

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S - 1575 SB of 2016 (O&M)
Date of decision : 20.7.2017
...

Om Parkash
.....Appellant

vs.

State of Punjab
.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Aditya Pal Singla, Advocate for the appellant

Ms. Jaspreet Kaur, Assistant Advocate General,
Punjab.

...

H. S. Madaan, J. (Oral)

This appeal is directed against judgment and order dated 25.9.2015 passed by the Court of Special Judge, Ludhiana, vide which he had convicted accused – Om Parkash and others. Accused-appellant Om Parkash was convicted for offence under Sections 326 and 328 IPC and was sentenced as follows:-

<i>Name of convict</i>	<i>U/s</i>	<i>Rigorous imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine, imprisonment for</i>
Om Parkash	326 IPC	10 years	Rs.10,000/-	SI for three months
	328 IPC	5 years	Rs.5,000/-	SI for two months

Both the sentences were ordered to run concurrently.

Feeling aggrieved by the said judgment the accused-appellant has filed the present appeal.

Briefly stated the prosecution story is that complainant Nikky Sharma had got a statement recorded with the police to the effect that he had been residing with Radha Mahant Eunuch at Ludhiana for 8-9 months earlier. As a matter of fact the purpose of his residing there was to perform dance etc. Accused – Goldy, Manga, Parveen Mahant and Renu Mahant had also been residing with Radha Mahant; that he had expressed a desire to go home, while all of them were sitting in the house of Radha Mahant at Mohalla Deep Nagar at about 10.45 P.M. Radha Mahant had administered some intoxicating substance to him, as a result of which he become semiconscious. Then Goldy and Manga, who were under the influence of liquor sodomized him. According to the complainant, thereafter he lost his consciousness. Radha Mahant - Eunuch, Renu, Parveen, Manga and Goldy as a result of conspiracy between them amputated his penis; that when he regained consciousness, he found himself near Milk Plant Ferozepur Road, Ludhiana; that he was taken to Civil Hospital, Ludhiana by some un-known person. He got recorded his statement with the police on the basis of which formal FIR No. 94 dated 20.9.2008 under Sections 377, 328, 326, 148, 149 IPC was recorded with Police Station Division No. 8, Ludhiana. The

case was investigated. The accused were arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Ludhiana.

Judicial Magistrate Ist Class, Ludhiana, supplied copies of documents relied upon therein to the accused free of cost, as provided under Section 207 Cr.P.C. and then committed the case to the Court of Sessions vide order dated 6.1.2009, for the reason that offence under Section 328 IPC happen to be triable by the Court of Sessions.

The case was entrusted to the Court of Additional Sessions Judge, Ludhiana. After hearing arguments, the trial Court framed charge for offence under Sections 377, 326, 328, 148, 149 IPC against the accused, to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined PW-1 Dr. Sunil Aggarwal, PW-2 Nikky Sharma - complainant, PW-3 Krishan Singh, PW-4 Retired SI Jagjit Singh, PW-5 ASI Vinod Kumar, PW-6 Inspector Ravinder Singh and closed the prosecution evidence.

When the prosecution evidence got concluded, statement of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against accused were put to them, but they denied the allegations, contending that they are innocent and have been falsely involved in this case. Accused – Om Parkash took up the plea that penis of Nikky Sharma was cut from its

base by him, Mohinder Nath and Sushil Kumar and that Renu Mahant, Radha Mahant, Parveen Mahant, Goldy Mahant and Mangat Rai had nothing to do with the same.

Accused, however, did not lead any evidence in defence.

After hearing arguments, the following points for determination were formulated by the trial Court :-

- Whether on 18.9.2008 at about 1.45 P.M., in the area of Mohalla Deep Nagar, all the accused gave some poisonous substance in the tea of complainant and he became unconscious and committed an offence punishable under Section 328 IPC.
- Whether on 18.9.2008, accused Goldy Mahant and Mangat Ram committed unnatural offence with complainant and committed an offence under Section 377 IPC.
- Whether on 18.9.2009 all the accused amputated the penis of the complainant and committed an offence under Section 326 IPC.

After hearing arguments, learned trial Court convicted and sentenced the accused Om Parkash as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant, learned State counsel, besides going through the record and I find that there is no illegality or infirmity in the trial Court judgment, as regards the conviction of accused-appellant Om Parkash.

Nikky Sharma, while getting his statement recorded

during the trial had supported the prosecution story on material aspects, stating that Radha Mahant had brought a cup of tea for him which was laced with some intoxicant substance and after consuming it he became semiconscious. Thereafter Manga and Goldy committed carnal intercourse with him. He had raised hue and cry as he was under the influence of intoxicant; that all the accused caught hold of him and accused Parveen sat on his chest and gagged his mouth and accused Radha Mahant chopped off his penis. It needs to be noted that Nikky Sharma has been changing his version from time to time, earlier naming five accused, subsequently, taking names of Om Parkash, Mohinder Nath and Sushil Kumar. While his statement was recorded in the Court, he stated in his examination-in-chief that Parveen sat on his chest and gagged his mouth, whereas Radha Mahant chopped off his penis. Those things are not found to be there in the statement made to the police on 8.5.2009. There he had stated that when he became semiconscious then Manga and Goldy had sodomized him and thereafter all the accused under the influence of liquor had castrated him, chopping off his penis. Whereas in his statement, which was recorded after summoning of additional accused, he had inculpated all of them.

Then there is statement of PW-3 Hari Krishan, before whom Om Parkash and Mohinder Nath, are stated to have made extra judicial confession regarding the present incident, requesting him to produce them before the police. In addition to that, then there is disclosure statement of Om Parkash, stated to have been suffered by him on 29.9.2008 during interrogation that during the intervening

night of 19/20.9.2008, he and Sushil Kumar had caught hold of Nikky Sharma from his arms and Mohinder Nath had chopped of penis of Nikky Sharma with knife/karad after making him unconscious and he could point out the place where it was so done and that the venue of the incident was a room without roof in the old Court Complex. Accused Mohinder Nath had also made a similar disclosure statement and got the knife used in the incident, recovered. Om Parkash, in police custody, had taken the police party to the venue of the incident.

Then there is medical evidence in the form of statement of PW-1 Dr. Sunil Aggarwal, who had medico legally examined Nikky Sharma on 20.9.2008, finding that it was total castration of penis from the base; bleeding was present; nature of injury was grievous; kind of weapon used was sharp and probable duration of injury was within 12 hours. He proved copy of MLR as Exhibit PA and pictorial diagram showing seats of injuries as Exhibit PA/1. In that way corroboration of the prosecution story is provided by the medical evidence.

The investigation in this case has been carried out in a fair and impartial manner. In addition to that Om Parkash, while being examined under Section 313 Cr.P.C. had admitted that he alongwith Mohinder Nath and Sushil Kumar had castrated the penis of the complainant.

The finding of the trial Court was that :-

“In view of my above discussion, I hold that the prosecution has successfully proved that on

18.9.2008, accused Om Parkash, Goldy, Manga, Radha Mahant, Sushil Kumar (since proclaimed offender) and Mohinder Nath (against whom proceedings have been abated) castrated the penis of complainant under the influence of intoxicant delivered by Radha Mahant in the tea and have committed an offence under Section 326, 328, 34 IPC. Whereas, accused Goldy and Manga committed carnal intercourse against the nature with complainant and committed offence under Section 377 IPC.”

The trial Court was justified in returning finding of guilt of accused Om Parkash as regards offence under Section 326 and 328 IPC and to sentence him for the said offences.

However, learned counsel for the appellant prays for taking a lenient view in the matter, for the reason that Om Parkash had already undergone 9 years, 10 months and 13 days of sentence, out of 10 years awarded to him for offence under Section 326 IPC, which is larger sentence, since sentence under Section 328 IPC is only for 5 years. He stated that Om Parkash is aged about 65-66 years, as such his sentence should be reduced.

After hearing learned counsel for the appellant - accused Om Parkash, I am of the view that his contention has force and ends of justice would be adequately met if he is sentenced to imprisonment already undergone by him in this case, as regards offence under Section 326 IPC, whereas maintaining sentence under Section 328

IPC, which has been ordered to run concurrently. I order accordingly.

Therefore, the impugned judgment is upheld as far as conviction part is concerned, whereas the same is modified as regards sentence part, as pointed out above.

The appeal stands disposed of accordingly.

(H.S. Madaan)
Judge

20.7.2017		
chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No