

State Of J&K vs Harjinder Singh And Others on 1 August, 2022

Author: Rajnesh Oswal

Bench: Rajnesh Oswal

S. No. 5

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 63/2013

State of J&K

.....Appellant(s)/Petitioner(s)

Through: Mr. Ravinder Gupta, AAG.

Vs

Harjinder Singh and others

..... Respondent(s)

Through: Ms. Pallavi Thakur, Advocate vice
Ms. Meenakshi Salathia, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER

1. This appeal is directed against the judgment dated 15.12.2012 passed by the court of learned Principal Sessions Judge, Samba (hereinafter to be referred as the trial Court) in file No. 70/Sessions titled "State Vs. Harjinder Singh and others" whereby the respondents have been acquitted of charges for commission of offences under Sections 366, 376, 109 RPC in FIR No. 114/2006 registered with Police Station, Samba.
2. The judgment has been impugned on the ground that the learned trial Court has not appreciated the evidence in right perspective, as such, the judgment is required to be set aside.
3. Mr Ravinder Gupta, learned AAG argued that the learned trial court has not rightly appreciated the evidence and has erroneously disbelieved the testimony of the prosecutrix.
4. Per contra, Ms. Pallavi Thakur, Advocate appearing vice Ms. Meenakshi Salathia, Advocate vehemently argued that the learned trial Court has passed the judgment on the basis of evidence brought on record by the prosecution and there is no perversity in the judgment impugned.
5. Heard and perused the record.

6. The facts necessary for disposal of the present appeal are that a written complaint was filed by the prosecutrix on 27.08.2006 at Police Station, Samba, wherein it was stated that on 26.08.2006 at about 7.00 P.M. while she was waiting for Matador at Bus Stand, Samba, the respondent No. 2 came and told her that respondent No. 3 is also coming from Jammu and she has to go to her house and she(prosecutrix) should wait for her. At about 7.30 P. M. the respondent No. 3, who happens to be the aunt of the prosecutrix came in a white Van in which two unknown persons were also accompanying her. The prosecutrix also sat in the Van. When the said Van reached near Bun Tanki, it was stopped. There were shrubs on both sides of the road and it was raining and dark. She was asked to sign one blank paper and one paper on which something was written but she refused and they started beating her with legs and fist blows. When she raised an alarm, her mouth was gagged with her Dupata and she was laid down before the front tyre and threatened that she would be killed in case she did not sign the papers. In the meanwhile, a Scooterist came from Samba side and those persons again put her in the Van and after the said Scooter passed through, they turned the Van towards Samba and continued threatening her that in case she did not sign the papers, she would be killed. When the Van reached an isolated place near the Khad near Bhat, she was forcibly brought out of the Van and asked that there was nobody to save her and in case she did not sign the papers, she would be killed. The prosecutrix signed those papers in the Mobile light of the respondent No. 3. Thereafter, the respondent No. 3 told those persons that as the prosecutrix had bothered them a lot, so she should be punished. The prosecutrix was forcibly taken to the shrubs where the respondent No. 3 caught hold of her hands and one person raped her and thereafter when second person started raping her, she became unconscious. When she regained consciousness on 27.08.2006, the sun had arisen and she found herself in a Pury De Khad in naked condition. She slowly and steadily came on road and informed her family members on telephone and at about 12.30 P.M. her mother reached there and took her to Samba Hospital for treatment.

7. On the complaint of the prosecutrix, FIR No. 114/2006 was registered in Police Station, Samba for commission of offences under Sections 376, 366, 109 RPC. During the investigation, the identification parade was also conducted by the ASI along with the prosecutrix, wherein the prosecutrix identified one person i.e. the respondent No. 1 in the presence of Naib- Tehsildar, Executive Magistrate 1st Class, Samba. The prosecutrix could not identify the other person during the identification parade and also the respondent No. 1 did not disclose anything. After the completion of the investigation, the challan was presented against the respondents.

8. The learned trial court framed charges against the respondents vide order dated 25.03.2009 and as the respondents did not plead guilty and claimed trial, so the prosecution was directed to lead evidence.

9. In support of the charges, prosecution examined 15 prosecution witnesses i.e. PW1-prosecutrix, PW2-Kamla Devi, PW3-Ajit Singh, PW4- Jaswant Singh, PW5- Thoru Ram, PW6-Harbhajan Singh, PW7- Chhaja Ram, PW8-Vijay Kumar, PW9-Nazir Ahmed, PW10-Kulbir Singh, PW11-Mool Raj, PW12-Mushtaq Ahmed Chouhan, PW13- Sarban Singh, PW14-Ved Parkash, PW15-Dr. Sanjay Gupta.

10. The statements of the accused were also recorded under Section 342 Cr.P.C. and they denied the allegations levelled against them. The respondent No. 1 further stated in his statement that he used to write against Dy. SP. Abrar Choudhary in paper and that is why he was inimical to him and falsely implicated him in the said case. He further stated that a false case has been made by the Police against him because on 20.07.2007 he had met IGP, Jammu and lodged a complaint against Dy. SP. Abrar Choudhary in which the IGP ordered an inquiry.

11. The respondents also examined DW1-Rakesh Kumar, DW2-Parveen Kumar Sharma, DW3-Yashdev Singh in their support.

12. The learned trial Court after hearing both the parties, vide judgment dated 15.12.2012 acquitted the respondents.

13. Before appreciating the rival contentions of the parties, it is necessary to have a brief resume of the witnesses examined by the parties. Out of the 15 prosecution witnesses, 8 prosecution witnesses i.e. PW3-Ajit Singh, PW4-Jaswant Singh, PW5- Thoru Ram, PW6-Harbhajan Singh, PW7-Chhaja Ram, PW8-Vijay Kumar, PW10-Kulbir Singh, PW13- Sarban Singh have not supported the prosecution story, as such, we are primarily concerned with the evidence led by the prosecutrix as well as her mother i.e. PW2-Kamla Devi.

14. PW1-Prosecutrix has stated that about 4 years ago she had come to the Police Station, Samba in connection with her case and in the evening she was going to her home. While she was waiting for the bus at Bus Stand, Samba, she met the accused/respondent No. 2-Thoru Ram, who told her that the accused/respondent No. 3-Raj Kumari was also coming and she should go to the village with her. Thereafter, the accused-Raj Kumari came there in a van along with one Sardar and one clean shaven person and asked her to accompany them in the vehicle. She sat in the vehicle. Accused-Raj Kumari told her that she would get her case settled, as she was known to number of persons. When the Van proceeded, accused-Raj Kumari brought out a blank paper and asked her to sign the same but she refused to do so. The Sikh accused was driving the vehicle and when they reached Village Raipur, he turned the vehicle towards the other side and the Sikh accused sat with her and Raj Kumari on the back seat of the vehicle. The Sikh accused asked her to sign the paper and when she refused, they started beating her. The clean shaven accused was driving the vehicle and when it reached the hilly area of Sumb, she was dragged by the accused towards stony Khad, where they started beating her. The Sardar accused and Raj Kumari tied her hands and mouth and threatened her to sign the paper, otherwise they would do some wrong with her. Raj Kumari and Sikh accused forcibly opened her clothes and again asked her to sign the paper but she refused. The Sikh accused started beating her with the wiper of the vehicle and he also raped her. They forcibly obtained her signatures on the paper and thereafter she became unconscious. The accused left her in the Khad, where she remained for whole night. In the morning, at about 5.30 A.M. some people who were moving along with their goats came and put clothes upon her. She gave her telephone number to them and they gave a call to her mother from a shop. Her mother also arrived on the spot and by that time she had come on road. Thereafter, she was brought to Police Station, from where she was taken to Hospital where she was medically examined. Her statement was recorded in the Hospital, which is correct. Her clothes were also seized, vide seizure memo marked as EXT-P1/2. The

supurdnama (EXT-P1/3) also bears her signatures. During cross examination, she stated that the accused-Raj Kumari is daughter in law of her mother's maternal uncle. She remained at Bus Stand for about 10 minutes and people were present there. She had made statement before the Police that she had come to the Police Station at 10 A.M. and in the evening she straightway went to the Bus Stand but it was not recorded in her statement. She also never mentioned the word Sardar in her statement recorded under Section 161 Cr.P.C. She had got recorded in her statement made under Section 161 Cr.P.C. as well as under

Section 164 Cr.P.C. that Raj Kumari told her that she would help her in the case, registered against her, but it was not mentioned in both the statements. She also expressed ignorance as to whether the Police had seized those papers which were signed by her. She had also told the Police as well as in her statement before the Court that she was beaten by wiper, but it was not mentioned in her statements. Firstly, her signatures were obtained by the Sardar accused and Raj Kumari and thereafter the Sardar accused forcibly raped her. In her statement made under Section 164 Cr.P.C she had not mentioned that person who raped her was Sardar. She did not talk to anybody till her mother reached on the spot at about 12.30 PM and also she did not try to come to the Police Station on her own. The Police did not record the statement of that old man who had brought her from the Khad and also did not record the statement of the person from whose shop the phone call was given. The case was registered against her on the complaint which was filed against her in the court of CJM, Jammu and in the said case her brother was also an accused. The challan has been filed against them in the court of law. In her statement EXT-P1 it has wrongly been mentioned that she collected Rs. 20,000/- each from the people and gave the money to Balbir Singh. She was bailed out by her mother, maternal uncle-Thoru Ram and Raj Kumari. No news was published against her in the newspaper that she was living with Choudhary Abrar-SDPO in the Police Station for the last 2-3 months. She expressed ignorance as to whether any deputation had met SSP, Jammu against her and Choudhary Abrar. Accused-respondent No. 1 is the President of the Press Association and he had met SSP, Jammu against her and SDPO.

15. PW2-Kamla Devi stated that the prosecutrix was bailed out in a case and she had come to the Police Station to mark her attendance. About 3-4 years ago the prosecutrix was taken by the accused in the vehicle and she did not return home. On the next morning, her relations received a telephone call from a shop, who told her that the prosecutrix was lying in a Khad and her mouth had been gagged with Dupata. She went on spot and saw her daughter standing on the road. She gave a telephone call to the Police and the Police came on spot and took her daughter to the hospital. Her daughter told her that the accused had forcibly kidnapped her and they had also beaten her, but what happened to her thereafter, was not known to her. She proved the seizure memo of the clothes (EXT-P1/2) and also the supurdnama (EXT-P1/3). During cross examination, she stated that the case was also filed against her son Sanju Singh. The said case was filed against her son and her daughter because they had issued forged appointment orders. She expressed ignorance as to whether some people had filed complaint against her daughter or not. There were number of people

at the place where she was sitting along with the daughter near the place of occurrence. There were injury marks on the hands of the prosecutrix.

16. PW9-Nazir Ahmed was posted as Naib Tehsildar, Samba in whose presence identification parade of Harjinder Singh was conducted. He proved the certificate of the identification, marked as EXT-P19. In cross examination, he stated that he had conducted identification parade of only Harjinder Singh who was identified by one girl namely Urmilla Devi. There were 8-9 Sikhs (Sardars) in the said identification parade. He also stated that Harjinder Singh is a Press Reporter and everyone in the town of Samba recognizes him. He further stated that the identification parade of the accused was not conducted in the Police Station, Samba.

17. PW11-Mool Raj who was the Scientific Officer FSL, Jammu has stated that he had examined one sealed packet „A which contained a stained black underwear, printed shalwar, shirt and unstained dupata and semen was found in exhibits B-2002/2006 to B-2005 to 2006.

18. PW12-Dr. Mushtaq Ahmed Chowhan attested the statement of the prosecutrix which was marked as EXT-P1.

19. PW15-Dr. Sanjay Gupta stated that he examined the prosecutrix and as per his examination, there was no evidence of sexual intercourse within 72 hours and there was no injury on the body of the girl when she was examined by him.

20. So far as the present case is concerned, the mother of the prosecutrix has not deposed anything about the commission of rape by the respondent No. 1 and as such, we are left with the statement of the prosecutrix only. Now, it is to be seen whether on the basis of the solitary statement made by the prosecutrix, the respondents could have been convicted or not. While perusing the statement of the prosecutrix we find that there are material contradictions in the statement of the prosecutrix.

21. The one very important aspect of the case is that prosecutrix did not know the names of those unknown persons who were sitting in the vehicle and also she had not stated in her complaint as well as in her statement recorded during the course of investigation that one of the unknown persons, who was accompanying them in the Van was a Sardar. Respondent No. 1 was roped in only after the identification parade was conducted in the Police Station, Samba, but none of the independent witnesses who were associated with the identification of the respondent No. 1 by the prosecutrix has supported the case of the prosecution.

22. PW3-Ajit Singh, PW4-Jaswant Singh, PW5-Thoru Singh, PW6-Harbajan Singh, PW7-Chajja Singh and PW8-Vijay Kumar in whose presence the identification parade of the accused has been stated to be conducted have not supported the prosecution case.

23. Though, Nazir Ahmed has proved the identification certificate but nonetheless he has categorically stated that the identification parade was conducted at Police Post, Supwal and not at Samba and he has further destroyed the prosecution case by stating that the respondent No. 1 was identified by one girl namely Urmilla Devi. Needless to say that Urmilla Devi is not the name of the

prosecutrix.

24. Not only this, there are many other irreconcilable material contradictions between the statement of the prosecutrix in the Court and during the course of investigation. In her statement recorded on 27.08.2006, she had stated that she was raped by two persons and even in her statement recorded under Section 161 Cr.P.C. she had repeated the same. Her statement was also recorded before the Judicial Magistrate 1st Class, Samba on 29.08.2006 and in all the statements she never stated that one of the persons who raped her was Sikh (Sardar). In her deposition before the court she stated that only Sardar accused raped her.

25. The prosecutrix and her mother though deposed that the condition of the prosecutrix was very bad and she was not in a position to walk properly, but PW15-Dr. Sanjay Gupta, who examined the prosecutrix on 27.08.2006, has categorically stated that he did not find any injury on the body of the girl. It assumes significance in view of the statement made by the prosecutrix that she was mercilessly beaten by the respondents before she was raped by them and also she remained in Khad for whole night, but still there was no scratch on her body.

26. PW13-Sarban Singh was the person from whose shop the prosecutrix had allegedly given a call to her mother to come on spot, however, the said witness stated that one girl gave a call from the STD at 7.00 A.M. in the morning and thereafter left for Samba in a Matador. This has also caused a dent in the prosecution case.

27. Another important aspect of the case is that there is nothing on record as to why the accused were bent upon to get her signatures on a blank paper and of what use those blank papers were for them. Those blank papers allegedly signed by the prosecutrix have also not been seized by the Investigating Officers.

28. Though PW11-Mool Raj stated that there was presence of human spermatozoa on clothes, however, he categorically stated that the age of the semen stains on the clothes of the prosecutrix could not be ascertained exactly.

29. Last but not the least, none of the Investigating Officer out of the three Investigating Officers has been examined by the prosecution which has further caused a dent in the prosecution case.

30. We have also gone through the judgment of the learned trial court and the learned trial court has rightly appreciated the evidence and we do not find that there is any perversity in the judgment impugned, passed by the learned trial court, rather on the basis of the evidence led by the prosecution, the only option available before the trial court was to acquit the accused-respondents. Therefore, we do not find any reason, whatsoever, particularly in view of all what has been discussed above, to take any other view contrary to the well reasoned judgment passed by the learned trial court. As such, the judgment impugned is upheld. The present appeal is dismissed.

31. Record of the trial court be sent back forthwith.

(RAJESH SEKHRI)

(RAJNESH OSWAL)

JUDGE

JUDGE

Jammu
01.08.2022
Sahil Padha

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No