

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.2660 of 2018 (O&M)

Date of Decision: 14.08.2018

Seema @ Sonu @ Sona

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Seema @ Sonu @ Sona, one of the accused in FIR No.665 dated 12.11.2013 under Sections 384/389/120-B IPC registered at Police Station City Fatehabad has filed the present revision petition against judgment dated 31.07.2018 passed by learned Additional Sessions Judge, Fatehabad, whereby her appeal against the judgment of conviction dated 12.06.2015 and order of sentence dated 15.06.2015 was dismissed.

Vide judgment dated 12.06.2015, learned Judicial Magistrate Ist Class, Fatehabad held the petitioner guilty for the commission of offence under Sections 389 and 120-B IPC. Vide separate order dated 15.06.2015 sentenced her to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo simple imprisonment for one month, for the offence

under Section 389 IPC. Similarly, for the offence under Section 120-B IPC, the petitioner was sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for seven days.

Briefly stated, the aforesaid FIR was registered at the instance of complainant - Kulwinder Singh son of Kashmir Singh, resident of Model Town, Fatehabad. As per the complainant, about 4-5 days prior to registration of the FIR, the complainant got missed calls on his mobile phone from Mobile No.80538-04122 but the complainant did not respond to it. Again, three days back, another call was received on his mobile number from the same number. However, this time, the complainant attended the call. A lady was speaking from the other side of the phone. She had told the complainant that she belongs to Sirsa and earlier she was residing at Fatehabad. Her father is a truck driver and she knows the complainant. She asked the complainant to get her marriage arranged with some Sikh boy. The complainant did not pay any attention to this.

On 21.11.2013, the complainant along with his friend Bahadur Singh son of Balbir Singh had gone to Sirsa in connection with some work, where he received repeated calls from the same mobile number. The complainant shared these calls with his friend Bahadur Singh and thereafter, they planned to visit the house of that lady. After making enquiry about the location of her house, they reached at her house, where they found that a lady aged about 24/25 years was talking to a man and a young boy. The lady introduced herself as Sona and the man present there was a relative of Sona. After some time, three men and a lady also came

there. On their arrival, petitioner (Sona) and the man already present there started making noise and stated that both these persons (i.e. the complainant and his friend Bahadur Singh) have done wrong thing with her. The complainant and his friend got scared. All these persons i.e. four men and two women stated that the complainant and his friend have done wrong act with this lady (Sona), for which, they will get a case of rape registered against them. Out of these persons, one of the persons disclosed his name as Mani Ram. He intervened that he can get the matter settled and save the complainant and his friend, provided they are ready to give an amount of Rs.10 lakhs, failing which, a case would be registered against them and they would remain in jail.

In these circumstances, the complainant and his friend agreed to give Rs.5 lakh to those persons. Out of those persons, two persons namely Mani Ram and Bhajan Lal (accused) came with the complainant and his friend in their Scorpio car at Fatehabad. The complainant parked his car at Bus Stand Fatehabad, leaving his friend Bahadur Singh with those persons in the car. After some time, one another person namely Malkiat also came there. The entire story was narrated by the complainant to his friend Gurdeep Singh, who gave him Rs.2 lakhs. The complainant handed over this money to those persons with an assurance that in order to save his reputation in the society, he will pay the remaining amount on next day i.e. 22.11.2013, the day on which the matter was brought to the notice of the police. On 22.11.2013, the complainant arranged Rs.1,50,000/- from his cousin Darshan by way of cheque, so that the money can be paid to the accused persons. In the meantime, the complainant received a call from

mobile no.94160-33590, obviously from the accused, informing him that they have reached at Fatehabad. They insisted the complainant to make the balance payment of Rs.3,00,000/-, otherwise, a false case of rape would be registered against the complainant. The complainant informed the accused that he could arrange Rs.1,50,000/- and would make the balance payment very shortly. However, the accused insisted for the whole payment of Rs.3,00,000/-. With these allegations, an FIR was got registered against the accused including the petitioner.

During investigation, Mani Ram and Bhajan Lal were arrested from the house of Gurdeep Singh on 22.11.2013 and an amount of Rs.3,00,000/- was also recovered from them. They were taken into police custody. In his disclosure statement, accused Bhajan Lal revealed about the conspiracy hatched by them and the deal struck between the accused and the complainant for an amount of Rs.5,00,000/- so as to avoid registration of a criminal case. At their instance, an amount of Rs.25,000/- each was recovered from the respective houses of the accused Mani Ram and Bhajan Lal. The petitioner was also arrested on 23.11.2013 and pursuant to her disclosure statement, an amount of Rs.10,000/- was recovered from her house. Similarly, accused Jassa @ Basant was arrested on 26.11.2013 and on his disclosure statement, an amount of Rs.2,200/- was recovered from his house. Other accused Dharmender, Malkiat and Jaspal Kaur were also arrested.

After completion of investigation, final report under Section 173 CrPC was presented before the trial Court and copies of the challan and other documents were supplied to the accused free of cost, as

envisaged under Section 207 CrPC. Accordingly, the accused were chargesheeted under Sections 120-B, 384 and 389 read with Section 120-B IPC, to which, they pleaded not guilty and claimed trial.

The prosecution examined PW-1 Kulwinder Singh, the complainant, PW-2 Gurdeep Singh, PW-3 Bahadur Singh, PW-4 HC Telu Ram, PW-5 ASI Balwan Singh, PW-6 PSI Saravjeet Kaur, PW-7 ASI Rameshwar, PW-8 C. Ram Kishan and PW-9 SI Niranjana Singh, I.O.

The accused when examined under Section 313 CrPC denied all the prosecution allegations and pleaded innocence and false implication. Though in defence, accused examined ASI Om Parkash as DW-1 and Pritam Singh as DW-2.

The trial Court after hearing both the sides and appreciating the evidence on record, convicted the petitioner along with other accused vide judgment dated 12.06.2015 and sentenced her, as indicated above vide order of sentence dated 15.06.2015.

The petitioner filed an appeal against the judgment passed by the trial Court, however, the same was dismissed by learned Additional Sessions Judge, Fatehabad vide order dated 31.07.2018.

It is in these circumstances, the petitioner has preferred the present revision petition against the judgment dated 31.07.2018 passed by learned Additional Sessions Judge, Fatehabad.

Learned counsel for the petitioner has argued that the money in question was never entrusted to the petitioner and as per the allegation of the complainant, the money was entrusted to Mani Ram and Bhajan Lal. The story propounded by the prosecution is highly improbable, as there is

no independent corroboration to the evidence recorded by the prosecution witnesses. The FIR was lodged after a delay of 24 hours, as the alleged incident took place on 21.11.2013, whereas the FIR was registered on 22.11.2013 in the evening, without any explanation. Both the Courts have failed to consider the fact as to why the complainant remained silent on 21.11.2013. The CD and the call details have not been proved in accordance with law. The defence version is cogent and convincing. The petitioner had moved an application to the police authorities, but the version of the petitioner was not believed. There are contradictions and discrepancies in the testimony of recovery witnesses and the recovery has been planted upon the petitioner. There is no justification as to why no independent witness was joined in the investigation. The defence version of DW-2 Preetam is not only cogent and convincing, rather natural, as after hearing the noise, he (DW-2) had reached the place of occurrence. It is the petitioner who is a victim and not the complainant. No test identification parade was carried out and the prosecution has failed to prove as to how the identity of the petitioner was established. As per the case of the prosecution itself, one of the accused Mani Ram had asked the complainant to pay Rs.10,00,000/- and finally a deal was struck between them at Rs.5,00,000/-. Thus, it is Mani Ram and Bhajan Lal who had accompanied the complainant and received money, if any. From the version of the complainant, nothing has come on record to establish that the petitioner had ever asked for any money. Therefore, the allegation of extorting money on the pretext of involving the complainant in a false case is totally unfounded. No woman would call a stranger and ask him to arrange her

marriage. Thus, the prosecution version is highly improbable and untenable.

I have heard learned counsel for the petitioner and perused the impugned judgments.

PW-1 Kulwinder Singh, complainant, has stated that about 4-5 days prior to the registration of the FIR, he had received missed calls on his mobile no.94160-61100 from the mobile number of the accused, whose last five digits were 04122, but he did not attend those calls. After 2-3 days, he again received a call from the aforesaid mobile number and this time, he (complainant) attended it. A woman was calling from the other side, who revealed that earlier, she was residing at Fatehabad but now she has shifted to Sirsa. Her father is a truck driver. She requested him to get her marriage arranged at Fatehabad with some Sikh boy, upon which, this witness asked her (petitioner) to come to Fatehabad with her parents. However, on 21.11.2013, when the complainant along with his friend PW-3 Bahadur Singh was in Sirsa, he received a call from the same mobile number, upon which, the complainant along with his friend visited the house of that lady at Sirsa at Rania Road, near Girls School. On reaching the house of the accused, they found a lady aged about 25 years, one boy aged about 11 years and a man aged about 28-30 years present in the house. The lady revealed her name as Sona. However, after some time, three persons and a lady also reached there and they started making noise that they (complainant and his friend) had done wrong act with Sona. The complainant and his friend got frightened. Out of these persons, one person namely Mani Ram intervened and took the complainant and his friend

inside the room and asked them to pay an amount of Rs.10,00,000/-, otherwise a case would be registered against them and they will remain in jail. Finally, a deal was struck at Rs.5,00,000/-. In order to collect the money, the accused Mani Ram and Bhajan Lal accompanied the complainant in his car. The complainant parked his car at Bus Stand Fatehabad, leaving Mani Ram and Bhajan Lal and visited the house of Gurdeep Singh. After narrating the entire story to Gurdeep Singh, the complainant borrowed an amount of Rs.2,00,000/- from him, which was handed over to Mani Ram and Bhajan Lal and he (complainant) assured them that the remaining amount shall be paid to them on the next day. But Mani Ram and Bhajan Lal did not agree and asked for the remaining amount on the same day. However, in between, another person namely Malkiat came at the spot and spoke to both Mani Ram and Bhajan Lal and went away. The complainant and his friend also returned to their homes. On 22.11.2013, the complainant took Rs.1,50,000/- from the account of his cousin Darshan through cheque, so as to give this money to the accused. Thereafter, a call was received from the mobile number ending 33590 digits with a threat that in case they will not make the payment, then they would be implicated in a rape case. The complainant requested that he has arranged Rs.1,50,000/- and the remaining amount would be arranged soon. The complainant in consultation with Gurdeep Singh moved a complaint Ex.PW1/A to SHO, P.S. City Fatehabad. The brother of the complainant Nirmal Singh brought Rs.1,50,000/- from a commission agent and after that, he called Mani Ram and Bhajan Lal, where the police apprehended

them with currency notes of Rs.3,00,000/-. They were taken in police custody Ex.PW1/B.

PW-2 Gurdeep Singh and PW-3 Bahadur Singh corroborated the version of the complainant.

PW-6 P/SLI Saravjeet Kaur stated that on 23.11.2013, while she was posted at Police Station City Fatehabad, she was joined by SI Niranjan Singh in the investigation of the case. Niranjan Singh had interrogated the petitioner Seema @ Sonu in her presence, where the accused (petitioner) had suffered a disclosure statement Ex.PW-5/A and on the basis of this disclosure statement, an amount of Rs.10,000/- was recovered.

PW-7 ASI Rameshwar testified that he joined investigation on 23.11.2013 and during their arrest, the accused Seema @ Soma @ Sonu, Mani Ram and Bajan Lal made their disclosure statements Ex.PW-7/A and Ex.PW-7/B, PW-7/C, PW-7/D, whereupon, an amount of Rs.25,000/- each was recovered from them, as per the recovery memos.Ex.PW-7/E and Ex.PW-7/F.

PW-8 C. Ram Kishan testified that he joined the investigation on 22.11.2013 with SI Niranjan Singh and he had done videography in the case. He has stated that two accused were arrested from the spot and he had prepared the compact disk from the government camera. He proved CDs Ex.P1 and Ex.P2.

The accused in their defence have examined two DWs. DW-1 ASI Om Prakash testified that the accused Seema @ Sona had not submitted any complaint against any person and no FIR has been lodged at

P.S. Sirsa. Similarly, DW-2 Preetam Singh, who is residing in the same colony, where the alleged incident took place, has deposed that on 21.11.2013 at about 4.30/5.00 p.m., he heard a noise near the house of Malkiat. He found that a lady Seema was weeping and the people present there told him that Kulwinder (complainant) and his friend Bahadur had raped her. Some of the persons present there were of the view that they (complainant and Bahadur Singh) be beaten whereas others wanted them to be taken to the police station. He has also deposed that 5-7 persons who were present there consulted themselves and decided to take both the persons (complainant and his friend) to police station. However, the police personnel had told that this case is of Fatehabad Police Station. They also consulted Advocate Kiran Kamboj. In this manner, they came back, as they got scared. However, after 2-3 days, it came to his notice that the police has registered a case against Seema, the present petitioner. He also met the complainant so as to withdraw the case, but he refused to do so with the plea that he has suffered a huge loss of Rs.15 lacs.

There is no contradiction in the evidence so led by the prosecution. Initially, an Amount of Rs.2,00,000/- was arranged by PW-1 Kulwinder Singh, complainant from his cousin PW-2 Gurdeep Singh. The version of PW-1 Kulwinder Singh is consistent throughout, which was supported with the deposition of PW-2 Gurdeep Singh and PW-3 Bahadur Singh. Thereafter, the incident of receiving cash amount of Rs.3,00,000/- was also videographed by C. Ram Kishan PW-8, who has testified that the incident was videographed with the help of official camera and video CDs Ex.P1 and P2 were prepared in the case. It was at the disclosure statements

of accused Mani Ram and Bhajan Lal, an amount of Rs.25,000/- each was recovered from their respective houses. On the disclosure statement of the petitioner, an amount of Rs.10,000/- was recovered from her house. Similarly, on the disclosure statement of accused Jassa @ Basant, an amount of Rs.2,200/- was recovered from his house.

The objection taken by the petitioner-accused that the complainant was guilty of committing rape upon her, cannot be accepted, as no such FIR has been registered against the complainant. Even assuming, for the sake of arguments, that if the police has not registered a case against the complainant and his friend, for want of jurisdiction, the accused could have got an FIR registered at a place which would have the jurisdiction in the case, especially when they had consulted Advocate Kiran Kamboj in the matter. It was on the basis of receiving repeated calls from the petitioner, the complainant along with his friend had visited the house of the petitioner, where other persons were also present. However, they fell in the trap laid by the petitioner and other co-accused. The defence version of DW-2 Preetam Singh indicates that the complainant PW-1 Kulwinder Singh and his friend of PW-2 Bahadur Singh had visited the house of the petitioner on 21.11.2013. The cross-examination of this witness is relevant, as in his deposition, he has stated that he was attracted to the house of the accused Palo on the evening of 21.11.2013, where he heard that PW-1 Kulwinder (complainant) and his friend Bahadur Singh had committed rape upon the petitioner. Thus, the evidence of DW-2 Preetam Singh is hearsay and has rightly been discarded by the trial Court being not admissible.

In fact, the other accused by keeping the petitioner in the background, had hatched a conspiracy to extort money from the complainant. The incident originated from the petitioner, who made repeated calls to the complainant and by entrapping him, called him to her house. It is as a result of hatching a conspiracy, an amount of Rs.2,00,000/- was extracted from the complainant by Mani Ram and Bhajan Lal, accused and further, they were caught red handed while receiving Rs.3,00,000/- at the house of Gurdeep Singh, which was duly videographed in the official camera Ex.P1 and Ex.P2. Therefore, the plea that the petitioner has not taken any money from the complainant, cannot be accepted. Moreover, this Court cannot ignore the trauma suffered by the complainant and his family, as it would have certainly tarnished the reputation of the complainant and his friend in the eyes of the society adversely. As held in the case of **Rajoo & ors. Vs. State of Madhya Pradesh 2009(1) RCR (Crl.) 310**, it cannot be lost sight that if rape can cause the greatest distress and humiliation to the victim of rape, but at the same time, a false allegation of rape can also cause equal distress, humiliation and damage to the person against whom such allegations are levelled.

There is concurrent findings of fact recorded by both the Courts below which is based on evidence led by the parties. Even otherwise, the scope of revisional jurisdiction is very limited. The petitioner-accused has not been able to prove that in what manner, the impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the judgment of conviction dated 12.06.2015 passed by learned Judicial Magistrate 1st Class, Fatehabad and the judgment dated 31.07.2018 passed by learned Additional Sessions Judge, Fatehabad are affirmed and the present revision petition, being devoid of any merit, is dismissed.

August 14, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No