

Supreme Court of India

S.P.S.Rathore vs C.B.I & Anr on 23 September, 2016

Author: R Agrawal

Bench: V. Gopala Gowda, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA CRIMINAL  
APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 2126 OF 2010

S.P.S. Rathore..... Appellant(s)

Versus

C.B.I. & Anr.

.... Respondent(s)

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J U D G M E N T

R.K. Agrawal, J.

1) This appeal has been filed against the judgment and order dated 01.09.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No. 1558 of 2010 whereby learned single Judge of the High Court dismissed the revision petition filed by the appellant herein.

2) Brief facts:

(a) SPS Rathore-the appellant-accused, a member of the prestigious

service of the country, was on deputation with Bhakhra Beas Management Board (BBMB), Chandigarh as Director (Vigilance & Security) at the relevant time. He also founded the Haryana Lawn Tennis Association (HLTA) in the year 1988.

(b) The office of HLTA was established in the garage of House No. 469, Sector 6, Panchkula, an under construction building owned by the appellant- accused which was divided into three portions wherein front portion was being used as the office of HLTA and the other two portions were being utilized by T. Thomas and Kuldeep Singh, Coach and Manager respectively of the Association for residential purposes. HLTA enrolled several member players who were mostly nearby residents of Panchkula on payment of monthly subscription.

(c) Ms. Ruchika (since deceased), daughter of Shri S.C. Girhotra and Ms. Aradhana @ Reemu, daughter of Shri Anand Prakash and Madhu Prakash (the complainant), both aged about 15 years, residents of Panchkula got themselves enrolled as members of the HLTA. Both of them were good friends and used to go together for practice at the Tennis court. The appellant-accused was also a frequent visitor to the said Tennis court. One day, when Ms. Ruchika informed the appellant-accused about her plan to go abroad, the appellant-accused met her father-Shri S.C. Girhotra on 11.08.1990 in order to persuade him to not to send his daughter out of the country for specialized tennis coaching and promised that special coaching would be arranged for her at HLTA itself and also asked him to send Ruchika to his office on the very next day in connection with the same. Shri Girhotra informed the same to his daughter-Ruchika and asked her to meet the appellant-accused in his office on 12.08.1990.

(d) On 12.08.1990, Ms. Ruchika visited the house of Ms. Aradhana and told her about the visit of the appellant-accused to her house and also that he had called her in his office. When both of them were practicing in the tennis court, Paltoo-the ball picker, informed Ms. Ruchika that the appellant-accused had called her in his office. Accordingly, Ms. Ruchika along with Ms. Aradhana went to meet the appellant-accused who was standing outside the office at that particular point of time. The appellant-accused insisted them to come inside the office. On his insistence, both the girls went inside the office. The appellant-accused got fetched one chair which was occupied by Ms. Aradhana and Ms. Ruchika kept standing on the right side of Ms. Aradhana while the appellant-accused sat in his chair which was on the other side of the table. The appellant-accused requested Ms. Aradhana to call for Mr. Thomas-the Coach. Accordingly, Ms. Aradhana went outside leaving behind the appellant-accused and Ms. Ruchika in the office. Ms. Aradhana asked the person who fetched the chair for her in the office to inform the Coach to come to the office of the appellant-accused. However, the Coach refused to come.

(e) Immediately thereafter, when Ms. Aradhana returned to the office, she witnessed that Ms. Ruchika was in the grip of the appellant-accused, who was holding one hand of Ruchika in his hand and his other hand was around her waist. The appellant-accused was pulling her towards his chest so as to embrace her and Ruchika was trying to push him back with her free hand.

(f) On seeing Ms. Aradhana (PW-13), the appellant-accused got frightened and released Ms. Ruchika and fell on his chair. The appellant-accused asked Ms. Aradhana to go out of his room again and personally bring the coach with her. The appellant-accused insisted Ruchika to stay in his room, but she somehow managed to escape. When Aradhana was about to go behind Ruchika, the appellant-accused told her Ask her to cool down, I will do whatever she will say. After listening to this, Ms. Aradhana also ran behind Ms. Ruchika to enquire about the matter. Thereafter, Ruchika narrated the whole incident to her. After discussion, both the girls decided not to inform the same to their parents as the appellant-accused, being IG of Police, could involve or harass them and their parents.

(g) On 14.08.1990, Ms. Ruchika along with Ms. Aradhana went to the lawn tennis court at about 4:30 p.m., instead of their usual timing, in order to avoid the appellant-accused, who used to visit the court in the evening. When both the girls were about to return, at about 6:30 p.m., Mr. Paltoo-

the ball picker, came out of the court and told Ms. Ruchika that the appellant-accused had called her in his office. However, Ms. Ruchika refused to meet him and pointed out to Ms. Aradhana that since they had not informed their parents about the mis-behaviour of the appellant-accused on 12.08.1990, the appellant-accused was feeling emboldened and had again called her to his office with a view to molest her. Thereafter, both of them decided to disclose the incident that took place on 12.08.1990 to their respective parents. Accordingly, Ruchika narrated the incident of her molestation at the hands of the appellant-accused to her father, Shri S. C. Girhotra. Also, the parents of Ms. Aradhana were made aware of the entire incident.

(h) On hearing this, Shri S.C. Girhotra, gathered the residents of the locality, who were mostly parents of trainee boys and girls, and they went to the HLTA office to meet the appellant-accused but they were informed that the appellant-accused had already left for Chandigarh. On 15.08.1990, a Memorandum/petition, duly signed by Ms. Ruchika, Ms. Aradhana, Mr. Anand Prakash and Ms. Madhu Prakash-father and mother of Ms. Aradhana, was presented to the then Secretary (Home), Haryana. After the approval of the Home Minister, Shri R.R. Singh, the then DGP was directed to hold an inquiry into the allegations leveled against the appellant-accused in the Memorandum/petition.

(i) After conducting the enquiry into the incident, Shri R.R. Singh concluded that the allegation of molestation is based on true facts and a cognizable case is made out against the appellant-accused under the provisions of the Indian Penal Code, 1860 (in short the IPC) and forwarded his enquiry report dated 03.09.1990 to the Secretary (Home), Government of Haryana.

(j) During investigation it was also revealed that after the incident of molestation, Ms. Ruchika confined herself in her house. Later, on 28.12.1993, she committed suicide by consuming poison and died on 29.12.1993.

(k) The enquiry report by Shri R.R. Singh was examined by the Legal Division of the Government of Haryana in 1990 and 1992 WHICH also recommended for registration of a case against the appellant-accused. Madhu Prakash-the complainant/Respondent No. 2 herein requested several authorities in the Government of Haryana for registration of a case but no action was taken on which she filed a Criminal Writ Petition being No. 1694 of 1997 before the Punjab and Haryana High Court. The High Court, vide order dated 21.08.1998, issued direction to the Superintendent of Police, Panchkula that after registration of the case, the investigation shall be handed over to the Central Bureau of Investigation (CBI) and the same shall be conducted by an officer not below the rank of DIG. This Court, by its order dated 14.12.1999, upheld the order of the High Court dated 21.08.1998 which culminated into registration of a First Information Report (FIR) being No. 516 of 1999 under Sections 354 and 509 of the IPC at PS Panchkula, Haryana against the appellant-accused.

(l) The CBI filed charge-sheet dated 16.11.2000 before the Court of Special Judicial Magistrate, CBI, Ambala under Section 354 of the IPC. A petition under Section 473 of the Code of Criminal Procedure, 1973 (in short the Code) was filed by the CBI for condoning the delay in filing the charge sheet and for taking cognizance which was allowed by the Court of Special Judicial Magistrate, by

his order dated 05.12.2000. Being aggrieved by the order dated 05.12.2000, the appellant-accused preferred Writ Petition (Criminal) being No. 46381 of 2000 before the High Court challenging the condonation of delay. The High Court, by its order dated 18.04.2001 dismissed the petition with a direction to the trial court to dispose of the case preferably within six months.

(m) Further, a petition was filed for addition of Section 306 IPC in the charge sheet which was allowed by an order of the Trial Court dated 23.10.2001. Being aggrieved by the order dated 23.10.2001, the appellant-accused preferred Criminal Misc. Petition being No. 44607-M/2011 before the High Court. The High Court, by its order dated 12.02.2002, set aside the order dated 23.10.2001 passed by the Trial Court. In appeal, this Court also upheld the order dated 12.02.2002 passed by the High Court.

(n) The Court of Chief Judicial Magistrate, Chandigarh, by its judgment and order dated 21.12.2009 in Challan No. 3/17-11-2000, 12 T/10.04.2006 RBT191/17-11-2009, held the appellant-accused guilty of offence under Section 354 of the IPC and sentenced him to suffer rigorous imprisonment (RI) for six months along with a fine of Rs. 1,000/-. Being aggrieved by the judgment and order dated 21.12.2009, the appellant-accused preferred Criminal Appeal being No. 5 of 12.01.2010 before the Court of Additional Sessions Judge, Chandigarh. The CBI and Madhu Prakash-Respondent No. 2 herein also preferred Criminal Appeal being Nos. 26 of 12.01.2010 and 22 of 05.02.2010 respectively, before the Court for enhancement of sentence. Learned Additional Sessions Judge, Chandigarh, by his order dated 25.05.2010 dismissed the appeal filed by the appellant-accused while allowing the appeals filed by the CBI and Madhu Prakash for inadequacy of the sentence and for enhancement of sentence of imprisonment and the appellant-accused was awarded with rigorous imprisonment for 1 ½ years (one and a half) for committing offence under Section 354 of the IPC. The sentence of fine remained unchanged.

(o) Being aggrieved of the judgment and order dated 25.05.2010, the appellant-accused preferred Criminal Revision being No. 1558 of 2010 before the High Court. The High Court, by its order dated 01.09.2010, dismissed the revision filed by the appellant-accused.

(p) Aggrieved by the above said order, the appellant-accused has preferred this petition by way of special leave before this Court. This Court, by its order dated 11.11.2010, has allowed the petition filed by the appellant-accused for bail.

3) Heard Shri K.V. Viswanathan, learned senior counsel for the appellant-accused and Ms. Vibha Datta Makhija, learned senior counsel for the CBI and Shri Vikas Mehta, learned counsel for Respondent No. 2. Rival contentions:

4) Learned senior counsel for the appellant-accused contended that given the situation of the HLTA make shift office in a garage at the relevant point of time along with the presence of a number of people including labourers, it would be impossible to even try for such an act, knowing well that the act can be seen by others. Learned senior counsel further contended that the prosecution story is absolutely false and frivolous and the appellant-accused has been framed in the present case by the complainant party and the high level officers of the State with an ulterior motive. The

appellant-accused neither visited the house of Shri S.C. Girhotra nor asked for a meeting with Ruchika on 12.08.1990 in HLTA office. It was further argued that the Memorandum/petition has been drafted after prolonged consideration and deliberation by several interested persons including some senior police officers of the State of Haryana. The name of the players who were allegedly accompanying Ms. Ruchika at the relevant time has not been mentioned in the Memorandum intentionally and later on Ms. Aradhana has been planted as Sathi Khiladi. It was contended that the words Sathi Khiladi have been mentioned in the Memorandum for the purpose of introducing an eye witness of choice. Learned senior counsel further contended that the signature of Ms. Ruchika on the alleged Memorandum is false and forged and on this ground, the document cannot be relied upon. This document does not disclose the details of the incident and merely suggests that the appellant-accused misbehaved with Ms. Ruchika which does not attract Section 354 of the IPC.

5) Learned senior counsel further contended that no complaint was filed by Ms. Ruchika or her father Shri S.C. Girhotra or Shri Ashu - elder brother of Ms. Ruchika or Mrs. Madhu Prakash (PW-2) or Sh. Anand Prakash (PW-1) or by Ms. Aradhana (PW-13) in the police station. Even after 14.08.1990, when Ms. Ruchika and Ms. Aradhana allegedly informed their parents, none of them approached the police to get the FIR registered. The police post, Sector 6, Panchkula is at a distance of 300 yards only from the tennis court. It is situated very near to the house of Shri S.C. Girhotra also. In this way undue and unexplained delay resulted in manipulations and proper version could not be put forth before the court.

6) Learned senior counsel for the appellant-accused further contended that the inquiry conducted by Shri R.R. Singh was without jurisdiction as the appellant-accused, at the relevant point of time, was on deputation with the BBMB and was not under the administrative control of the Government of Haryana. He further contended that the IAS lobby in the Government of Haryana was entirely against the appellant-accused and it had colluded with Shri Anand Prakash (PW-1) and others against the appellant-accused. He further pointed out the reason that there was rivalry between the two tennis associations, one headed by the appellant-accused and one formed later on by the IAS group with Shri J.K. Duggal, Secretary (Home) as its President with the patronage of Shri B.S. Ojha. It was further contended from the side of the appellant-accused that before forming the Haryana Tennis Association (HTA), the IAS lobby pressurized the appellant-accused to step down from the Presidentship of HLTA in favour of Shri B.S. Ojha to which the appellant-accused refused which annoyed Shri B.S. Ojha, who had strong reasons for ordering the enquiry by Shri R.R. Singh and police officers working under him had organized the drafting of the said Memorandum against the appellant-accused. The enquiry conducted by Shri R.R. Singh cannot be relied upon because no enquiry could be marked to him and also he has not held the enquiry in proper manner. It was further submitted by learned senior counsel that the media has played a negative role in the present case and published the selective news items only in collusion with the complainant party. The material witnesses like ball picker - Paltoo and Coach - K.T. Thomas, who were allegedly present at the place of alleged incident, have not been examined by the prosecution. Further, the witnesses have made a lot of improvements and there are other discrepancies also in the statements of witnesses and therefore, the same could not have been relied upon by the courts below. Learned senior counsel finally contended that the case of the prosecution is false and frivolous, the net result of which is that the prosecution has failed to prove its case and the appellant-accused is entitled to

be acquitted.

7) Per contra, learned senior counsel for the CBI submitted that the occurrence is well proved by the unimpeachable testimony of Ms. Aradhana (PW-13). The eye witness stood with her testimony till end and therefore, the contention urged on behalf of the appellant-accused with regard to the above evidence has no relevance or substance. On a careful examination of the statement of PW-13, it can be very easy to arrive at the conclusion that there was every possibility that Ms. Ruchika could have been embraced by the appellant-accused in the manner that the eye-witness eventually described in her deposition before the trial court. Even Shri S.C. Girhotra father of Ms. Ruchika has categorically deposed that the appellant-accused met him and requested him not to send his daughter abroad and also insisted to meet her in his office on 12.08.1990 which gets corroboration from the statement of PW-13 that both the girls went to meet the appellant-accused at his office at HLTA.

8) With regard to the claim of signature on the Memorandum as well as on the application given to the SHO, learned senior counsel for the CBI submitted that as far as the signatures of Ms. Ruchika on the document are concerned, Ms. Ruchika has signed the alleged Memorandum in the presence of others and the same is established by the witnesses like Ms. Aradhana, Mrs. Madhu Prakash and Sh. Anand Prakash in whose presence she signed the documents, which is a direct evidence. The evidence of expert witness cannot be considered conclusive proof of the charge and it requires independent and reliable evidence for its corroboration. She further submitted that Ms. Ruchika was the best person to depose about the genuineness of her signatures, but as she is no more, therefore, she could not appear in the witness box to depose about the genuineness of her signature on the alleged Memorandum. In her absence, the persons, in whose presence, she signed the document are the best witnesses to prove the genuineness of the signature of the victim. The strong direct evidence on record cannot be rebutted by weak type of evidence of hand writing expert upon which reliance is placed by the learned senior counsel on behalf of the appellant-accused.

9) With regard to the contention urged by the appellant-accused that Ms. Aradhana was the Sathi Khiladi as mentioned in the Memorandum, on the basis of which FIR got registered, was manipulated, learned senior counsel submitted that a perusal of the contents of the Memorandum reveals that it merely gives a sequence of events which had happened from the very beginning and no manipulation appears to be made out. Merely on the ground that Shri C.P. Bansal, the then DIG and Shri Sham Lal Goyal, the then DSP were present on the spot, it cannot be said that they actively participated in its drafting and certain unnecessary and unwarranted facts were added to it. If experienced police officers would have participated in its drafting then it should have been in the form of FIR and the evidence must have been specifically pointed out in it. But the language of the Memorandum is like that the people have tried to show their resentment against the alleged act and demanded action against the accused. The reason for not mentioning the name of Ms. Aradhana in the Memorandum is that she could have been harassed by the accused, who being a high ranking police officer. Because of this reason only, Ms. Ruchika or Ms. Aradhana or their parents did not approach the local police to lodge the FIR. They were fully aware that the appellant-accused, being a senior most police officer, holding a key post in the State, would definitely hamper the investigation or may not allow the police officers to cooperate with the complainant party.

10) Learned senior counsel for the CBI further pointed out that Shri R.R. Singh was an authority legally competent to investigate the facts of the Memorandum and he was asked by the Government of Haryana to enquire into the facts given in the Memorandum and to submit a report to it. To make a person an authority legally competent to investigate, it is not necessary that he should be having authority which flows from a Statute. It is sufficient that such person was authorized legally by the State Government to investigate the fact. As such, Sh. R.R. Singh was competent authority to investigate the facts in question and the statements given by the witnesses before him are admissible in evidence irrespective of time gap between the time when the incidents occurred and the date on which the statements were given.

11) Learned senior counsel for the CBI finally submitted that the alleged rivalry between the HLTA and HTA as well as the arguments advanced by learned senior counsel for the appellant-accused regarding the credibility of Shri Anand Prakash (PW-1) and Shri S.C. Girhotra (PW-15) have no bearing on the case at hand and the prosecution has made out a case for conviction of the appellant-accused under Section 354 of the IPC.

#### Discussion:

12) It is not disputed that HLTA was floated in 1988-89 at Panchkula, Haryana. The appellant-accused was the President of HLTA. Its office was established in the garage of an under construction house at Sector 6, Panchkula owned by the appellant-accused. It is also an admitted fact that Ms. Aradhana (PW-13), Mr. Manish Arora (PW-3), Mr. Vipul Chanana (PW-4) and Ms. Ruchika (since deceased) were the members of the Association and used to play tennis in its court. It is the case of the prosecution that on 11.08.1990, the appellant-accused visited the house of Shri S.C. Girhotra (PW-15) and requested him not to send his daughter to Canada for coaching as he would arrange special coaching for her at HLTA itself. This fact has been well proved by Shri S.C. Girhotra (PW-15) in his statement. He has deposed before the trial Court that on 11.08.1990, the appellant-accused visited his house at about 12.00 noon and had asked him not to send his daughter to Canada and that he would arrange special coaching for her. The appellant-accused further asked him to send his daughter on 12.08.1990, at about 12.00 noon, in his office to discuss about the training. At that particular point of time, Ms. Ruchika was not present at her house. On her return, PW-15 informed the same to her and also asked her to meet the appellant-accused on 12.08.1990 in his office at 12.00 noon. This fact finds corroboration from the statement of Ms. Aradhana (PW-13). She has deposed that on 12.08.1990, at about 11.00 a.m., Ms. Ruchika came to her house and she very excitedly told her that on 11.08.1990, the appellant-accused had visited her house and requested her father not to send her abroad and that he would arrange special coaching for her at HLTA itself as she was a promising player. She further informed Ms. Aradhana that the appellant-accused had asked her to meet him on 12.08.1990, at 12.00 noon, at HLTA office. The very same fact finds place in the Memorandum also which was signed by Ms. Ruchika along with others. The evidence of PW-15 corroborates with the evidence of PW-13 in order to substantiate the fact that the appellant-accused visited the house of Shri S.C. Girhotra on 11.08.1990 and asked him to send Ms. Ruchika to his office on 12.08.1990, at 12.00 noon.

13) Ms. Ruchika (since deceased) and Ms. Aradhana went to play at lawn tennis court on 12.08.1990 and while they were playing Sh. Paltoo-the ball picker came there and told Ms. Ruchika that the appellant-accused had called her to his office at 12.00 noon. Accordingly, Ms. Ruchika and Ms. Aradhana went to his office. The appellant-accused asked Ms. Aradhana to fetch the coach-Shri T. Thomas. While Ms. Aradhana had left the place, the appellant-accused molested/outraged the modesty of Ms. Ruchika. When Ms. Aradhana returned to the office, she witnessed the appellant-accused molesting Ms. Ruchika. Ms. Aradhana, in her statement, has categorically deposed that on that day when both of them i.e., Ms. Ruchika and Ms. Aradhana were playing tennis, Shri Paltoo, the ball picker, came and informed Ms. Ruchika that the appellant-accused had called her in HLTA office. They saw that the appellant-accused was standing outside his office. On seeing them, the appellant-accused asked them to come to his office. Though Ms. Ruchika requested the appellant-accused to talk to her outside the office, but he insisted them to come to his office. On his insistence, they followed him towards his office. On being asked by the appellant-accused, a chair was brought on which Ms. Aradhana (PW-13) sat down while Ruchika remained standing on her right side. Immediately thereafter, the appellant-accused asked Ms. Aradhana to fetch the coach-Mr. T. Thomas. When she went outside to call the coach, she found him standing at a distance on the other side of the house across the road. She asked the ball picker-Paltoo to go and fetch the coach. Mr. Thomas, on being informed about the same by Mr. Paltoo, waved his hand towards Ms. Aradhana expressing his inability to come at that moment. Thereafter, Ms. Aradhana returned and when she entered the office, she saw that the appellant-accused was holding one hand of Ms. Ruchika and his other hand was around her waist. Ms. Ruchika was trying hard to get herself released by pushing him away with her other hand. On seeing Ms. Aradhana (PW-13), the appellant-accused became nervous and released Ms. Ruchika and fell down on his chair. When she informed the appellant-accused that coach has refused to come to his office, the appellant-accused rudely ordered her to go again and call the coach personally. In the meantime, Ms. Ruchika came to her side and went out of the office. When PW-13 was trying to follow her, the appellant-accused told her ask her to cool down, I will do whatever she will say. Thereafter, PW-13 followed Ms. Ruchika and when she reached near her, Ruchika started weeping loudly. When she asked Ms. Ruchika as to what had happened, she narrated that as soon as she left to fetch the coach, the appellant-accused caught hold of her hand which she got released with great difficulty, but he again caught hold of her hand and with his other hand the appellant-accused caught hold of her waist and dragged her towards him and embraced her. She further told her that in the meantime when PW-13 reached there, he got scared and immediately released her. After discussion as to whether the incident be disclosed to their parents or not, both of them decided not to inform their parents about the incident as the appellant-accused, being a high ranking police officer, could harm their families. The molestation of Ms. Ruchika, at the hands of the appellant-accused is very well proved from the deposition of PW-13. There was no reason for Ms. Aradhana (PW-13) to depose falsely. In fact, she witnessed the actual act of molestation of Ms. Ruchika at the hands of the appellant-accused. Further, the fact regarding molestation of Ms. Ruchika by the appellant-accused has been stated on oath by Shri Anand Prakash (PW-

1), Mrs. Madhu Prakash (PW-2), Mr. Manish Arora (PW-3), Mr. Vipul Chanan (PW-4) and Shri S.C. Girhotra (PW-15). There is no reason as to why PW-13 and other aforementioned prosecution witnesses would falsely implicate the appellant-accused in the case.

14) Ms. Ruchika and Ms. Aradhana visited the lawn tennis court on 14.08.1990, at 4:30 p.m., instead of their usual timing deliberately in order to avoid confrontation with the appellant-accused, who usually used to visit the court in the evening daily. At about 6.30 p.m., when they were about to return after practice, Shri Paltoo the ball picker, came over the lawn tennis court and told Ms. Ruchika that the appellant-accused had called her in his office immediately. However, Ms. Ruchika refused to go there and told Ms. Aradhana that since they had not informed about the incident which took place on 12.08.1990 to their parents that has emboldened the appellant-accused. Thereupon, they decided to inform about the overt act of the appellant-accused to their parents. They went to the house of Ms. Ruchika where they met Shri S.C. Girhotra - father of Ms. Ruchika. Ms. Ruchika started narrating the incident of molestation to her father, however, she could not narrate the entire incident and broke down, whereupon her father told Ms. Aradhana to take Ms. Ruchika to her mother. They went to the house of Ms. Aradhana where Mrs. Madhu Prakash (PW-2) and Shri Anand Prakash (PW-1) were present. Ms. Ruchika disclosed the entire incident to PW-2, who further informed her husband about the said incident. Thereafter, Ms. Ruchika, Ms. Aradhana, Shri Anand Prakash, Mrs. Madhu Prakash and Shri S.C. Girhotra and other persons went to HLTA court to meet the appellant-accused wherefrom they came to know that the appellant-accused had already left for Chandigarh.

15) On 15.08.1990, a number of persons, who were mostly players and their parents, gathered at the residence of Shri Anand Prakash. They decided that the incident should be brought to the notice of higher authorities including the Chief Minister of Haryana. Accordingly, a Memorandum was prepared. A number of copies of this Memorandum were prepared for being handed over to different authorities. This Memorandum was signed by Sh. Anand Prakash, Ms. Ruchika, Mrs. Madhu Prakash, Meenu, Sangeet, Aradhana, Anirudh, Beenu, Naresh Mittal, C.S. Gupta and Shri I.D. Mittal. The witnesses who were examined in the court identified their signatures as well as signatures of Ms. Ruchika on the Memorandum. The appellant-accused disputed the genuineness of signatures of Ms. Ruchika. He tried to substantiate his contention by examining the hand writing expert. The contention of the appellant-accused is not tenable as the witnesses who have been examined by the prosecution and in whose presence the Memorandum was signed, have identified the signatures of Ms. Ruchika. Shri Anand Prakash has proved the preparation of Memorandum. In this regard, the law is very clear that a fact should be proved by the best available evidence. The witnesses had identified the signatures of Ms. Ruchika on the Memorandum, therefore, the evidence of the hand writing expert cannot be considered to be safe and it requires corroboration from independent witnesses. As already stated, the signatures of Ms. Ruchika have been proved by the witnesses who have signed the Memorandum and are direct, primary and best available evidence in the case and, therefore, the same can be relied upon.

16) On 16.08.1990, the Memorandum was given to Shri J.K. Duggal (PW-12), the then Secretary (Home) who assured them that the matter would be enquired into. He asked the persons who had presented the Memorandum to him to reach the lawn tennis court where Shri S.K. Joshi, the then SDM would also be reaching. After reaching there, they found a Notice dated 15.08.1990 declaring suspension of Ms. Ruchika with effect from 13.08.1990 displayed on the Notice Board. Shri S.K. Joshi, the then SDM also reached there. Shri Kuldeep Singh-the Manager and Shri T. Thomas-the Coach were also present there. On being asked, Shri Kuldeep Singh, in the presence of witnesses,

informed that he has affixed the notice on the directions of the appellant-accused. He further disclosed that Ms. Ruchika has committed no act of indiscipline. On being asked, Shri Kuldeep Singh gave the same facts in writing on the Notice. This fact was confirmed by the Coach - Shri T. Thomas and he signed at a point where the following words were written I support the contents of the endorsement of Sh. Kuldeep Singh. He was also asked to give it in writing, if any act of indiscipline has been committed by Ms. Ruchika. On this, he made an endorsement to the effect that to the best of his knowledge Ms. Ruchika has not done any act of misbehavior or indiscipline in the HLTA tennis court. This notice was produced by Shri Anand Prakash at the time of his deposition before the trial court. It has also come in his evidence that said notice was given to him by the SDM immediately after making endorsement. These facts have been proved by PW-1, PW-2, PW-3, PW-4, PW-5 and PW-13. The presence of Shri Kuldeep Singh and Shri T. Thomas on that day and time has already been proved by the then SHO, Panchkula who was on patrolling duty on that date and reached the spot on receiving verbal transmission message about the incident.

17) Shri R.R. Singh was directed by the Chief Minister and Home Minister of the State of Haryana to conduct an enquiry into the allegations contained in the Memorandum. In compliance of the said order, Shri R.R. Singh recorded the statements of the witnesses including Mrs. Madhu Prakash (PW-2), Ms. Aradhana (PW-13), Shri S.C. Girhotra (PW-15) and Shri Anil Kumar. The statements of Ms. Ruchika and Shri Anand Prakash (PW-1) were also recorded. After the enquiry, he recommended that a case under the relevant provisions of the IPC be got registered. Despite the fact that Shri R.R. Singh had recommended the registration of a case against the appellant-accused, no action was taken by the State Government. It is most surprising that no value was attached to the said Report and to the recommendations made by such a high ranking police officer i.e., Director General of Police, Haryana.

18) It has also been argued from the side of the appellant-accused that Shri B.S. Ojha and Shri J.K. Duggal were having great grudge against him. It was further contended that the relations between the appellant-accused and Shri R.R. Singh were strained since 1976. But this suggestion was denied by the witness while appearing in the court. Learned senior counsel for the CBI has strenuously submitted that a proper report was given by Shri R.R. Singh and it is a matter of common experience that no girl or father would make a false complaint of such heinous nature even against their enemy.

19) Shri R.R. Singh had conducted the enquiry under the orders of the Government of Haryana, therefore, he was competent to investigate/enquire into the allegations made in the Memorandum. As such, all the statements recorded by him are admissible under Section 157 of the Indian Evidence Act for the purpose of corroboration. Shri J.K. Duggal and Shri B.S. Ojha are independent witnesses and they have no grudge against the appellant-accused as alleged by the learned senior counsel. For the sake of arguments, even if it is assumed to be correct that there was some dispute over the control of HLTA between them, it was not such a big issue which would have induced them to implicate the appellant-accused falsely. There is no evidence on record to substantiate the allegations that these two officers were in any way instrumental in preparation of Memorandum or implicating the appellant- accused in the case. There is also no evidence on record to suggest any nexus of these two officers with Shri Anand Prakash (PW-1) and Shri S.C. Girhotra (PW-15). There is

no evidence to suggest any enmity between the appellant-accused and PW-1 to implicate him in a fabricated case. It is further the case of the appellant-accused that statement recorded by Shri R.R. Singh cannot be used by the prosecution for the purpose of corroboration under Section 157 of the Evidence Act. The contention of the accused is not tenable at all. This section envisages two categories of statements of witnesses, which can be used for corroboration. First is the statement made by a witness to any person at or about the time when the incident took place. The second is the statement made by him to any authority legally competent to investigate the matter. Such statements gain admissibility, no matter that it was made long after the incident. But if the statement was made to non-authority, it loses its probative value due to lapse of time. Shri R.R. Singh was an authority legally competent to investigate the incident. He was asked by the State Government to enquire into the facts given in the Memorandum and report thereon. To make a person an authority legally competent to investigate, it is not necessary that he should be having authority which flows from a Statute. It is sufficient that such person was authorized legally by the State Government to investigate the matter. Hence, we are of the view that Shri R.R. Singh was authority competent to investigate the fact in question and the statements given by the witnesses before him are admissible in evidence irrespective of time gap between the time when incidents occurred and the date on which the statements were given. Shri R.R. Singh was in fact competent to investigate the matter since the enquiry conducted by him was merely a fact finding enquiry. The undisputed fact is that nothing happened even after the submission of the report by Shri R.R. Singh because no action was taken by the State Government on the same. Further, all the witnesses including Sh. J.K. Duggal and Shri B.S. Ojha examined by the prosecution are the independent witnesses and the enmity, as suggested by the appellant- accused, is not proved, as discussed above.

20) Learned senior counsel for the appellant-accused has contended that in the present fact situation, how a person can embrace other while standing behind the table and then suddenly fall into his chair on the entry of PW-13. In this regard, we have carefully considered the evidence given by the prosecution, especially the evidence of PW-13. She, being the sole witness to prove the actus reus, her evidence should receive some careful consideration and we do not find any reason for her to depose falsely against the appellant-accused. There is, thus, every possibility that Ms. Ruchika could have been embraced by the appellant in the manner as described by PW-13.

21) The High Court, on proper re-appreciation of the entire evidence, came to the right conclusion that the prosecution was successful in proving the case beyond reasonable doubt and the offence punishable under Section 354 of the IPC was made out. There is devastating increase in cases relating to crime against women in the world and our country is also no exception to it. Although the statutory provisions provide strict penal action against such offenders, it is for the courts to ultimately decide whether such incident has occurred or not. The courts should be more cautious in appreciating the evidence and the accused should not be left scot-free merely on flimsy grounds. By the consistent evidence of Ms. Aradhana (PW-13), the prosecution has proved beyond reasonable doubt the offence committed by the appellant under Section 354 of the IPC. A charge under Section 354 of the IPC is one which is very easy to make and is very difficult to rebut. It is not that on account of alleged enmity between the appellant and Shri Duggal and Shri Ojha, he was falsely implicated. It would, however, be unusual in a conservative society that a woman would be used as a pawn to wreak vengeance. When a plea is taken by the appellant- accused that he has been falsely

implicated, courts have a duty to make deeper scrutiny of the evidence and decide the acceptability or otherwise of the accusations made against him. In the instant case, both the trial court and the High Court have done that. There is no scope for taking a different view from the view already been taken by the courts below. The occurrence of the overt act is well proved by the unimpeachable testimony of the eye-witness Ms. Aradhana (PW-13).

22) In order to constitute the offence under Section 354 of the IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

(i) that the person assaulted must be a woman;

(ii) that the accused must have used criminal force on her; and

(iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

23) This Court, in *Vidyadharan vs. State of Kerala* (2004) 1 SCC 215, held as under 10. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight ..

24) It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being state of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. The sequence of events which we have detailed earlier indicates that the appellant-accused had the requisite culpable intention.

25) This Court, in *Tarkeshwar Sahu vs. State of Bihar*, (2006) 8 SCC 560, held as under:-

39. So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.

40. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.

26) With regard to the delay of about 6 days in presenting the complaint to the SHO, this Court is of the view that the same has been duly explained. In a tradition-bound non-permissive society in India, it would be extremely reluctant to admit that any incident which is likely to reflect upon chastity of a woman had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. In the instant case, the victim-Ms. Ruchika not informing about the incident to the parents under the circumstances that the appellant- accused, who being a very senior police officer of the State, was reasonable and it would not have been an easy decision for her to speak out. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she has undergone and felt terribly embarrassed in relation to the incident to narrate it to her parents and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. After informing the incident to her parents, the follow up action was immediately taken by the residents and the fellow players and a Memorandum containing allegations against the appellant-accused was prepared and submitted before the then Secretary (Home). Therefore, giving a due consideration to the appellant- accused, once the victim and her family members got assurance of justice from the superior authorities, they lodged a formal complaint against the appellant-accused.

27) With regard to the contention of learned senior counsel for the appellant-accused that the signature of Ms. Ruchika on the Memorandum was forged though she signed the same in front of Shri Anand Prakash, Shri S.C. Girhotra, Ms. Aradhana and Mrs. Madhu Prakash and they have admitted the same, we are of the opinion that expert evidence as to handwriting is only opinion evidence and it can never be conclusive. Acting on the evidence of any expert, it is usually to see if that evidence is corroborated either by clear, direct or circumstantial evidence. The sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. A court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a court to record a finding about a persons writing in a certain document merely on the basis of expert comparison, but a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held by this Court in a catena of cases that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence.

28) In Mobarik Ali Ahmed vs. The State of Bombay AIR 1957 SC 857, this Court has held as under:-

11..LEARNED counsel objected to this approach on a question of proof. We are, however, unable to see any objection. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being

written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship. In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship. We are unable, therefore, to say that the approach adopted by the courts below in arriving at the conclusion that the letters are genuine is open to any serious legal objection. The question, if any, can only be as to the adequacy of the material on which the conclusion as to the genuineness of the letters is arrived at. That however is a matter which we cannot permit to be canvassed before us.

29) In *Smt. Bhagwan Kaur vs. Shri Maharaj Krishan Sharma And Others* (1973) 4 SCC 46, this Court held as under:-

26..It is no doubt true that the prosecution led evidence of handwriting expert to show the similarity of handwriting between (PW 1/A) and other admitted writings of the deceased, but in this respect, we are of the opinion that in view of the main essential features of the case, not much value can be attached to the expert evidence. The evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The courts should, therefore, be wary to give too much weight to the evidence of handwriting expert. In *Sri Sri Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat* this Court observed that conclusions based upon mere comparison of handwriting must at best be indecisive and yield to the positive evidence in the case.

30) It is thus clear that uncorroborated evidence of a hand writing expert is an extremely weak type of evidence and the same should not be relied upon either for the conviction or for acquittal. The courts, should, therefore, be wary to give too much weight to the evidence of handwriting expert. It can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence.

31) It is the claim of learned senior counsel for the appellant-accused that the present case is fabricated and a result of the rivalry between HLTA and HTA. Further, Shri Anand Prakash has derived professional benefit from this exercise besides venting his longstanding grudge against the appellant-accused. It does not stand to logic that having regard to the Indian social set up, any father would let his daughters honour and reputation be damaged merely because one of his associate has his own agenda against the appellant-accused. However, each case has to be determined on the touchstone of the factual matrix thereof. In the instant case, there is nothing on record on the basis of which it can be said that the tender age of the victim was exploited for the benefit of Shri Anand Prakash (PW-1)

32) With regard to the contention of learned senior counsel that non- examination of two important site witnesses viz., Shri Paltoo-the ball picker and Shri T.Thomas-the Coach draws adverse inference against the prosecution, the High Court has rightly held that adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. We are also of the opinion that they were not in any way connected with the actual commission of offence and even in their absence, the commission of the offence of molestation by the appellant-accused stands well proved by the unimpeachable testimony of the eye witness (PW-13) to the incident.

33) No particular number of witnesses is required for proving a certain fact. It is the quality and not the quantity of the witnesses that matters. Evidence is weighed and not counted. Evidence of even a single eye witness, truthful, consistent and inspiring confidence is sufficient for maintaining conviction. It is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Having examined all the witnesses, even if other persons present nearby not examined, the evidence of eye-witness cannot be discarded.

34) In view of the foregoing discussion, we are of the opinion that Ms. Aradhana (PW-13) withstood her testimony from beginning till the end and her deposition was found reliable and corroborative with other prosecution witnesses and both the courts below were right in upholding the conviction of the appellant-accused under Section 354 of the IPC.

35) With regard to sentence of the appellant-accused, learned senior counsel on his behalf has pointed out certain mitigating factors which are

- old age of the appellant-accused, health ailments, responsibility of looking after the unmarried daughter suffering from congenital heart disease, past meritorious service and prolonged trial. Keeping in view the aforementioned factors especially the old age and physical condition of the appellant-accused, we do not think it expedient to put him back in jail. While we uphold the findings as to the guilt of the appellant-accused, we are of the opinion that the cause of justice would be best sub-served when the sentence of the appellant-accused would be altered to the period already undergone. We, therefore, reduce the sentence of the appellant to the period already undergone by him as a special case considering his very advanced age.

36) In view of the foregoing discussion, we confirm the conviction of the appellant-accused under Section 354 of the IPC while modifying the sentence to the period already undergone. The appeal is disposed of with the above terms.

....J.

(V. GOPALA GOWDA)..... J.

(R.K. AGRAWAL) NEW DELHI;

SEPTEMBER 23, 2016.