

Sham Singh vs The State Of Haryana on 21 August, 2018

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Bench: Mohan M. Shantanagoudar, N.V. Ramana

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 544 OF 2018

Sham Singh

Versus

The State of Haryana

..Appellant

..Respondent

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

1. This appeal arises out of the judgment and order dated 17.07.2015 passed by the High Court of Punjab and Haryana at Chandigarh in CRA-S-1648-SB of 2011, whereby the High Court dismissed the appeal filed by the convicted accused, namely Jai Singh and Sham Singh.

Since the first accused – Jai Singh has undergone the sentence imposed upon him by the Courts below, he is stated to have been released. However, the accused-

Sham Singh, appellant herein, is serving the remainder of his sentence.

2. The case of the prosecution in brief is that on the night of 22.08.2001, the minor victim girl

(PW7), who was staying in the house of her paternal uncle Om Prakash and Aunt Laxmi (PW10), stepped out of the house to urinate, then she was approached by the two accused, namely Jai Singh and Sham Singh. Both of the accused are brothers inter se. The accused and the victim are cousins. The accused forcibly took the victim into their house and tied her hands on a cot with rope and committed rape on her. The mother of the accused, having learnt about the incident, told the victim to forget about the incident and threatened to wipe out her family in case she disclosed about the incident to anybody. She further made the victim consume some liquid, which resulted in loss of consciousness of the victim. On the next day, at about 5:00 a.m., the milkman Mahavir (not examined by the Trial Court) informed the Aunt (PW10) of the victim about the victim lying unconscious in front of a neighbouring house.

3. Based on the aforesaid allegations, the first information came to be lodged, which was registered in City Police Station at Palwal, Faridabad District, Haryana in FIR No. 653 dated 25.08.2001. Investigation was made and charge sheet came to be filed in the Sessions Court, Faridabad. The Additional Sessions Court framed charges against both the accused, namely Jai Singh and Sham Singh, for the offences punishable under Sections 376 (2)(g), 342 and 506 of the Indian Penal Code, and against the mother of the accused, namely Memwati, under Sections 342 and 506 of the IPC.

4. The Additional Sessions Judge (Ad-hoc), Fast Track Court No.II, Faridabad, after appreciating the materials on record, acquitted the accused by its judgment and order dated 29.03.2003. Thereafter, the victim preferred an appeal before the High Court, which came to be allowed, and set aside the judgment of acquittal passed by the Trial Court. The High Court remitted the matter back to the Trial Court for fresh consideration. The Trial Court on re-consideration of the materials on record, convicted the accused by its judgment dated 4.6.2011. Against this conviction, the accused preferred appeal before the High Court, and the High Court while confirming the judgment of conviction against the accused Jai Singh and Sham Singh, has acquitted the accused mother – Memwati from the charges levelled against her. As mentioned supra, the accused Jai Singh has served out the sentence imposed upon him and hence this appeal is only by the accused – Sham Singh, who is still serving the remainder of his sentence.

5. Learned counsel for the appellant taking us to the materials on record contended that the High Court is not justified in assuming that the injuries sustained by the victim may have healed at the time of medico-legal examination and the FSL report (Annexure P13) states that semen was not found on the vaginal swab of the victim as well as on the salwar. That the accused were relatives of the prosecutrix, however there was an ill will between the two families and in view of the same, the accused persons are falsely implicated. The evidence of Aunt/ Laxmi (PW10) and Medical Officer, Dr. Rekha Singh (PW6) do not establish the offence of rape against the accused. The Courts below have ignored the fact that the accused could not have committed rape in his own house, particularly when the other family members were present in the house. It was also argued that the material witness, namely, milkman Mahavir, who informed the Aunt about the victim lying unconscious in front of the house of one Pappu, was not examined, which is fatal to the case of the prosecution. Even Pappu before whose house the victim was allegedly lying unconscious was also not examined. The Courts below are not justified in disbelieving the defence version that the panchayat was conducted because the first accused had given a slap on the face of the victim, inasmuch as he had

come in possession of certain love letters written by the victim to someone. That the first accused apologised before panchayat for his behaviour of slapping the victim and not for the alleged rape. Thus the 'mafinama' given by the accused was on account of giving slap to the victim and not in respect of committing any other offence. The appreciation of evidence by the Trial Court and the High Court is not proper and correct. On these, among other grounds, it was prayed for acquittal of the accused.

Per contra, learned counsel for the State argued in support of the judgments of the Trial Court and the High Court.

6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. (see *State of Punjab vs. Gurmit Singh*, (1996) 2 SCC 384 (para21)).

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (see *Ranjit Hazarika vs. State of Assam*, (1998) 8 SCC 635).

8. It is also relevant to note the following observations of this Court in the case of *Raju vs. State of M.P.* (2008) 15 SCC 133, which read thus:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the

evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.” We have assessed the entire material on record to satisfy our conscience once again, keeping in mind the aforementioned set principles in such matters.

9. The medical examination of the victim was conducted by Dr. Rekha Singh (PW6), Medical Officer, General Hospital, Palwal. She has deposed that the victim was aged about 15 years at the time of the incident and had sustained an injury on the left side of the forehead and such injury is nothing but a small abrasion with crust formation. The organs of generation were fully developed and the secondary organs were also fully developed. The vagina of the victim permitted two fingers. However, the doctor observed the absence of hymen and did not mention the age of tear of the hymen because the tear was old. The vaginal swab and the salwar worn by the victim during the course of the incident were sent by the doctor to Forensic Sciences Laboratory for chemical examination, but no presence of semen was found on any of these exhibits. Finally however, the doctor has opined that the possibility of sexual assault upon the victim cannot be ruled out, though she did not specify as to whether the sexual assault was in the recent past.

10. The victim was examined as PW7. She reiterated the incident as stated by her in the first information. According to her, the panchayat was convened in the village for the purpose of settling the rape incident and not for the slapping incident. She denied writing any love letters to any person. It is specifically deposed by her that at the time of incident, the wife, children, sister and mother of the accused prsons were present in the house. She had resisted the tying of her hands and act of rape, and while doing so, she had sustained scratches on her wrists. She had shown these injuries to her Aunt Laxmi (PW10) and the doctor.

11. Aunt of the victim, Laxmi (PW10) has deposed that there was a family dispute between her family and the family of the accused and a case is pending with regard to an assault on accused – Appellant Sham Singh by her son. She further stated that in the morning at about 5:00 a.m., the milkman Mahavir informed her that her niece, the victim, was lying unconscious in front of neighbouring house; the milkman and the aunt thereafter went to the said place and brought the victim inside the house. A doctor was called who administered an injection to the victim. It is specifically admitted by PW10 that she did not see any injury on the victim.

12. The Investigating Officer (PW13) has deposed that he had not come across, during the investigation, any talks and efforts in the village regarding any panchayat held between the period of incident and the filing of the complaint. No one had told him about any commotion arising in the village regarding the incident in question. During investigation, no compromise or confession deed made before the panchayat was produced before him. He stated that there are houses near the place where the victim was allegedly left unconscious and he made enquiries from the persons living around that place, but he could not get any information regarding any such incident.

13. The aforementioned witnesses are the only relevant prosecution witnesses for deciding this appeal. Looking to the above evidence, it is amply clear that the case of the prosecution, as made out, appears to be artificial and concocted. It may not be probable to commit rape in one's own house in front of the sister, children, wife and mother. If in actuality the incident had taken place, the medical report would have gone against the accused. Be that as it may, before commenting anything further, it is better to discuss the evidence of the defence also.

14. The Panchayatdar, namely Lakhpat Singh, was examined on behalf of the defence as DW1. He had presided over the panchayat during the relevant date. He is also a common relative for both the parties. He has specifically deposed that the panchayat meeting was called to discuss about the incident of slapping the victim by the first accused – Jai Singh, due to objectionable activities of the victim in relation to sexual matters. In the panchayat, the first accused confessed for having slapped the victim and consequently he sought apology for the same before the panchayat. The 'Mafinama' was written by the first accused and the same was counter-signed by DW1. He has specifically deposed that he has seen the house of Aunt Laxmi (PW10), where the victim was staying and that the said house consisted of a bathroom and latrine.

15. The deposition of DW1 is corroborated by DW2 - Charan Singh, who was also a member of the panchayat and a signatory to the 'Mafinama' (Ex DB) written by the first accused. He has also deposed that the panchayat was held in respect of the incident of slapping, although there is no express mention of the same in the said 'Mafinama' (Ex DB). He denied the allegation that this document is fake and was prepared after initiation of the proceedings for the offence of rape.

16. The relevant portion of the 'Mafinama' (Ex DB) and its English translation reads as under:

Original version:

“Mai Jai Singh, Niwasi gaao Agwanpur, mere se apne chacha ki ladki se galat vaivhar galti se ho gaya, mai hath jod kar pure gaao se, sabhi logo se mafi mangta hu. Kripya mujhe maaf kiya jae agar ayanda koi galti mai karta hu to jo kuch pura gaao chahae wo saluki mere sath kiya jave.” English translation:

“I, Jai Singh, resident of Agwanpur village, do hereby admit that unfortunately I had misbehaved with my Uncle's daughter. With my folded hands, I apologise for the same in front of the whole village. Please forgive me. If I commit any mistake in the future, whatever punishment as decided by the village, I will bow down to.”

17. In the statement recorded under Section 313 of the Code of Criminal Procedure, the first accused, Jai Singh denied all the allegations made against him and his brother, Sham Singh, the appellant herein. He has stated that the incident is a false implication because of the family enmity that existed between the victim's family and his family. He had come in possession of a few love letters which the victim had written to certain boys and he had knowledge about the bad company of the victim. In these circumstances, he confronted the victim and had slapped her due to natural instinct. In this regard, a panchayat was held and in the said panchayat he confessed for having slapped the victim and also gave assurance that he will not repeat the said act.

18. The evidence of DW1 and DW2 was not shaken in the cross-examination. There is nothing on record to discard the evidence of these witnesses. DW1 and DW2 are Panchayatdars and are independent witnesses. Moreover, DW1 is a relative of both, the victim and the accused and he does not have any grudge against the victim. The evidence of DW1 and DW2 have practically remained untouched and their version fully supports the stand taken by the accused persons. It is specifically deposed by DW1 that he has seen the house of Laxmi (PW10), where the victim was staying, and the said house is having bathroom and latrine. If it is so, there was no occasion for the victim to go out of the house for the purpose of urinating. These facts, coupled with the fact that there is no medico-legal report to support the case of the victim relating to offence of rape, and as there are no injuries on the body of the victim, which is also admitted by PW10, it appears that the prosecution has cooked up the story against the accused for the reasons best known to them.

19. The High Court has mainly relied upon the 'Mafinama' (exhibit DB) to conclude that the accused himself has confessed about his illegal act. But during the process, the High Court has not given due weightage to the evidence of DW1 and DW2, whose evidence has remained unrebutted. The panchayat was not convened for the purpose of enquiring the offence of rape by the accused, but it was convened for the purpose of enquiring about the incident of a slap given to the victim by the first accused. We find that this is a case wherein incriminating materials are lacking against the accused.

20. It is also relevant to note that curiously the victim, as mentioned supra, has deposed on 31.05.2002 before the Trial Court corroborating the incident as mentioned in the first information. However, there is no mention anywhere in her statement about the panchayat that took place for the alleged incident of rape and the accused persons confessing the commission of offence. It is only when she was recalled for re-examination on 24.12.2002, i.e., after a lapse of about seven months, that she has deposed about the panchayat being held and about the alleged confession made by the accused about the offence of rape. Such crucial information relating to panchayat could not have been left out by the victim in case such panchayat was actually being held to enquire the alleged offence of rape. As mentioned supra, the wife, children, sister and mother of the accused persons were present in the house when the alleged incident took place. We find that such a scenario is highly unlikely. It is natural for a young girl to sustain certain injuries on the wrist, if the accused had tightly tied her hands on a cot with rope against her will, but the doctor's evidence discloses that no such injuries were found on the wrist of the victim. Even the Aunt of the victim, PW10, also deposed that she did not find any injuries on the body of the victim despite the victim deposing that she had shown the injuries to her Aunt (PW 10). Only one injury was found and it was only a small

abrasion on the forehead of the victim, which was not even mentioned by the victim in her deposition.

21. The three important witnesses, namely the milkman Mahavir, the doctor who administered injection immediately after the alleged incident and Pappu in front of whose house the victim was allegedly lying unconscious were not examined by the prosecution. Non-examination of these crucial witnesses further weakens the case of the prosecution.

22. The fact that at the residential house of the appellant, wherein all the inmates of the house including the mother, children, sister and wife of the accused were living, such a brutal offence of rape could not have been executed without attracting the attention of anyone at that point of time, would make the prosecution version seriously improbable. We are of the view that the doubtful and suspicious nature of the evidence sought to be relied upon to substantiate the circumstances in this case themselves suffer from serious infirmities and lack of legal credibility to merit acceptance in the hands of the court of law. Having regard to the material on record, we find that there is every possibility of false implication of the accused in this matter to take revenge against the family of the accused because of the longstanding disputes inter se between the two families.

23. The evidence of the victim/prosecutrix and the Aunt PW10 are unreliable, untrustworthy inasmuch as they are not credible witnesses. Their evidence bristles with contradictions and is full of improbabilities. We cannot resist ourselves to place on record that the prosecution has tried to rope in the appellant merely on assumptions, surmises and conjectures. The story of the prosecution is built on the materials placed on record, which seems to be neither the truth, nor wholly the truth. The findings of the court below, though concurrent, do not desire the merit of acceptance or approval in our hands with regard to the glaring infirmities and illegalities vitiating them, and the patent errors apparent on the face of record resulting in serious and grave miscarriage of justice to the appellant.

24. We find that the Trial Court and the High Court have convicted the accused merely on conjectures and surmises. The Courts have come to the conclusion based on assumptions and not on legally acceptable evidence, but such assumptions were not well founded, inasmuch as such assumptions are not corroborated by any reliable evidence. Medical evidence does not support the case of the prosecution relating to offence of rape.

25. For the reasons aforementioned, the offence of rape does not stand proved. Accordingly, the appellant deserves to be acquitted, by allowing this appeal. As mentioned supra, the first accused – Jai Singh has already served out the sentence imposed upon him, and the appellant before this Court has already served the sentence of seven years' out of the total sentence of ten years' imposed upon him.

26. The appeal is thus allowed, the appellant – Sham Singh is acquitted of the charges levelled against him. He shall be released forthwith, if not required in any other case.

..... J .
[N.V. RAMANA]

NEW DELHI;
AUGUST 21, 2018.

..... J .
[MOHAN M. SHANTANAGUDAR]