

CRMs-5416-17-2016 in/and
CRA-D-579-DB-2015

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRMs-5416-17-2016 in/and
CRA-D-579-DB-2015

Date of decision: 01.03.2016

Ashok Kumar

..... Applicant

Versus

Vinod and others

..... Respondents

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

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Yogesh Kumar Saini, Advocate
for the applicant(s).

RAMENDRA JAIN, J.

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For the reasons stated in the application, the applicants Randhir Singh and Angoori Devi, parents of the deceased-Dinesh are ordered to be brought on record as applicants No. 2 and 3. Amended memo of parties is taken on record.

The application is disposed of accordingly.

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By way of filing the instant application under Section 378(4) Cr.P.C., the applicant has sought leave to file the accompanying appeal against the impugned judgment dated 23.01.2015, passed by the learned Additional Sessions Judge, Panipat, whereby respondents No. 1 and 2, Vinod and Ravinder @ Binder were convicted under Sections 304 Part-I and 342 of the Indian Penal Code (IPC), whereas respondent No. 5-Rajo was convicted under Section 342 IPC instead of Sections 148, 149 and 302 IPC. Respondents No. 1 and 2 were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹ 50,000/- each under Section 304 Part-I IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year each. They were further sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 500/- each under Section 342 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month each. Both the substantive sentences of respondents No. 1 and 2 were ordered to run concurrently. Respondent No. 5 Rajo was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 500/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month. However, respondents No. 3, 4 and 6, namely, Sonu, Parmod and Mahipal were acquitted of the charges framed against them.

2. Briefly stated, on 09.06.2013, on receipt of information about the murder of Dinesh in the area of village Bhandari, SI/SHO

Satyawan along with other police officials reached at the spot and recorded the statement of complainant/applicant-Ashok Kumar. He stated that last night around 4.00 a.m. his nephew Vikas woke him up and disclosed that respondents No. 1 to 4, namely, Vinod, Ravinder @ Binder, Sonu and Parmod sons of Hari Singh, have wrongfully confined his brother Dinesh in their house and were beating him with dandas and pattas, whereupon he went to the spot and asked them to release Dinesh, but they did not pay any heed. The parents of deceased i.e. applicants No. 2 and 3 and aforesaid Vikas also requested respondents No. 1 to 4 to not to beat Dinesh, but they did not listen to them too. Respondent No. 5-Rajo incited her sons-respondents No. 1 to 4 to beat Dinesh and she also gave danda blows to him. Finally, Dinesh died on account of the injuries caused to him.

3. On the above statement of complainant-Ashok Kumar, a case under Sections 148, 149, 302, 342 IPC was registered. Inquest report was prepared. Post-mortem examination on the dead body of Dinesh was got conducted from Civil Hospital, Panipat. The spot was got inspected from FSL team. It was also got photographed. Respondents No. 1 to 5 were arrested. Respondent No. 6-Mahipal had surrendered before the learned Judicial Magistrate Ist Class, Panipat on 09.09.2013. Pursuant to their separate disclosure statements, the accused got recovered the alleged weapons of offence i.e. danda, iron rod, patta of the tyre, etc. After completion of investigation and receipt of FSL report, final report under Section 173 Cr.P.C. against respondents No. 1 to 6 was presented before the learned Area Magistrate.

4. On commitment of the case to the Court of Session, the learned trial Court framed charges under Sections 148, 342, 302 read with Section 149 IPC against respondents No. 1 to 6 to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 14 following witnesses.

6. PW-1 Complainant-Ashok Kumar and PW-2 Anguri Devi fully supported the prosecution story.

7. PW-3 Mahavir, Photographer, testified that he had clicked photographs Ex. P-1 to Ex. P-3 of the dead body of Dinesh.

8. PW-4 Constable Deepak through his affidavit Ex. PW-4/A testified about handing over of a sealed parcel containing viscera of the deceased and one sealed envelope along with sample seal to him by MHC PW-8 Sukhbir Singh for onward depositing the same with the FSL authorities on 12.06.2013 and after doing the needful, he had handed over the receipt to aforesaid MHC.

9. PW-5 Constable Vinod Kumar, testified about delivering of special reports to the Illaqa Magistrate and higher police officers without any delay on being handed over to him by ASI Pawan Kumar.

10. PW-6 HC Kuldeep Singh, testified that he has witnessed the interrogation of respondents No. 3 and 4, namely Sonu and Parmod by SI Satyawar and their sufferance of disclosure statements Ex. P-8 to Ex. P-9. He testified that respondents No. 3 and 4 have resiled from their earlier statement and suffered fresh disclosure statements Ex. P-10 and Ex. P-11, but no recovery was effected pursuant thereto.

11. PW-7 EHC Jagbir Singh had testified about preparation of scaled site plan Ex. P-12 of the place of occurrence.

12. PW-8 HC Sukhbir Singh by way of his affidavit Ex. PW-8/A had deposed about deposit of a sealed parcel containing viscera of the deceased, a sealed envelope, sample seal and sealed parcel containing weapons of offence used by accused by the Investigating Officer/SI Satyawar with him on 10.06.2013 and further sending the same to FSL, Madhuban through PW-4 Constable Deepak.

13. PW-9 ASI Pawan Kumar had simply recorded the FIR Ex. P-13.

14. PW-10 SI Satyawar is the Investigating Officer. He deposed about the steps taken by him during the course of investigation and arrest of respondents No. 1 to 6.

15. PW-11 HC Satvinder Singh has testified that he remained associated with the investigation of this case. He deposed about the interrogation of respondent No. 1-Vinod by the Investigating Officer and recovery of a patta of tyre taken into possession vide recovery memo Ex. P-26, after preparing its sketch Ex. P-25, pursuant to his disclosure statement Ex. P-24. He also testified that respondents No. 3 and 4, namely, Sonu and Parmod had got recovered a danda and iron rod respectively used by them in the commission of crime which were taken into possession vide recovery memos Ex. P-28 and Ex. P-30, respectively. This witness also proved identification memo of the place of occurrence Ex. P-33.

16. PW-12 ASI Raj Kumar deposed that he remained associated

with the Investigating Officer, PW-10 SI Satyawar during the investigation of this case. He corroborated the statement of aforesaid Investigating Officer in its letter and spirit. He deposed that on arrest of respondent No. 5-Rajo Devi, she got recovered a danda Ex. P-18 which was taken into possession vide recovery memo Ex. P-19. He further stated that on arrest of respondent No. 2-Ravinder @ Binder on the same day, he got recovered a danda used by him in commission of crime, pursuant to his disclosure statement Ex. P-23.

17. PW-13 EASI Ramesh Kumar, deposed that on 09.06.2013, he got conducted post-mortem examination on the dead body of Dinesh from Civil Hospital, Panipat. On 09.09.2013, respondent No. 6-Mahipal after his surrender before the Court was joined in the investigation. In pursuance of his disclosure statement Ex. P-36, Mahipal had got recovered the mobile phone, motorcycle, danda and registration certificate of the motorcycle, which were taken into possession vide recovery memo Ex. P-38.

18. PW-14 Dr. Raghvendra, Medical Officer, while proving post-mortem report Ex. P-46, testified that while conducting post-mortem examination on the dead body of Dinesh had found 15 injuries on his body. In their opinion, the cause of death was neurogenic shock due to scrotal injury and combined effect of other injuries. He also testified that as per report of the Chemical Examiner, the deceased had consumed alcohol prior to his death. During cross-examination, he stated that all the injuries on the body of deceased-Dinesh were simple in nature. As per FSL report, ethyl alcohol in the stomach and parts of small and large

intestines and blood of the deceased was found 63.25 mg per cent. The possibility of sexual assault by a person, who had consumed ethyl alcohol to the extent of 63.25 mg per cent cannot be ruled out. However, he clarified that a drunkard, who has consumed alcohol up to 63.25 mg per cent may ignore sexual boundaries as alcohol affects different parts of the brain of a person which increased sexual desire but decreases actual performance. Alcohol also affects on the medulla to slow a person's breathing and to increase body temperature which may also result in death.

19. After closure of the prosecution evidence, the statements of respondents No. 1 to 6 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which, they denied and pleaded their false implication. In defence, they examined DW-1 Santosh Kumar, Summary Clerk, DW-2 Ms. Poonam Kanwar, JMIC Gurgaon and DW-3 Sandeep.

20. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondents No. 3, 4 and 6, namely, Sonu, Parmod and Mahipal of the charges framed against them by giving them the benefit of doubt vide the impugned judgment and further convicted and sentenced respondents No. 1, 2 and 5, namely, Vinod, Ravinder @ Binder and Rajo, as indicated above in the opening part of this judgment.

21. Learned counsel for the applicants contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has wrongly and illegally acquitted respondents No. 1 to 6

under Sections 148 and 302 IPC. The finding of the learned trial Court that the prosecution has failed to prove the identity and presence of respondents No. 3, 4 and 6, namely, Sonu, Parmod and Mahipal is patently wrong and illegal, because PW-1 Ashok Kumar and PW-2 Anguri Devi have categorically deposed that respondents No. 3, 4 and 6 also gave beatings to deceased-Dinesh. The learned trial Court has erred in giving undue weight to the defence evidence, while discarding the well proved prosecution evidence. As per medical evidence, 15 injuries on different parts of the body of the deceased were found at the time of post-mortem examination. Hence, the findings of the learned trial Court that the prosecution could not prove that respondents No. 1 to 6 had any motive to cause death of Dinesh are wrong and illegal, more particularly, when it was evident from the defence taken by respondents No. 1 to 6 that deceased-Dinesh had committed rape upon Preeti, the niece of respondents No. 1 to 4. Deceased-Dinesh was done to death by respondents No. 1 to 6, for the aforesaid reason. In view of the above facts and circumstances, the learned trial Court ought to have convicted respondents No. 1 to 6 under Sections 302/342/148/149 IPC.

22. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant, we find the instant application completely devoid of any merit for the reasons to follow:-

- (i) To decide the present application effectively, the evidence produced by the prosecution has to be scanned minutely. PW-1 Ashok Kumar and PW-2 Anguri Devi, in their cross-examination have admitted

that respondent No. 6-Mahipal came at the spot after the occurrence had already taken place. Respondent No. 6 allegedly reached at the spot around 5.00 a.m. As per the prosecution case, respondent No. 1-Vinod called respondent No. 6 at the spot through his mobile phone in between 3.47 A.M. and 4.17 A.M. Both the above witnesses testified that they came to know about the occurrence around 4.00 A.M. and reached the spot immediately. Hence, the prosecution has miserably failed to prove the presence of respondent No. 6 at the spot, at the time when deceased-Dinesh was allegedly beaten up by the remaining respondents and, thus, has rightly been acquitted by the learned trial Court.

- (ii) As far as presence of respondents No. 3 and 4, namely, Sonu and Parmod is concerned, admittedly, they were not apprehended at the spot, rather were apprehended after 10 days of the occurrence. PW-1 and PW-2 were the star witnesses of the prosecution. In their cross-examination, they have admitted that both Sonu and Parmod were not present at the spot.

Even otherwise, no independent person was joined in the investigation at the time of their arrest or sufferance of any disclosure statement. Contrary to it, DW-3 Sandeep testified about their presence with him in their fields in the night of 08/09.06.2013 to plant

paddy crop. This witness has further testified that on receipt of information that deceased-Dinesh and his brother Vikas have illegally trespassed into the house of respondents No. 1 to 5 and molested their niece Preeti, both respondents No. 3 and 4 had fled away from the fields. He too reached at the spot around 7.15 A.M. and found that respondents No. 1, 2 and 5 were present in their house. He has also testified that the people, who have gathered at the spot had also given beatings to deceased-Dinesh. There is no contrary evidence from the side of the prosecution to rebut the statement of DW-3 Sandeep that respondents No. 3 and 4, namely, Sonu and Parmod were present with him in the fields on the intervening night of the date of occurrence.

More so, Vikas brother of the deceased had informed his uncle PW-1 Ashok Kumar and mother PW-2 Anguri Devi around 4.30 A.M. about beating of his brother at the hands of respondents No. 1 to 6. Hence, he was the best witness to establish the identity of the persons, who had allegedly given beatings to his deceased brother, but he has not been examined by the prosecution for the reasons best known to it which requires to draw an adverse inference that the things did not happen in the manner as narrated by the

prosecution. In view of the above factual position, we do not find any infirmity in the findings of learned trial Court in acquitting both respondents No. 3 and 4, namely, Sonu and Parmod.

- (iii) PW-14 Dr. Raghvendra, Medical Officer has specifically deposed that all the 15 injuries on the person of deceased-Dinesh were simple in nature. As per FSL report, ethyl alcohol was detected in stomach and parts of small and large intestines of the deceased which shows that he was drunk at the time of his death. The defence version in this case seems to be more probable. DW-2 Ms. Poonam Kanwar, Judicial Magistrate Ist Class, Gurgaon has testified that on 21.06.2013, she had recorded the statement of Preeti Ex. D-10 under Section 164 Cr.P.C., wherein she had levelled the allegations of gang rape upon her by deceased-Dinesh and his brother Vikas. As per prosecution story, since, deceased-Dinesh was allegedly beaten up at the house of respondents No. 1 to 5, therefore, the fact remains that he had committed criminal trespass into their house with an intent to molest Preeti and that too in the night hours of 08/09.06.2013 under the influence of liquor. The learned trial Court has rightly observed that there was no reason for the deceased to enter the house of

respondents No. 1 to 5 at night. Even otherwise, no explanation has been put forth by the prosecution as to for what reason the deceased had entered the house of respondents No. 1 to 5 at mid-night under the influence of liquor.

(iv) The material witnesses i.e. PW-1 and PW-2 in their depositions have admitted that there was no previous enmity in between them and respondents No. 1 to 6. Therefore, there was no motive for respondents No. 1 to 6 to commit the murder of Dinesh.

(v) PW-1 and PW-2 did not attribute any specific injury to respondent No. 5 Rajo. Even no weapon was recovered from her possession. She did not suffer any disclosure statement. Hence, the prosecution has miserably failed to prove before the learned trial Court that respondent No. 5 had given any beatings to the deceased. In other words, she had no role in the commission of crime. Therefore, she has rightly been acquitted under Section 302 IPC.

23. We have gone through the impugned judgment carefully and found no illegality in the same.

24. From the above discussion, this Court is of the considered view that no case is made out for any interference in the impugned judgment and order of sentence to the extent of acquitting respondents No. 1, 2 and 5 of the charge under Section 302 IPC, acquitting

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respondents No. 3, 4 and 6 of all the charges against them. The instant application being completely devoid of any merit is dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 01, 2016
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