

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

Date of Decision: 20.12.2019

1. CRA-D-60-DB of 2015 (O&M)

Sandeep SinghAppellant

Vs.

State of PunjabRespondent

2. CRA-D-176-DB of 2015 (O&M)

Shinderpal KaurAppellant

Vs.

State of PunjabRespondent

3. CRA-D-385-DB of 2015 (O&M)

Gurpreet Singh @ AmanAppellant

Vs.

State of PunjabRespondent

4. CRA-D-616-DB of 2015 (O&M)

Balwinder SinghAppellant

Vs.

State of PunjabRespondent

5. CRA-S-1485-SB of 2015 (O&M)

Shinderpal KaurAppellant

Vs.

State of PunjabRespondent

6. CRA-S-1741-SB of 2015 (O&M)

Surjit KaurAppellant

Vs.

State of Punjab and anotherRespondents

7. CRA-S-1940-SB of 2015 (O&M)

Balwinder SinghAppellant

Vs.

State of PunjabRespondent

8. CRA-S-853-SB of 2015 (O&M)

Surjit KaurAppellant

Vs.

State of Punjab and anotherRespondents

9. CRA-S-1599-SB of 2016 (O&M)

Gurpreet SinghAppellant

Vs.

State of PunjabRespondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present:- Mr. Shakti Mehta, Advocate
for the appellant (in CRA-D-385-DB-2015
and CRA-S-1599-SB-2016).

Mr. Vinod Ghai, Senior Advocate with
Mr. Amrit S. Kang, Advocate
for the appellant (in CRA-D-60-DB-2015).

Mr. Swaran Tiwana, Advocate
for the appellant (in CRA-D-176-DB-2015 &
CRA-S-1485-SB-2015).

Mr. Manoj Kumar, Advocate
for the appellant (in CRA-D-616-DB-2015 &
CRA-S-1940-SB-2015).

Mr. Virender Soni, Advocate for
Mr. Abhishek Goyal, Advocate
for the appellant (in CRA-S-1741-SB-2015 &
CRA-S-853-SB-2015).

Mr. K.S.Brar, Advocate for
Mr. S.P.S.Sidhu, Advocate
for respondent No. 2 (in CRA-S-1741-SB-2015 &
CRA-S-853-SB-2015).

Mr. H.S.Sullar, DAG., Punjab.

HARNARESH SINGH GILL, J.

Vide this judgment of ours, we propose to dispose of the
above noted criminal appeals.

Criminal Appeals bearing Nos. CRA-D-60-DB-2015; CRA-D-176-DB-2015; CRA-D-385-DB-2015; CRA-D-616-DB-2015 and CRA-D-1940-DB-2015 have been filed by the accused-appellant against the judgment and order dated 29.11.2014 passed by the learned Additional Sessions Judge, Patiala, in FIR No. 96 dated 27.11.2012 under Sections 328, 363-A, 366, 376 and 34 IPC, registered at Police Station P.S. Ghagga, District Patiala, whereby the accused-appellants Balwinder Singh and Gurpreet Singh @ Aman, were convicted of the offences under Sections 376(2)(g); 366 and 328 IPC, whereas accused-appellants Shinderpal Kaur and Sandeep Singh, were convicted of the offences under Section 376(2)(g) read with Section 120-B, Section 366 read with Section 120-B and Section 328 read Section 120-B IPC and sentenced as under:-

Convicts Balwinder Singh and Gurpreet Singh @ Aman

1.	U/s 376(2)(g) of IPC	Rigorous imprisonment for life each and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer further rigorous imprisonment for one year each.
2.	U/s 366 of IPC	Rigorous imprisonment for ten years each and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer further rigorous imprisonment for one year each.

3.	U/s 328 of IPC	Rigorous imprisonment for seven years each and to pay fine of Rs.5000/- each and in default of payment of fine to suffer further rigorous imprisonment for six months each.
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Convicts Shinderpal Kaur and Sandeep Singh

1.	U/s 376(2)(g) read with Section 120-B of IPC	Rigorous imprisonment for life each and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer further rigorous imprisonment for one year each.
2.	U/s 366 of IPC read with Section 120-B IPC.	Rigorous imprisonment for ten years each and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer further rigorous imprisonment for one year each.
3.	U/s 328 read with Section 120-B of IPC.	Rigorous imprisonment for seven years each and to pay fine of Rs.5000/- each and in default of payment of fine to suffer further rigorous imprisonment for six months each.

CRA-S-853-SB-2015 has been filed by Surjit Kaur, mother of the prosecutrix against the acquittal of accused-respondent- Nasib Singh in FIR No. 96 dated 96 dated 27.11.2012 aforesaid.

Criminal appeal bearing Nos. CRA-S-1741-SB-2015; CRA-S-1485-SB-2015; CRA-S-1599-SB-2015 and CRA-1940-SB-2015 arise out of the judgment of conviction and order of sentence dated 29.01.2015 in FIR No.187 dated 31.12.2012 under Sections 306/34, 217, 218 and 120-B IPC registered at Police Station City, Samana, whereby accused-appellant Balwinder Singh, Gurpreet Singh alias Aman and Shinderpal Kaur were convicted of the offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5000/- and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one year each.

CRA-S-1741-SB-2015 has been filed by Surjit Kaur against the judgment dated 29.01.2015 passed by the learned Additional Sessions Judge, Patiala, whereby Nasib Singh, was acquitted of the charges framed against him.

In FIR No.96 dated 27.11.2012, the case of the prosecution as noticed by the learned trial Court in para No.3 of its judgment, is as under:-

“3. Brief facts of the prosecution case are that on 13.11.2012 at about 4.30 p.m., the prosecutrix along with Shinderpal Kaur went to Guggha Mari near Ghaggar river for lighting the earthen lamp. When

they were returning to their home, then from the side of village Rampur Partan, one Swift car of white colour came, which was being driven by accused Gurpreet Singh alias Aman. Accused Balwinder Singh was sitting on the rear seat of the said car. Gurpreet Singh @ Aman stopped the car parallel to the prosecutrix and Shinderpal Kaur. Accused Balwinder Singh, who was known to the prosecutrix, opened the door of the car and grappled with the prosecutrix and threw her on the rear seat of the car. The prosecutrix raised alarm but Shinderpal Kaur did not help her and went way to her home. As the doors and windows panes of the car were closed, therefore, the voice of the prosecutrix did not come out and was not heard by anybody nor the said incident was witnessed by anyone. In the car accused Balwinder Singh kept on doing indecent acts with the prosecutrix. At about 7 p.m., both the accused took the prosecutrix at the motor of accused Sandeep Singh situated near the telephone tower ahead of village Bahman Majra. Accused Sandeep Singh handed over the key of the motor kotha to Balwinder Singh and left the place. Both the accused, namely, Balwinder Singh and Gurpreet Singh @ Aman took off all the clothes of the prosecutrix and committed rape with her turn by turn for 2-3 times, on a cot lying in the motor kotha. Accused Gurpreet Singh @

Aman forcibly administered some intoxicant medicine like liquid to the prosecutrix, as a result of which she became semi unconscious. At about 9.30 p.m., both the accused brought the prosecutrix in the said car and threw her near the Gurudwara of her village. With great difficulty, the prosecutrix managed to reach her house. On the next day, she disclosed the whole story to her mother Surjit Kaur. On 22.11.2012, the prosecutrix along with her relative Harwinder Kaur, sister and mother reached P.S. City Samana from where they were sent to P.S. Ghagga. Thereafter, the prosecutrix went along with her sister Gulshan Kaur at village Bishanpura and with the help of her brother-in-law Gursharan Singh, the prosecutrix made enquiries and also visited the place of rape as well as village Nagahian of the accused. The panchayat of village Nagahian and many persons of village Majri kept on trying to reconcile the matter but the same could not mature. On 27.11.2012, the prosecutrix along with her mother Surjit Kaur met SI Nasib Singh at Bus Adda of village Badshaahpur and got recorded her statement with him. On the basis of the said statement of prosecutrix, FIR No. 96 dated 27.11.2012 under Sections 363, 366-A, 376, 328 and 34 of IPC was registered against the accused. As per prosecution allegations SI Nasib Singh did not

correctly recorded the statement of the prosecutrix and rather he used abusive language with them. He also did not prepare the memo regarding taking into possession the broken pieces of Beer bottle, as mentioned in Zimni No. 1 and thus destroyed the valuable piece of evidence. Due to the non arrest of the accused persons and the pressure mounted by SI Nasib Singh and other accused upon the prosecutrix through panchayats and other respectable for effecting compromise, the prosecutrix started remaining under tension and depression and she committed suicide on 26.12.2012, after writing the suicide note. On the basis of statement of Harwinder Kaur, who is the cousin of the prosecutrix, FIR No. 100 dated 26.12.2012 under Section 306/34 of IPC has been registered at P.S. Ghagga against accused SI Nasib Singh, Balwinder Singh, Gurpreet Singh alias Aman and Shinderpal Kaur. Immediately after the death of the prosecutrix, SI Nasib Singh arrested accused Balwinder Singh, Gurpreet Singh alias Aman and Shinderpal Kaur on 26.12.2012 and left P.S. Ghagga on 27.12.2012 for producing the accused persons before the learned Illaqa Magistrate, Samana, but HC Ranjha Ram No. 552/Patiala in his statement under Section 161 Cr.P.C. stated that SI Nasib Singh did not appear in the Court on 27.12.2012 nor made any Zimni regarding the

investigation. Thereafter, ADGP (Crime), Punjab, Chandigarh formed Special Investigating Team (SIT) to inquire into the matter. Sh. Jai Pal Singh, SP (Crime), Patiala, who was member of the SIT, arrested accused Sandeep Singh on 28.12.2012 and recorded his statement under Section 27 of Evidence Act, who got recovered the duplicate key of the lock of motor kotha. The Indica car which was used in the commission of crime was also recovered and taken into police possession. The place of kidnapping of prosecutrix was got photographed and videographed and site plan of the said place was also prepared by him. The cot on which the rape was committed was also taken into police possession. Birth certificate of prosecutrix was obtained from the office of Local Registrar (Death and Birth), Nagar Council, Samana. Accused Balwinder Singh and Gurpreet Singh were got medically examined. Sh. Jai Pal Singh, S.P., also took into possession the C.D. containing the information given by the prosecutrix regarding her kidnapping and rape, which was recorded by Parshotam Kaushik, Reporter of PTC News Channel. Scaled site plans of the places of both the occurrences were got prepared from the Halqa Patwaris. On 23.1.2013, offence under Sections 217, 218 and 201 of IPC were added and SI Nasib Singh was nominated as an accused in the present case.

Thereafter, on completion of all other formalities of investigation, the challan against the present accused was presented in the Court of the learned Illaqa Magistrate, Samana. Copies of documents relied upon by the prosecution were supplied to the accused, free of cost. The case was committed by the learned Magistrate to the Court of Sessions, vide order dated 23.1.2013, as the offence punishable under Sections 328, 366-A, 376, 201 of IPC are exclusively triable by Court of Sessions.”

Charges were framed against the accused under Sections 120-B, 363, 366-A, 376, 328, 217, 218 IPC. Later on the amended charges under Sections 120-B, 363, 366-A, 376(2)(g), 328, 217, 218 IIPC were framed against the accused.

The prosecution examined PW-1 Parshotam Kaushik (T. V. Channel Reporter), PW-2 Jatinder Kumar Clerk from the office of Nagar Council Samana, PW-3 Pritam Singh Photographer, PW-4 Dr. Navdeep Walia, Medical Officer, PW-5 ASI Kararnjit Singh, PW-6 Dhani Chand Patwari Halka Badshahpur, PW-7 Karamjit Singh Patwari of Halka Siyal, PW-8 SI Mohan Jeet Singh, PW-9 Head Constable Gurjit Singh, PW-10 Harwinder Kaur cousin of the prosecutrix, PW-11 Dr. Charag Sagwan, PW-12 Surjit Kaur (mother of prosecutrix), PW-13 Pritpal Singh, PW-14 Rajinder Kumar, Additional Registration Clerk, PW-15 Ajaib Singh, Lambardar of village Kheri Nagahian, PW-16 SI Kulwant Singh, PW-17 HC Pritpal Singh, PW-18 SI

Major Singh, PW-19 Dr. Rama Garg, PW-20 HC Ranjha Ram, P.S. Shutrana, PW-21 Constable Rupinder Singh, P.S. Shutrana, PW-22 Dr. Anuj Bansal, Medical Officer, PW-23 Gursharan Singh, PW-24 SP Balbir Singh, PW-25 Gurmukh Singh, PW-26 ASI Jagroop Singh, PW-27 Charanjit Kaur (sister of the prosecutrix) and PW-28 SP Jaipal Singh (member of SIT).

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication.

In defence, the appellants had examined DW-1 Inderjeet Singh, Handwriting and Fingerprints Expert, DW-2 Lal Singh, Contractor and DW-3 Harpreet Kaur.

During the hearing of the criminal appeals arising out of FIR No. 96 dated 27.11.2012 as mentioned above, it came to the notice of this Court from the facts which were part of evidence in this FIR that the prosecutrix had thereafter committed suicide on 26.12.2012 and had allegedly left a suicide note naming three out of four accused (except Sandeep Singh) who were tried in FIR No.96 dated 27.11.2012. Accordingly, a separate criminal case i.e. FIR No.187 dated 31.12.2012 was registered under Sections 306/34, 217, 218 and 120-B of IPC at Police Station Samana and Balwinder Singh, Gurpreet Singh @ Aman, Shinder Pal Kaur and Nasib Singh were nominated as accused and tried separately from the earlier FIR. The said FIR culminated into passing of the judgment of conviction and order of sentence dated 29.1.2015

convicting and sentencing the accused (except accused Nasib Singh, who was acquitted of the charges framed against him), as noticed above.

It is also pertinent to mention here that appeals arising out of both the judgments in separate FIRs were ordered to be heard together by the Coordinate Bench of this Court. It, thus, came to the notice of this Court that the other appeals arising out of FIR No. 187 dated 31.12.2012 are listed together for final hearing. It was also noticed that most of the witnesses in both the FIRs were common although numbered differently (as the trials were different), the details whereof are mentioned below:-

Common witnesses in both the cases

FIR No. 096 Dated : 27.11.2012		FIR No. 187 Dated : 31.12.2012	
PW-1	Parshotam Kaushik	PW-9	Parshotam Kaushik
PW-2	Jatinder Kumar	PW-8	SI Mohan Jeet Singh
PW-5	ASI Karamjit Singh	PW-3	Pritam Singh
PW-10	Harwinder Kaur	PW-2	Jatinder Kumar
PW-12	Surjit Kaur	PW-12	Surjit Kaur
PW-16	SI Kulwant Singh	PW-13	Pritpal Singh
PW-20	HC Ranja Ram	PW-17	HC Pritpal Singh
PW-25	Gurmukh Singh	PW-20	HC Ranja Ram
PW-26	ASI Jagroop Singh	PW-5	ASI Karamjit Singh
PW-27	Charanjit Kaur	PW-21	Constable Rupinder Singh
PW-28	SP Jai Pal Singh	PW-22	

While hearing criminal appeals arising out of FIR No. 96 dated 27.11.2012 under Sections 328, 363-A, 366, 376 and 34 IPC, this Court found that it was this incident which led to

the incident of 26.12.2012. The evidence of FIR No. 187 dated 31.12.2012 was to some extent produced in/during the trial of FIR No. 96 dated 27.11.2012. The accused in the earlier FIR were also arrested after the incident of 26.12.2012. It is also important to mention here that initially FIR No. 100 dated 26.12.2012 under Section 306/34 IPC was registered at Police Station Ghagga where FIR No. 96 dated 27.11.2012 was already registered. But this FIR No. 100 at Police Station Ghagga was cancelled on the ground of territorial jurisdiction and later on registered at Police Station City Samana as FIR No. 187 dated 31.12.2012. It further came to the notice of this Court that evidence of FIR No. 96 dated 27.11.2012 was also brought in FIR No. 187 dated 31.12.2012.

This Court has also noticed that CRM-24912-2019 has been filed by accused-appellant Gurpreet Singh @ Aman in CRA-D-385-DB-2015, under Section 391 Cr.P.C. for permission to bring on record additional facts to show that in fact another person named Manpreet Singh, had also attempted suicide on the same day at the same place as the deceased and was taken to hospital by PW-10 – Harwinder Kaur (with whom the deceased was staying at that time). FIR No.1 dated 12.01.2013 under Section 309 IPC was registered at Police Station SAS Nagar, was registered in this regard. The learned counsel by putting forth this evidence wanted to assert that in fact the deceased had concocted story in the earlier FIR and had also committed suicide due to different reason(s).

After going through the evidence and the facts

mentioned above this Court is of the view that both the alleged offences are connected with each other in such a way that a serious prejudice has been caused to both prosecution as well as defence by the separate trials in the said cases. This Court feels that unless the evidence of both the FIRs is scanned together by the Court to arrive at final conclusion, it may lead to failure of justice.

Reference may be made here to Section 223 Cr.P.C. which is reproduced below:-

“Section 223 of the Code of Criminal Procedure, 1973-

223. Trial for more than one offence.

223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course same transaction;

(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of

stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same

coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

Now the question before this Court is whether these different offences should have been tried together and consequently, one trial should have taken place. Further, it is to be seen whether by trying both the FIRs separately in separate trials, an illegality has been committed resulting into a prejudice to both the parties as they were not able to refer evidence of one case in the other. A bare reading of Section 223 Cr.P.C shows that the word used is ‘he may be charged with and tried at one trial’. Thus, the discretion is with the Court depending on the facts and evidence. This Court finds that both the offences in the separate FIRs are so connected together as to form part of the same transaction.

To come to this conclusion let us see the facts of both the cases. The case of prosecution is that prosecutrix was allegedly raped by Gurpreet Singh @ Aman and Balwinder Singh in connivance with Shinder Pal Kaur and Sandeep Singh. The case of the prosecution is further that prosecutrix committed suicide because of her having been raped. The case of the defence is that the prosecutrix had illicit relations with one Manpreet Singh. Since Manpreet Singh was in relationship of

complainant party, therefore, they had objected to this. It is further case of the defence that since Paramjit Kaur deceased was turned out of her parental house of Badshahpur, both of them consumed poison and then the entire story had been concocted. The defence wants to rely on FIR No. FIR No.1 dated 12.01.2013 under Section 309 IPC relating to Manpreet Singh. Thus, both prosecution as well as defence are heavily relying on the facts and evidence of both the cases. But since the trials have been separately held and evidence has been separately recorded in both the FIRs, in view of judgment of Hon'ble Apex Court in ***Nathi Lal and others versus State of U.P. 1988 SC (Criminal) 638*** which laid the law that evidence of one case cannot be looked into the other case and the Court has to decide the case without being influenced by the evidence of other case, this Court cannot read the evidence of both the cases together. We find that in order to deliver justice, the evidence and facts of both the cases have to be gone through together and then only the Court can decide whether the appellants are guilty or not.

We are conscious of the fact that one of the alleged accused Nasib Singh who was tried together with the appellants during trial in both the FIRs was acquitted by the trial Court in 2014. Thus, he had earned a right and we should be slow in disturbing the same. But when the entire scenario is taken into consideration and is viewed from the angle of failure of justice then this Court is of the considered opinion that to maintain the

balance and delivery of justice, these cases should be remanded back for retrial.

Therefore, in view of the facts and observations as made hereinabove, we remit the judgment of conviction and order of sentence dated 29.11.2014 passed by Additional Sessions Judge, Patiala in case FIR No. 96 dated 27.11.2012 and judgment of conviction and order of sentence dated 29.1.2015 passed by the learned Additional Sessions Judge, Patiala, in FIR No. 187 dated 31.12.2012 with a direction that both the FIRs should be clubbed together as provided under Section 223 Cr.P.C. and they be tried together by one Court. Further, the accused be charged together according to the offences committed by them. Since the occurrence is of 2012 and the appellants have undergone the agony of trial and appeal for the last seven years, this Court deems it fit to suspend the sentence of appellant Gurpreet Singh @ Aman in CRA-D-385-DB of 2015 and Balwinder Singh in CRA-D-616-DB of 2015. They are directed to be released on bail pending trial on their furnishing adequate bail/surety bonds to the satisfaction of the trial Court.

It has been brought to the notice of this Court that other two appellants, namely Sandeep Singh (in FIR No. 96 dated 27.11.2012) and Shinder Pal Kaur (in FIR No. 96 dated 27.11.2012, P.S. Ghagga and FIR No. 187 dated 31.12.2012, P.S. Samana) have already been granted bail by this Court. They will continue on bail on furnishing fresh bail/surety bonds

to the satisfaction of the trial Court. As already mentioned, Nasib Singh was acquitted by trial Court and was on bail during trial. He will appear before the trial Court and furnish fresh bail/surety bonds to the satisfaction of the trial Court. It is further directed that all the appellants in appeals arising out of both the FIRs will remain on bail till the decision of trial. The record of the trial Court in both the FIRs is also sent back. The appellants and Nasib Singh are directed to be present before the trial Court as and when required.

The trial Court while deciding both the FIRs at one trial will not be influenced by any observations made by this Court while passing the present judgment. Since the matter is of 2012, the trial Court is directed to expedite the trial and decide it within a reasonable time.

(HARNARESH SINGH GILL)
JUDGE

(AJAY TEWARI)
JUDGE

December 20, 2019
ds

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No