

Dilawar Singh Viridi Vs State of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Aug. 19, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 164, 193, 437A

Penal Code, 1860 (IPC) â€” Section 34, 354, 366, 376

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(1)(xi)

Citation: (2014) CriLJ 4944 : (2015) 2 Crimes 395

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: R.S. Marhas, Advocate for the Appellant; Sameer Behar, Advocate for the Respondent

Judgement

Sanjay K. Agrawal, J.

1. This appeal has been preferred by the appellant questioning the impugned order of conviction and sentence dated 06.10.2012 passed by

learned Sessions Judge, Bilaspur, in Special Case No. 32/2011. The prosecution case as unfolded during the course of trial are as under:

1.1 That, on 26.01.2010 and thereafter on 08.03.2010, the appellant while holding the post of Chief Manager, State Bank of India, Main Branch

Bilaspur, attempted to outrage the modesty of complainant Shilpa Bhagat (PW-1) knowing well that she belongs to Schedule Tribe community. On

written complaint (Ex. P/1) made by the complainant to the Police Station Adim Jati Kalyan, Sarkanda, Bilaspur (for short, AJK) on 03.06.2010

offences under Section 354 Indian Penal Code (for short, IPC) and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (for short, the Act, 1989) were registered against the appellant on 17-10-2010.

1.2 During the course of investigation, the statement of witnesses were recorded under Section 161, Cr.P.C. and after completing investigation,

charge sheet was laid before the court of Judicial Magistrate.

1.3 The Judicial Magistrate, having found that the case was exclusively triable by the Special Court, committed the same to the court of Special

Judge under Section 193, Cr.P.C.

1.4 Learned Special Judge, by its order dated 04.02.2012 framed the charges under Section 3(1)(xi) of the Act, 1989 as well as under Section

354, IPC, to which, the appellant pleaded not guilty and claimed to be tried.

1.5 In order to bring home the charged offences, the Prosecution has examined following witnesses

- i. (PW-1) Ku. Shilpa Bhagat, complainant.
- ii. (PW-2) Azad Verma, co-worker of the complainant.
- iii. (PW-3) Birachi Dehari, investigating officer.

Apart from these, the prosecution brought nine documents and exhibited them (Exhibit P/1 to Exhibit P/9) on record.

1.6 The defence of the appellant is that of denial by submitting that he was strict disciplinarian and that he was not liked by the some sections of the

employees and in order to take revenge, he has been falsely implicated. Defence examined none, but brought documents (Exhibit D/2 to Exhibit

D/5) on record at his instance.

1.7 Learned Special Judge, in its judgment impugned considered the evidence pros and cons and acquitted the appellant from the charges under

Section 3(1)(xi) of the Act, 1989, however, convicted him for the offence punishable under Section 354, IPC and sentenced him to undergo R.I.

for six months and to pay fine of Rs. 5000/- with default stipulation.

1.8 Against this judgment of conviction, instant appeal has been preferred by the appellant/accused.

2. Shri R.S. Marhas, learned counsel appearing for the appellant would submit as under:

2.1 That, First Information Report (FIR) made by the complainant Shilpa Bhagat on 03.06.2010 suffers from unexplained delay of 3 to 5 months.

2.2 That, the testimony of complainant Shilpa Bhagat (PW-1) is not trustworthy in absence of corroboration by independent public witness.

2.3 That, non-examination of charge-sheet listed witness Anirudh Kori would lead to, adverse inference against the prosecution.

2.4 That, finding of learned Special Judge holding that complainant made a complaint against the appellant to R.B.O. is contrary to the complaint

made by complainant Shilpa Bhagat as the complaint (Ex. P/1) shows that no such complaint was made with regard to the alleged incident to

R.B.O., and therefore, order of conviction and sentence as well deserves to be set aside.

3. On the other hand, Shri Sameer Behar, learned counsel appearing for the respondent/State would submit that, the reasons assigned by learned

Special Judge for delay in lodging FIR is one of plausible reason and, as such, the sole testimony of the complainant Shilpa Bhagat (PW-1) is

sufficient & safe to convict the appellant for offence under Section 354, IPC apart from the fact that her testimony is duly supported by Azad

Verma (PW-2), and therefore, the appeal deserves to be dismissed.

4. I have heard the learned counsel appearing for the parties and considered their rival submissions, made therein and perused the judgment

impugned including records of the case with utmost circumspection.

5. Upon hearing learned counsel appearing for the parties and perusal of records, the question that arises for determination is, Whether the

prosecution has proved the offence under Section 354, IPC against the appellant/accused beyond shadow of doubt.

6. In order to better appreciate the rivalized contentions of the parties, it would be proper to notice the definition of Section 354, IPC, which reads

as under:

354. Assault or criminal force to woman with intent to outrage her modesty. Whoever assaults or uses criminal force to any woman, intending to

outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term

which may extend to two years, or with fine, or with both.

7. Section 354, IPC have following ingredients--

1. That the assault must be on a women,

2. That the accused must have used criminal force on her, and

3. That the criminal force must have been used on the woman intending thereby to outrage her modesty.

8. The question to be considered is, whether the appellant has used criminal force upon the complainant Shilpa Bhagat (PW-1) with an intention to

outrage her modesty.

9. In order to answer this question, it would be proper to have brief survey of the statement made by the prosecution witnesses and particularly the

evidence of complainant Shilpa Bhagat (PW-1).

10. (PW-1) Shilpa Bhagat, in her statement before the court, stated that she was posted in the Main Branch of State Bank of India, Bilapur, on

26.01.2010 and on that date she had gone to the chamber of appellant/accused to congratulate him on the occasion, of Republic Day and she

wanted to touch his feet to seek his blessings and as soon as she touched his feet, he (accused) firstly embraced her and then kissed her, thereafter,

she came out from his cabin, but did not inform to anyone. Thereafter, again on the Women's Day falling on 8th March of that year, the

appellant/accused called all women employees posted in said Branch to his chamber one-by-one to congratulate all of them and when she visited

his chamber, in her turn, the appellant/accused again repeated the same act i.e. caught hold of her and kissed her and she immediately informed

about the said incident to one Anirudh Kori, a co-worker. She has also stated that she made a complaint to the regional Branch Office against the

appellant on 25.05.2010 and pursuant to which, he was transferred to another place.

11. Azad Verma (PW-2) is the prosecution witness, to whom the complainant Shilpa Bhagat (PW-1) informed that accused came along with

daily-wager Chhotu to serve order of transfer to her on 26.05.2010.

12. The testimony of complainant (PW-1) has been challenged by the defence on the ground that there is inordinate delay of about four months

eight days with regard to first occurrence, i.e. 26.01.2010 and there is delay of two months 26 days so far as second occurrence is concerned.

According to the appellant, aforesaid inordinate delay ought to have been explained by the prosecution satisfactorily, which, prosecution has failed.

13. The first incident occurred on 26-01-2010 i.e. Republic Day. Ordinarily on the national festival after flag hoisting ceremony and other ancillary

function, usually Bank is closed and no business is transacted, but according to complainant, on that date, the appellant was available in his

chamber and she went to the chamber of appellant to congratulate him and during that period such incident occurred, which she did not inform to

any one on account of fear, and thereafter again on the Women's Day i.e. 08.03.2010 the appellant called all women employees posted at the said

Branch and she became victim of appellant's indecent behaviour.

14. The question is, whether in such circumstance the sole uncorroborated testimony of complainant Shilpa Bhagat is to be relied upon when there

is inordinate and unexplained delay in lodging FIR.

15. Undisputedly, that FIR in criminal cases is vital and valuable piece of evidence though may not be substantive piece of evidence. In a

decision reported in *Jai Prakash Singh Vs. State of Bihar and Another etc.*, their Lordships of Supreme Court, highlighting the object of lodging

FIR, have held as under--

12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting

upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the

crime, was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of

occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version,

exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR

is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened,

and who was responsible for the offence in question. (Vide: *Thulia Kali Vs. The State of Tamil Nadu*, ; *State of Punjab v. Surja Ram*, AIR 1995

SC 2413; Girish Yadav and Others Vs. State of Madhya Pradesh, ; and Takdir Samsuddin Sheikh Vs. State of Gujarat and Another,

16. However, the delay in lodging FIR makes the case doubtful. In case of Jai Krishna Mandal v. State of Jharkhand, 2010 (14) SCC 534 the

Supreme Court has held that delay of 3 days in lodging FIR is fatal to the prosecution, and observed as under--

9. We also see from the order of the High Court that at the initial stage only a case under Section 366 read with Section 34, IPC had been

registered against the appellants but it was only after the statement under Section 164 had been recorded by the Magistrate that Section 376 had

been added as well".

17. The Supreme Court in a decision rendered in Vidyadharan Vs. State of Kerala, has held that, charge under Section 354, IPC is one which is

very easy to make and is very difficult to rebut.

18. Thus, in the light of aforesaid principles of law laid down by their Lordships of Supreme Court if the facts of present case are examined, it is

abundantly clear that inordinate and unexplained delay of 3 to 5 months in lodging FIR is fatal to the prosecution. The first incident occurred on

26.01.2010 whereas second incident occurred on 8.03.2010 and in the meanwhile, according to complainant, she made complaint to the Regional

Branch Office against the appellant on 25.05.2010, but in written complaint (Ex. P/1) filed before AJK, Sarkanda, Bilaspur, she has categorically

admitted that she did not bring to the notice of the higher authorities about the impugned fact of outraging her modesty by the appellant, which

creates doubt in the case of prosecution. It is quite unnatural that employee of Nationalized Bank has made written report to the higher authorities

against the misconduct of appellant, but omitted to mention material misconduct/misbehavior without any reason while making report, and as such,

testimony of complainant Shilpa Bhagat (PW-1) does not infuse confidence in the mind of the court to accept her version without further

confirmation. This is the reason, why corroboration of her testimony is needed.

19. The Supreme Court in case of Sidheswar Ganguly Vs. The State of West Bengal, , it has been held that, insistence on corroboration is

advisable but is not compulsory in the eye of law.

20. Wayback, in case of Rameshwar Vs. The State of Rajasthan, , observation of Supreme Court to the following effect is extremely relevant:

The only rule of law is that this rule of prudence must be present to the mind of Judge or.....as the case may be and be understood and

appreciated by him or them. There is no rule of practice that there must be, in every, case, be corroboration before a conviction can be allowed to

stand....

21. Thus, in view of fact that there is inordinate and unexplained delay in lodging FIR, in the opinion of this court, there must be clear and

unimpeachable evidence before it can be accepted, as it is unsafe to rely upon the unconfirmed testimony of the complainant Shilpa Bhagat (PW-1)

and to convict the appellant that too for the offence punishable under Section 354, IPC as the law reports are replete with the decisions where

charges under 354, IPC have been found to have been falsely advanced.

22. Now the question is that why was Anirudh Kori, a co-worker of said Branch who was included in the charge-sheet as a witness on behalf of

the prosecution, had been given-up and was not examined by the prosecution and no explanation was offered for his non-examination?. He was an

important witness, who could have thrown light into the controversy, but the prosecution has failed to examine him.

23. In another decision in Takhaji Hiraji Vs. Thakore Kubarsing Chamansing and Others, , the Supreme Court while considering fact of non-

examination of material witness, held that, if the material witness has not been examined, the inference would be, he would not have supported the

prosecution.

24. Apart from this, complainant Shilpa Bhagat herself has clearly stated that on Women"s Day i.e. 8.03.2010, the appellant-called each one of

the women employee posted at Main Branch, but none of the above women employees were examined as prosecution witness, which also makes

the prosecution case more, suspicious. In order to bring home the offence, the prosecution was required to examine the material witness available

at the time of occurrence. Examination of listed witness Anirudh Kori as well as other co-employees who were allegedly called by the

appellant/accused on the date of occurrence was very much necessary to bring home the offence under Section 354, IPC, and therefore, it is

unsafe to convict the appellant on the sole uncorroborated testimony of complainant Shilpa Bhagat. The reason assigned by the learned Special

Judge that delay has been explained by prosecution, appears to be incorrect on the face of records. Learned Special Judge has held that matter

was complained, to the higher authorities by the complainant, therefore, delay stands explained. This is factually incorrect finding, as complainant

has categorically stated in her complaint (Ex. P/1) filed before AJK, Sarkanda, Bilaspur, that she made complaint to the regional Branch Office,

but did not mention about outraging her modesty by the appellant/accused, and thus, this finding is perverse and deserves to be set aside.

25. On the basis of forgoing analysis, it is held that prosecution has absolutely failed to explain inordinate delay in lodging FIR and it is unsafe to

convict the appellant/accused on the sole testimony of the complainant Shilpa Bhagat (PW-1) in absence of corroboration by independent public

witness which the prosecution has failed to adduce, and further, in absence of clear and unimpeachable evidence, I have no hesitation in holding

that prosecution has miserably failed to make out a case against the appellant/accused and the appellant is entitled to succeed and conviction of

appellant cannot be allowed to stand. Concludingly, the Criminal Appeal is allowed. The conviction of appellant followed by sentence for offence

under Section 354, IPC is set aside. The appellant is acquitted of the charges under Section 354, IPC. The bail bonds of the appellant shall remain

in operation for a period of six months from today in view of provision contained in Section 437-A, Cr.P.C.