

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.Appeal D-362-DB of 2014
DATE OF DECISION: April 25, 2016

Reshma

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.H.S.Gill, Senior Advocate with
Mr.R.K.Dhiman, Advocate for the appellant.
Mr.Kapil Aggarwal, Additional A.G., Haryana.
Mr.G.C.Shahpuri, Advocate for respondent
Nos.2,3, and 5.
Appeal already abated qua respondent No.4.

RAMENDRA JAIN, J.

This appeal arises out of a judgment of conviction and sentence passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri as well as Principal Magistrate, Juvenile Justice Board, Yamuna Nagar to convict respondent Nos.2 to 4 of the charges under Section 302 read with Section 34 IPC and to enhance the sentence of imprisonment of the respondent Nos.2 to 5.

Respondent Nos.2 to 4 were convicted for commission of offence under Section 201 read with section 34 IPC and sentenced to undergo three years rigorous imprisonment and to pay fine of Rs.7,000/- each with default clause, whereas, respondent No.5 was convicted for

commission of offence under Sections 302 and 201 read with section 34 IPC. However, considering his juvenility vide order dated 29.9.2011, the sentence part of respondent No.5 was ordered to be dealt by the Principal Magistrate, Juvenile Justice Board, Yamuna Nagar at Jagadhri. On hearing and perusing the record, the Principal Magistrate released respondent No.5 on probation.

The appellant herein filed a criminal complaint against the respondent Nos.2 to 5 as well as Manohar Lal, the then Station House Officer, Police Station Chhachhrauli on the allegations inter-alia that her husband Biram Pal had taken on contract the mango orchard of respondent No.5-Sonu @ Bhikhar. Around 10.00 a.m., on 22.5.2007, the said respondent No.5 visited her house. He took her husband along-with him to irrigate the mango orchard. One Dayal Singh had seen her husband Biram Pal with respondent No.5. Around 12 O'clock, she had gone to the fields with meals for her husband. However, she could not find her husband there. Even her son could not find him. After one hour, Mohinder, her brother-in-law, while returning from the fields had seen the respondent Nos.2 to 5 trying to immolate Biram Pal. Alarm raised by Mohinder Pal attracted several persons and the children, who were

playing nearby. On seeing Mohinder Pal, respondent Nos.2 to 5 fled away from the spot. A villager apprised the appellant that half charred body of Biram Pal was lying near a mango tree in the orchard. The information was given to the police of Police Station Chhachhrauli regarding the said unfortunate incident. On visiting the place of occurrence, the police recorded the statement of the appellant, whereupon, formal FIR No.68 dated 22.5.2007 under Sections 302,34 IPC against respondent Nos.2 to 5 was registered. The post mortem examination on the dead body of deceased Biram Pal was conducted at PGI, Rohtak. However, the police in collusion with respondent Nos.2 to 5 did not initiate any action against them, who were openly threatening the appellant and her family members. The respondents Nos.2 to 5 also used derogatory remarks like "Chamar, Gittal" etc. Even her approaching the Superintendent of Police, Yamuna Nagar on 1.6.2007 and the National Human Rights Commission did not set the police machinery into motion. When enquiry was made from Manohar Lal, the then Station House Officer, Police Station Chhachhrauli regarding the status of the case, he showed his bias. There was every apprehension that the said Station House Officer would twist her statement and

that of the witnesses. Due to non action of the police, the complaint was filed.

The preliminary evidence was led. Thereafter, the respondent Nos.2 to 5 were summoned under Sections 302/201 read with section 34 IPC, whereas, Manohar Lal, SI was summoned under Section 201 read with section 34 IPC. After procuring the presence of the aforesaid accused, the case was committed to the Court of Sessions.

On appraisal of material, when it transpired that the provisions of Sections 3(2)(v) and 3(2)(vi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 were attracted, the case was assigned to the designated Court.

After hearing and perusing the records on the point of charge, one of the accused, namely, Manohar Lal, SI was discharged, whereas, respondent Nos.2 to 5 were charge sheeted under Sections 302 and 201 read with section 34 IPC vide order dated 19.5.2010. During the pendency of proceedings, the police had initiated the closure proceedings by filing the untrace report on 18.3.2010 which was also ordered to be attached with the complaint case.

In order to prove her case, the appellant examined as many as four witnesses.

The entire incriminating evidence was put to the respondent Nos.2 to 5. In defence, they examined five witnesses.

After hearing learned counsel for both the parties, the trial Court as well as Principal Magistrate convicted and sentenced the respondents Nos.2 to 5, as detailed above, in the opening part of the judgment.

It may be relevant to mention here that during the pendency of proceedings before this Court, respondent No.4 Manga has closed his eyes and is no more in the world and, therefore, vide order dated 21.8.2015, the present appeal qua him stood abated.

Learned counsel for the appellant argued that the impugned judgment and orders of sentence are based on surmises and conjectures. Convinced with evidence available, the respondent Nos.2, 3 and 5 were convicted, but that conviction and sentence demonstrably is inconsistent with the evidence and, therefore, respondent Nos.2 and 3 should have also been convicted under Section 302 read with section 34 IPC and sentenced to undergo life

imprisonment and respondent No.5 should have been sentenced to undergo life imprisonment.

Learned counsel appearing for the State has argued that the impugned judgment of conviction and orders of sentence are perfect and legally justified, thus, require no interference.

Learned counsel for respondent Nos.2,3 and 5 has argued that the conviction recorded so, is based on appreciation of evidence. The sentence part of respondent Nos.2 and 3 is also not on the excessive side.

After giving our thoughtful consideration to the arguments advanced by learned counsel for the parties, we find the present appeal completely meritless for the reasons to follow.

So far as the argument that respondent No.5 Sonu @ Bhikhar is to be sentenced to undergo life imprisonment under Section 302 IPC is concerned, the same is meritless, inasmuch as, the Principal Magistrate, after considering the facts and circumstances of the case, came to the conclusion that under the provisions of Section 15(1)(e) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'Act 2000'), he should be released on probation. That too, by any stretch of

imagination, cannot be said to be speculative analysis, inasmuch as, Section 15(1)(g) of the Act 2000 inter-alia provides that the Board may, if it so thinks fit, direct the juvenile to be released on probation or to send him in a special home for a period not more than three years. To make it more clear, respondent No.5 could not have been sent to a special home for more than three years. Considering overall facts and circumstances, we do not find any justification to interfere with the sentence part awarded by the Board being legally sustainable.

The other argument that respondent Nos.2 and 3 should have been convicted and sentenced under Section 302 read with section 34 IPC is also substance-less.

The evaluation of evidence depicts that earlier to his last breath, on 22.5.2007 the deceased Biram Pal was firstly seen by Dayal Singh in the company of respondent No.5 Sonu @ Bhikhar. However, this witness was examined in preliminary evidence, but was given go-bye by the prosecution after summoning of respondent Nos.2 to 5. In the evidence of PW4 Mohinder, the factum of immolating the deceased Biram Pal by respondent Nos.2 to 5 was established. His presence before reaching the place of occurrence is not disputed by the defence witnesses,

namely, DW2 Narender Singh, Sarpanch as well as DW3 SI Manohar Lal, who specifically deposed that the fire had not completely extinguished on their visit to the spot.

PW3 Reshma (appellant) deposed that her husband Biram Pal had entered into a contract with respondent No.5 Sonu @ Bhikhar for mango orchard. Around 10.00 a.m., on 22.5.2007, respondent No.5 visited her home and asked her husband to accompany him for irrigating the mango orchard. Her husband took ₹500/- from her and accompanied him. He was seen in the company of her husband by Dayal Singh. Around 12 O'clock, she went to the fields with meals for deceased-husband. She and her son could not find Biram Pal. After passing of one hour, Mohinder, brother-in-law, had seen the respondent Nos.2 to 5 trying to immolate Biram Pal. His hue and cry, attracted several persons and children. Consequently, respondent Nos.2 to 5 ran away from the spot. The police was immediately apprised of the said unfortunate incident. On the basis of statement of appellant, formal FIR was recorded. The evidence of this witness and PW4 Mohinder is duly corroborated by the evidence of PW2 Dr.Vijay Pal Khangwal, who specifically deposed that "the cause of death in this case was manual

strangulation (throttling) and that the burns noticed over the body were postmortem in nature....” The probable time that elapsed between injuries and death was opined as instantaneous. Thus, it is well proved on record that after the incident, truth came out from the mouth of PW3 Reshma (appellant) and PW4 Mohinder which they expressed spontaneously in the information given to the police. However, the police did not initiate any substantive proceedings and twisted the statements of the witnesses of its own for destroying the positive and concrete evidence.

Thus, the evidence available on record unambiguously evinces that the deceased had gone with respondent No.5-Sonu @ Bhikhar. Later on, he was found dead, that too, in his mango orchard. Respondent Nos.2, 3 and 5 along with their accomplice, i.e. respondent No.4 (since deceased) had tried to destroy the evidence showing it to be a case of burning, but that too was intervened by the presence of PW4 Mohinder. This evidence ascribes the role of respondent Nos.2 and 3 and their accomplice respondent No.4 (since deceased) only in destroying the evidence showing it to be a case of burning and, therefore, they cannot be held guilty under Sections 302 read with section 34 IPC.

The appreciation of evidence by the trial Court and the Principal Magistrate in reaching the conclusion that respondent No.5 was lastly seen in the company of the deceased Biram Pal and found murdered in his mango orchard and respondent Nos.2, 3 and 5 in order to destroy the evidence had set on fire the body of deceased, does not require any interference by this Court.

In view of the aforesaid discussion, we find no merit in the present appeal and the same is accordingly dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

April 25,2016
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