

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA No.2954-SB of 2012

Date of decision : 05.02.2018

Pirthi and another

.....Petitioners

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Sanjeev Sharma, Legal Aid Counsel for the appellants.

Mr. Anil Mehta, D.A.G., Haryana.

* * *

DAYA CHAUDHARY, J.

The present appeal has been preferred against the judgment of conviction dated 31.08.2012 and order of sentence dated 03.09.2012, passed by learned Additional Sessions Judge, Jind, vide which both the appellants namely Pirthi and Sewak Ram were held guilty and convicted for the offences punishable under Sections 304 Part-II and 379 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced vide order dated 03.09.2012 as under : -

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
304 Part-II/34 IPC	Rigorous imprisonment for seven years each	₹5000/- each	Three months
379/34 IPC	Rigorous imprisonment for one year each	₹2000/- each	One month

Both the substantive sentences were ordered to run concurrently. It was also ordered that period of custody already undergone by the convicts during investigation, inquiry and trial shall be set off against the substantive sentences awarded to them.

This appeal was admitted on 11.10.2012 and recovery of fine was also stayed and their sentences were suspended vide different orders, during pendency of the appeal.

The sequence of the events leading to this prosecution are that on 09.11.2010, a telephonic message was received from Police Station-Civil Lines, Hisar in Police Station-City Narwana that Bhagwanta (since deceased) was admitted in Jindal Hospital, Hisar. ASI Rattan Singh (PW-8) went to Jindal Hospital, Hisar on 10.11.2010 but injured Bhagwanta was found to be unfit to make statement as stated by the concerned doctor on duty. On 15.11.2010, after having opinion of fitness of injured Bhagwanta from the doctor, his statement was recorded by ASI Rattan Singh, wherein it was stated that he had retired from the post of Sweeper from Railway Department. On 01.11.2010, he left his house for Oriental Bank, Narwana to withdraw the amount of pension. On reaching at Punjabi Chowk, Narwana, accused/appellant Sewak met him, who was previously known to him. Both of them went to Oriental Bank of Commerce, Narwana. Complainant Bhagwanta received pension amount of ₹5000/-. Thereafter, on asking of Sewak Ram, complainant went to his house for taking liquor. After taking liquor on the way from Bhagat Singh Chowk, Narwana, they started consuming liquor at the house of Sewak. After some time,

accused/appellant Pirthi also arrived there and they all of three consumed liquor. After taking liquor, complainant became unconscious. Both accused/appellants Sewak and Pirthi committed act of sodomy with him and also removed cash from his pocket. Complainant Bhagwanta was shifted to his house by Ravi (PW-7). Finding him injured, his son Ram Kumar took him to Civil Hospital, Narwana, where the doctor after providing first aid, referred him to PGIMS, Rohtak. He was admitted in PGIMS, Rohtak. Finding treatment to be unsatisfactory, his son took him to Jindal Hospital, Hisar on 03.11.2010.

Initially the case was registered vide FIR No.272 dated 15.11.2010 (Ex.PB) at Police Station - City Narwana for offences under Sections 377 and 379 IPC. On sending *Rukka* by ASI Rattan Singh, statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'). Spot was inspected and accused were arrested. During investigation, Section 326 IPC was also added but later on, Sections 326 and 377 IPC were deleted and Section 325 IPC was added. Bhagwanta died in Jindal Hospital, Hisar on 25.02.2011. Inquest proceedings were conducted under Section 174 Cr.P.C. and, thereafter, Section 304 IPC was added. After completion of investigation, report under Section 173 Cr.P.C. was submitted in the Court against both the accused/appellants. Thereafter, the provisions of Section 207 Cr.P.C. were complied with and case was committed to the Court of Sessions by learned Area Magistrate.

The accused were charge-sheeted for the offences punishable

under Sections 379, 325 and 304 read with Section 34 IPC vide order dated 06.08.2011. The contents of charges were read-over and explained to the accused/appellants, to which they pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined as many as 14 witnesses namely ASI Ram Kumar, HC Sajjan Singh, Dr. Sandeep Kumar, Raj Kumar S/o Bhagwanta, Ram Kumar S/o Bhagwanta, ASI Wazir Singh, Ravi S/o Pappu, ASI Rattan Singh, SI Jagbir Singh, HC Rajinder Kumar, Constable Balvinder Kuldeep Gupta, Draftsman, EHC Lakhpat Singh and Dr. Rajnish Sehgal, as PW-1 to PW-14, respectively.

When examined under Section 313 Cr.P.C., the accused/appellants denied the prosecution allegations and pleaded innocence and false implication. They further pleaded that the deceased was patient of piles and had quarreled with his son. They both were under influence of liquor. Bhagwanta fell on stones and received injuries.

In their defence evidence, the accused/appellants examined Pala Ram, Medical Record Keeper of PGIMS Rohtak as DW-1.

On appreciation of evidence on record led by both the sides and the contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted the accused/appellants for the offence punishable under Sections 304 Part-II and 379 read with Section 34 IPC and sentenced them to undergo the imprisonment as mentioned in the upper part of the judgment.

Aggrieved with the aforesaid judgment of conviction and the order on the quantum of sentence, the present appeal has been preferred by

the accused/appellants by raising various grounds.

Learned Legal Aid Counsel appearing for the appellants submits that there was no eye-witness of the incident but still Ravi (PW-7) has stated that he had seen the accused/appellants along with Bhagwanta while consuming liquor. But while stepping into the witness box, said Ravi (PW-7) did not support the prosecution version. Learned counsel further submits that the recovery of ₹500/- from appellant Sewak Ram also falsifies the story of the prosecution as it is an admitted case of the prosecution that Bhagwanta received ₹5000/- as pension but the recovery of only ₹500/- has been shown by the police just to complete the chain of events. Learned counsel further submits that there was no motive with the appellants to commit such an act and the story of the prosecution appears to be improbable as injured/deceased Bhagwanta was admitted in hospital on 03.11.2010 and thereafter, he was discharged on 21.11.2010. Thereafter, he was admitted and discharged on various occasions. It shows the negligence on the part of doctors of the hospital. He was given treatment and died on account of sepsis and septi cemic shock, which shows that the death occurred due to not giving proper treatment by the doctors.

On the other hand, learned State counsel submits that the judgment of the trial Court is well reasoned and same has been passed after proper appreciation of evidence. He also submits that there was no previous enmity between the parties and there was no reason for the complainant to falsely implicate the accused persons. Dying declaration made by the deceased cannot be doubted as the statement was made by the deceased

before his death. Learned State counsel also submits that there was no external injury on the person of the deceased. A plastic pipe with cotton string was found to be inserted inside the body of the deceased, which shows that accused/appellants were having knowledge that it was likely to cause death. In absence of any intention, the offence was made out under Section 304 Part-II IPC and Section 326 and 377 IPC were deleted.

Heard arguments of learned counsel for both the sides and have also perused the statements of prosecution witnesses, defence witnesses as well as the trial Court record. I have also gone through the statements of the accused/appellants recorded under Section 313 Cr.P.C.

Facts relating to lodging of FIR, admission of the deceased in the hospital and thereafter, recording his statement by the Investigating Officer, facing trial by the accused/appellants and their conviction by trial Court, are not disputed.

As per statement of PW-7 Ravi, he saw that Bhagwanta and Ram Kumar son of Bhagwanta were quarrelling to each other under influence of liquor. Ram Kumar pushed him and he fell down on the pieces of stones and received some injuries. In cross-examination by learned Public Prosecutor, he denied having made any statement to the police. He had also denied that on the date of occurrence, he was present in his house. He has also denied that Sewak and Bhagwanta were taking liquor and after sometime, accused/appellant Pirthi also reached there. In the cross-examination by learned defence counsel, he has admitted that the deceased was habitual of taking liquor and he was suffering from piles. He always

used to remain under influence of liquor. There used to be quarrel between Bhagwanta and his son Ram Kumar due to their bad habit of consuming liquor.

PW-8 ASI Rattan Singh, the Investigating Officer of the case has stated in his statement that he cannot tell the proper names of the owners of the houses as per rough site plan Ex.PT. He could not tell the names of those persons who were present at the time of preparing the rough site plan. He has also stated that at the time of recording the statement of Bhagwanta, only he and his two sons were present and no other person was present. He took the parcel from the doctor at Jindal Hospital, Hisar. The parcel was having total 10 seals, out of which four were on the upper side of the parcel and six seals were on the side of the parcel. He has also stated that the seal was not affixed in his presence as it was already sealed. It has also been admitted by PW-8 that deceased Bhagwanta did not get recorded in his statement that any plastic object was inserted by the accused persons in his anus, whereas he got recorded about the unnatural offence being committed with him.

When deceased Bhagwanta was under treatment, he got recorded in his statement that there was no previous enmity between him and the accused/appellants. From the statement of prosecution witnesses, it could be proved that the only alleged eye-witness of the incident *i.e.* PW-7 Ravi did not support the case of the prosecution and turned hostile. He denied having made his statement to the police under Section 161 Cr.P.C.

From a perusal of the evidence available, it has been proved on

record that the deceased and accused/appellants were not having any previous enmity. They had a quarrel while consuming liquor. The law to be dealt with the evidence of a hostile witness is that the evidence of such a witness need not be completely rejected only because he has been turned hostile. The Court must, however, be circumspect in accepting testimony and, to the extent possible, look for its corroboration. The testimony of a hostile witness may not be rejected outrightly but the Court is to see prima facie that the witness who makes different statements at different times is having no regard for truth. It has been held in various judgments that Court should be slow to act on the testimony of such a witness.

In the present case, neither there was any personal enmity between the parties nor there was any reason for the accused/appellants to cause injuries to the deceased or to cause his death. Even otherwise, there was no reason to falsely implicate the accused/appellants. It has nowhere come in the statements of the prosecution witnesses that any enmity was there between the deceased and the accused/appellants. It appears from the statements of the witnesses that the accused/appellants and the deceased had a sudden quarrel as they were under influence of liquor. There was no premeditation, intimidation or any motive between the parties. Even the blow given to the injured was not repeated.

On perusal of evidence available on record, I am of the opinion that there was no intention of the accused/appellants to kill the deceased. At the most, it can be said that the accused/appellants had the knowledge that injury inflicted upon the deceased was likely to cause death.

Moreover, the accused/appellants have been convicted on the basis of evidence of one eyewitness and statement of the deceased. Both the accused/appellants have been convicted/sentenced for maximum period of seven years. They have faced the agony of trial since lodging of FIR *i.e.* 15.11.2010. They have also undergone actual sentence of more than two years. There is no other case against them as is reflected in the custody certificate.

Accordingly, the present appeal is partly allowed. While upholding the conviction of the appellants, the sentence of imprisonment awarded against to them is reduced to the period already undergone by them. The amount of fine, imposed by learned Trial Court, be deposited within a period of one month from the date of receipt of copy of the order by learned counsel for the appellants, failing which, the appellants shall have to undergo the remaining part of their sentence. They are on bail as their sentence was suspended.

Dated: 05.02.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No