

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2972-2014 (O&M)

Date of Decision:- 02.02.2017

Saroj Bala

....Petitioner

Versus

Vipin Kumar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.B. Aggarwal, Advocate, for the petitioner.

Mr. Ashik Malik, Advocate, for respondent No.1.

Mr. D.R. Singla, DAG, Haryana.

RITU BAHRI, J. (Oral)

Present revision petition is against order dated 25.08.2014 whereby the learned Additional Sessions Judge (Exclusive Court of Heinous Crimes against Women), Kurukshetra dismissed the application for framing of charge under Section 302 IPC against accused Vipin Kumar.

As per the allegations set out in the FIR, the daughter of complainant, namely, Monika (since deceased), was taken from the college in love net by Vipin Kumar son of Kishanbir, caste Jat, resident of Alika, District Palwal but later on because of fear of parents and “social limits” they went somewhere else and Monika was then instigated by Vipin Kumar to commit suicide by jumping in front of a train at Hodal Railway Station. Monika jumped in front of the train and was killed on the spot whereas Vipin Kumar saved himself and as such, the death of her daughter took

place because of accused Vipin Kumar as he compelled her to commit suicide.

After investigation in the FIR, the charges were framed under Sections 363, 366-A, 306 and 309 IPC, vide order dated 10.04.2009, passed by the Court of Ms. Sneh Prashar, the then, learned Additional Sessions Judge, Faridabad. Thereafter, an application for framing additional charges under Sections 376 and 302 IPC was filed on 13.06.2011 i.e. after examining of 14 witnesses, out of 21 witnesses. Thereafter, supplementary challan under Section 376 IPC was filed on 05.08.2011 and a fresh charge-sheet for the commission of offences punishable under Sections 363, 366-A, 376, 306 and 309 IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes Act, 1989 was framed on 05.08.2011.

After presentation of the supplementary challan, vide order 22.09.2012, an application for framing of charge under Sections 302 and 376 IPC was dismissed. This order was challenged by filing Criminal Revision No.3657 of 2012 before this Court and vide order dated 05.05.2014 the matter was remanded back to the trial Court for first determining, in the light of evidence before it as to whether such a charge is made out or not. Thereafter, the impugned order has been passed.

Learned counsel for the petitioner has argued that the body of Monika victim was found in almost naked conditions in the month of December as per photographs (Annexure P-10) and she had been actually raped and thereafter thrown in front of running train. As per confessional statement given by accused Vipin Kumar (Annexure P-9), he was to get recovered a letter/compromise where they had decided to commit suicide

but the letter has not been recovered so far. The deceased was last seen in

the company of accused Vipin Kumar, he has not offered any appropriate explanation. Moreover, as per confessional statement of accused Vipin Kumar (Annexure P-9) they jumped together before the train but somehow he came under the train and was saved and Monika was crushed and died on the spot. He became unconscious and after regaining conscious he went from the spot and ran away in the fields. Once the accused had jumped along with the deceased in front of fast running train it is not believable that he could come under the train and be saved without a scratch. Learned counsel while referring to the photographs (Annexure P-10) has argued that the dead body was found without clothes and there was sufficient evidence to frame charge under Section 302 IPC. In this regard, he has placed reliance upon judgments of Supreme Court in cases **Rohtash Kumar Vs. State of Haryana**, 2013(3) R.C.R. (Criminal) 355 and **Ramesh Vs. State through Inspector of Police**, 2014(4) R.C.R. (Criminal) 122.

Learned State counsel has argued that on the basis of material available with the police, the challan has rightly been presented after recording the statements made by the five witnesses i.e. PW15 to PW19 whereby nowhere it was stated that she had been murdered by accused Vipin Kumar. Monika had been taken away from the college by the accused as they were having love affair and this fact is not in dispute or has been denied by any of the witness. Accused Vipin Kumar after recording his confessional statement (Annexure P-9) has taken the police to the room at Pipli where he was residing for 2-3 days with Monika and got recovered some books and clothes. There is no evidence to show that he has actually pushed Monika in front of the train and he had committed murder.

the record, this Court is of the considered view that the relationship between Monika and the present accused Vipin Kumar is not in dispute. Both were students of college and the accused had taken her from the college. They had stayed in a room in Pipli from where they went to Hodal Railway station and as per confessional statement made by Vipin Kumar (Annexure P-9), they could not meet the father of Vipin Kumar to seek his permission to get married and thereafter feeling helpless, they had decided to commit suicide and jumped in front of the train. Vipin Kumar as per luck got saved and became unconscious. The distance between the room at Pipli and Hodal railway station is about 150 kms and at the railway station in the month of December, Vipin Kumar could not have committed rape with Monika on the railway station. As per recovery memo (Annexure P-2), a sweater, jacket and shoes have been recovered from the railway track. The very fact that Vipin Kumar got saved would not be a sufficient material to frame a charge under Section 302 IPC. Since, Monika was in the company of the accused Vipin Kumar for the last 3-4 days, the charge under Section 376 IPC has been framed as she was minor at that time and had been taken away by accused Vipin Kumar from the hostel.

Moreover, perusal of statement of ASI Surender Singh (Annexure P-14) shows that on 25.12.2008 when he was posted at Police Post GRP Palwal, on receiving *ruqua*/information (Ex.P1) from railway authorities, he went to the railway station Hodal. The photographs of the dead body were taken and sent for postmortem through Virender Singh HC. A jacket was lying on the track was containing one slip (Ex.P12) as well. After the postmortem was conducted, the police was handed over two sealed parcels containing clothes and swabs of the deceased. As per disclosure

statement, accused took ASI Surender Singh to a room which he had taken on rent and got recovered certain belongings of deceased Monika, which were taken into possession vide recovery memo (Ex.P17). The other articles were identified by Narender, uncle of Monika, as belonging to Monika. In cross-examination, he admitted that the victim was properly dressed. One sweater and sleeve portion of a shirt were lying at nearby track.

As per deposition of Dr. Usha Mathur (Annexure P-15), she along with Dr. B.S. Sharma had conducted the post-mortem on the body of Monika and possibility of intercourse could not be ruled out. There was no injury on the internal or external parts of the body of deceased.

Finally, as per version given by complainant-Chhotan Lal Chote Lal (since deceased), her daughter and accused Vipin Kumar had jumped in front of the train. Monika killed on the spot and Vipin Kumar saved himself. Accused Vipin Kumar had compelled her daughter to commit suicide.

Taking into consideration all the evidence brought on record, the ratio of above-said judgments is not applicable to the facts of this case and accordingly the present revision petition deserves to be and is hereby dismissed in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant revision petition is hereby dismissed as such.

02.02.2017
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No