

SUPREME COURT OF INDIA

Charanjit

Vs.

State of Punjab

Crl.A.No.232 of 2007

(A.K.Patnaik and Gyan Sudha Misra JJ.)

04.07.2013

JUDGMENT

A. K. PATNAIK, J.

1. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment of the Punjab & Haryana High Court in Criminal Appeal Nos. 768-SB of 1997 & 769-SB of 1997 arising out of a complaint case.

Facts of the case:

2. The facts very briefly are that on 09.02.1989 at about 5.00 a.m. Shankar Dass, who was the Principal of D.A.V. Higher Secondary School, Balachaur, was shot dead by terrorists and Ramesh Kumar, son of the deceased Shankar Dass lodged FIR No. 13 on 09.02.1989 in Police Station, Balachaur. Thirty two persons of village Paili filed a petition before the SHO, Police Station, Balachaur, alleging that terrorists frequent the house of the complainant in Village Paili. The appellants who were posted in Police Station, Balachaur went to the house of the complainant and picked up the complainant and one Kamaljit Kaur, who were working as 'dai' and nurse respectively, and brought them to the Police Station. On 13.02.1989, the complainant sent a petition to the Governor of Punjab by a registered letter alleging that she along with Kamaljit Kaur were taken to the Police Station on 09.02.1989 at 7.00 a.m. and were asked whether the extremists were frequenting their house and when they replied in the negative they were tortured at the Police Station. On the intervention of Maha Singh, President of the Para Medical Union, Kamaljit Kaur, was released, but the complainant was not released. The complainant further alleged in her petition to the Governor of Punjab that in the night of 09.02.1989,

the appellants tortured her with patta, made her senseless and had intercourse with her and released her on the morning of 10.02.1989 on the intervention of the Panchayats of Villages Paili, Otal Majorh and Unaramour. Soon after the release, the complainant disclosed to the members of Panchayat what had happened to her in the night of 09.02.1989. In this petition to the Governor of Punjab, the complainant made a request for an enquiry.

3. When no action was taken against the appellants, the complainant filed a criminal complaint before the Chief Judicial Magistrate, Hoshiarpur on 25.07.1989 making substantially the same allegations against the appellants. The Magistrate recorded the preliminary evidence of the complainant and took cognizance of the offences under Sections 323 and 504 read with Section 34 of the Indian Penal Code (for short 'IPC') and issued summons to the appellants. The complainant then filed a petition under Section 482 of the Criminal Procedure Code (for short "Cr.P.C.") contending that the appellants should be summoned for standing trial for the offences under Sections 366/342/376/506 read with Section 34 IPC. The appellants also filed a petition under Section 482 Cr.P.C. for quashing the complaint as well as the order of the Magistrate summoning the appellants. Both these petitions were disposed of by order dated 29.07.1991 with the direction to the Magistrate to hold an enquiry in respect of the offences described in the complaint. The complaint was thereafter transferred to the court of the Chief Judicial Magistrate, Chandigarh, by the High Court. Thereafter, the Magistrate took cognizance of offences under Sections 323/342/366/506 read with Section 34 IPC and summoned the appellants and Hussan Lal. The case was committed to the Sessions Court and the Additional Sessions Judge, Chandigarh, was entrusted with the case. The Additional Sessions Judge initially framed charges under Sections 366/504/342 and 323 IPC to which the appellants pleaded not guilty, but thereafter by order dated 16.02.1995 the High Court directed the Additional Sessions Judge to reconsider the framing of charges against the appellants in the light of the allegations made in the complaint and the preliminary evidence recorded in respect of the complaint. The learned Additional Sessions Judge reframed the charges under Section 376 (2) (g) IPC to which the appellants pleaded not guilty and the appellants were tried.

4. At the trial, the complainant was examined as PW-3 and she reiterated in the witness box her version in the complaint. The husband of the complainant, Gurmail Singh, was examined as PW-1 and, the neighbour of Gurmail Singh, Harbans Singh was examined as PW-2 and both PW-1 and PW-2 stated before the trial court that the complainant (PW-3) was not released on the evening of 09.02.1989 and was released only at 4.30 p.m. on 10.02.1989 and when she was

released on 10.02.1989, she was in a bad shape and she told them about the torture and sexual intercourse that was forced upon her by the appellants on the night of 09.02.1989. The appellants in their statements under Section 313 Cr.P.C. before the trial court, on the other hand, took the defence that the complainant (PW-3) along with Kamaljit Kaur were actually released on 09.02.1989 at 6.00 p.m. and they were handed over to the people of Panchayat to ensure that the complainant would not do anything wrong in future and they denied that they had any sexual intercourse with the complainant and also stated that she was not detained in the evening or the night of 09.02.1989 at the Police Station as alleged by her. In support of their defence, the appellants examined witnesses and produced two documents Ex. DW-1A and Ex. DW-1B.

5. The trial court, however, rejected the defence of the appellants and instead held that the testimony of PW-3 as corroborated by the evidence of PW-1 and PW-2 who were present at the gathering immediately after the release of PW-3 clearly establishes that PW-3 was released on 10.02.1989 and at the time of her release she was in a bad shape and in torn clothes and was bleeding and that she had told her tale of sufferings before PW-1 and PW-2 by giving details of the incident of rape at the hands of the appellants. The trial court accordingly convicted the appellants under Sections 323/34, 504/34, 376(2)(a) and 376(2)(g) IPC and sentenced them to rigorous imprisonment for various periods which were to run concurrently, the maximum being 10 years for the offences under Sections 376(2)(a) and 376(2)(g) IPC. Aggrieved, the appellants, Charanjit and Kashmiri Lal filed Criminal Appeal No. 768-SB of 1997 and Radha Krishan filed Criminal Appeal No. 769-SB of 1997, but by the impugned common judgment, the High Court has dismissed their appeals.

Contentions of the learned Counsel for the parties:

6. Mr. P. H. Parekh, learned counsel for the appellants, submitted that the finding of the trial court as well as the High Court that PW-3 was not released on 09.02.1989 at 6 p.m. and was detained in the Police Station on the night of 09.02.1989 and raped by the police is not at all correct. He submitted that this finding is based on the evidence of PW-3 but PW-3 ought not to have been believed because she had close links with the terrorists who had pressurized her to implicate the appellants falsely in the case and therefore it was unsafe to rely on her evidence. In this connection, he submitted that one of the terrorists Hazura Singh was a relative of PW-3 and PW-3 used to give shelter to him and this would be clear from the letter dated 09.02.1989 of the villagers marked as Ex.DW1/B. He

submitted that PW-3 had herself given an earlier statement in an enquiry conducted by the Superintendent of Police Mr. Harbhajan Singh Bajwa that she had made the complaint against the appellants on someone's instigation and she does not want any action to be taken on her complaint.

7. Mr. Parekh next submitted that the trial court and the High Court have held that the evidence of PW-3 has been corroborated by the evidence of PW-1 and PW-2 who claimed to have gone to the Police Station on 10.02.1989 at 5.30 p.m. when PW-3 was released but in her petition dated 13.02.1989 to the Governor (Ex.PW-3/A) she has not mentioned that PW-1 and PW-2 were present when she was released at the intervention of the Panchayat of village Paili, Otal Majorh and Unaramour on 10.02.1989. He submitted that the trial court and the High Court, therefore, should not have relied on the corroboration of PW-1 and PW-2.

8. Mr. Parekh next submitted that the trial court and the High Court ought to have considered the evidence led on behalf of the defence. He referred to the evidence of DW-2 as well as Ex.DW1/A to submit that PW-3 was released on 09.02.1989 itself. He also referred to the evidence of DW- 10, who has stated that PW-3 had returned home on 09.02.1989 at about 9.00 p.m. He submitted that the case of the prosecution is that PW-3 went to the civil hospital at Balachaur for her medical examination and thereafter to the hospital at Saroa but the doctors of the two hospitals did not conduct the medical examination to avoid a conflict with the police, and therefore the appellants examined the doctors of the two hospitals DW-11 and DW-12, and both DW-11 and DW-12 have denied that PW-3 approached them for her medical examination. Mr. Parekh vehemently submitted that there is thus no medical evidence to support the allegation of rape and the trial court and the High Court could not have held the appellants guilty of the offence of rape.

9. Mr. Parekh submitted that the main reason why the trial court and the High Court disbelieved the defence version was that the records of the Police Station relating to the arrest of PW-3 were not produced by the appellants before the Court. He submitted that in the present case there was no arrest of PW-3 at all and she was picked up only for interrogation and for this reason no records were maintained by the Police Station. He vehemently argued that the prosecution has not been able to establish the guilt of the appellants beyond reasonable doubt and hence they are entitled to acquittal.

10. Learned counsel for the State Mr. Kuldip Singh submitted that it is not believable that PW-1, husband of PW-3 did not accompany the Panchayat to the Police Station for release of PW-3 on 10.02.1989. He submitted that Ex. DW-1/A

dated 09.02.1989 on which the appellants relied on for their case that PW-3 was released on 09.02.1989 itself has not been signed by PW- 1, the husband of PW-3. He referred to the evidence of PW-3 to show how she was tortured and raped by the appellants one after the other and submitted that the evidence of PW-3 is believable. He submitted that PW-1, the husband of PW-3 as well as PW-2, the neighbour of PW-1 who had accompanied PW-1 to the Police Station on 10.02.1989, have also deposed that soon after PW-3 was released from the Police Station she told them how she was humiliated and raped by the appellants against her consent after taking liquor. He submitted that the evidence of PW-3 as corroborated by the evidence of PW-1 and PW-2 was sufficient for the trial court and the High Court to hold the appellants guilty of the offences under Sections 323/34, 504/34 and 376 2(a) and 2(g), IPC and to hold the appellant Radha Krishan guilty also of the offence under Section 342, IPC.

Findings of the Court

11. We have considered the contention of Mr. Parekh on behalf of the appellants that PW-3 has sought to falsely implicate the appellants on account of her close links with the terrorists and on account of the pressure from the terrorists, but no evidence as such has been led on behalf of the defence to show that PW-3 has implicated the appellants under the influence of the terrorists. Mr. Parekh relied on Ext.DW-1/B dated 09.02.1989 said to have been signed by 32 villagers in which it is stated that the villagers believe that terrorists were frequenting the house of PW-3 and staying in her house and taking their meals and, therefore, PW-3 should be brought and interrogated about those terrorists, but Ext.DW-1/B is no proof of the fact that PW-3 has made the allegations of rape against the appellants on the pressure of the terrorists. We have also considered the submission of Mr. Parekh that PW-3 had herself given a statement in the inquiry conducted by the Superintendent of Police, Mr. Harbhajan Singh Bajwa, that she had made the complaint against the appellants at someone's instigation and she does not want any action to be taken on her complaint. This statement of PW-3 is not substantive evidence before the Court and at best can be treated as a previous statement to contradict the substantive evidence of PW-3 given in Court. Section 145 of the Indian Evidence Act states that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. In the cross-examination of PW-3, a question was put whether S.P. Mr. Harbhajan Singh Bajwa conducted the inquiry and recorded her statement and she has stated that he did conduct an inquiry but she does not know what he had

recorded. She has further stated that her signatures were obtained on the statement but she knew only how to write her name and cannot read or write Punjabi except appending her signatures. In view of the aforesaid statement made by PW-3 in her cross-examination, her statement recorded in the inquiry conducted by S.P. Mr. Harbhajan Singh Bajwa cannot be used to contradict the evidence of PW-3 given in Court.

12. We have also considered the submission of Mr. Parekh that in the petition dated 13.02.1989 to the Governor (Ex.PW-3/A), PW-3 had not mentioned that PW-1 and PW-2 were present when she was released at the intervention of the Panchayat of village Paili, Otal Majorh and Unaramour on 10.02.1989. This statement of PW-3 in the petition dated 13.02.1989 is not substantive evidence before the Court and can only be treated as a previous statement to contradict the substantive evidence of PW-3 given in Court by putting a question to PW-3 in course of her cross-examination under Section 145 of the Indian Evidence Act. If such a question was put in the cross-examination, PW-3 would have got an opportunity to explain why she had not specifically stated in the petition dated 13.02.1989 to the Governor (Ex.PW-3/A) that her husband (PW-1) and the neighbour (PW-2) were also present when she was released at the intervention of the Panchayat of village Paili, Otal Majorh and Unaramour on 10.02.1989. In absence of any such question put to PW-3 in her cross-examination, the omission of the names of PW-1 and PW-2 in the petition dated 13.02.1989 to the Governor (Ex.PW-3/A) cannot be taken as contradictory to the evidence of PW-3. Hence, the evidence of PW-3 as well as that of PW-1 and PW-2 that on 10.02.1982, PW-1 and PW-2 were present when PW-3 was released at 4.30 p.m. could not have been disbelieved by the Court.

13. We have perused the depositions of PW-1, PW-2 and PW-3 and we find that the depositions of these three witnesses support the findings of the trial court and the High Court that PW-3 was not released at 6.00 p.m. on 09.02.1989 but 4.30 p.m. on 10.02.1989. As against the evidence of PW-1, PW-2 and PW-3, the appellants examined DW-1, the Head Constable, who produced the record of Police Station, Balachaur relating to FIR No.13 dated 09.02.1989 and he has stated that the investigation of the case was conducted by the appellant-Radha Krishan, the then SHO of Police Station, Balachaur, and PW-3 was interrogated by him and PW-3 was handed over to Shanker Singh, Maha Singh, Dhanpat, Sarpanch of village Pillai and others as per the document Ext.DW1/A dated 09.02.1989, but he has admitted in his cross-examination that he has no personal knowledge of the investigation and he did not know PW-3 and had just produced the record. The appellants have also examined DW-2 and he has stated in his examination-in-chief

that he along with others who had been to the Police Station requested the appellant-Radha Krishan to release the two ladies in case they were no longer required for interrogation and the two ladies, PW-3 and Kamaljit Kaur, were released at 6.00 p.m. on 09.02.1989 after getting a writing from them (Ext.DW1/A) to the effect that they will produce them before the police if need be at a future date. In cross-examination, however, DW-2 admitted that he did not know whether any entry was recorded at the Police Station for calling the two ladies to the Police Station, Balachaur and whether any entry was recorded regarding their release and he was also not aware whether Ext.DW1/A was recorded in the Daily Diary Register of the Police Station, Balachaur. Additional M.H.C. Harminder Singh of Police Station, Balachaur was examined as DW-4 and he produced the FIR Register containing the FIR No.13 dated 09.02.1989 of Police Station, Balachaur under Section 302/34, IPC and others and has admitted that there was no jimni specifically incorporating the facts of execution of Ext.DW1/A. The Head Constable Gurdev Dass of Police Station, Balachaur was examined as DW- 9 and he has stated that he was posted in Police Station, Balachaur from 20.11.1988 to April, 1991 and his duty hours on 09.02.1989 and 10.02.1989 were from 8.00 p.m. to 8.00 a.m. and no lady by the name of PW-3 was confined in the police lock up, but he has stated that he has not brought any record of Police Station, Balachaur and he has made the statement from his memory only. He has, however, admitted that entries were to be made in Daily Diary Register kept in the Police Station as and when any police official leaves the Police Station or returns to the Police Station and similarly, if anybody other than police officials enters or departs from the Police Station. Thus, except the document Ext.DW1/A, the relevant records of Police Station, Balachaur such as the Daily Diary Register were not produced to support the defence case that PW-3 was picked up for interrogation on the morning of 09.02.1989 and was released at 6.00 p.m. on 09.02.1989 and for this reason both the trial court and the High Court rejected the defence case and instead believed the evidence of PW-1, PW-2 and PW-3 that PW-3 was not released at 6.00 p.m. on 09.02.1989, but was detained during the night of 09.02.1989 and was released only on the next day in the evening on 10.02.1989.

14. The aforesaid discussion would show that the prosecution adduced evidence through PW-1, PW-2 and PW-3 that PW-3 was not released from the Police Station on 09.02.1989 at 6.00 p.m., but was actually released on 10.02.1989 at 4.30 p.m. This evidence could be discarded by the Court only if reliable evidence was produced by the defence to establish that PW-3 was actually released from the Police Station at 6.00 p.m. on 09.02.1989. The most relevant evidence to establish this defence of the appellants would have been the records of the Police Station. As has been provided in Section 35 of the Indian Evidence Act, an entry in any public

or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, is itself a relevant fact. The Punjab Police Rules provides that Register No. II shall be maintained in the Police Station and Rule 22.49 in Chapter 22 enumerates the matters to be entered in Register No. II. These include the following matters in clauses (c) and (h) of Rule 22.49, which are extracted hereinbelow:

“(c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal.

Note. - The term Police Station will include all places such as Police Lines and Police Posts where Register No. II is maintained.”

“(h) All arrivals at, and dispatches from, the police station of persons in custody, and all admissions to, and removals from, the police station lock-ups, whether temporary or otherwise, the exact hour being given in every case.”

That the aforesaid matters are required to be maintained in the Daily Diary Register kept in the Police Station has been admitted by DW-9 in his evidence. Thus, even if PW-3 was not arrested as contended by Mr. Parekh, records were required to be maintained in Police Station, Balachaur with regard to both the arrivals of the appellants and PW-3 and their departure giving the exact hour of arrival and departure. Moreover, if Ex.DW1/A was to be treated as a genuine document, records of Police Station, Balachaur, containing relevant entries ought to have been produced by the appellants to show that Ex.DW1/A was contemporaneously created on 09.02.1989. Since the appellants did not produce the aforesaid records in their defence, the trial court and the High Court acted within their powers to reject the defence of the appellants and instead believe the evidence of PW-1, PW-2 and PW-3 that PW-3 was released only on 10.02.1989 at 4.30 p.m.

15. We further find that the trial court and the High Court have recorded the findings of rape committed by the appellants on PW-3 because of her consistent version in her petition dated 13.02.1989 (Ext.P3/A) to the Governor made within a few days of her release from Police Station on 09.02.1989, her complaint dated 25.07.1989 and her evidence in Court. PW- 1, PW-2 and PW-3 have deposed that

an attempt was made for a medical examination in the Civil Hospital, Balachaur, and the hospital at Saroa but the doctors refused to conduct the medical examination on account of the pressure from the appellant-Radha Krishan, but DW-11 and DW-12, the doctors in the hospital, have denied that they had refused to conduct the medical examination. The result is that there is no medical evidence to support the allegation of rape made by PW-3 against the appellants. The High Court, however, has held that as PW-3 was not a young woman, medical examination was not significant and absence of medical examination may not be sufficient to disbelieve PW-3 if her story stands on its own. The High Court has found that she has consistently stated in her petition dated 13.02.1989 to the Governor of Punjab, in her complaint dated 25.07.1989 before the Magistrate and in her deposition in Court that she was detained in the night and raped by the appellants and both the trial court and the High Court have found that soon after she was released from the Police Station on 10.02.1989, she stated before her husband (PW-1) and the neighbour (PW-2) that she had been raped by the appellants and that she was bleeding profusely. The trial court and the High Court, therefore, have come to the finding of guilt of rape against the appellants relying on the evidence of PW-3 as corroborated by the evidence of PW-1, PW-2 under Section 157 of the Indian Evidence Act.

16. Thus, the trial court and the High Court have recorded concurrent findings of facts holding the appellants guilty of the offences under Sections 323/34, 504/34, 376(2)(a) and 376(2)(g) IPC and the appellant- Radha Krishan guilty of the offence under Section 342 IPC also. It has been repeatedly held by this Court that even though the powers of this Court under Article 136 of the Constitution are very wide, in criminal appeals this Court does not interfere with the concurrent findings of facts, save in exceptional circumstances where there has been grave miscarriage of justice (*Sri Sambhu Das and Another v. State of Assam* [(2010) 10 SCC 374]). As we have found that the concurrent findings of facts recorded by the trial court and the High Court in this case are based on legal evidence and there is no miscarriage of justice as such by the two courts while arriving at said findings, we are not inclined to disturb the impugned judgment of the High Court in exercise of our discretion under Article 136 of the Constitution and we accordingly dismiss the appeal.