

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-1196-DB of 2014 (O & M)
DATE OF DECISION: July 20, 2015

Balraj and another

....Appellants

Versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.G.S.Sidhu, Advocate for the appellants.

RAMENDRA JAIN,J.

In the memo of parties the State of Punjab has inadvertently been mentioned. This appeal relates to State of Haryana. The Registry, therefore, shall correct the memo of parties from State of Punjab to State of Haryana.

The parents of the deceased have preferred the present appeal against the judgment 18.2.2013 acquitting respondent Nos.2 and 3, namely, Meena and Manoj Kumar, respectively, for the offences under Section 376 (2) (g), Section 306 read with Section 34 Indian Penal Code ('IPC' – for short). Along with the appeal CRM No.22539 of 2014 has been filed seeking condonation of 402 days' delay in filing the appeal.

Meena and Manoj Kumar were accused No.3 and 4 before the learned trial Court and in terms of the said judgment dated 18.02.2013 passed by the learned Additional Sessions Judge, Jind; Pradeep son of Rajpal and Sanjiv son of Ramphal (accused No.1 and 2) have been convicted for the offence punishable under Section 306 read with Section 34 IPC for abetting the prosecutrix to commit suicide. Besides, they were also held guilty for the commission of offence punishable under Section 376 (2) (g) read with Section 34 IPC. By a separate order passed on 22.02.2013, they have been sentenced to undergo life imprisonment; besides, pay a fine of Rs.5000/- each and in default thereof undergo simple imprisonment of two months for the offence under Section 376 (2) (g) read with Section 34 IPC. They have also been sentenced to undergo rigorous imprisonment for ten years; besides, pay a fine of Rs.5000/- and in default thereof undergo simple imprisonment for two months for the offence under Section 306 read with Section 34 IPC.

Inspector/SHO Suresh Pal along with ASIs Roshan Lal and Ram Chander, EASI Satyawar, EHC Ram Singh were present at the Local Courts at Narwana in connection with a case in criminal proceedings on 06.10.2012. Information was received by them there that the prosecutrix who was a resident of Sacha Kehra had been admitted in the General Hospital, Narwana. She had suffered 95% burn injuries. An application

was accordingly, moved before the Area Magistrate, requesting for recording her statement.

Smt. Taranjit Kaur, Judicial Magistrate Ist Class, Narwana who was the Area Magistrate reached General Hospital Narwana, and recorded the statement of the prosecutrix. To questions that were put, the prosecutrix stated that there was no pressure on her and she was giving her statement on her own. She stated that she had burnt herself with kerosene oil. In her village there was a boy Pradeep (accused No.1) and he had committed rape with her. He was from her village. He caught hold of her arm and took her with him. While she was passing from the street, he was standing at his gate. He took her inside the room. He subjected her with force. His 'bhabhi' (brother's wife) while standing at the top was keeping a watch that no one from the street enters. Naveen, the father's younger brother's son of Pradeep, was with him and he also committed rape with her. Sandeep, the father's elder brother's son of Pradeep, was also with him but he only bolted the latch. Both Naveen and Pradeep had committed rape on her. She could not bear this and she burnt herself. The right thumb impression was affixed below the statement of the prosecutrix. Dr. Shuchi Goyal, MO, GH Narwana certified that the patient remained fit during the statement.

In the police report ('challan') filed under Section 173 of the Code of Criminal Procedure ('CrPC' - for short), the cousin

brother of Pradeep, who is mentioned as Sandeep in the statement of the prosecutrix is shown as Sanjiv (accused No.2). He was also present there and he had bolted the latch. Naveen was declared a juvenile. The brother's wife ('bhabhi') of Pradeep is Meena (respondent No.2), who in the statement of the prosecutrix is mentioned as standing on the roof and keeping a watch so that no one enters. Manoj (respondent No.3) is the brother of Sandeep or Sanjiv (accused No.2) and husband of Meena (respondent No.2).

The statement of the prosecutrix along with 'ruqa' and her medico legal report was sent to the Police Station for registration of a case. A case for the offences punishable under Sections 376 (G) [sic. Section 376 (2) (g)], 306, 511, 34 IPC was registered. The police investigated the case. Inspector Suresh Pal reached the spot along with the team of Scene of Crime and a photographer. The site plan was prepared. One bed sheet, sheet and one towel were recovered and taken in possession. He went to the place, where the prosecutrix had set herself ablaze. Her burnt clothes, match sticks, plastic can of kerosene were recovered and were taken in possession after converting the same into a sealed parcel. In the meanwhile, on receipt of information about the death of the prosecutrix in PGIMS, Rohtak, he deputed ASI Roshan Lal to conduct inquest proceedings. On 6.10.2012, accused Naveen (juvenile), Sanjiv (accused No.2) and Meena (respondent No.2) were arrested. On

7.10.2012, accused Pradeep (accused No.1) and Naveen (juvenile) were got medico legally examined in General Hospital, Narwana. They identified the place of occurrence. Statements of relevant witnesses were recorded. Their blood samples were obtained. A letter was written to the Director, FSL Madhuban for DNA profile of accused Pradeep and Naveen. DNA report was obtained. After completion of investigation, police report ('challan') for the commission of offences punishable under Sections 376 G, 306, 511, 34 IPC was filed against the accused Pradeep (accused No.1), Sanjiv (accused No.2), Manoj (respondent No.3) and Meena (respondent No.2) was presented in the Court under Section 173 CrPC. Copies of challan were supplied to the accused as envisaged under Section 207 CrPC.

Since the offence committed was exclusively triable by the Court of Session, therefore, the learned Ilaka Magistrate committed the case to the Court of Session.

On finding a prima facie case, charges for the offences punishable under Section 376 (2) (g), Section 306 read with Section 34 IPC was framed against the accused vide order dated 11.12.2012 to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as twenty one witnesses, namely, PW1 Kuldeep Gupta Draftsman, PW2 Head Constable Jasbir Singh, PW3 EHC Shyam Lal, PW4 Photographer Janga alias Jagjit, PW5 EASI Bahadur

Singh, PW6 Dr. Anil Kumar Malik, PW7 Dr. Himanshu, PW8 ASI Jagdish, PW9 EHC Ram Chander, PW10 Raj Kali (appellant No.2), PW11 Balraj (appellant No.1), PW12 Ashu, PW13 Ms.Taranjit Kaur SDJM, Narwana, PW14 Dr.Shuchi Goyal, PW15 Pala Ram, PW16 Dharamender Siwach, PW17 Dr. Saket, PW18 EASI Bhim Singh, PW19 Ashok Kumar, PW20 EASI Roshan Lal and PW21 Inspector/SHO Suresh Pal. The prosecution also relied upon various documents prepared during the investigation of the case.

The statements of accused under Section 313 CrPC were recorded putting the entire incriminating material brought on record against them to which they denied and pleaded their false implication. In their defence, the accused examined, DW1 Promila, In-charge, Govt. Girls Primary School, Village Sacha Khera, District Jind to prove the date of birth of the deceased as 10.9.1995, DW2 Dr. Prabhu Dayal Medical Officer, General Hospital, Narwana , DW3 ASI Karan Singh, Incharge Police Post Danoda and DW4 Satbir.

After hearing learned Public Prosecutor and learned defence counsel, learned trial Court while convicting accused Pradeep and Sanjiv (accused Nos.1 and 2) for the offences under Section 376 (2) (g) read with Section 34 IPC, Section 306 read with Section 34 IPC, acquitted Meena and Manoj, respondent Nos.2 and 3 vide impugned judgment dated 18.2.2013.

Learned counsel for the appellants has contended that the impugned judgment of the learned trial Court is based on surmises and conjectures to the extent that respondents No.2 and 3 have been acquitted. The learned trial Court has failed to appreciate that respondent No.2 Meena was standing on the roof to guard that no one comes on the spot, where the prosecutrix was being raped by her brothers-in-law Pradeep and Naveen. The deceased prosecutrix in her dying declaration, it is stated, has categorically deposed about the above fact. Hence, she was liable to be held guilty and punished in accordance with law being equally responsible for the commission of rape by her brothers-in-law Pradeep (accused No.1) and Naveen (juvenile). The prosecutrix committed suicide as she was ashamed by the act of respondent No.2 Meena as she had facilitated her rape. Her husband Manoj Kumar, respondent No.3 had taken away the accused Pradeep and Sandeep (accused Nos.1 and 2) from the place of occurrence on a motor cycle, so he too was equally liable for the commission of the crime and the offences.

We have given our thoughtful consideration to the submissions made by learned counsel for the appellants and also gone through the records submitted by learned counsel.

It may be noticed that the prosecutrix in her initial statement recorded by the learned Judicial Magistrate Ist Class, Narwana, did not disclose the name of respondent No.2, rather she simply stated that sister-in-law ('bhabhi') of accused Pradeep

was standing on the roof. The learned trial Court has categorically observed that from the ration cards Ex.DI, DJ and DK it had been clearly established that respondent No.2 Meena was not the real brother's wife ('bhabhi') of accused Pradeep. From the memo of parties even, it is evident that Meena (respondent No.2) is the wife of Manoj Kumar (respondent No.3), who is the son of Ramphal. Sanjiv (accused No.2) is the son of Ramphal. Therefore, indeed Meena (respondent No.2) is not the real sister in law ('bhabhi') of Pradeep (accused No.1). Even otherwise, no role has been attributed to Meena and Manoj Kumar (respondents No.2 and 3) either by the prosecutrix or any other prosecution witnesses. According to the prosecution case, Meena (respondent No.2) was standing on the roof of the house in order to see that no one enters from the street. This aspect is quite out of context as the prosecutrix had stated that Sandeep (Sanjiv-accused No.2) who is the cousin brother Pradeep (accused No.1) being the father's elder brother's son of Pradeep had only bolted the latch and did not commit any act. Therefore, in any case, the entry of others in the room where the rape it was said was being committed had already been secured. The allegation that the sister in law ('bhabhi') of Pradeep was keeping a watch so that no one enters from the street is really not tenable. In fact it appears that she may be happening to be standing on the roof which was

mentioned and taken by the prosecutrix to be ensuring that no one else enters.

The statements of the appellants, if any, touching any point qua this case, are completely hearsay, because their presence at the spot has not been alleged or proved by the prosecution. As per prosecution case, they had shifted the prosecutrix to the hospital and she had not disclosed anything about the incident to them, besides that, she was raped by two persons, namely, Pradeep (accused No.1) and Naveen (juvenile).

The role attributed to respondent No.3 Manoj is that he had taken the accused from the place of occurrence, but he has not been named by the prosecutrix in her dying declaration Ex.PY. Hence, his presence at the spot has rightly been held to be doubtful, because had he been present at the spot, in that eventuality, the prosecutrix would have disclosed the said fact to the learned Magistrate in her statement.

The appellants in their statements under Section 161 CrPC, did not state before the police that the accused Manoj (respondent No.3) had taken away the accused. Hence, the story put-forth by the prosecution with regard to taking away the accused by Manoj Kumar, respondent No.3 is indeed an afterthought and can be termed as such. In fact even the registration number of the motor cycle that is alleged to have been used was not disclosed by PW12 Ashu in his statement to

the police. Besides, this witness even did not disclose the name of accused-respondent No.3 Manoj before the police; rather he named him for the first time in the Court, which being an improvement was hit by Section 145 of the Indian Evidence Act. Hence, his statement was liable to be disbelieved qua this fact.

PW19 Ashok Kumar introduced an altogether different story by deposing that the deceased prosecutrix had told him that accused Manoj (respondent No.3) had bolted the gate from inside, when accused Pradeep had dragged the deceased prosecutrix inside the house, contrary to the deposition of PW12 Ashu that Manoj had taken the accused Pradeep, Sanjiv and Naveen on a motor cycle.

Admittedly, respondent No.3 Manoj Kumar is a Govt. servant. The fact cannot be lost sight of the fact that now-a-days it has become a common practice to rope in a Government servant in some criminal case falsely so as to pressurize him the most taking advantage of his service career at stake.

Even otherwise, there is not an iota of evidence on the record that Manoj, respondent No.3 was ever present at the spot.

In the facts and circumstances, the learned trial Court has taken a reasonable and a possible view in acquitting Meena and Manoj (respondents No.2 and 3). It is well settled, that if the learned trial Court has taken a possible view in acquitting the accused in a criminal case, the same is not liable

to be lightly interfered merely because another view may be possible. In fact, the view favouring the accused except where facts and circumstances are otherwise is liable to be adopted. Convicting an innocent person for a crime he had not committed is equal to acquitting a person guilty of committing the crime. The Court is to ensure that miscarriage of justice is prevented.

In State of U.P. v. Atar Singh and others, 2007 (4) Crimes 180 (SC), it was held that generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is ensure that miscarriage of justice is prevented. A miscarriage of justice, which may arise from acquittal of the guilty, is no less than from the conviction of an innocent.

We have gone through the impugned judgment passed by the learned trial Court and find no illegality or perversity in the same insofar as respondents No.2 and 3 have been acquitted. However, this would not in any manner mean that the conviction of Pradeep and Sanjiv (accused Nos.1 and 2) is proper. The Court is to consider their case on its own merit on

the basis of the evidence and material appearing against them. Nothing contained in this order shall in any manner be construed as an expression of opinion on merit, in any other case/appeal pending, if any.

Keeping in view of the above facts and circumstances, we find no merit in the present appeal and the same is accordingly dismissed. Since the appeal has been dismissed on the merit, the question of 402 days delay in filing the appeal is only academic and the application seeking condonation of delay is also dismissed.

(RAMENDRA JAIN)
JUDGE

July 20, 2015
Kd/A.kaundal

(S.S.SARON)
JUDGE