

Smt. Chander Kala

Vs

Ram Kishan and Another

Criminal Appeal No. 177 of 1985

(V. D. Tulzapurkar, A. N. Sen, D. A. Desai JJ)

01.05.1985

JUDGMENT

TULZAPURKAR, J. -

1. Ordinarily this Court does not interfere with the acquittal recorded by the High court in favour of an accused but this Court cannot shirk its responsibility when it comes across an acquittal recorded by the High Court in the most perfunctory manner leading to great injustice and the instant case being one such we proceed to discharge our duty.

2. The appellant Smt. Chander Kala (hereinafter called 'the complainant') was working as a teacher in the Government Middle School, Pubri since about January 1977 and the respondent Ram Kishan (hereinafter referred to as 'the accused') was the headmaster of that school. The complainant's case was that the accused abusing his superior position used to tease her in the presence of other teachers with a view to cause annoyance to her. For instance he used to pass a remark (addressing it to her) in the presence of others "when I see you I forget my beloved" as also the remark "we would go to jail together and live there in the same cell". According to her on finding some mistake or other in her work he used to call her and make overtures displaying his evil desires which she did not like and some times protested. In March 1978 two incidents occurred. On March 10, 1978 when she went to school Nand Kishore (PW 2), another teacher, gave her a message that she should get a statement (or Lists) about the fifth class children of the school signed by him at his residence as he (the accused) was ill and was not going to attend the school that day. Accordingly she went to the residence of the accused at about 11 or 11.30 a.m. with that statement (Lists) and placed the same before the accused for his signature but accused kept aside and that statement (Lists) and placed three blank papers (meant for preparing affidavits) before her asking her, to put her signature thereon and threatened her that if she did not sign them he would spoil her modesty. The accused was done alone in the house and apprehending trouble she put her signature in English and Gurumukhy on those three papers under pressure. She was thus forced to sign on each of the three blank papers at different places, whereupon the accused her that he could malign and blackmail her by recording any kind of statement on those papers or she should act according to his wishes. The complainant refused and left the place and after reaching home she narrated the incident to her husband. On the following day that is on March 11 she narrated this incident to some of her colleagues namely Govind Ram, Gian Chand and Smt. Nirmal Mehta (PWs 3, 4 and 5 respectively). Thereafter the accused used to threaten her that he would make use of those papers. On March 18, 1978 the accused sent for her to see him in his office and when she went there he was all alone and he actually caught hold of her by her arm and tried to outrage her modesty but after pushing him aside she managed to escape. The complainant immediately returned home and reported this incident to her husband and on the very day accompanied by her husband she went to the police

station and lodged a report (Ex. P-A.) on the basis of which a regular FIR was recorded in which offences under Sections 294, 354, 384 and 506 IPC were registered against the accused.

3. AST Gurbachan Singh (PW 6) to whom the case was handed over for investigation arrested the accused on the same day and during the course of interrogation that followed the accused made a disclosure statement regarding the three papers on which the complainant's signatures had been obtained as also some photographs of the member of the staff (including a cut of the complaint) and in pursuance of such statement he led the police and the Panchas to his house and he produced the three papers (Ex. P-1, P-2, P-3) and some photographs (Exs. P-4 to P-7) from a trunk kept in an underground room of his house. These documents were seized under a Memo (Ex. P-C) attested by Panch-witnesses.

4. At the trial the accused was charged under Section 294 (making obscene remarks with a view to cause annoyance), Sections 384 and 506 (in respect of the incident of March 10, 1978) and Section 354 (in respect of the incident of March 18, 1978). The prosecution led evidence of six witnesses, namely, the complainant (PW 1), Nand Kishore (PW 2), Govind Ram, Gian Chand and Smt. Nirmal Mehta (PWs 3, 4 and 5) and ASI Gurbachan Singh (PW 6) and also produced the documentary evidence namely the report lodged by the complainant (Ex. P-A) the FIR, the three papers bearing signature of the complainant (on one of which Ex P-1 some affidavit had been written above the complainant's signature and the other two Exs. P-2 and P-3 which were still blank bearing only the complainant's signature thereon) and the photographs etc. The defence of the accused was one of denial and false implication. He suggested that the complainant's husband was close to one Shri Harbans Lal, a Janatha MLA and he had been implicated falsely out of political rivalry between members of Janatha MLA and he had been implicated falsely out of political rivalry between members of Janatha Party at Rajpura and himself who was the President of National Teachers Federation affiliated to INTUC. He also suggested that quite a few of the teachers in his school were offended because he was a strict disciplinarian and PWs 3, 4 and 5 belonged to such aggrieved category and had falsely deposed against him and that the complainant in particular was inimical to him because she had committed irregularities as a teacher which were being inquired into by the Education Department. He also led evidence of as many as eight witnesses in an attempt in an attempt his plea of political rivalry and enmity. On an appreciation of the entire material on record the learned Magistrate accepted the complainant case corroborated as it was by documentary and circumstantial evidence; he rejected the defence version of false implication on the basis that the plea of political rivalry was without any substance and the plea of animosity arising out of his behaviour as a strict disciplinarian was of no avail; he took the view that the accused's conduct as a strict disciplinarian could not cause such resentment if at all among the teachers as would prompt them to support a false case and so far as complainant was concerned her honour and modesty were involved and as such she would not run the risk of exposing herself by levelling a false imputation against the accused. Accepting the prosecution evidence he convicted the accused under each of the four counts and sentenced him to suffer two months' RI under Section 294, six months' RI under Section 506 and one-year RI and a fine of Rs. 1000 each under Sections 384, 354 respectively, substantive sentences being directed to run concurrently.

5. Feeling aggrieved by the convictions and sentences imposed upon him, the accused preferred Criminal Appeal No. 6 of 1981 to the Sessions Judge, Patiala while the complainant preferred Criminal Revision No. 34 of 1981 seeking enhancement of sentences. The learned Additional Sessions Judge took the view that charges under Sections 384 and 506 IPC had not been proved beyond reasonable doubt and acquitted the accused by the giving him a benefit of doubt in respect thereof but as regards the charges under Sections 294 and 354 IPC he held that these had been

proved beyond any suspicion and he therefore confirmed the accused convictions for the said officers but thought fit to enlarge him on probation of good conduct by directing that he be released on his entering into a bond in the sum of Rs. 3000 with one surety in like amount to appear and receive sentence when called upon during the period of two years as the Court may direct and in the mean time to keep peace and be of good behaviour. He however directed that a sum of Rs. 500 out of the fine which he had deposited in the Court be paid over to the complainant towards her costs of proceedings and the balance of the amount of fine be refunded to the accused.

6. The accused preferred a Criminal Revision No. 656 of 1981 to the High Court challenging his convictions under Sections 294 and 354 while the complainant prepared a Criminal Revision No. 839 of 1981 challenging the acquittal of the accused on two counts and the grant of the benefit of probation to the accused under the other two counts. The High Court disposed of both the revisions by a recorded judgment dated August 4, 1983 whereby the High Court recorded a complete acquittal in favour of the accused, even quashing his convictions under Sections 294 and 354 IPC, and dismissed the complainant's Criminal Revision. By the instant appeal before us the complainant has challenged this composite judgment of the High Court in all its aspects.

7. We have gone through the entire evidence in the case as also each one of the three judgments of the lower court and have heard counsel on both sides at the end of this entire exercise we have come to the conclusion that our interference with the acquittal of the accused would not merely be justified but necessary to prevent miscarriage of justice. Principally there were two incidents in the case one of March 10, 1978 and the other of March 18, 1978 and we shall briefly indicate what errors (of law and appreciation of facts) concerning these on the part of the Sessions Court and the High Court have resulted in basing the acquittal on untenable grounds.

8. As regards the first incident the evidence consisted of (a) the complainant's deposition (PW 1), (b) her conduct in narrating the incident to Govind Ram, Gian Chand and Smt. Nirmal Mehta (PWs 3, 4 and 5) all of whom corroborated the same and (c) the physical recovery of the three papers Exs. P-1, P-2 and P-3 bearing her signatures from the house of the accused pursuant to the statement made by him to the police officers during interrogation. Re (a) both the Sessions Court as well as the High Court did not accept the complainant's evidence on the ground of delay of eight days in lodging the report to the police and lack of corroboration; re (b) Sessions Court ignored it and held it inadmissible as not constituting *res gestae* under Section 6 of the Evidence Act; re (c) both the Sessions Court and High Court erroneously surmised that such documents could come into existence at any time and were of no value.

9. In our view the reasoning and appreciation suffer from a legal error and almost sound perverse. Assuming that the complainant's conduct in narrating all that transpired on March 10 to three of her colleagues is not *res gestae* and hence inadmissible under Section 6 of the Evidence Act, the same when corroborated by the three witnesses is clearly admissible under Section 157 of the Evidence Act and therefore ignoring such crucial and relevant evidence had led the Court to give undue importance to the so-called delay in lodging the report with the police. In fact it could not be regarded as a case of any delayed report for it should have been appreciated that it was the second incident when the accused actually assaulted the complainant by catching hold of her arm and tried to outrage her modesty that the culminating point was reached and immediately the same evening (of March 18) she lodged her complaint with the police. It is surprising that the High Court without paying any attention to this legal error impliedly confirmed the Sessions Court's view about the inadmissibility of that evidence. It is thus clear that such subsequent conduct on the part of the complainant in narrating all that transpired at the accused's residence to three of her colleagues on

the following day (supported as it was by the three witness) lent ample corroboration to her story.

10. Secondly, as regards the actual recovery of three papers (Exs. P-1, P-2, and P-3) bearing the signature of the complainant from the house of the accused the Sessions Court has adopted the most queer reasoning. The evidence in this behalf consisted of testimony of ASI Gurbachan Singh (PW 6) and Govind Ram (PW 3) who also acted as a Panch in the matter of seizure of these documents. According to this evidence such recovery was as a result of a discovery statement made by the accused during interrogation, and the accused leading the police and Panchas to his house and taking out those papers from a trunk kept in one of the basement rooms. The learned Additional Sessions Judge felt that since the house was actually searched by the ASI and the papers were recovered it would not be a case of the accused making a discovery statement and he was not prepared to believe that the accused had made any statement leading to recovery but whether it was a recovery during the search carried out by the ASI or a recovery made pursuant to the statement made by the accused, the fact remains that three papers bearing the signature of the complainant were found with and recovered from the possession of the accused and such findings of these papers with the accused itself lent corroboration to the complainant's story about what transpired on March 10, 1978. The learned Additional Sessions Judge has therefore, really missed the significance of such an importance circumstance. Further both the Sessions Court and the High High Court have erroneously surmised that the three documents (EXs. P-1, P-2, and P-3) could have come into existence at any later stage, presumably at the instance of the complainant. If once the fact of recovery of these papers from the house of the accused was delivered as has been done by the Additional Sessions Judge, there could be no question of drawing such erroneous surmise. There was no material whatsoever on record suggesting planting of the documents in the house of the accused.

11. In our view these two pieces of evidence (subsequent conduct on the part of the complainant in narrating the story to the three witness on the following day and actual recovery of the three papers bearing the signature of the complainant thereon from the house of the accused) lend the strongest support to the complainant's story and clinches the veracity of that incident as deposed to by her in her evidence and the so-called delay in lodging the report to the police cannot cast any doubt on the veracity of the story. It is clear that the so-called doubt entertained by the Sessions Judge about the complaint's version regarding the first incident of March 10 is not a doubt of a reasonable mind. In fact with the two strong pieces of corroborative evidence discussed above the acquittal of the accused in regard to charge under Sections 384 and 506 must be regarded as perverse.

12. So far as the second incident of March 18, 1978 is concerned the learned Additional Sessions Judge had accepted the prosecution case that the accused had actually caught hold of the complainant by her hand with a view to outrage her modesty and had convicted him under Section 354, but the grant of the benefit of probation to him under that count was, in view of the persistent conduct and behaviour of the accused in teasing the complainant and passing obscene remarks towards her off and on (of which there was sufficient material on record), clearly unwarranted. But curiously enough the High Court acquitted the accused of this charge also. In this behalf the High Court has observed thus :

It is held by the appellate court in its judgment that the delay factor appears to have played its part and the complainant has introduced the alleged occurrence of March 10, 1978, perhaps to magnify the offences against the petitioner then the only inference that can be drawn is that the possibility of fabrication of the alleged incident of March 18, 1978 cannot be ruled out. In any case, the sole testimony of

Smt. Chander Kala is not of the category which can be considered wholly reliable as to furnish the basis for the conviction of the petitioner. She is a witness who has been held to have told lies with regard to the alleged occurrence on March 10, 1978 and hence she is not a witness who can be considered wholly reliable.

To say the least the High Court has disposed of complaints evidence as regards the second incident in the most perfunctory manner. Apart from the question whether her evidence with regard to the first incident was acceptable or not it was the duty of the High Court as was done by the learned Additional Sessions Judge to have discussed the complainant's evidence and the surrounding circumstances in regard to the second incident but without doing so it has dubbed her evidence in regard thereto as false simply because her testimony as regards the first incident was unacceptable. The complainant's immediate conduct in narrating the incident (second incident) to her husband on the very day and her further conduct in lodging the report at the police station also on the same day have been completely ignored by the High Court - which goes a long way to corroborate her story. In fact it was such conduct on the part of the complainant which led the learned Additional Sessions Judge to differentiate between the evidence pertaining to the first incident and the evidence pertaining to the second incident and made him accept her evidence pertaining to the second incident leading to the conviction of the accused; without paying any attention to this aspect of the matter the High Court recorded an acquittal in favour of the accused in regard to the second incident and we find it difficult to sustain the same.

13. Lastly as regards the charge under Section 294 there is ample view that in substantiate the same in the shape of not merely the evidence of the complainant but of her three colleagues practically Smt. Nirmal Mehta (PW 5). The defence version of false implication put forward by the accused was in our view rightly rejected by the learned Trial Magistrate.

14. Having regard to the above discussion we are clearly of the view that in recording the acquittal in favour of the accused grave injustice has been perpetrated and this is solely due to erroneous and almost perverse appreciation of the evidence and error of law committed by the Sessions Court and High Court. We set aside the acquittal and convict the accused under each of the four counts. We restore the sentences imposed upon by the learned Trial Magistrate under Sections 294 and 506 IPC but as regards the convictions under Sections 384 and 354 we direct that the accused be sentenced to rigorous imprisonment for six months and a fine of Rs. 1500 under each of the said two counts and in default of payment of fine to suffer further rigorous imprisonment for a period of two months. Substantive sentence under all counts to run concurrently. We further direct that on the recovery of the total fine of Rs. 3000 from him the said amount should be made over to the complainant by way of compensation. Bail bond of the accused, if there be any, is cancelled and the accused be taken into custody forthwith.

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