

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S - 4778 SB of 2015 (O&M)

Date of decision : 20.9.2017

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Radha Mahant

.....Appellant

vs.

State of Punjab

.....Respondent

2.

CRA-S - 4634 SB of 2015 (O&M)

...

Mangat Ram

.....Appellant

vs.

State of Punjab and another

.....Respondents

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

Present: Mr. Gaurav Sharma, Advocate for the appellant
in CRA-S-4778-SB-2015

Mr. Bhoop Singh, Advocate for the appellant
in CRA-S-4634-SB-2015

Ms. Jaspreet Kaur, Assistant Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

Vide this judgment I propose to dispose of two appeals,
bearing CRA-S-4778-SB-2015 filed by appellant- Radha Mahant and
CRA-S-4634-SB-2015 filed by appellant – Mangat Ram, arising out
of the single judgment passed by Additional Sessions Judge,

Ludhiana, dated 25.9.2015. Vide said judgment, the learned Additional Sessions Judge, Ludhiana, had convicted accused Om Parkash, Goldy, Manga, Radha Mahant for offence under Sections 326, 328,, 34 IPC, whereas Goldy and Manga were convicted for offence under Section 377 IPC also. Accused Sushil Kumar had been declared as proclaimed offender. Accused Mohinder Nath had expired and proceedings against him stood abated.

Om Parkash, Radha Mahant and Mangat Ram had filed appeals against the judgment of conviction. The appeal filed by Om Parkash bearing CRA-S-1575-SB-2016, was decided on 20.7.2017 and he was sentenced to imprisonment already undergone by him in this case as regards offence under Section 326 IPC, whereas sentence under Section 328 IPC was maintained.

Present appellants – Radha Mahant and Mangat Ram were convicted and 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>
Radha Mahant	326 IPC	10 years	Rs.10,000/-	SI for three months
	328 IPC	5 years	Rs.5,000/-	SI for two months
Mangat Ram	377 IPC	5 years	Rs. 5,000/-	SI for two months
	326 IPC	10 years	Rs.10,000/-	SI for three months
	328 IPC	5 years	Rs.5,000/-	SI for two months

All the sentences were ordered to run concurrently. Further convicts were ordered to compensate the complainant/injured to the tune of Rs.1 lac each imposed under Section 357 Cr.P.C. and relying upon case titled as **C. Ganga Vs. Lakshmi Ammal, 2009 (5) RCR (Criminal) 141,** in default of payment of compensation amount,

imprisonment of six months was ordered to be imposed.

Feeling aggrieved by the said judgment the accused-appellants have filed the present appeals.

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, statements 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 were innocent and had 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.

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. Accused – convicts Radha Mahant and Mangat Ram have filed the present appeals.

I have heard learned counsel for the appellant, learned State counsel, besides going through the record.

I am of the considered view that the prosecution has not been successful in proving its charge against Radha Mahant and Mangat Ram beyond a shadow of reasonable doubt. The yardstick is used for decision in criminal cases, the reasons for it are many.

Firstly although in his statement recorded with the police

complainant Nikky Sharma had named several persons, as alleged in earlier part of the judgment. However, after registration of the FIR when the case was investigated, the version of the complainant qua Renu Mahant, Mangat Rai, Parveen Mahant, Radha Mahant and Goldy was not found correct. Resultantly, they were declared innocent and were not challaned. Only Om Parkash, Mohinder Nath and Sushil Kumar (since declared proclaimed offender) were found to be guilty and were challaned. It was only during the trial, when an application under Section 319 Cr.P.C. was filed, that Radha Mahant, Mangat Ram etc. were summoned to face trial as additional accused. It is not uncommon to see people in the region trying to inflate number of the assailants and accused by throwing the net wide and involving as many persons of the opposite camp as possible. Therefore involvement of Radha Mahant and Mangat Ram in that way could be termed as doubtful.

Secondly, Om Parkash accused in his statement under Section 313 Cr.P.C. has in no uncertain terms stated that penis of Nikky Sharma was cut from its base by him, Mohinder Nath and Sushil Kumar, categorically adding that Renu Mahant, Radha Mahant, Parveen Mahant, Goldy Mahant and Mangat Ram had nothing to do with the same. Om parkash had no reason to take the blame on himself, as well as, Mohinder Nath and Sushil Kumar, whereas giving a clean chit to Renu Mahant, Radha Mahant, Parveen Mahant, Goldy Mahant and Mangat Ram without any rhyme and reason. According to Om Parkash, Nikky Sharma had willfully got his penis cut from them.

The medical, evidence does not corroborate the prosecution story. According to the statement made by complainant Nikky Sharma to police his castration was done on 18.9.2008 at about 10.45 P.M., when he was administered some intoxicating substance, as a result of which he lost consciousness, thereafter Manga and Goldy had committed unnatural offence with him. However, he was medico legally examined by Dr. Sunil Aggarwal PW-1 on 20.9.2008 at 7.30 P.M. finding that total castration of penis had been done from its base. He has given the probable duration of injuries within 12 hours. Going back the time comes to 20.9.2008 at 7.30 A.M., which does not corroborate the version given by the complainant to the police that it was so done on 18.9.2008 at 10.45 P.M. As regards, complainant having been sodomized, that would have been revealed on medico legal examination of the complainant, but as it is evident from the record, when the Investigating Officer moved an application before doctor Mark – 1 on 21.9.2008, for medico legal examination of Nikky Sharma, complainant, he refused to get himself medically examined on that date, stating that he would undergo that medical examination one or two days thereafter. But then no such medical examination was got conducted. It has to be taken note of that complainant Nikky Sharma had initially named five accused, but subsequently added three others i.e. Om Parkash, Mohinder Nath and Sushil Kumar by making statement to the police. According to him accused Radha Mahant had made him consume a cup of tea laced with some intoxicant substance, thereafter he became semiconscious; that thereafter Manga and Goldy committed carnal

intercourse with him; that 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, whereas accused Radha Mahant chopped of his penis. Though in his examination-in-chief, he has stated that Parveen sat on his chest and gagged his mouth, whereas Radha Mahant castrated his penis.

It has been observed that complainant had stated on 8.5.2009 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 of his penis. However, factum of accused Parveen sitting on his chest and accused Radha Mahant castrating his penis is not found to be there in his statement.

The complainant has been changing his version quite often, which also put a question mark over his credibility, as such the trial Court was not justified in convicting Radha Mahant and Mangat Ram. The judgment of conviction and sentence passed against them is set aside by way of acceptance of appeals and they are acquitted of the charge framed against them.

Accordingly, both the appeals are accepted.

(H.S. Madaan)
Judge

20.9.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No