

Bimla Devi Vs. Ishwar Singh

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Court : Delhi

Decided On : Aug-20-1997

Reported in : 1997VAD(Delhi)170; 68(1997)DLT306; 1997(43)DRJ316

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 227

Appeal No. : Criminal Revision Appeal No. 290 of 1995

Appellant : Bimla Devi

Respondent : ishwar Singh

Advocate for Pet/Ap. : Rajeev Awasthi and; K.B. Andley, Advs

Judgement :

Jaspal Singh, J.

(1) On May 27, 1993 Bimla Devi filed a complaint against Ishwar Singh the then Station House Officer, Police Station Jahangir Puri and some other police officials of that Police Station. The complainant alleged commission of offences under Sections 343, 354, 357, 376, 506, 120B of the Indian Penal Code. Section 34, of the Code was also invoked. The learned trial Magistrate, after recording the statement of the complainant and her other witnesses, summoned all the accused persons excepting are R.C.Sharma. It was observed that as far as the Station

House Officer Ishwar Singh was concerned a prima facie case was made out against him under Sections 330/348/354 read with Sections 114/506 besides Section 376 of the Indian Penal Code. The case, it appears, was subsequently committed to the Court of Sessions. The learned Additional Sessions Judge to whom the case was assigned, heard arguments on charge and holding that there was no 'incriminating evidence' against the Station House Officer Ishwar Singh and that the complainant had not 'Specifically narrated any incident in the complaint involving Ishwar Singh in assaulting her or outraging her modesty or in her wrongful confinement....' discharged him.

(2) Let us first have a look at the complaint filed by Bimla Devi, the present petitioner. It alleges that on February 9, 1993 at about 11 a.m. Sub Inspector Inderpal Along with one Constable Ramesh came to her parental house, took away her brother Ashok Kumar after hurling abuses at her 'in most filthy language'. This, however, was just the beginning of her long ordeal. She claims that when on the same day she went to the Police Station Along with Rekha, her sister-in-law (the wife of Ashok Kumar) to serve meals to him, though her sister-in-law was forcibly turned out, she herself was caught hold of from her hair by Inder Pal, Ramesh and P.C.Sharma and was kept illegally confined in the Police Station from February 9, 1993 to February 11, 1993. Allegedly during this period the 'accused persons' beat her, snatched her hair, subjected her to assault and criminal force with an intention to outrage her modesty, made her naked and raped her in the presence of her brother. She further claims that at the time of her release on February 11, 1993 she was threatened by the 'accused persons' that on her lodging a report against them she would not only be implicated 'in some heinous crime' but would also be killed and that on her release on the night of February 11, 1993 though she Along with her husband did go to Police Post Majnu Ka Pilla to lodge a report against the officials of Police Station Jahangirpuri, she was turned away.

(3) In support of the complaint, Bimla, Devi, complainant examined herself as CW-1. The other witnesses examined were her sister-in-law Rekha. Sita Devi mother of Ashok Kumar, Bishan Dass, Vinod Kumar, Raghbir Singh and Anil Kumar.

(4) The statement of the complainant Bimla Devi (CW-1) makes a sad reading. She speaks of Inderpal, and other Police officials having taken away her brother Ashok Kumar on February 9, 1993 to the Police Station and of her own visit to the Police Station on that very day Along with her sister-in-law Rekha with a view to serve him meals. According to her whereas Station House Officer Ishwar Singh abused Rekha and made her leave the police station, she herself was kicked, abused, given danda blows and detained by him till 9 p.m. of February 11, 1993. This, however, is not all. She tells us that on February 10, 1993 Inderpal dragged her up to the room where her brother Ashok was confined, directed her to open his fly-buttons and when she refused she was beaten, made naked as also her brother and on refusal by her brother to rape her as directed, her body was violated by Inderpal himself. To add to the agony, the Station House Officer threatened that in case of her disclosing to anyone about her having been raped her family members would be wiped out.

(5) Coming to Rekha who is the sister-in-law of the complainant and by now the widow of Ashok Kumar, she lends full support to the version of the complainant with regard to the detention of her husband and her subsequent visit to the Police Station Along with the complainant. According to her whereas she herself was pushed out by Ishwar Singh, Bimla was caught hold of by him and given beatings. This was on February 9, 1993. She tells us that she had again gone to the Police Station on February 10, 1993 and had seen Inderpal pushing her naked husband towards Bimla who too had no clothes on and giving them beatings.

(6) Sita Devi, the mother-in-law of the complainant too speaks of the detention of Bimla Devi by Ishwar Singh, S.H.O., and of her having been beaten and dragged by him. According to her Ishwar Singh did not release the complainant till 9 p.m. of February 11, 1993 despite his having been approached by others too. Not only that, As per her, Ishwar Singh had threatened her with dire consequences in case of her making any complaint to anyone.

(7) That the Station House Officer had been approached to release the complainant and further that he had abused and insulted them finds support from the statement of CW-4 Bishan Dass also.

(8) The statement of CW-5 Vinod Kumar also needs to be noticed in some detail. he was in the lock-up of Police Station Jahangirpuri from 8th to 11th of February, 1993. As per him when the complainant Along with her sister-in-law came to the Police Station on February 9, the sister-in-law was beaten and pushed out of the Police Station by Inderpal while the complainant was beaten by S.H.O. Ishwar Singh and that it was on the orders of S.H.O. Ishwar Singh that the Complainant and Ashok Kumar were made naked. According to him she was raped by Inderpal on the 10th in his presence and on the 11th Ishwar Singh had threatened the complainant that in case of her lodging a report against them, she and her family members would meet with dire consequences.

(9) As already noticed above the learned Additional Sessions Judge has discharged Station House Officer Ishwar Singh on the ground that she did not find 'any incriminating evidence' against him. She observed that the complainant had 'not specifically narrated any incident in the complaint involving Inspector Ishwar Singh in assaulting her or outraging her modesty or in her wrongful confinement or his convenience (sic)' and that 'the name of Ishwar Singh was introduced, for the first time, by the complainant in her statement made in Court on 26.6.93 i.e. after two and half month of the filing of the complaint for the obvious reason that her brother was previously lifted by police station Jahangir Puri for investigation in a murder case and then he was taken away by the police of Gurgaon where he died in custody.' The learned Additional Sessions Judge has also observed that there was delay in lodging the complaint and that the same had not been explained and, therefore, the allegations have to be viewed 'with suspicion'.

(10) The learned counsel for the petitioner submitted that neither the learned Additional Sessions Judge correctly appreciated the evidence on the record nor did she look into the matter in right perspective. Ofcourse, the impugned order won full-throated approval from the learned counsel appearing for Ishwar Singh.

(11) What is committed to the Court of Sessions is not an accused but the case. This being the position, the Sessions Court can proceed not only against the accused originally committed but also against other persons appearing to be guilty from the material on record and that material, in a complaint case, would not only

be the complaint itself but also the statements on oath (of any) under Section 202 and the documents submitted, if any, I have been constrained to reiterate this well-entrenched legal position because the tenor of the order of the learned Additional Sessions Judge would reveal that much was sought to be made of the allegations contained in the complaint only as if the statements recorded on oath were not of much consequence.

(12) Section 227 of the Code of Criminal Procedure having bearing on the points in issue, provides:

'227.Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

(13) Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence.

(14) The interaction of Sections 227 and 228 of the Code of Criminal Procedure has already been the subject matter of consideration by the Supreme Court. The two leading cases on the point which immediately come to mind are State of Bihar v. Ramesh Singh : 1977 CriLJ1606 and Union of India v. Prafulla Kumar Samal : 1979 CriLJ154 . Dealing with the said two decisions, the Supreme Court observed in Stress Atyachar Virodhi Parishad v. Dilip Nathumal Chordia : [1989]1SCR560 .

'PRAFULLA Kumar case has only reiterated what had been stated in Ramesh Singh case. In fact Section 227 itself contains enough guidance as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is not sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate inquiry into sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All

that the Court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.'

(15) Can it be said, in the case in hand that the evidentiary material on record if generally accepted would reasonably connect Station House Officer Ishwar Singh with the crime? My unhesitating response is in the affirmative.

(16) With respect I, do not think the learned Additional Sessions Judge has read the complaint with a discerning eye. It does, clearly and unambiguously, point an accusing finger towards Station House Officer Ishwar Singh. Let us keep it in mind that Station House Officer Ishwar Singh was imp leaded in the complaint as accused No. 1 while Inder Pal, Ramesh and P.C.Sharma were imp leaded as accused numbers 2, 3 and 4 respectively. A bare reading of the complaint would disclose that where ever a specific role is assigned to any of the accused persons, a pointed reference is made to him. For example in paragraph 3 of the complaint there is a pointed reference to the acts of Inder Pal and Ramesh. In paragraph 4 there is a pointed reference to 'accused Nos. 2 and 3'. However, where all the accused are alleged to have committed an act then reference is made to them as 'accused persons'. for example in paragraph 5 wherein she speaks of her illegal detention in the Police Station from February 9 to February 11 of 1993 she alleges that during that period she was beaten and assaulted and subjected to criminal force by 'the accused persons' and that it were the 'accused persons' who had outraged her modesty. In paragraph 6 she alleges that she was raped by 'the accused persons' and was wrongfully confined 'by the accused persons.' Coming to paragraph 9 she alleges that 'the accused persons' had threatened her at the time of her release that in case of her lodging a report against them she would be implicated in some heinous crime. Unfortunately, the learned Additional Sessions Judge did not notice what was so obvious and thus wrongly felt that in the complaint no allegations appeared against the Station House Officer Ishwar Singh.

(17) As already noticed above the complainant in her statement recorded on oath has categorically named Station House Officer Ishwar Singh and her version finds support and corroboration from the statements of Rekha, Sita Devi and Vinod

Kumar. Bishan Dass and Raghbir Singh also implicate Station House Officer Ishwar Singh and lend credence to the version of the complainant.

(18) This is certainly not the stage to embark upon an elaborate inquiry into sifting and weighing the material. As pointed out by the Supreme Court in *State of Bihar v. Ramesh Singh* : 1977 CriLJ1606 , the standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter either under Section 227 or Section 228 of the Code of Criminal Procedure. To go back to the dictum in *Stree Atyachar Virodhi Parishad's case* (supra) all that the Court has to consider at the stage of Section 227 is whether the evidentiary material on record, if generally accepted (as in the present case), would reasonably connect the accused with the crime.

(19) The complaint and the materials on the record show that the Station House Officer Ishwar Singh was actively involved in the alleged illegal detention of the complainant in the Police Station, in beatings given to her, and in outraging her modesty. There is also evidence to show that the complainant was raped while in illegal detention and that the Station House Officer abetted and connived at it. Even otherwise he was In-charge of the Police Station and was consequently expected to know what was happening within its fourwalls and the fact that he was in the know of it is prima facie borne out from the threats extended by him while letting the complainant go on the 11th of February. In this respect I would rely upon the ratio in *Ram Kumar v. State of Himachal Pradesh* : AIR 1995 SC1965 .

(20) For the reasons recorded above, I hold that the learned Additional Sessions Judge was wrong in holding that there was no sufficient ground for proceedings against Ishwar Singh and thereby discharging him. The impugned order is consequently set aside. The matter thus has to go back for proceeding further in accordance with law. Let Ishwar Singh appear before the learned Additional Sessions Judge on September 9, 1997. Trial Court record be sent back forthwith.

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