

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1781-DB-2014
Reserved on : 10.04.2019
Date of decision : 12.04.2019

Ranbir

... Appellant

Versus

State of Haryana

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Jitender Dhanda, Advocate
for the appellant.

Mr. Vishal Garg, Addl. A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order 21.10.2014 and 28.10.2014 rendered by the learned Additional Sessions Judge, Rohtak, in Sessions Case No.25 of 2011 whereby the appellant, who was charged with and tried for offence punishable under Sections 302 of the Indian Penal Code (in short 'IPC'), has been convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one year.

2. The case of the prosecution in a nutshell is that on 18.10.2010 a telephonic information was received by the police that in Dairy Mohalla, Rohtak, a girl had been murdered after being raped. The police reached the spot. Statement of PW-21 Kamla was recorded. According to her, she was working in Aanganwari as a helper. She had three daughters and one son.

The eldest daughter Pushpa was aged about 24 years. Thereafter the girl (name withheld as initially the accused was charged under Section 376 IPC). Her son Naveen was 14 years of age. The younger daughter Priya was 7 years of age. The deceased girl was doing M.A. English from distance education. She was working in Sparkle Parlour at Shiela Bye-pass, Rohtak. On 17.10.2010 the girl was standing in the room of upper floor along with Pushpa. Thereafter Pushpa had slept. The deceased girl had gone in the bathroom. Some unknown person had come to their roof. He talked with the girl on the upper roof. He committed rape and also tried to strangle her with her clothes. The girl resisted. However the said person had thrown the girl on the ground. She died. In the morning at about 09.00 A.M. when the complainant tried to find out her, she could not be found. Thereafter the complainant searched for her. She found that dead body of her daughter was lying in the rear courtyard. The clothes of girl were removed and torn. A case under Sections 376 and 302 of the IPC was registered. The matter was investigated. It was found in the investigation that rape had not been committed upon the girl. Hence Section 376 IPC was deleted. The investigation was completed. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of appellant was recorded under Section 313 Cr.P.C. According to him, he was falsely implicated. The appellant was convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-4 Dr.Sanjay Kumar had conducted post-mortem examination on 18.10.2010. He tendered his evidence by way of affidavit Ex.PW4/A. He noticed the following injuries on the dead body of girl:-

“1. Contusion of size 6 cm x 4 cm at right side of forehead.

2. Contusion of size 6 cm x 4 cm at right shoulder.

3. Multiple abrasion of various small sizes present on B/L upper chest.

4. Multiple abrasion present on upper abdomen.

5. Multiple abrasion present on B/L knee.

6. Multiple abrasion present on right hip and right thigh.

7. Contusion of size 7 cm x 4 cm at right temporal region of face, under lying tissue ecchymosed.

8. Contusion present on upper and lower lips, ecchymosed.

9. 3 to 4 abrasion on the right side of neck and 2-3 abrasion on the left side of neck with the swelling of the neck between the abrasion ecchmyosed present under neath the tissue.

10. Abrasion with contusion of size 4 cm x 3 cm at right let and abrasion of various sizes multiple in number at B/L legs present.”

According to his opinion, the cause of death was due to throttling (manual strangulation). The possibility of recent sexual activity could not be ruled out. The post-mortem report is Ex.P6.

8. PW-1 Suraj deposed that he was posted as a teacher in Gurukul.

On 18.10.2010 he received telephonic message to the effect that his niece (daughter of Ranbir) had died. He reached the house of Ranbir. The dead body of girl was lying in the back side of the house of Ranbir. It was naked. He identified the body. Kamla, his sister-in-law told him that some one had dropped her from the roof of the house. Police recorded his statement Ex.P1.

9. PW-3 Vinod Kumar deposed that he was working as a Hair Dresser in Sparkle Saloon near Shiela Bye-Pass, Rohtak. One girl was also working as a beautician. On 17.10.2010, he talked with the girl between 10.00 PM to 11.00 P.M. on mobile phone. He did not remember the mobile number of the girl. They had a normal talk with each other. Thereafter she disconnected the phone as her father had arrived. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination by learned Public Prosecutor, he admitted that he talked to her for about one hour. He also admitted that his mobile phone was in the name of Ram Rattan, who was his friend.

10. PW-5 Pardeep Kumar deposed that he went to police station City Rohtak. Accused Ranbir was already arrested by the police. Police obtained his signatures on some blank paper. He was declared hostile and was cross-examined by the learned Public Prosecutor. He was confronted with statement Ex.P17. According to him, the police had obtained his signatures on blank papers. He denied that on 01.11.2010 accused Ranbir came to him and confessed the guilt of the crime.

11. PW-8 Hari Om deposed that he along with Ramesh Inspector / SHO, P.S. City Rohtak, had reached the spot. Inspector Ramesh inspected the spot. He with the help of cotton lifted blood stains from two places. He

took a hair pin, one underwear. He converted the same into separate parcels. The same were taken into possession. The dead body was handed over to him for conducting post-mortem examination. In his cross-examination, he deposed that there was no adjoining roof with the house of accused Ranbir.

12. PW-11 HC Sumit Kumar had prepared scaled site plan Ex.P24.

13. PW-12 Ram Rattan deposed that SIM No.8053648167 was issued in his name. He used the same. He did not give this SIM to any person. Accused Ranbir was known to him. He used to talk with him on his mobile phone. On 17.10.2010, he talked to him on his mobile phone. He was declared hostile and was cross-examined by the learned Public Prosecutor.

13. PW-13 Inspector Lalit Kumar deposed that accused Ranbir made disclosure statement Ex.P29 regarding concealment of belt under the heap of bricks in his house. He got recovered a black belt from the place of concealment. Belt is Ex.P30.

14. PW-19 ASI Ravinder Kumar proved the call details.

15. PW-20 Ramesh Kumar deposed that he recorded statement of Kamla Ex.P47. Rough site plan Ex.P48 was prepared. He lifted blood stained earth as well as hair pin from *chaubara*. He took into possession one fax message and one application vide recovery memo Ex.P33. He recorded extra judicial confessional statement of Pardeep on 01.10.2010 vide Ex.P18. Accused made disclosure statement Ex.P29 on the basis of which area was demarcated and belt was recovered.

16. PW-21 Kamla deposed that her daughter was student of M.A. Her daughter used to stay on the upper storey of the house. On 17.10.2012 she studied in her room on the upper storey. She slept in that room after

taking dinner. She, her husband and children were sleeping in the room on the ground floor. On the next day, her husband left for his job at Delhi. At about 08.00/08.30 A.M. when she went on the upper storey to wake up her daughter, she was not found in her room. Room was open. She and her other family members searched for her. She was found missing. However when from the roof she peeped out, she noticed the dead body of her daughter lying in naked condition in the *gher* of her *devar*. People gathered on the spot. Police also reached. His daughter was killed by some unknown person. She was declared hostile and was cross-examined by the learned Public Prosecutor. In her cross-examination, she admitted her signatures on Ex.P47. She denied the contents of Ex.P47. She denied that her daughter was having two mobile SIMs bearing No.9050486346 and 9729365032. She also denied that she moved application Ex.P54. She also denied the supplementary statement Ex.P56 made on 31.10.2012.

17. PW-23 Ravinder deposed that he was summoned by the police on 30.10.2010. The police threatened him. His statement was recorded under pressure. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied that he saw deceased strolling on the roof and talking on her mobile and when he again went to the roof at about 11.00 P.M., he saw Ranbir son of Balwant and deceased standing on the roof.

18. The FSL report is Ex.P32. Blood was found on cotton wool swab, lady's shirt, *salwar*, *chunni*, brassier, *sameez*. Traces of blood too small for serological examinations were detected on exhibit-4 and exhibit 5g, i.e. Lady's underwear and *kada*. Blood was detected in exhibit-3, i.e. blood stained earth.

19. In the earlier statement recorded by PW-21 Kamla, it is stated that her daughter was student of M.A. She was studying in the upper storey of the house. She went missing. However the dead body of the girl was found in the rear side of *gher* of her brother-in-law. Police reached the spot. Body was sent for post-mortem examination. The cause of death was manual strangulation. Accused made disclosure statement on the basis of which his belt was recovered from the heap of bricks. According to the earlier statement made by PW-21 Kamla, an unknown person had killed her daughter by coming from the adjoining roof.

20. The supplementary statement of PW-21 Kamla was recorded vide Ex.P56. She signed the same. According to the contents of this, her daughter was talking with her friend on the roof of *chaubara* for about one hour. Her husband went up. Her daughter insisted that she would marry with that boy. Her husband became angry. In order to save the honour in society, he had murdered her. He torn the clothes and threw her from the *chaubara* on the ground. Her daughter was not raped by anyone. She by mistake had got recorded in her earlier statement that her daughter was raped. There was no occasion for PW-21 Kamla to falsely implicate her husband. It has come in the statement of PW-3 Vinod Kumar that he talked to the deceased for about one hour. Thereafter she disconnected the phone. PW-5 Pardeep Kumar before whom the accused had made extra judicial confession has not supported the case of prosecution. According to him, his signatures were obtained on blank papers. We have also gone through the site plan. The defence taken by the accused that someone had entered in the room of his daughter from the adjoining roof. A suggestion was put to PW-8 Hari Om.

He has categorically deposed in his cross-examination that there was no

adjoining roof with the house of accused Ranbir. The body was found near the house of accused. He has to explain the circumstances under which the body was found in the close proximity of his house. The statement of PW-21 Kamla that her husband had gone to the office, cannot be believed more particularly when the girl had gone missing. In case unknown person entered the house, there would have been commotion. The girl would have raised alarm after seeing the stranger. It is also stated in the statement recorded by PW-21 Kamla on the basis of which FIR was registered that her daughter Pushpa was also on the upper floor. In case a person had entered from the adjoining roof, Pushpa would have got up and raised alarm. The prosecution has proved the case against the appellant beyond reasonable doubt. There is no law that statement of hostile witness is to be discarded in its entirety. PW-21 Kamla has earlier given it colour of rape. It is not found to be so. The accused was only tried under Section 302 IPC.

21. Their Lordships of the Supreme Court in ***Bhagwan Singh v. The State of Haryana, AIR 1976 Supreme Court 202*** have held that where the Court gives permission to the Prosecutor to cross-examine his own witness, thus characterising him as, a hostile witness, that fact does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. Their Lordships have held as under:-

“8. We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the Prosecutor

to cross examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 I.P.C. There is, therefore, clear abetment by the appellant of the offence under Section 161 I.P.C. and the ingredients of Section 165-A I.P.C. are established against him.”

22. Their Lordships of the Supreme Court in ***State of Uttar Pradesh vs. Chet Ram and others, AIR 1989 Supreme Court 1543*** have held that entire evidence of hostile witness does not get excluded or rendered unworthy of consideration because he is declared hostile. Their Lordships have held as under:-

“13. PW-5, in our opinion, has been wrongly declared a hostile witness to the prosecution. He has deposed that he too went to Kishori's house on hearing her alarm and that PW-3, who had gone ahead of him had scaled over the wall and entered the house and opened the front door and thereafter he and Behari went inside the house and noticed the three respondents fleeing from Kishori's house to their house by jumping over the partition wall. The only reason why PW-5 had been declared hostile

was that he had failed to say that besides seeing the respondents running away, he had seen them also attacking Kishori. In the very nature of things PW-5 could not have seen the actual attack on Kishori or the removal of her jewels because he had entered the house only after PW-3 had gone inside and opened the front door. Naturally, by the time PW-5 went inside the house, the attack must have been over and as such, he would have been able to see only the respondents running away to their house. Except that he had not seen the actual attack on Kishori, PW-5's evidence is in line with the evidence of PW-3 in all aspects. In fact he has also stated that Buddhi and Puttu were carrying a knife and sooja respectively and that a lantern was burning in Kishori's house on that night. The High Court has unfortunately failed to advert to any of these matters and has been carried away only by his stray statement in cross-examination that Kishori was unconscious when he reached the house. The High Court has brushed aside his entire evidence, which fully corroborates PW-3, merely on the ground he had been declared a hostile witness. The High Court has failed to bear in mind that merely because a witness is declared hostile, his entire evidence does not get excluded or rendered unworthy of consideration.”

23. Their Lordships of the Supreme Court in ***Paramjeet Singh @ Pamma vs. State of Uttarakhand, Air 2011 Supreme Court 200*** have held that evidence of hostile witness need not to be rejected en bloc but should be considered with caution. The Court should look for corroboration. Their Lordships have held as under:-

“17. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification

for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide : State of Rajasthan v. Bhawani & Anr., (2003) 7 SCC 291)

xxx xxx xxx

22. *In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”*

24. The same principle has been reiterated by Their Lordships of the Supreme Court in ***Shyamal Ghosh vs. State of West Bengal, AIR 2012 Supreme Court 3539*** where Their Lordships have held that the statement of hostile witness that supports the prosecution can be relied upon. Their Lordships have held as under:-

“33. It was contended that some of the witnesses had turned hostile and have not supported the case of the prosecution. In this regard, reference has been made to PW13 and PW23. PW13 admitted that he was a rickshaw puller of rickshaw No. 4. He also stated that he was not examined by the police. It was at that stage that the learned prosecutor sought permission of the Court to declare him hostile, which leave was granted by the Court. This witness stated that there were 10 rikshaw pullers at Nandan Kanan and he used to park his rikshaw from 7.00 a.m. to 10.00 a.m. at that stand, while in the afternoon, he used to park his rikshaw at the

Sodhpur Railway Station. He denied having seen the accused persons loading the gunny bags into the Maruti Van and also receded completely from his statement made under Section 161 of the Cr.PC. The other witness is PW23 who was a witness to the recovery of the Maruti Van. According to this witness, the Maruti Van was parked in his parking lot. However, on 30th November, 2003 Manik Das had taken out the vehicle from the parking and again returned at mid night. With regard to his signature on the seizure memo which he accepted as Exhibit 13, he took up the plea that he was made to sign blank papers.

The mere fact that these two witnesses had turned hostile would not affect the case of the prosecution adversely. Firstly, it is for the reason that the facts that these witnesses were to prove already stand fully proved by other prosecution witnesses and those witnesses have not turned hostile, instead they have fully supported the case of the prosecution. As per the version of the prosecution, PW23 was witness to the recovery of the Maruti Van along with PW24, PW25 and PW26. All those witnesses have proved the said recovery in accordance with law. They have clearly stated that it was upon the statement of Manik Das that the vehicle had been recovered. Other witnesses have proved that the said vehicle was used for carrying the gunny bags containing the mutilated parts of the dead body of the deceased. Firstly, PW13 is a witness who was at the railway station rickshaw stand along with other two witnesses namely PW9 and PW11 who have fully proved the fact as eye-witnesses to the loading of the gunny bags into the Maruti van. Secondly, even the version given by PW13 and PW23 partially supports the case of the prosecution, though in bits and pieces. For example, PW23 has stated that the driver of the Maruti Van was

Manik Das and also that he had taken out the vehicle from the parking lot at about 9.30 p.m. on the day of the incident and had brought it back after mid-night. He also stated that this car was being driven by Manik Das. Similarly, PW13 also admitted that other rickshaws were standing at the stand. This was the place where PW9 and PW11 had seen the loading of the gunny bags into the Maruti Van. In other words, even the statements of witnesses PW13 and PW23, who had turned hostile, have partially supported the case of the prosecution. It is a settled principle of law that statement of a hostile witness can also be relied upon by the Court to the extent it supports the case of the prosecution. Reference in this regard can be made to the case of Govindaraju @ Govind v. State by Sriramapuram P.S. & Anr. [(2012) 4 SCC 722].

25. Their Lordships of the Supreme Court in ***Attar Singh vs. State of Maharashtra, (2013) 11 Supreme Court Cases 719*** have held that it cannot be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in cross-examination, there is no ground to reject his testimony in toto. The Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of statement of hostile witness inspires confidence, it can be relied upon. Their Lordships have held as under:-

“14. We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the

accused-appellant. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well-settled by a catena of decisions that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this court in the case of Syed Akbar vs. Stae of Karnataka reported in AIR 1979 SC 1848 whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety.

15. Similarly, other High Courts in the matter of Gulshan Kumar vs. State (1993) Crl.L.J. 1525 as also Kunwar vs. State of U.P. (1993) Crl.L.J. 3421 as also Haneefa vs. State (1993) Crl.L.J. 2125 have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in the matter of State of U.P. vs. Chet Ram reported in AIR 1989 SC 1543 = (1989) Crl.L.J. 1785; it was held that if some portion of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in the case of [Shatrughan vs. State of M.P.](#) (1993) Crl.L.J. 3120 that hostile witness is not necessarily a false witness. Granting of a permission by the Court to cross-examine his own witness does not

amount to adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in the matter of [Sat Paul vs. Delhi Administration](#) AIR 1976 SC 294.

16. *Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.*

17. *While examining the instant matter on the anvil of the aforesaid legal position laid down by this Court in several pronouncements, we have noticed that the support rendered by the daughter Mangibai approving the incident should be accepted as reliable part of evidence in spite of she being a hostile witness. The witness Mangibai's evidence pushes the accused with his bag to the wall and the accused is obliged to explain because her evidence shows that the accused was the only person in the company of the deceased soon before the death. The defence of the accused that Nagibai's injury was a result of fall is ruled out by medical evidence and the details available of the location in the panchnama of offence. The courts below thus have rightly drawn some support from the reports of the chemical analysis since all the articles of the victims and clothes of the accused are found having blood stains of human blood group A. This was in view of the fact that*

the results of the analysis for determination of the blood group of the victim and accused were conclusive when blood sent to phial was analysed. Thus, the evidence of the daughter of the deceased coupled with other material as also evidence of other witnesses i.e. Ramesh, Khandu, Bhatu and Makhan, provided a complete chain and the prosecution successfully proved that the incident occurred in the manner and the place which was alleged.”

26. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 12 , 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No