

Arvind Kumar and Another Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : May-15-2014

Appellant : Arvind Kumar and Another

Respondent : State of Haryana

Judgement :

CRA No.S-1688 SB of 2003 -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CRA No.S-1688 SB of 2003 (O&M) Date of decision : 15.5.2014 ..Arvind Kumar and anotherAppellants versus State of HaryanaRespondent Coram: Hon'ble Mr.Justice K.C.Puri Present: Ms.Kiran Bala Jain, Advocate for the appellants.

Sh.Amit Kaushik, Senior DAG, Haryana..K.C.Puri, J.

Challenge in this appeal is the judgment and order dated 2/4.8.2003 passed by MRS.Ritu Tagore, Additional District and Sessions Judge, Fast Track Court, Ambala, vide which the accused- appellant Arvind was convicted under Sections 452, 354/34 and 307 IPC and 25/54/59 of Arms Act, whereas accused-appellant Yogesh @ Mittu was convicted under Sections 452, 354, 307/34 IPC and Section 25/54/59 of Arms Act.

However, both of them were acquitted under Section 376 (2) (g) IPC.

They were sentenced to undergo imprisonment and fine as under:- Arvind u/s 354/34 IPC Two years rigorous imprisonment and fine of Rs.200/- and in default of

payment of fine to Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -2- further undergo rigorous imprisonment for 7 days.

u/s 452/34 IPC Four years rigorous imprisonment and fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days.

u/s 307 IPC Eight years rigorous imprisonment and fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months.

u/s 25/54/59 Arms Act Three years rigorous imprisonment and fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days.

Yogesh @ Mittu u/s 354/34 IPC Two years rigorous imprisonment and fine of Rs.200/- and in default of payment of fine to further undergo rigorous imprisonment for 7 days.

u/s 452/34 IPC Four years rigorous imprisonment and fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days.

u/s 307/34 IPC Eight years rigorous imprisonment and fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months.

u/s 25/54/59 Arms Act Three years rigorous imprisonment and fine of Rs.500/- and in default of payment of fine to further Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -3- undergo rigorous imprisonment for 15 days.

However, all the sentences were ordered to run concurrently.

The accused-appellants were sent up by SHO Police Station Baldev Nagar, to face trial for offence under Sections 376, 307, 452, 511/34 IPC read with Section 25/54/59 of Arms Act vide FIR No.84 dated 26.2.2001.

Brief facts of the case are that on 26.2.2001 SHO Police Station Baldev Nagar, received a telephonic message regarding admission of Seema r/o Jandli in Civil Hospital, Ambala City.

Thereupon ASI Ashok Kumar alongwith other police officials reached at Civil Hospital Ambala City.

Statement of Seema was recorded, in which she has stated that they are three sisters and one brother.

Arvind s/o Ami Ram and Yogesh @ Mittu s/o Kailash Chand - accused appellants, were friends of her brother and they had been visiting their house.

On 26.2.2001 in the morning her parents and sisters went to Yamuna Nagar to attend a marriage.

Her brother Deepak also went to school.

She was all alone in the house.

Around 12.00 noon she was present in her house when accused Arvind and Mittu scaled the door of her house and entered her house.

As soon as accused persons entered her house, accused Arvind gagged her mouth and caught hold of her.

Accused Mittu started removing her clothes in order to force him upon her.

Her clothes got torn in the process.

She raised the alarm and manage to free herself and ran into the house of her neighbour Tilak Raj.

No one was present in the house of Tilak Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -4- Raj.

Arvind and Mittu followed her and entered the house of Tilak Raj.

In order to save herself she ran into the kitchen and tried to close the door, then Arvind took out a pistol from his pocket and fired at the left side of her abdomen.

On receipt of the gun shot she fell down.

On hearing her noise, her brother Deepak and her aunt Chameli rushed to the spot.

On seeing them, both the accused ran away alongwith the pistol.

The complainant was taken to the hospital by her aunt.

The complainant further alleged that accused Arvind and Mittu in order to commit rape upon her trespassed into her house when she was all alone and forcibly removed and torn her clothes and also fired at her with an intention to kill her.

On the basis of statement FIR was registered.

Accused Arvind and Yogesh were arrested.

On their disclosure statement, a country made pistol was recovered from Arvind, whereas one live cartridge was recovered from Yogesh.

After completion of the investigation, challan was presented against the accused.

Copies of documents were supplied to the accused free of costs, as provided under Section 207 Cr.P.C.Charge under Sections 452, 376 (2) (g).511, 307, read with Section 34 IPC and 25/54/59 of Arms Act, was framed against the accused, to which they pleaded not guilty and claimed trial.

The prosecution, in order to bring home guilt of the accused, examined PW-1 prosecutrix, PW-2 Deepak, PW-3 HC Jaspal Singh, PW-4 Suresh Kumar, PW-5 Manohar Lal C.

Draftsman, PW-6 Constable Hardev Singh, PW-7 Ved Parkash, PW-8 Ashok Kumar Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -5- ASI, PW-9 Dr.

V.K.Sharma, Medical Officer, PW-10 HC Bhim Singh, PW-11 ASI Raj Kumar, PW-12 Inspector Jai Singh, PW-13 Satnam Singh Reader, PW-14 Dr.

Anil Jain, PW-15 Dr.

Ravun Jindal, PW-16 Dr.

S.S.Punia and closed the prosecution evidence.

The accused were examined under Section 313 Cr.P.C.and all the incriminating evidence was put to them to which they pleaded innocence and false implication.

Accused Arvind stated that he never tried to outrage the modesty of the prosecutrix nor attempted to commit rape upon her.

He never fired at her.

The parents of prosecutrix falsely implicated him in the present case.

The prosecutrix was having love affair to which her parents objected to.

He and prosecutrix had been studying together and were having visiting terms with each other.

Accused Yogesh stated that he has been falsely implicated in the present case as he had refused to make the statement as suggested by the complainant and her parents.

He has further stated that nothing was recovered from him and a false recovery of cartridge has been planted upon him.

The accused were called upon to lead their defence evidence but they had chosen not to lead any defence evidence.

Learned trial Court after appraisal of the evidence convicted the accused and sentenced them to undergo imprisonment and fine as narrated above.

Feeling dissatisfied with the abovesaid judgment and order dated 2/4.8.2003 passed by MRS.Ritu Tagore, Additional District and Sessions Judge, Fast Track Court, Ambala, the accused appellants Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -6- have preferred the present appeal.

I have heard counsel for both the sides and have also gone through the record of the case.

Learned counsel for the appellants has submitted that there was love affair between the injured-complainant and that of Arvind and love letters Mark X and Mark Y have been placed on the file.

The parents of complainant wanted to marry the complainant with Arvind but parents of Arvind told the parents of complainant that Arvind could marry only after studies.

Some un-identified persons have caused injury to the complainant and Arvind has been falsely implicated on account of above said fact.

Accused Yogesh @ Mittu has been implicated as he has refused to be a witness against Arvind.

The sole testimony of the complainant is not sufficient to convict the appellants for offence under Section 307 IPC.

I have carefully considered the said submission but do not find any force in that submission.

The weapon of offence has been recovered from Arvind.

Empty of the cartridge has also been recovered near the bathroom of the house of Tilak Raj where the occurrence has taken place.

One live cartridge was recovered from Yogesh accused.

The torn clothes of the complainant were also recovered.

There was corresponding hole of fire arm injury in the torn clothes.

The doctor has opined that there is fire arm injury.

The reason given by the appellants for false implication is not at all probable.

Even if there is love affair between the prosecutrix and Arvind, in that case there was no reason for false Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -7-implication.

The recovery of weapon and empty cartridge and live cartridge fully supports the case of the prosecution.

Learned counsel for the appellants has further submitted that Chameli aunt of the complainant has not been examined.

Any family member of Tilak Raj, who is stated to be present at the time of occurrence has also not been examined.

PW-15 Dr.

Ravun Jindal has stated that the prosecutrix told the doctor that 2-3 boys known to her came to her house and tried to molest her and at her residence they fired and ran away.

The name of the appellants was not given.

It is further submitted that even according to the said doctor the injury was simple in nature.

So, the ingredients of offence under Section 307 IPC is not made out.

I have carefully considered the said submission but do not find any force in that submission.

PW-15 Dr.

Ravun Jindal has stated in the cross examination that prosecutrix told that 2-3 boys came to her house and tried to molest her and at her residence they fired upon her and ran away.

It is not the requirement of law to give the name of the assailant to the doctor.

Otherwise, doctor has supported the remaining story of the prosecution in the cross examination, except name of the assailants.

The fire arm injury in the abdomen cannot be said to be simple injury.

Chameli or any family member of Tilak Raj was not stated to be present at the time of occurrence and as such their non-examination is not fatal to the prosecution.

Counsel for the appellants has further submitted that the trial Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -8- court has held that motive for the occurrence is not proved and on that account prosecution story is doubtful.

I have carefully considered the said submission, but do not find any force in that submission.

In a eyewitness count, motive is not so material.

Otherwise the prosecutrix has stated that accused have tried to molest her and it has come on the record that on the date of occurrence, victim was alone at the house and as such the lust for sex must be the reason for occurrence.

The prosecutrix might have resisted and the accused has fired upon her on that account.

The prosecutrix even went to the house of her neighbour Tilak Raj, where she was fired upon.

So, it cannot be said that offence under Section 307 IPC is not made out.

Counsel for the appellants has further submitted that as per the custody certificate, appellant Arvind has undergone incarceration for a period of 3 years, 2 months and 12 days and have earned remission of 2 months and 11 days, whereas accused Yogesh @ Mittu has undergone incarceration for a period of 3 years, 3 months and 13 days and has earned remission of 2 months and 15 days and in this manner, both of them have already undergone incarceration for about 3 years. It is submitted that in the judgment itself, age of Arvind has been mentioned as 21 years and that of Yogesh is 22 years. The accused are not the previous convicts.

The occurrence relates to more than 13 years back.

So, prayer has been made for taking a lenient view regarding quantum of sentence.

Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh CRA No.S-1688 SB of 2003 -9- I have considered the said submission.

The age of Arvind has been mentioned as 21 years and age of Yogesh @ Mittu has been mentioned as 22 years in the judgment itself.

The occurrence relates to the year 2001 i.e. more than 13 years back and since then the appellants are facing the agony of protracted trial.

Both the appellants have already undergone incarceration for a period of about 3 years including remissions.

They are not the previous convicts.

They are on bail since the year 2004 i.e. for the last about 10 years and no untoward occurrence has taken place between the parties.

So, considering all the circumstances of the case, the conviction recorded by the trial Court stands affirmed, however, sentence of both the appellants stands reduced to the period already undergone.

The sentence of fine stands affirmed.

Both the appellants are directed to pay compensation to the tune of Rs.50,000/- each within two months from today.

The said amount of compensation shall be deposited before the trial court and on realisation the same shall be paid to the complainant.

However, it is made clear that in case the said amount is not deposited within two months from today, in that case, the appellants shall undergo the imprisonment awarded by the trial Court.

The appeal stands disposed of accordingly.

A copy of the judgment be sent to the trial Court for compliance.

(K.C.Puri) 15.5.2014 Judge chugh Chugh Banita 2014.05.27 12:03 I attest to the accuracy and integrity of this document chandigarh

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