

INDRESH KUMAR

v.

RAM PHAL AND ORS.

(Criminal Appeal Nos.125-126 of 2003)

JANUARY 6, 2010

**[V.S. SIRPURKAR AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Appeal against acquittal: Conviction of appellant by trial court – Other six co-accused acquitted – High Court acquitted appellant – Revision against the acquittal of other co-accused, dismissed – On appeal against acquittal, held: High Court did not consider the evidence of witnesses in proper perspective – Revision against acquittal of other co-accused, dismissed without giving reasons – Matter remanded to High Court for consideration afresh – Penal Code, 1860 – ss.218, 342, 323.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 125-126 of 2003.

From the Judgment & Order dated 17.7.2002 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 196-SB of 2001 and Criminal Revision No. 1018 of 2001.

Sushil Kumar, Navin Chawla, Rakesh Pandey, Sanjay Jain, Manjit Singh (for Kamal Mohan Gupta), K.C. Rajput (for I.M. Nanavati Associates) for the appearing parties.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. These appeals questions the judgment of the High Court whereby the High Court allowed the appeal filed by one Ramphal (respondent No. 1 herein), an Inspector of Police and acquitted him of the offence punishable under Section 218, IPC. He was also acquitted of the other

A offences punishable under Sections 342 and 323, IPC. He was convicted by the Court of Additional Sessions Judge, Kaithal wherein as many as seven persons were tried for these offences. His other six co-accused were, however, acquitted by the Trial Court while Inspector Ramphal who is now arrayed
 B as the first respondent, was convicted. This judgment was challenged by him before the High Court. The acquittal of Ramphal from other offences as also the total acquittal of other six accused persons came to be challenged by Indresh Kumar, the original complainant and the appellant herein by way of a
 C criminal revision. The High Court in its common judgment has allowed the appeal filed by the respondent No. 1 herein and has awarded him the verdict of total acquittal. At the same time, the revision filed by appellant Indresh Kumar was dismissed. Appellant Indresh Kumar now has come up before us
 D challenging the acquittal of all the accused persons including Ramphal (respondent No. 1-accused) who was acquitted by the High Court.

2. This case has a long history as well as political overtones. The appellant-complainant Indresh Kumar who was
 E originally examined as PW-8 came to know about the illegal detention of his father Chaman Lal Saraf and his two brothers by the Police of Kaithal. He was ordinarily residing in Jammu where he was working as a full time preacher of an organisation, namely, Rashtriya Swamsewak Sangh. On
 F coming to know about the illegal detention he reached Kaithal on 25.06.1992 and went to the city Police Station, Kaithal where Ramphal (respondent No. 1-accused) was the Station House Officer. He had gone there along with two of his friends. On being asked about the illegal detention of his father and the
 G brothers, Ramphal not only took him in custody but he was beaten up with stick not only by Ramphal but by other Police Officials also (the other six accused persons) on the asking of Ramphal. He was then taken from place to place in a Police jeep. On the next day, after the medical examination, he was
 H produced before the Executive Magistrate where he learnt that

a total false case under Section 107/151 Cr.P.C. was registered against him on the allegations that he had fought and created ruckus at the residence of one Anil Kumar S/o Prem Chand. He was initially directed to submit a bond of his good behaviour, however, later on the Magistrate dropped the proceedings against him. Appellant Indresh Kumar then met the Superintendent of Police and Deputy Commissioner, Kaithal where he filed the complaint against Ramphal (respondent No.1-accused) and his co-accused. He, thereafter, returned to Jammu. However, he returned to Kaithal on 11.07.1992 and again got himself examined where on his radiological examination, a fracture was found on his left foot.

3. On demonstrations by a political party about the alleged police atrocities, the District and Sessions Judge, Kurukshetra was appointed as the inquiry officer to inquire into the offence on 10.07.1992. He submitted his report on 31.07.1992 wherein it was reported that Ramphal (respondent No.1-accused) and other co-accused were guilty of offences. On the basis of this report, a case was registered at the city Police Station, Kaithal in February, 1996. The case also got reinvestigated. Ultimately, all the accused persons were charged under Sections 367, 420, 468, 471, 218, IPC and 120B, IPC. The case was tried by the Additional Sessions Judge, Kaithal where as many as 22 witnesses came to be examined. However, the Trial Court acquitted six accused persons while convicting respondent Ramphal alone for the offence punishable under Sections 323, 218 and 342, IPC. We have already pointed out that Ramphal's appeal before the High Court was allowed and he was acquitted while the revision filed against his acquittal from the other offences and the total acquittal granted to other six accused persons was dismissed. That is how Indresh Kumar (appellant-complainant) is before us in this appeal.

4. On the basis of the evidence of Dr. B.B. Kakkar (PW-6) that he had examined Indresh Kumar on 26.06.1992 at 6.05 a.m. and issued medical report as Exhibit PD, the High Court

A found that in the said medical report, it was mentioned that Indresh Kumar had suffered the injury to his right foot. Whereas when examined by Dr. S.K. Singhal (PW-7) on 11.07.1992 in the Civil Hospital, Kaithal, Dr. Singhal he had found fracture of fifth Metatarsal bone of the left foot of Indresh Kumar. From

B these, the High Court came to the conclusion that the prosecution had not given the truthful version of the story inasmuch as a fracture of right foot could not travel to the left foot within a period of 20 days. The High Court then found fault with the absence of application which Indresh Kumar had given

C before the Superintendent of Police, Kaithal on 26.06.1992 itself. It, therefore, came to the conclusion that it could not presume that Indresh Kumar had moved the police authorities on 26.06.1992 against the torture allegedly suffered by him at the hands of Ramphal. The High Court also noticed that one

D Anil Kumar s/o Prem Chand had moved an application on 25.06.1992 against Indresh Kumar, the photocopy of which was produced by accused as Exhibit-DA. From this, the High Court deduced that the story put forth by the Police that Ramphal (respondent No.1-accused) had gone to the residence of Prem Chand and had created a ruckus there and during that Ramphal

E (respondent No.1-accused) was injured at the hands of Anil Kumar due to which both Indresh Kumar (appellant herein) as well as Anil Kumar were produced before the Executive Magistrate in the morning, must be taken to be a true story. From this the High Court further deduced that Indresh Kumar

F might have felt insulted and in order to take revenge against Ramphal and other six co-accused persons, Indresh Kumar might have invented a false story. The High Court also viewed suspiciously that injured Indresh Kumar went to Jammu on 26.06.1992 itself without getting himself radiologically examined

G only to return from there on 11.07.1992 to get the confirmation about his fracture in the subsequent examination. It was held that Indresh Kumar got the wrong foot X-rayed. It was also held that the prosecution had not proved that Ramphal had forged the application on behalf of Anil Kumar and had registered a

H false case under Section 107/151 Cr.P.C. against Indresh

Kumar and it had further failed to produce Anil Kumar in order to rebut the contention of Ramphal that he had taken action against Indresh Kumar on the application moved by Anil Kumar. It was also held that prosecution had failed to prove that Ramphal had concocted a story in order to falsely implicate Indresh Kumar in a case under Section 107/151 Cr.P.C. relating to the earlier incident of beating the accused. The High Court also found fault with the late lodging of the First Information Report and that is how the High Court allowed the appeal and set aside the conviction and the sentence of Ramphal (respondent No.1 herein).

5. Very significantly there is not even one word about the six other accused persons whose acquittal was also challenged by the appellant Indresh Kumar by filing a separate revision against their acquittal. It is only in the operative part, the High Court mentions, 'the petition is dismissed. See detailed judgment in Criminal Appeal No. 196-SB/2001'. Very significantly not even one word has been mentioned by the High court in the said judgment.

6. On behalf of Indresh Kumar (appellant herein), Shri Navin Chawla, learned counsel appeared and pointed out as to how the whole judgment of the High Court was perverse. Shri Chawla produced before us, firstly, the photocopy of the document in the case which was allegedly initiated on the basis of the report by Anil Kumar against Indresh Kumar to the effect that he had come to his house and had fought with him wherein they had physical altercation. It is significant to note that on the basis of this report, the police allegedly came to the residence of Anil Kumar and arrested both Anil Kumar as well as appellant Indresh Kumar as per the version of Ramphal (respondent No.1-accused). It is then on that basis that they were produced in the morning after their medical examination before the Executive Magistrate dealing with the Chapter cases under Sections 107 and 151 Cr.P.C.

7. According to the police though the Magistrate had first

A passed an order against Indresh Kumar, he later on dropped the proceedings. Shri Chawla pointed out to us on the basis of the photocopies of the documents, that before the Magistrate, Anil Kumar had given a statement that he was picked up at 3 a.m. in the night and was kept in the police custody and he also
 B went out to ask in the Court as to why he was taken away. The argument is that this document, if accepted, would completely falsify the story of Ramphal (respondent No.1-accused) that he had picked up Indresh Kumar (appellant herein) and Anil Kumar and had arrested them. It is true that Ramphal (respondent No.1-accused)
 C claims to have picked up Anil Kumar along with Indresh Kumar from the house. However, if Anil Kumar has disputed this very statement then the whole story put forth by Ramphal (respondent No.1-accused) that Indresh Kumar had gone to the house of Anil Kumar and had fought with him and
 D it was during that physical altercation that Indresh Kumar got injured, becomes a suspected story according to the Counsel. Unfortunately, the High Court has not adverted to this aspect at all.

8. Shri Navin Chawla, learned counsel then produced
 E before us the original certificate by which Indresh Kumar was referred to Dr. Kakkar and pointed out to us that in that certificate there is a clear cut overwriting and the words 'LT' have been changed by writing 'R' over the letter 'L'. Therefore, the original words suggesting that the fracture was on the left
 F side left foot appears to have been changed by overwriting 'R' on the letter 'L'. Dr. Kakkar who was examined as PW-6, in his evidence undoubtedly relied on this medical certificate and was cross-examined on this aspect. The following admissions in the evidence were noted:-

G "There is overwriting in injury No.1 regarding the foot of Indresh Kumar but I cannot say how it occurred. I cannot say whether that overwriting was done by me or someone else but the same does not contain initials".

H 9. The learned counsel for the appellant further argues, that

while the High Court discussed this aspect of the transfer of fracture from right foot to left foot, the High Court has not bothered to look into the evidence. We feel the High Court was bound to consider not only the overwriting over Exhibit PD but was also bound to take into consideration the evidence of Dr. B.B.Kakkar (PW-6). There is not even a mention of all these things in the High Court's order. Therefore, the basis of the High Court's order about the prosecution story being false in respect of the injury suffered by Indresh Kumar (appellant herein) is shattered, at least *prima facie*.

10. The Counsel further rightly contends that the High Court has also not considered the other evidence like the evidence of Raj Kumar, DSP who specifically deposed regarding the documents in the case before the Executive Magistrate and there is no mention in the whole order regarding the way in which and the reason for which the proceedings against Indresh Kumar were dropped. It is also seen from the High Court's order that on this subject, the evidence of Jagbir Singh (PW-19), Assistant in the office of Inspector General of Police Rohtak has also not been taken into consideration which is rather surprising. The High Court was bound to consider the correctness of the story given by the accused that Indresh Kumar and Anil Kumar were arrested at the house of Anil Kumar and the injury suffered by Indresh Kumar was due to physical altercation.

11. Not only was the evidence of Jaswant Singh (PW-20) totally left out of consideration which was very relevant to test the story of the appellant about the incident on 26.06.1992, the High Court has also not bothered to consider the evidence of Triloki Nath (PW-21), who specifically spoke and proved the hand writing and signature of Anil Kumar on the document wherein Anil Kumar had specifically complained that he was picked up at 3 O'clock in the night. He did not know as to why he was arrested. The whole basis of the High Court's order was the falsity regarding the foot on which Indresh Kumar suffered

A fracture as also the correctness of the version of Ramphal (respondent No.1-accused) that there was an altercation between Anil Kumar and Indresh Kumar on 26.06.1992 and in that altercation, he suffered injuries.

B 12. Once it is found that the High Court has not taken into consideration any of these vital pieces of evidence, it becomes difficult to uphold the order of the High Court. This is apart from the fact that the High Court has not uttered one word about the criminal revision which was filed by Indresh Kumar against the other six-accused persons also vide Criminal Revision No. C 1018 of 2001, except dismissing the same.

D 13. However, Shri Chawla stated that it was not possible for the High Court to convert the acquittal against Ramphal (respondent No.1-accused) in a criminal revision. He, therefore, did not pursue the matter against the six accused persons who were acquitted by the Trial Court and whose acquittal was challenged by the appellant in a criminal revision in the High Court. However, the High Court ought to have given some reasons regarding the acquittal of those six persons before E dismissing the criminal revision.

F 14. Shri Sushil Kumar, learned Counsel for the respondents tried to support the acquittal order pointing out that Ramphal (respondent No.1-accused) is now retired. He also pointed out that once there was an acquittal of all the accused from the charge of criminal conspiracy then there would be no question of proceeding even against the present accused Ramphal. The contention is clearly incorrect for the simple reason that individual role of Ramphal is being highlighted by the prosecution and not his role as a conspirator. Therefore, G even if the charge of conspiracy failed and, if the individual act is established, the accused would still be guilty. It was also suggested that the possible view of acquittal was taken by High Court and, therefore, we should not interfere with the acquittal.

H 15. We cannot come to the definite conclusion that the High

Court has taken possible view as the High Court has not considered the evidence which it was bound to consider. In that view, we would remand the matter back to the High Court for fresh consideration. We, however, make it clear that since the learned Counsel for the appellant was not interested in proceeding against the other six accused for the obvious difficulties, the High Court will do well in considering only the case against accused Ramphal without being influenced by any of our observations against the other co-accused persons. The High Court shall be free to consider the matter afresh. The appeals, therefore, succeed. The judgment of the High Court is set aside in terms stated above.

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Appeals allowed.