Supreme Court of India
Dharma vs Nirmal Singh & Bittu & Anr on 5 February, 1996
Equivalent citations: 1996 AIR 1136, JT 1996 (4) 608
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
DHARMA

Vs.

RESPONDENT:
NIRMAL SINGH & BITTU & ANR.

DATE OF JUDGMENT: 05/02/1996

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
RAY, G.N. (J)

CITATION:
1996 AIR 1136 JT 1996 (4) 608
1996 SCALE (1)677

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T HANSARIA. J.

Sex violence is on increase, and in a big way. It is an irony, as recently pointed out by this Court in State of Punjab vs. Gurmit Singh, JT 1996 (1) SC 298, that while celebrating woman's rights in all spheres, we show little concern for her honour, which is a sad reflection. It has to be remembered that a rapist not only violates the victim's personal integrity but degrades the very soul of the helpless female.

2. Present case is much more serious, because here, after Ravindarjit had resisted rape, she was done to death. there can be no doubt that such an offence has to be viewed very seriously and a person accused of such an offence does not deserve to be acquitted lightly. But this is precisely what has happened inasmuch as the trial court, despite there being clinching and conclusive evidence to find the accused guilty, acquitted him. What is more, the State did not think it fit to file appeal. We

wonder why? It was left to the complainant to knock the door of the High Court by invoking its revisional jurisdiction. And seal what the High Court has done. It passes one word order only saving "Dismissed". We are afraid, the High Court was far from justified in doing so inasmuch as from what is being stated later it would appear that a full proof case exists against the accused. The complainant was, however, not to be disheartened at losing at the hands of two courts, as he moved this Court by filing the present appeal. May we say by allowing the appeal, for reasons to be given, we have felt a little relieved that the failure of justice has after all been taken care of and the damage done to womanhood and the society is being repaired, albeit belatedly.

3. We are satisfied about the guilt of respondent- Nirmal Singh, the sole accused in this case, because there is on record the testimony of P.W.5, Balbir Singh, who had seen Nirmal Singh assaulting helpless and hapless Ravinder with the blunt side of the Datar (which is a heavy instrument made of iron whose one side is sharp and the other blunt) on her head. Then there is evidence of Sarpanch P.W.4, Kashmir Singh, about the extra-judicial confession of the accused. This is not all. A Datar was recovered pursuant to the information given by the accused which was found concealed in the cattle shed under the heap of fuel wood. The Datar had blood-stains on it. The fact of abscondence was also pressed into service by the prosecution. Then the accused had an inquiry on the outer angle of the right eye, which also shows his involvement inasmuch as when he made the extra judicial confession, he had stated to the Sarpanch that when he was trying to commit rape on Ravinder, she had given a fist blow on the right eye. It fails our comprehension as to how despite the aforesaid believable evidence being on record, the accused could be acquitted ?

4. Before we record our reading of the evidence produced in the case, let a legal submission advanced by Shri Lalit, appearing for the respondent-accused, be dealt with. His submission is that as the complainant had approached the High Court in revision and as under the revisional power available to the High Court under section 401 Cr.P.C., the High Court could not have altered the finding of acquittal into one of convictions, because of what has been stated in sub-section (3) thereof, if we were to be satisfied that the acquittal was wrongful, it would not be within our competence to convict the respondent; at best the case could be sent back for retrial. We are not impressed with this submission inasmuch as the approach to this Court being under Article 136 of the Constitution. We do not read the limitation imposed by section 401 (3) of the Code qua the power available to us under the aforesaid provision. May it be pointed out that a similar submission had been advanced by Shri Lalit himself in the case of E.K. Chandrasenan vs. State of Kerala, JT 1995 (1) SC 496, then contending that this Court is incompetent to issue rule of enhancement as had been done in those cases. It was held in the aforesaid decision that the power available to this Court under Article 136 is not circumscribed by any limitation. In any case, power under Article 142 is available to pass such order as may be deemed appropriate to do complete justice. We, therefore, reject this contention of Shri Lalit and proceed to examine the materials to find out whether case of conviction does exist, as the contention of the appellant.

5. We have dealt with the aforesaid legal submission at the threshold because, if we were agreed to Shri Lalit, we would not have analyzed the evidence ourselves but would have sent the case for retrial by passing a short order indicating broadly as to why, according to us, the acquittal was not justified. As the legal contention is not acceptable to us, we propose to enter into the merits

ourselves and see whether the case really was one of acquittal or of conviction.

6. Let us first note the evidence of the sole eye witness, P.W.5, Balbir Singh and why he has been disbelieved by the trial court. His deposition is that on the date of occurrence, which was 25.12.1987, he had come to his village as it was holiday. At about 6.15 a.m. he went to his field of Malkiat Singh, which adjoins his field. After exchanging greetings they separated to go to their respective destinations. At about 7.00 a.m. he went to his field and saw a girl tied to a eucalyptus tree and the accused was present there who was known to him before. He found him giving Datar blows on the head of the girl, by using the blunt side of the weapon. The girl was also known to him from before - she was Ravinder Jit Kaur. He could not hear the alarm of the girl, even if raised, as a loud speaker fixed to a Gurudwara was in action. On seeing the witness, the accused ran away. Reaching near to the victim, the witness saw that she had been tied to the tree with the help of a cloth. Injuries could be noticed on the head and her salwar was open. He wanted to bring this immediately to the notice of Shital Singh, father of the victim, and in search of him went upto Manilpur on a cycle. Not finding him there, he took a bus for Nangal and brought the matter to his notice. This was around 11.00 a.m., whereafter both of them came back to the village.

7. The aforesaid clearly shows that Balbir Singh had seen the assault on the person of the girl. The trial court, however, disbelieved him because of the evidence given buy P.W.2, Dr. Mahajan, who had done the autopsy. On this being done the following injuries were noticed on the person of Ravinder:

> (1) A lacerated wound 4-1/2 x 1- 1/2 cm. x bone deep on the head extending to both sides 12 cm. from frontal hair-line. On dissection, there was a depressed fracture of the skull underneath the wound and corresponding area of the meninges was also having ear of : cm x 1/4th cm.
>
> (2) An oblique lacerated wound 6 cm x 1-1/2 cm. bone deep on right a side back of head, 2 cms, back to injury No.1. On dissection, underneath bone, manings and brain were healthy.
>
> (3) A lacerated wound 1 cm. x 1/2 cm. x bone deep on the left side chin 2-1/2 cm. from the mioline, on dissaction, underneath bone was healthy.
>
> (4) A lacerated wound 1/2 cm. x bone deep on mid-line of chin. On dissaction, the underneath bone was normal.
>
> (5) A reddish contusion 3-1/2 cm. x 2-1/2 cm. on front of the left shoulder joint.
>
> (6) A reddish contusion 5 cm. x 2- 1/2 cm. on front of left mid clavicular region. On dissection of injuries Nos.5 and 6, under- neath bones were healthy and normal. (7) Dissection of the ligature mark. The sub-cutaneous tissue was having ecchymonis and underneath plasma was ruptured and blood was present in the adjoining area. There was laceration on both carotids. On further dissection, there was found

dislocation of the second chervil vertebrae.

8. On this witness being asked by the court whether "Injuries Nos. 1 and 2 were likely to have been caused by the blunt side of blade of Datar (Exhibit - P.1) or by its handle?", the answer was "by the handle of Datar and not by the blunt side of the blade". By referring to this piece of evidence, the trial court stated that it was difficult to expect that the assailant would hold the weapon from the blade and cause injury from the handle. The court further opined that the rapist must have decided resolutely to finish the girl, in which case he would have rather used the weapon more effectively. This led the court to observe the possibility of a blunt weapon other than exhibit - P.1 with bigger girth or width, having been used, in the circumstances of the case.

9. According to us, the trial court was swept too much by the aforesaid answer of the autopsy surgeon. Injuries 1 and 2 being lacerated, the same could have been caused by blunt side of Datar. It may be pointed out that what has to be accepted when an autopsy surgeon deposes in the court is his findings relating to the nature of injuries, and not as to how these were caused. Shri Lalit does not deny this legal position but, according to him, the blunt side of Datar would not have been used as the accused must have attempted to cause death, in which case, would have used the sharp side. The learned counsel goes a step further and submits that Balbir Singh deposed about the use of blunt side of the weapon having known that the injuries were lacerated in nature.

10. The last part of the submission has absolutely no merit inasmuch as even though the postmortem was done on 25th December itself, it is a common knowledge that the post mortem reports do not become available for long even to police. This being the position, the submission that when Balbir Singh stated during investigation about the use of blunt side of Datar during his examination on 25th itself, he had done so because of the postmortem finding, is merciless. The question as to why the blunt side of Datar was used, is answered by the type of weapon the Datar was, which, as would appear from Exhibit PO/1 had a blade 9-1/2" in length and handle 5-1/2" long. This shows that even the blunt side of Datar had lethality. This apart, as the assault was on the head, striking by the blunt side would have achieved the object inasmuch as a purely blunt weapon like lathi is very often used for assault on head, so much so as to cause death of the victim.

11. Because of the above, we totally disagree with the trial court's assessment of the evidence of Balbir Singh. To shake his credibility, Shri Lalit, however, urges that having seen Ravinder Jit in the condition deposed by the witness, he should not have gone in search of her father upto Nangal. but should have gone to the village Abadi nearby and brought to the notice of the villagers as to what had happened to Ravinder Jit. Instead of doing this, if Balbir Singh thought it proper to first inform father of Ravinder Jit, we do not think what the witness had done was unnatural: indeed, it was a natural conduct to first speak to the father having found that Ravinder Jit had not only been assaulted but was perhaps raped. The fact that the father (Shital Singh) was not examined as an eye witness cannot take away the weight of Balbir Singh's evidence, though it would have been better for the prosecution to produce Shital Singh also a witness. But then, this lapse has been met to a great extent by examining grand father of Ravinder Jit, who is P.W. 6. Dharma, and who is the person who had approached the High Court and is the appellant herein. From his evidence it has come out that his son Shital Singh had left for Nangal at about 6.15 a.m. Sc. the evidence of Balbir Singh that

he had met Shital Singh at Nangal has received corroboration from the deposition of Dharma.

12. Yet another criticism of Balbir Singh is based on what was stated in this remand application - Exhibit DA. As the original document is in Gurmukhi (whose translation was not found in record). this was translated for us in the Court by a counsel knowing Gurmukhi. A perusal of the same shows that it mentioned about registration of a case against the accused on 25.12.1987 at about 6.30 a.m., on the information given by Dharma who had gone to the field in search of Ravinder Jit as he had not come back. The informant had stated that "one young man, name not known" had murdered Ravinder Jit. Materials on record show that the name of the accused had not come to be known to Dharma before Shital Singh had come back to the village around 11 a.m. So the statement by Dharma made around 6.30 a.m. that an unnamed young man had caused the murder, cannot affect the voracity of Balbir Singh.

13. The aforesaid would show that there was really nothing to disbelieve Balbir Singh. The prosecution, however, has not sought to rely on Balbir Singh alone to demand conviction of the respondent inasmuch as there is on record the evidence of Sarpanch, P.W.4 Kashmir Singh, to speak about the extra-Judicial confession of the accused. From his evidence it has transpired that the accused has an eye on Ravinder Jit from before and it was on 30th December that the accused case to him to seek some assistance because he being a Sarpanch had a say with the police who was putting pressure upon his family members because of his having caused the offence in question. The accused, therefore, desired that the Sarpanch should meet the police which was so done. But before that when the accused has met the witness he had stated that he had committed the offence in question and on the girl offering resistance she was taken to a nearby field in which trees were planted. The accused also had stated to the Sarpanch that Ravinder Kaur had given fist blow on his right side of the eye while offering resistance. The further admission was that on the girl stating that she would disclose what he had attempted to do with her, cloth was tied around her neck and she was dragged upto the tree, tied with it and injuries were inflicted with Datar from the blunt side.

14. The trial court disbelieved the Sarpanch stating that the same did not inspire confidence because of the reason that the office having been committed in absolute secrecy, the perpetrator would have been too hesitant to make a confession; more so. when practically all the residents of the village were strongly condemning the rapist/killer of a young girl of the same village. According to us, the trial court absolutely missed the point that the Sarpanch was approached by the accused to seek protection in as much as police was putting pressure on the members of his family. A Sarpanch being a man of authority it was nothing unnatural in the accused approaching him and apprising him as to what he had done.

15. The above is not all. There is evidence of the investigating officer, P.W.7, that a Datar had been recovered consequent upon the information given by the accused that he had kept the same concealed in his cattle shed under the heap of fuel wood. After giving this information, the accused really led the police to the place from where recovery was made and a bloodstained Datar was found. This recovery does connect the accused with the crime.

16. Shri Lalit submitted that as the room of the house of accused was lying unlocked, police itself could have recovered the Datar if thorough search would have been made. But as the instrument was lying hidden in the cattle shed under the heap of fuel wood, and the weapon could not have been found on search but for the information given and leading the police to the place of concealment.

17. It is baffling to us as to how such an important piece of circumstance was totally missed by the trial court. This shows the casual approach not only of the trial court but of the public prosecutor. The casualness does not stop here inasmuch as the State did not feel it necessary to file an appeal against the acquittal, leaving it to the old grand- father of the victim to knock the door of the High Court first and lastly of this Court.

18. The involvement of the accused is fortified by the fact that on his examination by P.W. 1 redishness/sub-conjectivel haemorrhage was found on the outer angle of the right eye, which must have been the result of the fist blow on his right eye given by Ravinder Jit, about which the Sarpanch had deposed, as already noted.

19. We have also on record the fact of absconded of the accused. Shri Lalit would not like us to believe this inasmuch as there is no evidence that the police had searched for the accused at his house all the days after the occurrence till his surrender. The learned counsel put the matter thus becasue the evidence of P.W.8. S.I Avtar Singh, who had taken up investigation from P.W.7. is that after recording the statements of witnesses, he had searched for the accused on 25th itself but he was not available. Shri Lalit contended that as this witness had not stated that search was made on subsequent days also, the circumstance of absconding had not been established. But then from the evidence of P.W.6 we find that the police had been visiting the village in connection with this case. It may be that on such visits being made, whereabouts of the accused were tried to be ascertained. The fact that the accused was keeping away from the police has transpired from the evidence of the Sarpanch also according to whom the accused met him on 30th saying that the police was putting pressure on his family members. All these evidence taken together do establish the fact of abscondence.

20. We are thus fully satisfied that the respondent had first attempted to commit rape on Ravinder Jit and thereafter killed her. He is, therefore, convicted under Sections 376/511 and 302 of the Indian Penal Code.

21. This requires us to consider the question of sentence. As to this, the submission of Shri Lalit is that the present is not the 'rarest of the rare' case. Further, in view of the fact that occurrence had taken place in 1987 and the accused was then aged around 19, he may not be visited with capital punishment; more so, as he had been acquitted by the trial court, which order was not interfered with by the High Court. We accept the submission and hold that sentence of imprisonment for life would be the appropriate punishment.

22. In the result, the appeal is allowed by convicting the respondent under Sections 376/511 and 302 of the Penal Code, for which offences we award a composite sentence of imprisonment for life. He would be got arrested and follow up steps would be taken as required by law.