

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CRR No. 862 of 2016 (O&M)

Date of decision : September 22, 2016

* * * * *

Parkash Kaur

.....Petitioner

Versus

State of Punjab

.....Respondent

CRR No. 1507 of 2016 (O&M)

* * * * *

Saroj Rani

.....Petitioner

Versus

State of Punjab

.....Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Ashok Kumar Sharma, Advocate for the petitioner.
(in CRR No. 862 of 2016)

Mr. K.S Lakhanpal, Advocate for the petitioner.
(in CRR No. 1507 of 2016)

Mr. A.P.S Gill, AAG, Punjab.

* * * * *

RITU BAHRI, J.

By way of this common judgment, two revision petitions i.e

CRR No.862 of 2016 (Parkash Kaur vs. State of Punjab) and CRR No. 1507 of 2016 (Saroj Rani vs. State of Punjab) shall be decided as a similar question of law has been involved in these revision petitions and common orders have been impugned in both of them.

The petitioners have filed the present revision petitions against the judgment of conviction and order of sentence dated 2.5.2014 passed by the Judicial Magistrate First Class, Fazilka whereby the petitioners Parkash Kaur was convicted under Section 317 IPC and was sentenced to undergo rigorous imprisonment for a period of two years and Saroj Rani was convicted under Section 318 IPC and was sentenced to undergo rigorous imprisonment for a period of one year and also against the judgment dated 20.1.2016 passed by Additional Sessions Judge, Fazilka, whereby the appeal against the judgment dated 2.5.2014 has been dismissed.

Brief facts of the case are that on 21.4.2008, ASI Tilak Raj along with other police officials in connection with patrolling duty received a secret information that accused Saroj Rani is running a clinic under the name of Ashu Nursing Home without having requisite qualifications and permit/license and was conducting ultra sound and determination of sex test and was also doing abortion of Parkash Kaur. ASI Tilak Raj along with other police officials and Dr. NK Sethi, Medical Officer reached at Ashu Nursing Home and apprehended both the accused. The medicines of abortion was recovered and taken into police possession. Accused Parkash Kaur whose abortion was being conducted at the time of conducting raid by the police party was got admitted in Civil Hospital, Fazilka for her medico-legal examination.

After presentation of the challan, charges were framed against

the accused under Sections 317 and 318 of IPC. Accused did not plead guilty and claimed trial. In order to prove the allegations levelled against the accused, the prosecution examined Dr. Kavita, Medical Officer as PW-1, Dr. N.K Sethi, Medical Officer as PW-2, LC Shimla Devi as PW-3, Inspector Tilak Raj as PW-4, HC Radhey Sham as PW-5, ASI Rajinder Kumar as PW-6, Dr. Gurnmanjit Rai as PW-7, SI Balkar Singh as PW-8. Thereafter, statements of the accused were recorded under Section 313 Cr.P.C. The trial Court after going through the testimony of PW-2, Dr. N.K Sethi, PW-4, Inspector Tilak Raj and PW-5 HC Radhey Sham gave a finding that presence of accused Parkash Kaur in Ashu Nursing Home at the time of conducting raid is duly proved. PW-2 has clearly stated that when they conducted raid accused Parkash Kaur was lying in the said Nursing Home. PW-4, Tilak Raj has also proved that accused Parkash Kaur was present there and was suffering from pain. Moreover, immediately thereafter Parkash Kaur was sent to Civil Hospital by the police party where she was medico legally examined by PW-1, Dr. Kavita. PW-1 has also proved that though no mark of external injury on any part of body was present but on gynecological examination, she found:

“P/V bleeding present from vagina and vagina was relaxed. She further deposed that according to the uterus slightly increased in size.”

Apart from this, PW-1 has clearly proved that according to the USG report No.53 dated 22.4.2008, small hyperchoic masses seen in endometrial canal blood clots. From the testimony of these witnesses, no doubt is left regarding the presence of accused Parkash Kaur in Ashu Nursing Home at the time of raid conducted by the police party. Moreover,

the circumstances in which the accused Parkash Kaur was found lying in the Nursing Home and the articles which were recovered i.e Phenergan, syringes, injection needles, cotton swabs soaked with blood, green coloured clothes soaked with blood, newspaper soaked with blood were sufficient to make out that the said articles were used by the accused Saroj Rani for conducting abortion of accused Parkash Kaur. No evidence was led by Parkash Kuar to show that after about six months of the raid, she gave birth to any child or otherwise any dead child was born to her. It was further proved by PW-7, Dr. Gurmanjit Rai that the sex organs were not distinguishable as the age of fetus was about 10 to 12 weeks and sex organs were not developed as observed by naked eye. To prove innocence, the accused could herself offer for her DNA test so as to prove that fetus recovered did not belong to her. As regards allegation against Saroj Rani, she was not having requisite qualifications for running a nursing home and doing operation. The recovery of the articles were duly proved that the nursing home was being run and operation was being carried out against the provisions of Sections 317 and 318 IPC. Judgment of conviction and order of sentence dated 2.5.2014 has been upheld by the Additional Sessions Judge, Fazilka by dismissing the appeal vide its judgment dated 20.1.2016.

Counsel for the petitioners, at this stage, do not challenge the conviction of the accused on merits but restrict their prayer to the quantum of sentence.

As per the custody certificate of Saroj Rani, she has undergone six months in custody as on 30.6.2016 and she has been facing the agony of protracted criminal trial since the date of registration of FIR i.e 21.4.2008 for almost eight years.

In view of the above position, the petitions are dismissed on merits. However, the judgment of conviction, recorded by the Courts below is upheld. The petitioners are allowed concession of probation for a period of six months. They shall deposit Rs.10,000/- each in the State Legal Services Authority, Ferozepur to the satisfaction of the trial Court with an undertaking therein that they shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

September 22, 2016

*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

No

Whether reportable

Yes