

CASE NO.:
Review Petition (crl.) 1038 of 2005

PETITIONER:
AHSA RAM

RESPONDENT:
STATE OF HIMACHAL PRADESH

DATE OF JUDGMENT: 25/02/2008

BENCH:
H.K. SEMA & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT
O R D E R

REVIEW PETITION(CRL.) NO.1038 OF 2005
IN
CRIMINAL APPEAL NO.1266 OF 1998

In our judgment and order dated 17.11.2005 this Court while allowing the appeal preferred by the State also enhanced the punishment of the accused under Section 376 IPC from five years RI to RI for life, after hearing the parties. By the said judgment the order of the High Court acquitting the accused was set aside.

On 22.11.2005 that is after the judgment was delivered by this Court, the prosecutrix, namely, Smt. Seema, daughter of accused Asha Rams has filed the following affidavit :

" I, Seema daughter of Sh. Assa Ram now married wife of Bhag Singh resident of Shimla Tailor Ward No.11 near Post Office Balachaur Distt. Nawanshahar do hereby solemnly affirm and declare as under :-

1. That I am the daughter of Sh. Assa Ram resident of village Chaklu teh.Ark Disst.Solan HP.

Earlier residing at Sevant Quarter Raj Bhawan Shimla.

2. That there was a dispute between my parents and at that time I was minor and was residing with my mother alongwith my elder sister namely Uma. At that time I was minor aged 14 years and was under the influence of my mother Kalawati who was separately residing from my father.

3. That as there was a matrimonial dispute between my mother and father. My mother wanted to take revenge from my father and she compelled me to lodge a false case u/s 376 of IPC against my father.

4. That under the influence of my mother and also being minor I did not know the consequence I lodge false FIR No.110 of 1988 u/s 376 of IPC at police station Chotta Shimla and accordingly my father Assa Ram was arrested. I was also compelled by my mother under whose custody I was living and also the police to depose in the court against my father that he committed rape upon me. Accordingly I deposed in the trial court of Addl. Sessions Judge Shimla against my father.

5. That the police in-conivance with my mother fabricated false case property i.e. Salwar and under wear which did not belongs to me as my father never committed rape upon me.

6. That my father bears a good moral character and all this unfortunate happened due to my mother.

6. That my father was innocent and he did not commit any rape with me and case was falsely lodged against him and I also deposed against my father in the court of Addl. Sessions Judge Shimla at the instance of my mother and police. If I did not depose so at that time

against my father then my mother would have harmed me alongwith police.

7. That on the day of alleged occurrence I was not living with my father nor I came to my father's house on that day, so the questions of committing rape does not arise.

Seema
Deponent....

Verification;

I, the above named deponent further hereby solemn and affirmation that the contents of paras no.1 to 7 of my above affidavit are true and correct to the best of my knowledge and belief and nothing has been kept concealed therein.

Verified & signed at Seema
Deponent...

Dated:-22 NOV 2005."

The statement of prosecutrix was examined by the trial court, examined by this Court and accepted. Before the trial court she gave a statement that her father raped her on the fateful day. Relying upon the statement and evidence on record the trial court convicted the father of the prosecutrix. It was re-examined and accepted by this Court. This Court was of the view that the statement of the prosecutrix inspired confidence.

In our view, the subsequent affidavit filed by the prosecutrix on 22.11.2005, read thus, on the face of it, appears to be false and afterthought aimed at to bail out her father from undergoing life imprisonment. The said affidavit, in our view, is false and it would have far reaching legal consequences.

In view thereof, this review petition is dismissed. We further direct the Sessions Judge, Shimla to take the affidavit dated 22.11.2005 filed by the prosecutrix into the record and initiate a proceeding in accordance with the provisions contained in Chapter XI of the Indian Penal Code. It is open to the Sessions Judge, Shimla to pass any appropriate order as may deem fit and proper in accordance with law.

With the aforesaid direction, the review petition is dismissed. Registry shall transmit the records along with the copy of this order to Session Judge, Shimla forthwith.