

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

CRR No.1225 of 2009.

Decided on:-September 07, 2018.

Ranvir alias Pinki.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Shiv Raj Malik, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 25.04.2009 passed by learned Additional Sessions Judge (ad hoc) Fast Track Court, Rohtak, whereby the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 26.07.2006 passed by learned Sub-Divisional Judicial Magistrate, Meham convicting him for offence under Section 429 IPC and sentencing him to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, was dismissed.

Briefly stated, FIR No.47 dated 13.03.1999 under Section 429 IPC was registered against the petitioner at Police Station Meham on the basis of a complaint made by Rameshwar son of Chander Singh that he sells vegetables on a Rehri, which is run by a mare. The mare was pregnant. He had tied the mare in the street. On the night of 11.03.1999 at about 10.00

P.M., when the complainant woke up to see the mare, he found that petitioner-accused Ranvir alias Pinki had put his hand in the vagina of mare. When complainant raised an alarm, the accused ran away from the spot. The feet of the mare were tied and profuse bleeding was present from the vagina of the mare. The complainant contacted a veterinary surgeon on the next morning, who gave medicines to the mare, but the mare delivered a dead colt and the mare also died on the night of 12/13.09.1999.

The police investigated the matter and on completion of investigation, Challan under Section 173 Cr.P.C. was presented in the Court. Copies of Challan, as envisaged under Section 207 Cr.P.C., were supplied to the accused free of costs.

Finding a prima-facie case against the accused, he was charge-sheeted for the commission of offence punishable under Section 429 IPC to which he did not plead guilty and claimed trial.

In support of its case, the prosecution examined complainant Rameshwar as PW1, Ram Karan as PW2, Dr. Jagat Singh Dhull, Veterinary Surgeon as PW3 and SI Ram Singh as PW4. Thereafter, statement of the accused under Section 313 Cr.PC was recorded, wherein all the incriminating evidence produced against him was put to him, but he denied the same and claimed false implication.

Vide impugned judgment and order dated 26.07.2006, learned trial Court convicted the petitioner for offence under Section 429 IPC and sentenced him in the manner as mentioned hereinabove.

Against the judgment and order dated 26.07.2006 passed by learned trial Court, the petitioner preferred an appeal before the Court of Session. However, the appeal was also dismissed by learned Additional Sessions Judge (adhoc) Fast Track Court, Rohtak vide judgment dated 25.04.2009.

It is in the aforesaid circumstances, the petitioner has preferred the present revision petition.

Learned counsel for the petitioner has argued that the Courts below have not evaluated the evidence correctly and have arrived at a wrong conclusion. There was no evidence of poisoning in the death of the mare. In fact, the case was registered at 04.15 P.M. on 13.03.1999 and the post-mortem was conducted by Dr. Jagat Singh Dhull (PW3) at 01.30 P.M. on 13.03.1999 i.e. prior to the registration of the FIR and before the matter came into the knowledge of the police and without there being any application moved by the police. In the post-mortem report and the statement of Dr. Jagat Singh (PW3), there is no evidence that bleeding occurred to the mare and death of the mare was the result of allegedly inserting hand in the vagina of the mare.

He has further argued that Ram Karan (PW2) is the real brother of the complainant and, therefore, his testimony should not have been read into evidence as he was an interested witness. The evidence of complainant Rameshwar as PW1 and his brother Ram Karan as PW2 is again contradictory with their statements under Section 161 Cr.PC recorded by the police. Even the non-examination of the investigating officer was fatal to the

case of the prosecution. Conducting the post-mortem report before the registration of the FIR and that too not on the request of the police coupled with the fact that the non-examination of the doctor, who treated the mare immediately before its death are glaring points which have not been taken into consideration by the Courts below.

On the other hand, learned State counsel has argued that the scope of revisional jurisdiction is limited and the petitioner cannot re-agitate the case in revision petition. He has further argued that the Courts below have rightly examined the evidence brought on record and held the petitioner guilty for the offence under Section 429 IPC. There was no previous rivalry between the complainant and the petitioner and, therefore, there was no occasion for the complainant to name him falsely. On the night of occurrence at about 10.00 P.M., the complainant had found that the accused had tied the feet of the mare and put his hand in the vagina of the mare for which treatment was sought from the doctor, but a dead colt was delivered by the mare. Even the mare also died due to poisoning caused by the accused while inserting hand in the vagina of mare.

I have heard learned counsel for the parties.

The very document on the basis of which conviction was based by the Courts below is the post-mortem report Ex.P3, which was proved by Dr. Jagat Singh Dhull, Veterinary Surgeon who had appeared in the witness box as PW3. In the said report, PW3 has mentioned that in his opinion, the animal died due to haemorrhagic shock as a result of excessive bleeding. As

per the post-mortem report Ex.P3, the mare had died on 13.03.1999 at about 02.00 A.M. i.e. in the intervening night of 12/13.03.1999.

As per the prosecution version, complainant Rameshwar had seen the accused inserting hand in the vagina of the mare at about 10.00 P.M. on 11.03.1999 and on seeing the complainant, the accused ran away from the spot. There is no eye witness of the occurrence. The only independent witness examined by the complainant is none else, but Ram Karan (PW2), who is the real brother of complainant. This witness while appearing in the witness box as PW2 has deposed that when at about 09.30 P.M., he was coming to his house, he saw that the hands of accused Ranvir were drenched in blood. When he asked for the reason, the accused ran away. Thereafter, he went to the house of the complainant, who told that the accused had inserted his hand in the vagina of the mare. Meaning thereby, he had not seen the accused committing the alleged crime and his testimony, being an interested witness is not reliable.

Moreover, complainant Rameshwar while appearing in the witness box as PW1 has deposed that he had provided medical treatment to his mare through a doctor on the next morning, but neither he has disclosed the name of the said doctor nor the prosecution has examined any such doctor, who had given treatment to the mare on 12.03.1999.

Thus, in these circumstances, this Court finds that in the absence of any eye-witness of the occurrence and the non-examination of the doctor, who gave medical treatment to the mare of the complainant on 12.03.1999,

the entire case of the prosecution becomes doubtful and as such, the petitioner deserves to be given the benefit of doubt.

Accordingly, the impugned judgment of conviction and order of sentence dated 26.07.2006 passed by learned trial Court and the impugned judgment dated 25.04.2009 passed by learned appellate Court are set aside. The petitioner is acquitted of the charges levelled against him.

The revision petition is, accordingly, allowed.

September 07, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No