

Chaman Ali Vs. State

Chaman Ali Vs. State

SooperKanoon Citation : sooperkanoon.com/681943

Court : Delhi

Decided On : Aug-25-1992

Reported in : 1993CriLJ1256; 1992(3)Crimes767; 1992(24)DRJ257; 1992RLR434

Judge : Usha Mehra, J.

Appeal No. : Cr. M(M.) 2148 of 1992

Appellant : Chaman Ali

Respondent : State

Advocate for Def. : A.K. Singh, Adv.

Advocate for Pet/Ap. : K.G. Bhagat, Sr. Adv. and; Arun Kapil, Ad

Judgement :

ORDER

1. Smt. Babita Devi aged about 23 years is a married woman. She has two sons from her wedlock with Shri Hira Lal, aged about 3 1/2 years and 9 months. She was suffering from fever and for quite sometime she was also getting gidiness. She had been taking treatment for this. However some known person informed her that in Subhas Khand, girl Nagar, there was one Chaman Baba who does 'Jharphukhan' and by the said 'Jharphukhan' she may get cured. On 22nd July, 1992 her husband took her to Chaman Baba. So many people had been visiting

him. She was given a Token which indicated that her turn was at Sl. No. 64 to see him. At about 12.15 noon her turn came when she entered the room of Chaman Baba, the accused in this case. About 4/5 people were already sitting there. He asked Babita to sit outside as he 'Phukhan'. After about 20/25 minutes she was called inside but her husband was not allowed to come with her. Even the 4/5 persons sitting there were asked to leave the room so that he could give her the treatment. He made her lie on the sofa and administered some substance by smelling which she became insensible. After making her so, he bolted the door from inside and committed rape on her. She could not raise the alarm nor could cry because of the effect of that substance which she was made to smell and which made her mute spectator.

2. It is in this background that the first information was lodged by Smt. Babita on 22nd July, 1992 alleging that rape committed on her by the petitioner. The present petition has been filed by Chaman Ali, the petitioner seeking bail, inter alia, on the grounds that the allegations of the prosecutrix are unbelievable. He treats with divine remedies almost 100 persons everyday. A number of patients were waiting outside the room therefore, there could not have been any chance for the petitioner to commit such an act. Moreover, she neither raised alarm nor intimated about the rape to her husband immediately when she came out of the room. The FIR has been lodged after about 8 1/2 hours of the alleged incident for which there is no Explanation. The petitioner was in fact severely beaten by the police officials and this is a cooked up case against him. In fact the prosecution has been hired by Sardar Amarjeet Singh in order to make incriminating statement against the petitioner. The said Sardar Amarjeet Singh is a taxi driver and wanted to take revenge against the petitioner.

3. I have heard Shri K. G. Bhagat, Sr. Advocate for the petitioner and Shri A. K. Singh, counsel for the State. It is an admitted case on record that the petitioner practices 'Jharphukhan'. In a way it can be taken curing by diving medicine or divine-craft. This is also admitted case that Smt. Babita had gone to the petitioner on 22nd July, 1992 for getting cured from her illness. It is also an admitted fact on record that she was given token in which her number that she was 64. It is also not disputed that she was called by the petitioner for the purpose of giving

'Jharphukhan' inside the room. Now the question which arises for consideration is why would a married woman level such a charge against the petitioner. While deciding the petition for bail, we have to see the evidence collected by the prosecution and not the defense set up by the accused. The evidence so far collected indicate that there was semen on the Patikot of Smt. Babita. Of course the report of CFSL is awaited. But the fact remains that this semen was lifted from her Patikot by the Police on the same day on which she alleged that the rape was committed on her. Why she could not raise the alarm, she has explained the same in her own statement when she stated 'Mujhe Kuch Cheej Sungha Di Jisse Main Behosh Jassi Halat Me Ho Gai' meaning thereby he made her smell some substance as a result of which her condition became like that of a unconscious person she became lifeless. She could not understand what was being done to her but became so helpless that she could not protest or resist against the same. She could not protest of his bolting the door from inside. For doing 'Jharphukhan' on a woman he pretended that the door has to be closed for this nobody could have objected. Similarly, when rape was committed, she could not cry or raise alarm because she was in that state of mind where she could understand what was going on but was helpless because of the effect of that smelling. It is in this background that she could not raise the alarm. She has further stated that her husband was not allowed to go with her in the room. This circumstance coupled with her statement that she was administered. Some smelling substance, prima facie, establishes that she was not in a position to raise the alarm as she had become mute spectator of this crime. As regards the contentions of Mr. Bhagat that there was a delay in lodging the FIR, to my mind, this argument has no force. In the peculiar facts of this case the delay has to be seen in the light of her family background and the traumas alleged to have undergone. She has further stated that after leaving the room she wanted to run away from the place. She wanted to reach home so that she could muster enough courage, strength to tell her husband as to what had happened to her. It is only when she collected courage and made her husband aware as to what happened with her that they decided to lodge a police report.

4. She is a married woman. There are many constraints to a married woman before lodging the FIR. Hence mere delay of about 8 hours, to my mind, at this stage, is

no ground for granting the bail. Her faculty was crowded because of the smelling of substance and it must have been sometime to come out of that trauma and then to inform her husband about what happened with her. Supreme Court in the Case of Harpal Singh, : 1981 CriLJ1 held that delay of about 10 days with respect to the filing of the FIR in case of alleged rape was explained as a result of deliberation in the family whether to take the matter which involved the honour of the family to get words was held to be reasonable and could be expected as it was not a uncommon that such considerations delay action on the part of the near relations of girl who had been raped. Let us not forget that every woman in this Republic is under the protection of law and an offence committed notwithstanding any insinuations or suggestions against her character. The delay by itself is no ground to grant the bail particularly her statement where she stated that she became so afraid that immediately she left the place of the petitioner for home and there she had to the muster enough courage to tell this incident to her husband. I must say that for a married woman to tell her husband that rape had been committed on her must have required enough courage to do so. Moreover, the question of delay will be looked into on merits.

5. After the amendment of Criminal Law, Amendment Act of 1983 on insertion of S. 114A in the Evidence Act which provides that in a prosecution for rape under sub-Sec. (2) of S. 376 when there is an allegation of rape the question whether it was without consent, the Court shall presume that she did not give the consent and in this case she has in unequivocal terms stated that she was insensible because of the smell administered to her as a result of which she could not resist and suffered the assault passively. She could watch what was happening but could not protest the same.

6. With these observations, I find that this is not a fit case where the petitioner should be granted bail. However, I may make it clear that any observations made will have no bearing on the merits of the case. Dismissed.

7. Petition dismissed.