

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

Crl. Appeal No.S-71-SB of 2004

Om Parkash

...Appellant

VERSUS

Saroj

...Respondent

(2)

Crl. Revision No.638 of 2004

Saroj

...Petitioner

VERSUS

Om Parkash

...Respondent

Date of Decision: August 26, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr.R.S.Malik, Advocate
for the appellant (in CRA No.S-71-SB of 2004) and
for the respondent (in CRR No.638 of 2004).

Mr.Rahul Jain, Advocate for
Mr.Sudershan Goel, Advocate
for the respondent(in CRA No.S-71-SB of 2004) and
for the petitioner (in CRR No.638 of 2004).

INDERJIT SINGH, J.

This judgment shall dispose of two connected cases i.e.

CRA No.S-71-SB of 2004 and CRR No.638 of 2004 arising out of the
same judgment of conviction dated 18.12.2003 and order of sentence

dated 20.12.2003 passed by learned Sessions Judge, Sonipat.

Accused-appellant Om Parkash has filed the appeal against the above-said judgment of conviction and order of sentence, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 313 read with Section 511 IPC.

Revision-petitioner Saroj has filed the revision for enhancement of the sentence imposed upon the accused-appellant.

The brief facts of the case are that Smt.Saroj filed a complaint before Illaqa Magistrate, Gohana against Om Parkash under Section 313/511 IPC stating therein that she is resident of village Ahulana and is a labourer. On 26.06.1998 at about 7/9.00 A.M., Raj Singh, son of her Jeth (brother-in-law) was flying a kite. The same was snatched by son of Om Parkash accused. In the meantime, Om Parkash came to the spot and started beating Raj Singh. Complainant also reached there and asked the accused as to why he was beating the child and that he should be ashamed of this act. On this, Om Parkash pushed the complainant aside and kicked her in the stomach. In the meantime, jethani (sister-in-law) of the complainant came. The complainant was carrying eight months child in her womb and she was removed to Civil Hospital, Gohana and medically examined. Due to the injuries caused, complainant gave birth to a son, who was ill and had to be given medical treatment.

Report was made to the police but the police did not take any action.

After summoning of accused under Section 313/511 IPC by the JMIC, the complaint was committed to the Court of Sessions, it being Sessions trial. Finding prima facie case, the accused was charge-sheeted under Section 313/511 IPC, to which he pleaded not guilty and claimed trial.

In support of her case, complainant examined PW-1 Dr.Poonam, Medical Officer, who medico-legally examined the complainant Saroj on 26.06.1998 and opined that though it is written that it is alleged history of assault but all vitals are maintained. She further opined that there is no history of leaking or bleeding P/V. No injury was found as per the doctor and advised ultrasound. During cross-examination doctor stated that no external mark of injury was visible on the person of the patient. There was also no bleeding. It is also stated in the cross-examination that foetus was healthy. This witness during cross-examination further deposed after seeing the ultrasound that it was not a case of miscarriage. PW-2 Saroj, complainant, deposed as per prosecution version. PW-3 Ram Ratti, jethani of the complainant, also deposed as per prosecution version. PW-4 Dr.B.K.Gupta deposed that on 02.07.1998 at about 12 noon, a new born baby was brought to the hospital. Baby was prematurely born and suffering from respiration and not in good general condition. In cross-examination, the doctor deposed that due to lack of balance diet premature delivery takes place. He further deposed in cross-examination that miscarriage can take place or it is possible due to

tension, anemia, hypertension or mental tension. He deposed that he did not remember whether he is the family doctor of the complainant. PW-5 Shadi Lal, father-in-law of complainant deposed that he came to know that Saroj sustained injuries in her abdomen caused by present accused. In cross-examination, he deposed that it is correct that no occurrence took place in his presence. He also stated that suit regarding ejectment was filed by son of the accused against him and ejectment order was passed. He also deposed that son of accused also filed a suit regarding encroachment of the street, in which ejectment order was passed. He further deposed that they made application but it is incorrect that compromise was arrived at between them. He denied the suggestion that no such incident took place with his daughter-in-law or that the present case is the counter blast of the civil litigation. PW-6 Dr.Promila Jain, Radiologist deposed that on 27.06.1998, she conducted sonographic examination of Saroj and baby was having no congenial anomaly. There was no sign of any traumatic injury to the foetus. In cross-examination, she stated that woman can deliver the foetus after 32 to 33 weeks of pregnancy.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he has been falsely implicated in this case as his son filed a petition under Section 7 of the Village Common Land Act against father-in-law of the complainant and ejectment orders were passed. The appeal filed by the appellant in that petition was also

dismissed. He also pleaded that he filed a civil suit against father-in-law of complainant restraining him from running a brick-kiln in the panchayat land and due to litigation and previous enmity, he has been implicated in a false case.

In defence, accused-appellant examined DW-1 Ram Chander, Pharmacist, who mainly brought the summoned record of General Hospital, Sonipat and deposed that Saroj did not remain as indoor patient from 26.06.1998 to 30.06.1998.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant argued that complainant Saroj and other witness have stated that there was sign of injury on the abdomen of the complainant but no such injury has been found by the doctor during the medico legal examination. The occurrence is of 26.06.1998 but complainant was not admitted in the hospital as per DW-1. The doctors have nowhere stated that there was any problem to the complainant or to the foetus. He further argued that it is also in the statement of the doctor that on physical verification, no bleeding was found. Learned counsel for the appellant next argued that child was born prematurely and is now normal and studying in the school. Even if it is taken that after the delivery, the child has some problem in respiratory system, this can be there due to premature delivery. He next contended that complainant has filed a false complaint as there is litigation between son of the accused with the father-in-law of the complainant, which is duly

proved on the record and which was earlier to the present complaint and this complaint was only filed to put pressure regarding those proceedings. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned counsel for the respondent/ revision petitioner argued that complainant has duly proved her case by leading cogent evidence beyond reasonable doubt. He, therefore, argued there being no merit in the appeal, the same should be dismissed. Learned counsel for the revision petitioner further contended that the sentence awarded to the accused-appellant by the Court below is inadequate and the same is liable to be enhanced.

I have gone through the record minutely and have heard learned counsel for the parties.

From the record, first of all, I find that it is duly proved on the record and admitted in the cross-examination of PWs that son of the accused has filed civil suit for ejectment and ejectment order was passed against Shadi Lal, PW-5 father-in-law of the complainant. Secondly, as per statement of complainant and her *jethani*, there is scar on the abdomen of the complainant due to leg blow but no such external mark of injury was found during medical examination. PW-2 Saroj and PW-3 Ram Ratti, jethani of the complainant stated that bleeding started due to the leg blow injury but on the same day, complainant was medico-legally examined by the doctor and it was found that there was no bleeding nor injury on the person of the

complainant. The version of the complainant is not supported and corroborated by any medical evidence. The doctor, in cross-examination, has admitted that premature delivery can take place due to lack of balance diet. The only evidence produced by the complainant is that the new born child was having some respiratory problem and sent to the doctor but that will not prove, support or corroborate the complainant's version. Even the doctor in cross-examination has stated that he does not remember whether he is family doctor of the complainant. Such type of statements by the doctor that he do not remember that he is family doctor of the complainant show that much reliance cannot be placed upon his statement. As per DW-1 Ram Chander, who has brought the record of the General Hospital, Sonipat, the complainant was not admitted in the hospital from 26.06.1998 to 30.06.1998. It is also in the evidence that child was delivered by the complainant in her house. All these facts show that no such occurrence took place. If the leg blow would have been given at that time to the complainant by the accused, then the consequence would have been very serious and the delivery might have taken place on that very day. The occurrence took place on 26.06.1998 and the complainant delivered the baby on 02.07.1998 in her house.

All the above facts show that no such occurrence took place. Further, the enmity between the son of the accused and father-in-law of complainant is duly proved on the record. There is no independent corroboration to the statement of the complainant.

In view of the above discussion, I find that reasonable doubt exists in the complainant's version and she has failed to prove her case by leading cogent evidence beyond reasonable doubt. The benefit of doubt is always to go to the accused. Hence, giving benefit of doubt, accused-appellant is acquitted of the charges framed against him. The judgment of conviction dated 18.12.2003 and order of sentence dated 20.12.2003 passed by learned Sessions Judge, Sonipat, are set aside. As appellant Om Parkash is on bail, his bail bonds stand discharged.

As regarding the revision petition filed by the complainant Saroj, I find that in view of the above findings that accused-appellant is acquitted of the charged framed against him, the revision petition has become infructuous.

Resultantly, CRA No.S-71-SB of 2004 stands allowed whereas CRR No.638 of 2004 stands dismissed.

August 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE