr. Sandeep Vashisht, DAG Haryana.

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KULDIP SINGH, J. (ORAL)

Custody certificate filed in Court today and same is taken on record.

This is revision against judgment dated 15.12.2006, passed by learned Sessions Judge, Narnaul, affirming judgment of conviction and order of sentence dated 1.8.2006, passed by learned Judicial Magistrate 1st Class, Mohendergarh, vide which present petitioner was convicted under Section 457 IPC and was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default thereof, to further undergo imprisonment for one month. Fine was paid.

Facts of case are that complainant Rama Nand is working as a Havaldar in EME Core, Army. On night intervening 23/24.5.1999, at about 12 O' clock midnight, accused Sumer Singh, illegally entered house of complainant after scaling boundary wall and had a scuffle with his wife victim (Mrs. G). The victim (Mrs. G) raised alarm, as a result of which his mother Sunder Devi, aged about 85 years, and children woke up. Accused

then fled away after scaling boundary wall of house. His sleeper was left behind in house. The victim (Mrs. G) made a telephonic call to her husband Rama Nand (complainant) on 24.5.1999, at about 10:00 AM, who was then posted at Jalandhar Cantt. After obtaining leave, Rama Nand (complainant) reached his village and moved a complaint to Station House Officer, Police Station Kanina, on the basis of which, present case was registered. Accused was arrested and after completion of investigation, challan was presented against him in Court.

Accused was chargesheeted under Section 457 IPC, to which he pleaded not guilty.

In support of its case, prosecution examined Rama Nand (PW1), victim (Mrs. G) as PW2, Baldev Singh Inspector (PW3), Jthar Singh (PW4) and Sunder Devi (PW5) and closed evidence.

In statement recorded under Section 313 Cr.P.C., accused pleaded innocence and did not lead any evidence in defence.

The learned Judicial Magistrate 1st Class, Mohindergarh, after hearing both parties and going through evidence, convicted and sentenced accused, as aforesaid. The appeal against said judgment was dismissed.

I have heard learned counsel for parties and have gone through file and lower Court file as well.

The learned counsel for accused has vehemently argued that in this case, Rama Nand (complainant) had not seen occurrence. Sunder Devi, mother in law of victim, though stated that one boy entered into house and that victim (Mrs. G) had raised alarm, but she could not name the boy, though she stated that said boy had ran away. The learned counsel for accused further contends that there is only statement of victim (Mrs. G), which was without any corroboration.

I am of the view that facts and circumstances shows that statement of victim (Mrs. G) was rightly relied upon by both Courts below. The victim (Mrs. G) was sleeping in her house at night with her children and mother in law. Her husband Rama Nand (complainant), who is in Army and was posted at Jalandhar Cantt., was away on duty. There is no reason for victim (Mrs. G) to raise alarm at midnight saying that somebody caught hold of her hand and scuffled with her and then claim that accused left his sleeper. The conduct of victim (Mrs. G) shows that on next morning, she informed her husband, who got leave and after returning to his village, moved a complaint before police. The chappal was handed over to police. There is no enmity or ill will with accused. Therefore, statement of victim (Mrs. G) was rightly relied upon, even if not corroborated with other witness. It is to be noted that though her mother in law did not state about identity of accused, but her mother in law Sunder Devi, who is of advance age, aged about 85 years, had stated that infact occurrence had taken place. One boy at midnight caught hold of hand of victim (Mrs. G), who raised alarm and then said boy ran away. Said boy was identified by victim (Mrs. G). In this way, statement of victim (Mrs. G) was corroborated by her mother in law Sunder Devi.

The learned counsel for accused further contends that there is delay in lodging FIR. The occurrence took place on night intervening 23/24.5.1999 and FIR was registered on 26.5.1999, in evening. I am of the view that in view of incident, victim (Mrs. G) was justified in calling her husband, who lodged FIR. In our social set up in the villages, ladies do act in such circumstances through their male members of family. There was no other male member available at her house, except complainant.

The plea that witnesses are related is without any force since only related witnesses could be available at house.

The learned counsel for petitioner further contends that it was claimed that neighbour namely Mool Chand had also reached spot, but he has not been examined.

The victim (Mrs. G) had clearly stated in cross examination that neighbour Mool Chand came there after five minutes of occurrence. He had not seen accused.

The learned counsel for accused further contends that recovery of chappal was planted and second chappal of accused was not recovered.

I am of view that it is a defect in investigation. However, crime is proved from testimony of victim (Mrs. G) and duly supported by her mother in law Sunder Devi and conduct of victim (Mrs. G) informing her husband on next day and narrating about incident. There is no illegality or infirmity in findings recorded by two Courts below.

The learned counsel for accused, faced with these circumstances, has relied upon various authorities of this Court in *Major Singh Versus State of Punjab*, 1999 (4) AICLR 136, *Satnam Singh and others Versus State of Punjab*, 2009 (2) RCR (Criminal) 286, *Harbans Gir etc. Versus Punjab State*, 2004 (4) RCR (Criminal) 239, *Devinder Singh Versus State of Punjab*, 2004 (1) RCR (Criminal) 727, *Jhabbu Versus State of M.P.*, 2007 (20) RCR (Criminal) 40, *Vijay Pal Singh and others Versus State of Haryana*, 2004 (3) RCR (Criminal) 600 and authority of Patna High Court in *Pappu Singh and others Versus State of Bihar*, 2008 (6) RCR (Criminal) 317 and prays that it is a 16 year old case and that accused should be sentenced to the period already undergone by him, which in this case is 1 month and 15 days.

I am of view that each case is to be examined on its own facts.

In present case, accused at night committed lurking trespass and caught hold hand of victim (Mrs. G) and had scuffled with her. In these circumstances, there is no ground to take any lenient view.

As a result of foregoing discussion, revision is dismissed. Accused, who is on bail, be rearrested and sent to jail to undergo remaining part of sentence.

(KULDIP SINGH)
JUDGE

13.11.2018
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No