

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.A-907-MA of 2014
DATE OF DECISION: May 05, 2015

Jasvir Singh

....Applicant

versus

State of Haryana and others

.....Respondents

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

Present: Mr.Vinod K. Kataria, Advocate for the applicant.

RAMENDRA JAIN,J.

The present application under Section 378(3) Code of Criminal Procedure (for brevity, 'the Code') has been moved seeking leave to appeal against the judgment dated 26.3.2014 passed by the Sessions Judge, Faridkot acquitting respondent Nos.2 to 4 of the charges under Sections 364,120-B IPC.

Brief facts which are imperative to dispose of the application are recapitulated as under:-

Complainant-Jasvir Singh filed a complaint in the Court of Chief Judicial Magistrate, Faridkot, alleging commission of offence under Sections 364,120-B IPC by respondent Nos.2

to 4. According to him, he was resident of village Machaki Mal Singh, Police Station Sadar Faridkot having two sons, namely, Gurpreet Singh and Manpreet Singh. Manpreet Singh, aged 19 years, was studying with Satvir Kaur daughter of Jasvir Singh-respondent No.3, resident of his own village and was having love affair with her, since last seven years. He belongs to Harijan community, whereas, respondent Nos.2 to 4 belong to Jat Sikh community and thus they did not like the aforesaid love affair of his son with Savita Kaur. Hence, they being annoyed and furious, manhandled Manpreet Singh and threatened him with dire consequences. The complainant with his wife, namely, Jaswinder Kaur had gone to the house of respondent Nos.2 to 4 to complain, but they extended threat to refrain their son Manpreet Singh from meeting Satvir Kaur.

In the evening, around 6/6.30 p.m. on 1.1.2009, the son of the complainant went out of the house on motor cycle, belonging to Jaswinder Singh and Gagandeep Singh, residents of Faridkot. However, he did not come back. The matter was reported to the police of Police Station Sadar, Faridkot after searching him in the village, relations and other places. Subsequently, he came to know from Jaswinder Singh and Gagandeep Singh that his son was saying that Satvir Kaur had called him to meet in the evening. When they were on their way, respondent No.4-Gurpreet Singh came into their contact and told that he was waiting for Manpreet Singh, so as to take

him to see Satvir Kaur. While they were about to move on their motor-cycle, respondent Nos.2 and 3 reached there and starting abusing and quarrelling with Manpreet Singh. In order to avoid unnecessary involvement, Jaswinder Singh and Gagandeep Singh went off. Respondent Nos.2 to 4 being not happy with the love affair of the complainant's son and their daughter Satvir Kaur, as such, respondent Nos.2 and 3 called Manpreet through respondent No.4 and abducted him with an intention to kill him. The complainant was sure that respondent Nos.2 to 4 had disposed of the body of Manpreet Singh after murdering him. The matter was reported to the police, but it did not take any action in the matter. Aggrieved with the non action of the police, the complainant approached this Court for issuance of directions to the police for lodging an FIR against the respondents. The writ petition was, however, disposed of relegating the complainant to avail the remedy under Section 156(3) CrPC. Instead of lodging an FIR against the respondents and tracing out the body of Manpreet Singh, the police refused to take any action, which necessitated the complainant to file the complaint. The complainant was a poor person, whereas, the respondents were influential persons.

After recording the preliminary evidence, respondent Nos.2 to 4 were ordered to be summoned to face trial under Sections 364,120-B IPC vide order dated 15.6.2010.

In pursuance of the summoning order, respondent Nos.2 to 4 had put in appearance. Since the offence under Section 364 IPC was exclusive triable by the Court of Sessions, the case was committed to the Court of Sessions vide its order dated 11.5.2010.

Finding prima facie case against respondent Nos.2 to 4, the learned trial Court charge sheeted the respondent Nos.2 to 4 under Sections 364,120-B IPC vide order dated 15.6.2010.

In order to establish the guilt of respondent Nos.2 to 4, the prosecution in all examined three witnesses, namely, Gagandeep Singh PW1, Jasvir Singh (complainant) PW2 and Jaswinder Singh PW3

In the statements recorded under Section 313 CrPC, respondent Nos.2 to 4 denied all the allegations and pleaded their false implication. In defence, respondent Nos.2 to 4 examined as many as seven witnesses, namely, Baldev Singh DW1, Lahwidner Singh DW2, Rupinder Singh DW3, HC Jaspal Singh DW4, Balvir Singh DW5, Anil Kumar Gupta, Handwriting and Finger Print Expert DW6 and Balwinder Singh DW7.

After hearing learned Public Prosecutor for the State as well as learned counsel for respondent Nos.2 to 4 and on appraisal of evidence, the trial Court reached to the conclusion that the prosecution has failed to establish the guilt of respondent Nos.2 to 4, beyond shadow of reasonable doubt and consequently, acquitted Pritam Singh, Jasvir Singh and Gurpreet

Singh (respondent Nos.2 to 4) vide impugned judgment dated 26.3.2014.

Aggrieved by the aforesaid judgment of acquittal dated 26.3.2014, the complainant has preferred the present appeal.

We have heard learned counsel for the applicant and gone through the record very minutely.

Learned counsel for the applicant submits that the trial Court, without appraising the evidence in a correct perspective, has erroneously acquitted respondent Nos.2 to 4, despite the fact that there was sufficient evidence, indicating their conspiracy with each other and abduction of Manpreet Singh with an intention to kill him. Complainant-Jasvir Singh as PW2 has unambiguously deposed that there was acquaintance between Manpreet Singh and Satvir Kaur, because of their studying in the same school and that they had fallen in love with each other, since last seven years. Respondent Nos.2 to 4 were not tolerant of the said love affairs, because the complainant belongs to Harijan community, whereas, respondent Nos.2 to 4 belong to Jat Singh community. On the fateful day i.e. 1.1.2009, respondent Nos.2 and 3 were abusing and quarrelling with Manpreet Singh in the presence of Jaswinder Singh and Gagandeep Singh and they in conspiracy with each other had abducted Manpreet Singh with an intention to murder him. The impugned judgment is based on wrong on

surmises and conjectures and thus is not sustainable in the eyes of law.

Having given our thoughtful consideration to the arguments of learned counsel for the applicant, we are of the considered opinion that the impugned judgment of the trial Court is well-reasoned, based upon proper appreciation of the entire evidence on record, hence, the present appeal being bereft of any merit is liable to be dismissed.

In the complaint, Ex.PA, it was specifically mentioned that Manpreet Singh and Satvir Kaur were studying together and had developed love affair, since last seven years. Complainant as PW2 also specifically deposed that his son Manpreet Singh was studying in Government School, Machaki Mal Singh and Satvir Kaur was his classmate. However, when he was cross-examined, he admitted that his son, namely, Manpreet Singh was studying in Government School, Machaki Mal Singh, whereas, Satvir Kaur was studying in a school at Faridkot. In order to shatter the version of the complainant that any love affair was going on in between Manpreet Singh and Savita Kaur, while they were studying together in the Government School, Machaki Mal Singh, respondent Nos.2 to 4 have examined Baldev Singh as DW1, who specifically deposed that Manpreet Singh studied in Government Primary School, Machaki Mal Singh upto 31.3.2011 and Satvir Kaur had never studied in their school. DW2-Lakhwinder Singh also deposed

that the name of Manpreet Singh was struck off on 20.4.2001 while he was studying in 7th standard in Senior Secondary School, Machaki Mal Singh. He also deposed on similar line as of DW1-Baldev Singh regarding studying of Savita Kaur. Hence, the aforesaid evidence belies the version of the complainant in respect of studying of his son Manpreet Singh with Satvir Kaur.

That apart, learned counsel for the applicant placed reliance on the love letters allegedly written by Satvir Kaur to Manpreet Singh, marked B to E and the photographs marked F to J, to show that there was some love affair between the two. Refusal to give specimen hand-writing by Satvir Kaur led to conclusion that the aforesaid letters were written by her. No doubt, refusal invites adverse inference against Satvir Kaur, however, the letters in its entirety show that they are addressed to some Mr.Ajay. In examination-in-chief, the complainant (PW2) made an attempt to establish that Manpreet Singh was also known as "Ajay". However, since earlier to his deposition before the trial Court, there was no document to show that Manpreet Singh was also known as "Ajay", hence, it can safely be inferred that it was a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. Thus, the reliance placed on the letters does not prove that there was any love affair between Manpreet Singh and Satvir Kaur.

The other argument of learned counsel for the applicant that he belongs to lower caste and respondent Nos.2 to 4 to upper caste and they were not tolerant of the love affair of Manpreet Singh and Savita Kaur does not hold water, inasmuch as, the prosecution has failed to prove that there was any love affair between the two and even in the statement recorded under Section 313 CrPC, respondent Nos.2 to 4 took the plea that the complainant was a Mistri and in order to win favour, he claimed himself to be a Majbi Sikh which is altogether in contradiction to his earlier stand.

To deal with the third argument of learned counsel that on 1.1.2009, the son of the complainant, namely, Manpreet Singh was lastly seen in the company of respondent Nos.2 to 4 by Jaswinder Singh and Gagandeep Singh, it would be necessary to notice the facts giving rise to the appeal.

Initially, the complainant got recorded DDR No.11 on 5.1.2009 with the police regarding missing of his son. That DDR (Ex.DW7/A) has been proved by DW7-SI Balwinder Singh which was signed by Balbir Singh DW5, neighbourer of the complainant, who deposed that he and Jasvir Singh (complainant) appended his signatures. The complainant while appearing as PW2 made denial to the recording of DDR on the premise that he did not sign and only appended his thumb impression, but in the cross examination he admitted that he knew how to sign. His admission falsifies his deposition that he

had appended his thumb impression on the DDR in the light of deposition of Sukhdev Singh DW5 that he and complainant had appended their signatures in column no.2 of the DDR. Even Anil Kumar Gupta, Handwriting and Finger Print Expert (DW6) gave his opinion that the signature on the aforesaid DDR belonged to the complainant. Evidently, the first version recorded through DDR No.11 speaks only missing of Manpreet Singh, but without mentioning about the so called witnesses, namely, Jaswinder Singh and Gagandeep Singh. However, in the complaint, Ex.PA, the complainant stated that he came to know from Jaswinder Singh and Gagandeep Singh, that initially Gurpreet Singh had met them and then Pritam Singh and Jasvir Singh came at the spot and they abused and quarrelled with his son-Manpreet Singh. On the similar lines, the complainant deposed before the trial Court. However, DDR Ex.DW7/A does not find mention, the names of the persons from whom the complainant had come to know about the names and role of respondent Nos.2 to 4. Not only this, he took different stands from time to time. Vide application dated 13.2.2009 (Ex.D3) addressed to Senior Superintendent of Police, Faridkot, the complainant requested for initiation of action against Satvir Kaur, Jasvir Singh and Pritam Singh. However, the same does not find mention the name of Gurpreet Singh. Even it does not find mention the role of the witnesses, namely, Jaswinder Singh and Gagandeep Singh, which is now the bone of the complaint. In the similar

fashion, in application dated 24.1.2009 (Ex.D4), the complainant took the plea, which is admitted by him in his cross examination, that he lodged the DDR regarding missing of his son and his murder by Pritam Singh. Again it does not find mention the name of any witness. Numerous applications, including the writ petition and affidavit, Ex.D5 to D9 , made to various forums show that the complainant took different version from time to time. Hence, it belies the entire prosecution version.

Gagandeep Singh as PW1 deposed that Manpreet Singh accompanied him on motorcycle with Jaswinder Singh and when they were on the way, they came into contact with Gurpreet Singh, who stopped their motor cycle and told that he was looking for Manpreet Singh and at that point of time, Jasvir Singh and Pritam Singh came there and took away Manpreet Singh. However, this witness also deposed that Jaswinder Singh told him that Manpreet Singh had met him after 2-3 days. Jaswinder Singh as PW3 did not toe to the line of the prosecution and deposed entirely different from PW1 and PW2. He admitted in cross examination that during the course of enquiry, he made statement Ex.D1, countersigned by PW1 Gagandeep Singh, which shows that they did not come into contact with any person on 1.1.2009, where Manpreet Singh had parted with them. However, both the aforesaid witnesses in their cross examination deposed that they were not in a

position to give physical attribution of Manpreet Singh and geographical location of the house of the complainant. It leads to conclude that both the witnesses did not visit the house of the complainant.

In view of the aforesaid discussion, we find no merit in the arguments raised by learned counsel for the applicant. Accordingly, the application moved for seeking leave to appeal against the judgment dated 26.3.2014 passed by the Sessions Judge, Faridkot is dismissed, being devoid of any merit.

(RAMENDRA JAIN)
JUDGE

May 05, 2015
Kd

(S.S.SARON)
JUDGE