

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

**Crl. Appeal No.D-631-DBA of 2003
Date of Decision: December 16, 2019**

State of Haryana

...Appellant

VERSUS

Ramesh

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the appellant-State.

None for the respondent.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment dated 19.10.2002 passed by learned Sessions Judge, Rohtak, vide which the accused-respondent Ramesh was acquitted of the charges levelled against him.

The background facts in nutshell are as follows:-

That complainant Naresh s/o Dhan Singh resident of village Bainsi, used to work at Rohtak as Carpenter at the shop of Jasbir Carpenter situated at Delhi Road near Jannat Hotel. On 15.01.2002, he had gone to Jind with Jasbir Singh Carpenter and when they were returning from Jind, Naresh got down from the bus at about 5.45 p.m. at Lakhan Majra bus stop and thereafter, he reached at his residence at about 6.15 p.m. When he

reached home, he saw his maternal cousin Ramesh accused and his wife sitting inside their house. He wished them and asked Ramesh about his well being and accused told him that everything was fine. Then, after some time, accused demanded his money from the complainant, which he had obtained from the accused some time earlier and during the course of talks, they entered into arguments and started quarreling with each other. Then Ramesh took out a knife and gave a knife blow in the belly of the complainant. The complainant raised alarm, upon which, his father Dhan Singh and brother Anand rescued him. After some time, the complainant became unconscious and he was taken to PGIMS, Rohtak, for treatment by his uncle Ram Narain and his brother Anand and he was got admitted there.

Proceedings in the present case were initiated, on the basis of the statement of Naresh got recorded by ASI Mahender Singh, in pursuance of the ruqa having received from the concerned doctor of PGIMS, Rohtak and thereafter, the information was passed on to police station Meham. ASI Mahender Singh had recorded statement of Naresh, in pursuance of obtaining opinion of fitness of the injured from the concerned doctor. The statement of Naresh, so recorded, is Ex.PQ and endorsement of investigating officer made upon the same is Ex.PQ/1, on the basis whereof, FIR Ex.PR was got registered.

During the course of investigation, ASI Mahender Singh, while in the company of Dhan Singh, had inspected the spot and prepared the site plan of the spot of occurrence. Even, the doctor, who had medico-legally examined the injured, had sealed the pant, shirt and sweater of injured Naresh and handed over the same to Dhan Singh, father of the injured, who

further handed over the same to ASI Mahender Singh, who took into

possession the same, vide recovery memo Ex.PK. There was corresponding cut on the clothes and same were also having blood-stains.

During the course of investigation, on 18.01.2002, ASI Mahender Singh had arrested accused Ramesh from village Bainsi and the during of the course of his interrogation at bus stop Bainsi, Ramesh had made the statement, thereby disclosing about having kept the knife under the *kikar* tree near the house of complainant Naresh and on the basis of the aforesaid disclosure statement, the knife was got recovered and the same was taken into possession, vide recovery memo Ex.PG. Rough sketch of the same was also prepared. Site plan of spot of recovery was also prepared.

In pursuance of the application dated 16.02.2002 filed by Investigating Officer, the concerned doctor had opined about the injury to be result of use of sharp-edged weapon. Likewise, on 09.04.2002, in pursuance of the separate application, so filed, the injury on the person of Naresh was opined by the concerned doctor, to be dangerous to life. The said report is Ex.PC. Vide separate report Ex.PC/4 made on the same day, in pursuance of the knife, shown by the police officer, the concerned doctor opined that injury was possible with the knife shown to him.

On completion of investigation, accused Ramesh was sent up to face trial for commission of offence punishable under Section 307 IPC.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, considering the report under Section 173 Cr.P.C. and documents annexed therewith, charge was framed against accused-respondent under Section 307 IPC, which was

read over and explained to the accused, to which he pleaded not guilty and

claimed trial.

In an endeavour to establish its case, the prosecution examined as many as 9 witness, besides adducing documentary evidence.

PW-1 Sumeet Kumar, had produced the treatment record of injured Naresh of PGIMS, Rohtak.

PW-2 Dr.Ramesh Gupta has deposed about admission and treatment of injured Naresh at PGIMS, Rohtak.

No witness has been cited as PW-3.

PW-4 Dr.P.K.Saini has deposed about having examined injured Naresh on 15.01.2002 and further also deposed having given the fitness of the injured, to make statement, on separate application filed by ASI Mahender Singh and also given opinion about the nature of the injury and co-relating of the same, with the weapon in question.

PW-5 Constable Sumit Kumar has deposed about having prepared scaled site plan of the spot of occurrence.

PW-6 Anand, is brother of the injured and **PW-7 Dhan Singh**, is father of the injured, who have also deposed about the manner of accused having caused injuries on the person of Naresh.

PW-8 ASI Mahender Singh, is the Investigating Officer of the present case. He has deposed about the recording of statement of injured Naresh, on the basis whereof, the FIR was registered and further deposed about the manner of interception of accused and detail of investigation so conducted by him, vis-a-vis, the occurrence in question.

PW-9 is injured Naresh, who has deposed about the manner of occurrence caused by the accused and the injuries sustained by him.

Thereafter, learned Public Prosecutor closed the the evidence

on behalf of the prosecution.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in his statement under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence. For the convenience of discussion, the plea so taken by Ramesh, as such, is reproduced in verbatim, as herein given:-

“It is a false case. I have been falsely implicated in this case. On 29.6.2001 the marriage of Saroj and Kavita D/o Dhan Singh was to be performed. So on 18.6.2001 Dhan Singh my Phuffaji accompanied by Kavita came to my house at Gannaur and brought my wife Anita and his girls and one son for making preparation for the marriage ceremony. On the night of 22nd June, Naresh, Anand, Anita and the children were watching a film in VCR. Anand prepared tea and he mixed up some intoxicant in the cup of tea and she became unconscious and thereafter Naresh committed rape upon her. At that time, Sonia my daughter was on the cot of Anita and she was shifted to other bed. When she woke up and saw Naresh committing sex with her mother. In the morning she disclosed to her mother what had happened with her during the night. She lodged protest in that behalf with Dhan Singh but he adopted evasive attitude towards her saying that it was matter between dever and bhabhi and advised her not to whisper about it otherwise she would stand defamed. Naresh and Anand gave her threats that in case she told about it to her husband and son shall be finished. So she maintained silence.

On 15th June 2002 when she was unable to keep it secret she told me in that behalf. I come with her to the house of Dhan Singh and demanded the amount of Rs.24000/- from him and that due to the incident which Naresh committed with his

wife his relationship with them stand finished and they shall not to on visiting terms with each other. On which he and both his sons Naresh and Anand quarreled with him and I was beaten and I was tied with a tree and then I was falsely implicated in this case on a false report with the police. In the police station the Investigating Officer misbehaved with my wife. On the report of my wife a report with police a case under FIR 194 dt. 1.6.2002 u/s 376/379/342/354/506 IPC which is pending against the complainant party.”

In defence, accused examined his wife as **DW-1**, who deposed about Dhan Singh, to be husband of sister of her husband's father and her husband is maternal cousin of Naresh and Anand PWs. She further deposed that marriage of Saroj and Kavita were to take place on 29.06.2001. On 18.06.2001, Dhan singh and his daughter Kavita, had come to their house for extending invitation and on that very day, they brought her (this witness) to their house for looking after the management of ceremonies as wife of Dhan Singh had already expired. Then, she accompanied along with her daughter and son, to the house of Dhan Singh. On 22.06.2001, when she, her children as well as Naresh and Anand were watching film on VCR, at about 9.30 p.m., after a while Anand prepared tea and a cup of tea was offered to her. After taking tea, she felt sleepy. In the morning,s he found herself on the bed and Naresh was sleeping with her. During all night, she was not in senses. Further, she also deposed about Naresh to have sexually assaulted her during the night and about her daughter Sonia, to have witnessed the same. She further deposed that she had disclosed about the occurrence to Dhan Singh and his daughters, but they stated that it is a matter between devar and bhabhi. Dhan Singh threatened her, that in case,

she discloses anything to anybody, he would kill her husband and her children. In the first week of January 2002, when she could not keep the matter secret, she had apprised about the same to her husband and thereafter, on 15.01.2002, she along with her husband, had gone to the house of Dhan Singh, for getting the account settled and also to protest about the offence, having committed upon her and to sever all relationships with them. So, they had gone to their house at about noon time and further, she has also deposed about the manner, in which, the talk had flared up when the explanation was sought of the act of Naresh with her. She also deposed that when she intervened, she was beaten and pushed out away. Thereafter, Naresh had left the house. Then, her husband told that it was not safe for them to remain in the house and they had left the house of the complainant on scooter. She further deposed that when they were still near the house of Dhan Singh and Parkash, some persons came running and took them back to the house, alleging that they were running after their husband, who had given injuries to Naresh. They were brought back to the house of Dhan Singh and at that time too, Naresh was not in the house. Her husband was tied with a neem tree in the courtyard and on the next day, police arrived in the village at about 3.30 p.m and after some time, her husband as untied and at about 5.00 p.m., he was taken to police station. Thereafter, the false case was registered.

Thereafter, evidence of the defence was closed.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, learned trial Court acquitted by the accused-respondent of the charge levelled against him, vide judgment dated 19.10.2002.

Feeling aggrieved by the aforesaid judgment, appellant-State of Haryana, has filed the present appeal. The lower Court record was requisitioned.

We have heard learned State counsel and have perused the record.

As per the version, set up by the prosecution, the occurrence in question is consequent act of the alleged rape having committed upon wife of the accused by Naresh, on the night of 22.06.2001. So called prosecutrix has appeared as defence witness as DW-1. She has deposed that there was marriage of daughters of Dhan Singh, who is their relative, on 29.06.2001 and she was taken to the house to facilitate conducting of the marriage by Dhan Singh, father of the complainant on 18.06.2001 and thereafter, she stayed there upto the date of marriage i.e. 29.06.2001 and some time thereafter. She further deposed that sexual assault was committed upon her by Naresh on the night of 22.06.2001, after she was administered something in the tea and she became unconscious. Also, it is coming forth in her testimony that accused, who is husband of this witness, had accompanied the brides to matrimonial home and returned with them when they had come for *phera* ceremony. Meaning thereby, she had remained in the house of Dhan Singh for more than 10 days after her ravishment. In the light of the same, it is pertinent to mention that she has categorically deposed that on the morning of 23.06.2001, when her daughter apprised about the conduct of Naresh qua her, she had lodged protest with Dhan Singh and his daughters, vis-a-vis, the conduct of Naresh towards her and they had asked her to keep quiet. However, from the testimony of this

witness, it is evident that the misconduct of Naresh, as such, came to the

knowledge of his family members. In such circumstances, if, such act of her sexual assault had taken place, then the question arises, that she would not have stayed in the house of Dhan Singh, for such a long time, even much, after the performance of marriage of his daughters and she would not have allowed her husband to accompany the daughters of Dhan Singh to their matrimonial home. Instant reaction would have come from the side of the lady, who had been ravished. However, at that time, she maintained silence. Even, nothing as such was disclosed by Sonia, regarding the conduct of Naresh, qua her mother. If, for all intents and purposes, it is so taken that DW-1 had so remained silent, then the question arises, why she would open her mouth, after a period of six months. This is highly improbable.

In this backdrop, now coming to the occurrence relating to 15.01.2002, Naresh victim has appeared in the witness box as PW-9 and he has categorically deposed about having returned to his house at about 6.15 p.m. and he found accused Ramesh, his cousin and his wife, to be sitting in their house. He had further stated that he had wished them and enquired about the well being and after some time, accused had demanded money from him, which he had obtained as loan earlier and he had also told him that he shall return the money in few days. This witness further deposed that upon this reply, the accused got annoyed and took knife from this pocket and gave a thrust-wise blow at his belly. He raised alarm and then his father and brother Anand had reached there and rescued him. He also deposed that after the receipt of the knife blow, he became unconscious and gained consciousness, on the next morning, while in the hospital. He further deposed about recording of his statement, which is Ex.PQ.

Another material witness of the prosecution is PW-6 Anand,

who is the brother of the injured. He has also deposed about the manner of his brother Naresh having returned to their house in the evening of 15.01.2002 and further also deposed about the arrival of accused and his wife in their house and also deposed about the manner of exchange of hot words between accused and Naresh on that day vis-a-vis demand of money by the accused from Naresh. He also deposed that then accused had taken out a knife from his pocket and gave a knife blow at the belly of Naresh. He also deposed that Naresh rushed towards the house of neighbour and accused and his wife left their house. He and his uncle Ram Narain had taken Naresh to PGIMS, Rohtak, where he was got admitted. However, the said witness has not supported the prosecution version, vis-a-vis, making of disclosure statement by the accused and the recovery of knife from the disclosed spot at his instance.

Next, material witness of the prosecution is PW-7 Dhan Singh, who is father of Naresh. He also deposed in verbatim with the testimony of PW-6 Anand and further also deposed that after giving a knife blow, accused had tried to run away on scooter with his wife, but he was apprehended by some neighbours. He further deposed that thereafter, injured was admitted in hospital by Ram Narain, his brother and Anand. However, this witness deposed about the interrogation of the accused, after 3-4 days by the police and making of the disclosure statement, on the basis whereof, knife was recovered under a *kikar* tree, which was also taken into possession. He deposed about the documents relating to the same having been prepared, which were attested by him and Anand. Even, he deposed about the shirt, pant and sweater of the injured, having been handed over by him to the Investigating Officer, which were converted into parcel and taken

into possession, vide memo Ex.PG.

Besides the aforesaid witness, another material witness of the prosecution, is the Investigating Officer, PW-8 ASI Mohinder Singh. He has deposed about the recording of statement of the complainant Ex.PU on 16.01.2002, on the basis whereof, FIR was recorded. Further, he deposed about the preparation of the site plan Ex.PS and then about the arrest of accused from village Bainsi on 18.01.2002. He also deposed about having interrogated accused at Bus-stop on that day and he made disclosure statement Ex.PF, regarding the knife and got the same recovered. Rough sketch of the same was prepared, which is Ex.PH and the same was taken into possession, vide recovery memo Ex.PG. Further, he had deposed about the manner of injury having opined by the doctor, to be dangerous to life, on the basis of the application, so filed by him and also about the possibility of injury to have been caused by the knife which was shown to the doctor.

Besides the aforesaid ocular version, there is also medical evidence, so coming forth. PW-4 Dr.P.K.Saini has deposed about having conducted medico-legal examination of injured Naresh on 15.01.2002 and he had found a stab wound in the lower abdomen in central portion in between umbilicus and symphysis pubis. A smaller gut was protruding out of the abdominal wall. Lacerations were present over the intestines. He found wound dangerous to life. His report in this behalf is Ex.PC. The matter was referred to Dr.Ramesh Gupta, for surgical intervention. Dr.Ramesh Gupta, who had conducted surgery on the person of injured Naresh has also deposed that on 15.01.2002, patient Naresh was admitted in PGIMS, Rohtak, with the alleged history of assault. There was bleeding

un-recordable. The patient was resuscitated and BP was brought up and patient was taken up for immediate surgery and exploratory laprotomy with closure of perforation was done. In operation, it was observed that there were five perforations present in jejunem and two perforations in his sigmoid colon. The patient was discharged in good condition on 22.01.2002. His report in this behalf is Ex.PA. Treatment file and bed head ticket is Ex.PB.

Keeping in view the aforesaid ocular version and the medical evidence, so coming forth, it is pertinent to mention that present case is the apt example of '**Men may tell lies, but circumstances do not**'. In a criminal trial, however, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved, beyond all reasonable doubt and the requirement of proof, cannot lie in the realm of surmises and conjectures. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of "**may be true**" but has to essentially elevate it to the grade of "**must be true**". In a criminal proceeding, the court has a duty to ensure that mere conjectures or suspicion, do not take the place of legal proof and in a situation, where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent, but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. However, at the same time, it is also a settled law that

also by circumstantial evidence or by the combination of both. Of course, while appraising circumstantial evidence, the Court has to draw inference as to whether or not, the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. The direct evidence as well as circumstances from which the inference of guilt is to be drawn, should form sufficient connectivity of the accused with the circumstances, pointing towards the guilt of the accused.

In this backdrop, at the very outset, it is pertinent to mention that from the rough sketch of the knife, which was prepared by the Investigating Officer, it is evident that the knife was 8.3 inches long. It was made of an iron patti and there is nothing, as such, coming forth about its having the capacity to be folded. In these circumstances, it has been rightly observed by the learned trial Court that such kind of knife, could not have been kept by the accused in his pocket, as is the version of the prosecution. Such a long knife, cannot be retained in the pocket by any person, while in a sitting posture, without causing any damage to his pocket or without it being noticeable by the people around. Furthermore, as per the version of the prosecution, the accused had arrived at the house of the complainant at about 3.00 p.m. and he was entertained by Anand and his sister Saroj, who were present in the house. The behaviour of the accused and his wife, vis-a-vis, the family members of the complainant Naresh was quite normal and good wishes were exchanged. If the occurrence of rape, as such, had taken place at the relevant time, as claimed by the accused side, then, such kind of greetings would not have been exchanged between them and there would not have been, such a long stay in the house of the complainant by the accused and his wife. Another improbability coming forth is that when the

accused demanded money from the complainant, he had stated that he shall return the same after few days. No such immediate trigger was there, so as to cause the injury to the complainant. The return of money, as such, was not denied by the complainant and in these circumstance, inflicting of the injury on this account, highly makes prosecution version improbable.

Furthermore, it is pertinent to mention that it is coming forth in the testimonies of material witness of the prosecution that at the time when the occurrence was caused, the accused was sitting on the cot, amidst them. If it be so and if hot words were exchanged, it would not have been possible for the accused, at once, to take out knife from his pocket and attack the complainant, without any kind of resistance, on the part of the complainant or his father or brother. Some time, ought to have lapsed before the injury could have been caused. Even, Dhan Singh is not aware, as to from which pocket of his clothing, the accused had taken out the knife.

Proceeding one step ahead, even if the injury, had been so inflicted, then also the accused could not have been very conveniently overpowered at the spot. The accused and his wife, could not have been allowed to leave the house of the complainant on the scooter. However, it is the version of PW-6 Anand that accused had left but he was apprehended at some distance by one Dalu and he was brought back to the house of the complainant. Even DW-1, wife of the accused, had so stated that they were brought back. Even if, things had developed in this manner, it is pertinent to mention that PW-7 Dhan Singh had given different version. He stated that accused was arrested by other persons, there and then in the house. If the accused was overpowered at the spot, then, question arises, how knife

sound to logic, if the accused was fleeing on his scooter along with his wife, then very conveniently, he would have taken the knife and there was no occasion for him to conceal the knife under the *kikar* tree, adjoining to the house of the complainant. Moreover, PW-6 Anand, who is brother of the injured, has also not supported the prosecution version, vis-a-vis, disclosure statement, so made by the accused and the recovery of knife, on the basis thereof and thus, his statement also raises an element of doubt on this aspect, qua the recovery of knife.

Besides the aforesaid, there are several discrepancies, coming forth, in the version of the prosecution. The complainant, his brother as well as father, who were the material witnesses of the prosecution, have deposed about the interception of the accused on that very day, soon after the occurrence and that accused was tied with the tree and in the morning, he was handed over to the police. However, the Investigating Officer, PW-8 Mohinder Singh had stated that it was on 18.01.2002, he had visited village Bainsi, in search of accused and he arrested the accused and interrogated him at bus stop. However, it is pertinent to mention that village of the accused is Ganaur and in what manner and for what purpose, the accused would visit village Bainsi, after few days of the occurrence. Thus, it is evident that prosecution is not coming forth with the truth, vis-a-vis, the manner of interception of the accused. Besides this, also it is pertinent to mention that as per the testimony of Dhan Singh, the clothes of the injured were handed over to him by the doctor and he had produced the same to the Investigating Officer, who had taken into possession, vide separate memo after converting the same into parcels. Relating to the same, it is claim of

no effort has been made to send the clothes to the FSL. Even, there is contradiction with regard to the scooter of the accused, having been taken into possession by the police. Dhan Singh, father of the complainant had stated about police having taken into possession, the scooter, whereas Investigating Officer stated that no scooter was taken into possession by him. Furthermore, besides the aforesaid contradictions, it is pertinent to mention that witnesses of the prosecution had also stated that wife of the accused had stayed in their house for 3-4 days after the occurrence and only, thereafter, she had returned to village Ganaur. This conduct, is otherwise, highly improbable, moreso, if the act of her ravishment, earlier had taken place, as claimed by the accused. Even, the police officer, who had visited the house and prepared site plan, had stated that he did not see wife of the accused in the house. Furthermore, it is pertinent to mention that PW-6 Anand had stated that after inflicting of the injury, the complainant ran to the house of Jagdev, their neighbour and when they had gone there, he was found to be lying on the cot. However, injured himself stated that after the inflicting of injury, he fell down at the spot and became unconscious. In the light of the same, there are lot of discrepancies and contradictions, coming forth, in the testimonies of the material witnesses. In fact, there are serious infirmities and inconsistencies. The Investigating Officer had also made omissions, vis-a-vis, the collection of evidence, so as to complete the string to nail down the accused.

No doubt, from the medical evidence, so coming forth, it stands established that Naresh had sustained serious injury, which was declared dangerous to life but it is pertinent to mention that no blood was found at

the place of occurrence or at any place upto the house of Jagdev, the

neighbour or on the cot on which, the injured is stated to be lying. No blood-stained earth was picked up. Even, the knife and clothes were not sent to FSL. All these circumstances, reveal about the serious infirmities, coming forth, in the prosecution version, which definitely raises doubt about the truthfulness of the prosecution version and precisely, on this account, learned trial Court has rightly extended benefit of doubt and acquitted the accused of the charge levelled against him.

The impugned judgment, as such, merits no interference. As such, the appeal sans merit and is hereby dismissed.

(JITENDRA CHAUHAN)	(ARCHANA PURI)
JUDGE	JUDGE
December 16, 2019	
Vgulati	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No