

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-710-SB of 2005
Date of Decision: 23.9.2017

Shobha Rani and another

... Appellants

Versus

State of Haryana

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr.Anju Sharma, Advocate for the appellants

Mr.Sushil Gautam, DAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. At the outset of the hearing, learned State counsel has brought to the notice of this Court on papers received from the Police Department, Haryana that appellant no.2, Dinesh Kumar expired on 20th July, 2009. Death Certificate duly certified by the Investigating Officer has been placed on record. Accordingly, appeal filed by Dinesh Kumar abates and it has been so ordered by this Court vide interim order dated 23rd August, 2017.

2. Appellant no.1, Shobha Rani has been heard through counsel appointed by the Legal Services Authority as also Dr. Sushil Gautam, DAG, Haryana appearing for the State. It may be noted that appellant no.1 was allowed the benefit of suspended sentence and released on bail by the trial court on the condition that appeal be filed against conviction and sentence during the prescribed period of limitation. The appeal has been filed within limitation and Shobha Rani has furnished bail bounds and is on bail pending appeal since then. Shobha Rani is about 70 years old. The actual period undergone including custody under trial is 11 days and after conviction Nil as supported by the affidavit of custody filed by the Deputy Superintendent,

Central Jail, Ambala. The trial court has recorded conviction of Shobha Rani and sentenced her to undergo RI for a period of three years for committing offence under Section 304 Part II read with Section 34 of the IPC.

3. The prosecution case was that the deceased Jagmal Singh resident of Village Naggal Patti Machrauli, District Yamuna Nagar, Haryana was employed as a driver on the tractor trolley of Rati Ram PW3 of Village Miyanpur. On 13th May, 2003, he was engaged in hauling minerals (sand) from Dadupur river bed with destination of one Mahender Singh's house in village Machhrauli. After unloading sand at the house of Mahinder, Jagmal Singh proceeded to the house of Pawan Kumar PW4 to load goods to carry them to Bilaspur. On reaching the house of Pawan Kumar to unload the goods while reversing the tractor trolley, the trolley hit the wall of the residence of both the accused Shobha Rani and late Dinesh Kumar, mother and son respectively. The accused came out of the house and pulled down Jagmal Singh from the driver's seat followed by kicks and fist blows. After the occurrence Jagmal Singh returned to his home. He felt difficulty in walking and speaking.

4. The following day, he presented an application Ex.PB before the SHO, Police Station Bilaspur to take action against the accused. No action was taken by the Head Constable. Four days later, i.e. on 17th May, 2003, Jagaml singh went to the Police Station to enquire about the progress of his case. On the way, he died in front of the shop of Satpal, PW13 who informed the Police. ASI Krishan Chand, PW10 reached the spot, recorded statement of Satpal and held the inquest Ex.PL. The dead body was taken to Civil Hospital, Jagadhri for post mortem examination, where autopsy on the body of the deceased was conducted by Dr. Sarita Gulati. On examination,

congested and lacerated. In the opinion of the doctor, the cause of death was shock and hemorrhage due to laceration in the spleen which was ante mortem in nature and sufficient to cause death due to debilitated condition of the deceased as he was found suffering from tuberculosis and was malnourished.

5. On 23rd May, 2003, an application Ex.PF was moved by the police before the doctor to seek her opinion whether the death of the deceased was homicidal or natural. The doctor gave her opinion that the death was homicidal. On 6th June, 2003, another application was moved before the doctor to seek her opinion whether the laceration of the spleen could be on account of violent attack. The doctor gave her opinion Ex.PG/1 in the affirmative.

6. On 10th June, 2003, the statement of Kamla Devi wife of the deceased Jagmal Singh was recorded by the police as Ex.PE and on the basis of that statement and the opinion of the doctor, FIR, Ex.PE/2 was drawn under Section 304 read with Section 34 of the IPC. Both the accused were arrested. After completion of investigation, charge-sheet was filed against them to stand trial for the offence under Section 304 read with Section 34 of the IPC. Charges were framed against the accused vide order dated 7th November, 2003 to which they pleaded not guilty and claimed trial.

7. To connect the accused with the crime, the prosecution examined 13 witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. to afford them an opportunity to explain the evidence appearing against them. They denied all the allegations of the prosecution to be false and pleaded their false implication. They were called upon to enter into defence, but they opted not to lead any evidence invoking

8. Prosecution, in order to prove the charge, has examined two alleged eye witnesses to the occurrence, one is Pawan Kumar who was examined as PW4 and another is Gurnam Singh who was examined as PW5. PW4 Pawan Kumar stated that the deceased was known to him. On the day of alleged occurrence, he was reversing his tractor trolley near his house to load the bags of wheat in the trolley for transporting to Bilaspur when his tractor hit "slightly" against the wall of the house of Rajinder Singh, husband of accused no 2. He asked the deceased to stop the tractor trolley as it was not possible to reverse the same, the lane being narrow. Thereafter, he loaded the bags of wheat in the trolley. When the last bag of wheat was placed in the trolley, both the accused who are wife and son of Rajinder Singh came there and only exchanged hot words with the deceased. They did not exchange blows. Thereafter, the deceased went away. The witness was declared hostile on the request of learned Public Prosecutor as in his statement before the police the witness had stated that the deceased was beaten up by both the accused with kicks and fist blows. In his cross-examination by the learned Public Prosecutor, he denied having made such a statement to the police. The statement before the police was of no legal value.

9. It was PW5 Gurnam Singh who supported the prosecution story. Even he admitted that the tractor trolley did hit the wall of the house of Rajinder Singh, husband and father of the accused. But he said that the accused came out in the open, pulled the deceased out of the seat and beat him up. Jagmal Singh was made to lie on the heap of crushed stones and was given kicks and fist blows by both the accused. He further deposed that Shobha Rani accused was holding a *Thapi* (wooden bat) used for washing

The deceased was rescued by him and Pawan Kumar. He accompanied the deceased next day to report the occurrence to the police. It is not a disputed fact that the deceased died after about three days of the occurrence.

10. PW3, Rati Ram, employer of the deceased appeared for the prosecution. He did not support the prosecution story. He stated that when the deceased returned from Machhrauli, after unloading sand, he did not tell him anything about the occurrence. He was declared hostile on the request of learned Public Prosecutor and in his cross-examination also he stuck to his stand. He denied having made any statement to the police to the effect that the deceased had told him about the occurrence.

11. Kamla Devi wife of the deceased appeared as PW6. Obviously, she was not an eye witness. But what is relevant, she stated that there was injury mark on the person of her husband. This is belied by the MLR as no injury mark was found on the person of the deceased.

12. Dr. Sarita Gulati appeared as PW12 and proved the post mortem report Ex.PN. She stated that she had conducted the post mortem examination on the dead body of the deceased. The prosecution made her a formal witness. The statements of the remaining witnesses have been found to be of not much consequence by the trial court itself and are therefore not touched upon. However, a word on the statement of PW13, Satpal in front of whose shop the death occurred is of significance. He stated that on 17th May, 2003 at about 9.45 a.m, an old man came in front of his shop, he was trembling. Then he asked if he needed help. The man could not reply and fell down. Persons gathered there. They found that the man had died. It was Satpal who informed the police of the death in front of his shop. This is the entire evidence on record.

13. We are confronted with the statements of two eye witnesses, one of whom resiled from the prosecution story. PW 3 Rati Ram did not support the prosecution story and PW4 Pawan Kumar also denied that any fist blows was given to the deceased. In short, we are left with the statement of PW5, Gurnam Singh. He supported the prosecution story. But at the same time he made material improvements in his statement to help in conviction of the accused. It was argued that this witness was resident of another village, and therefore, his presence at the time of occurrence is doubtful. If he was resident of another village, then he should have explained the reason why he happened to be at the place of the occurrence, near the house of Rajinder Singh where admittedly, the tractor trolley has been reversed by deceased Jagmal Singh hitting the wall of the house of the accused. Even in the statement before the police, PW5 Gurnam Singh did not say that Shobha Rani was holding a *thapi* (wooden bat) or she gave blows from that *thapi* on the abdomen of the deceased. This amounts to padding the prosecution story and inspires no trust. If he was not present at the time of occurrence or the presence is doubtful, then he is a witness procured by the prosecution to support its case. The trial court thought that the application Ex.PB moved by the deceased before the police is relevant piece of evidence under Section 32 of the Indian Evidence Act and is sufficient to prove the charge. The application has been treated as a dying declaration. While he had specifically stated in the application that he was beaten up by both the accused, he, in the application, significantly did not impute the *thapi* blow to Shobha Rani or that she used it to hit his abdomen. This vital aspect has been over-looked by the learned trial court which was very much material to bring home the charge under Section 304 Part II of the IPC.

14. Even assuming *arguendo*, the story of the prosecution is admitted and proven on its face value, no offence under Section 304 of the IPC is made out as per charge and at the most, the case falls under Section 34 of the IPC because neither the accused intended to kill the deceased nor could be imputed with the knowledge that the act was likely to result in death. It was explained by the counsel for the appellant, and I think correctly so, that it will not be possible to cause injury to the spleen without causing fracture of the ribs. In this case, no external injury was found on the person of the deceased leading to the inference that the spleen of the deceased was already affected on account of tuberculosis and some other ailment, and therefore, Section 304 of the IPC was not made out. The trial court agreed on this point and instead convicted the accused under Section 304 Part II of the IPC. The trial court observed from the evidence that the deceased looked weak and may have collapsed due to disease and malnourishment and therefore, the accused can be imputed with the required knowledge because they might know that the spleen of the deceased was affected on account of tuberculosis or on account of some other ailment and for that reason even a simple fist blow and kick could cause laceration in the spleen resulting into death and for this facile reason, the trial court made the case fall under Section 304 Part II of the IPC. I have no doubt that this reasoning is completely fallacious and is not supported by the entirety of the evidence read as a whole. The reasoning assigned by the learned Additional Sessions Judge, Jagadhri in his judgment dated 4th April, 2005 is not supported by clear and cogent evidence connecting the accused with the commission of crime. Jagmal Singh died four days after the occurrence while walking past the shop of Satpal collapsing to death at a public place in a busy market in

15. The other factors which persuade me to set aside the judgment of the trial court and acquit the accused Shobha Rani are that the wife of Jagmal Singh submitted a delayed complaint after the death of Jagmal Singh on 10th June, 2003 whereas the occurrence took place on 13th May, 2003. PW4 Pawan Kumar stated that Jagmal was not beaten up and even this witness turned hostile. He cannot be disbelieved out of hand. All he said was that hot words were exchanged. Hot words would be exchanged by any person whose wall had been struck by the tractor trolley driven by deceased Jagmal Singh. The other eye witness PW4 should not have been believed because there were material improvements and discrepancies in his statement. He did not make any statement before the police that Shobha Rani was holding a *thapi* and gave blows from that instrument on the abdomen of the deceased. This was enough to cause serious doubt on the prosecution story.

16. Even otherwise, there is no link between the prosecution story resulting into the death of deceased Jagmal Singh and the post mortem report because the post mortem report does not show any bodily injury on the person of the deceased and the cause of death in the post mortem report was reported due to shock and hemorrhage. Fact of the matter was that the deceased was suffering from tuberculosis and was malnourished and it is not beyond reasonable doubt that the occurrence had anything to do with the death or had accelerated it. The spleen of the deceased and its deterioration could have been known by none of the accused and any injury to it could have been only by a rib fracture and no rib fracture was found on the body of the deceased. There are many failures in the prosecution version and unexplained gaps in the link evidence produced by the prosecution to bring

17. Accordingly, this appeal is allowed. The judgment of conviction and sentence recorded by the learned Additional Sessions Judge, Jagadhri vide its order dated 4th April, 2005 is set aside. Appellant no.1, Shobha Rani is acquitted of the charges.

(RAJIV NARAIN RAINA)
JUDGE

23.9. 2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No