

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-757-DB-2017 (O&M)
Reserved on: 09.9.2022
Date of Decision: 14.9.2022

TaslimAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. Siddarth, Advocate for
Mr. Mansur Ali, Advocate
for the appellant.

Mr. Anmol Malik, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 6.7.2017, by the learned Additional Sessions Judge, Karnal, upon Sessions Case No. 12 of 2017, wherethrough, he proceeded to convict the accused Taslim, in respect of charges drawn against him, for offences punishable under Sections 436, 342, 307, 302 read with Section 34 of the IPC. Moreover, vide a separate sentencing order, drawn on 6.7.2017, he proceeded to sentence the convict in the hereinafter extracted manner.

Section	Sentence
342/34 of IPC	To undergo rigorous imprisonment for one year.
436/34 of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs. 5000/-. In default of payment of fine to undergo further imprisonment for one year.
307/34 of IPC	To undergo rigorous imprisonment for ten years and to pay fine of Rs. 5000/-. In default of payment of fine to undergo further imprisonment for two years.

302/34 of IPC	To undergo rigorous imprisonment for life and to pay fine of Rs. 10,000/-. In default of payment of fine to undergo further imprisonment for three years.
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2. The convict becomes aggrieved from the above recorded verdict of conviction, and, also, from the consequent therewith sentence(s) of imprisonment and of fine, as became imposed, upon him, and hence becomes led to constitute thereagainst the instant appeal before this Court.

Factual Background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. 13 is assigned. In Ex. P-13 it is narrated, that on 17.01.2013 at about 6.00 A.M., Ramesh Chand ASI received a telephonic call from Control Room regarding the fire in the house of Mannu Mahant, resident of village Kachhwa and for proceeding. On this information, ASI alongwith ASI Sumer Chand, Constable Devi Singh reached in the house of Mannu Mahant in village Kachhwa where Sapna Kinner (eunuch) pupil of Deepa, was found present, who got recorded her statement with the contents, that she is a resident of House No. 122-AC Road Babban Gazi Hawra (Calcutta) pupil of Deepa. She has the relationship with Deepa and Mannu Mahant, who are also from the eunuch (Hijra) community. She had gone to see Mannu Mahant on 12.01.2013 in village Kachhwa, and, at about 10.00 P.M. in the night, two boys namely Taslim and Rizwan, who used to play Dholki with Mannu Mahant, Taslim used to stay with Mannu Mahant for about 20-25 days. On that day, at about 11.00 P.M., in the night, she had left Mannu Mahant, Koyal, Ranjit, Taslim and Rizwan in the relevant room, and, she went to sleep in the other room. At about 3.30 A.M., she heard noises from the room of Mannu Mahant, Koyal and Ranjit. Though, she tried to unbolt her room, but she found that her room was bolted from

outside. Thereafter, she opened the window, and, raised a hue and cry and on listening the same, the neighbours, who were sleeping on the roof, came on the spot and after opening the door, she came out of the room. Mannu Mahant, Ranjit, Koyal, Taslim, Rizwan were sleeping in the adjoining room but that room was also bolted from the outside. The villagers broke open the door and brought out Mannu Mahant. Her pupils Koyal and Dholki player Ranjit were there, but Taslim and Rizwan were not found in that room. A huge fire was there in the room which was doused by the villagers but Mannu Mahant, Koyal and Ranjit were totally burnt. They were shifted to Civil Hospital through ambulance. The informant had apprehension that accused Rizwan and Taslim in order to kill Mannu Mahant, Koyal and Ranjit, had put the room on fire and slipped away by bolting the room from outside.

Investigation proceedings

4. Having found that a case under sections 436, 342, 307, 34 of IPC was made out, hence ruqa was sent to the Police Station through C. Devi Singh, on the basis of which formal FIR was registered. Copy of FIR was sent to Illaqa Magistrate and Senior Police Officers through email ID. FSL team was called and photographs of the place of/site of occurrence were taken and thereafter the machinery of law was set in motion.

5. During the course of further investigations, site plan of the place of occurrence was prepared, statement of victim Mannu Mahant was recorded. The recovery memo of Payjeb silver, was got recovered in the presence of Sapna, from accused Taslim on 27.4.2014, which was attested by H.C. Sulinder Kumar. Spot was also got identified by accused Taslim. Disclosure statement of accused Rizwan was also recorded, and, in

pursuance to that, the Payjeb (Ghungru wali) was also got recovered, and, got identified by Sapna complainant, in the presence of HC Sulinder Singh and HC Karambir Singh. Scaled site plan was also got prepared. Report under section 173 Cr.P.C. was also got prepared, disclosure statements of both the accused Taslim and Rizwan (juvenile) were recorded, rough site plan of the place of occurrence were also prepared, spot was got inspected through both the accused, post-mortem of Mannu Mahant was got conducted, and, photographs of the spot were also taken. Medico-legal reports of Koyal and Ranjit were also obtained, rough site plan was got prepared and all the belongings which were taken into possession by the doctor were handed over to the police in the presence of Sumer Chand ASI. Opinion of the cause of death was also taken from the doctor. Statements of witnesses under section 161 Cr.P.C. were also recorded. After completion of investigations challan was prepared and furnished in the court.

Committal Proceedings

6. The learned committal Court concerned, after complying with the provisions contained in Section 207 of the Cr.P.C., through a committal order made on 2.7.2014, proceeded to commit the case to the Court of Session.

Trial Proceedings

7. After perusing the police report, and, final report under section 173 Cr.P.C., along with the documents, as referred to therein, and, after the hearing learned Public Prosecutor for the State, and, the learned defence counsel, a *prima facie* case under Sections 342, 307, 302, 436 read with Section 34 of IPC was found to be made out against both the accused, who were, vide order dated 14.08.2014, charge sheeted accordingly by the

learned Sessions Judge concerned, to which they pleaded not plead guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 16 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. Subsequently, the learned trial Judge concerned, proceeded to draw proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. Though, the accused claimed the granting of leave to them, for leading defence evidence, but the above granted leave never became availed by them.

9. Thereafter, vide order dated 4.5.2016, passed by the learned Sessions Judge, Karnal, accused Rizwan was declared a juvenile, and, supplementary challan against him, was ordered to be furnished before Principal Magistrate, Juvenile Justice Board, Karnal.

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and, consequent therewith sentence (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross misappreciation, and, non-appreciation of the evidence, as exists on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed and set aside.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and, does not warrant any interference.

Discussion about the deposition of PW-4, the star prosecution witness.

12. PW-4 Sapna, in her examination-in-chief has supported the genesis of the prosecution case, as becomes carried in the appeal FIR Ex. P-13. In her examination-in-chief, she has deposed that on 12.1.2013, she had gone to Kachwa to meet Mannu Mahant, and, that she had remained there. However, on the night of 16.1.2013, at about 10.00 P.M., two boys Tasleem and Rizwan, who became identified in Court, are stated to arrive at the crime site. She continued to testify, that both used to play *dholki* with kinnars. She further deposed that, at about 11.00 P.M., on the ill-fated day, she exited from the room of deceased Mannu Mahant, and, went to sleep in the adjacent room, but she yet echoes, that the deceased, Ranjit, Koyal, Tasleem, and, Rijwan yet continued to occupy the said room. She further testifies, that on 17.1.2013, at about 3.30 A.M., she heard cries of Mannu, Ranjit, and, Koyal, and, though, she tried to come out of her room to proceed to the crime site, but she noticed that the door of her room was bolted from outside. She has thereafter testified, that from the window of her room, she called for help from the neighbours, who arrived at the crime site, and, unbolted the door of the room, and, thereafter she came out of the room. It was then she noticed, that the room where she had left deceased Mannu Mahant, Ranjit, Koyal, Tasleem and Rizwan, was under fire. Even the above room was bolted from outside, as such, the door of the room was broken, and, then deceased Mannu Mahant, and, injured Ranjit and Koyal, were taken out from the room, whereas Tasleem, and, Rizwan were not found in the room. Mannu Mahant, Ranjit, and, Koyal are stated to receive burn injuries, and, that then they were taken to the hospital for treatment, being given to them.

She is the witness of last seen

13. The above PW-4, in the above mode, in her examination-in-chief, has propagated the theory of the accused, being last seen in the company of the deceased. The above fact is but noticeable in her examination-in-chief, wherein she stated with firmness, that when on 16.1.2013, she exited from the room of the deceased Mannu Mahant, and, went to sleep in an adjacent room, yet the deceased besides injured Ranjit, Koyal, and, also Tasleem, and, Rizwan, were all in the said room. Moreover, she echoes in her examination-in-chief, that on 17.1.2013, at about 3.30 A.M., she heard cries for help, emanating from the room of deceased Mannu Mahant, injured Ranjit, and, Koyal, but states that she could not exit from her room, as it was bolted from outside. Nonetheless, only on hers, from the window of the room, seeking the help of the neighbours, that the said room was unbolted, and, it was then she noticed, that deceased Mannu Mahant, and, injured Ranjit, and, besides injured Koyal had received burn injuries, whereas the accused were not available at the crime site.

Inference from the above discussion

14. In consequence, the above deposition reveals, that she had last seen both the accused continuing to occupy the crime site, even after she had exited therefrom. Moreover, she has also clearly stated, that subsequently she had shifted to an adjoining room, but thereafter on 17.1.2013, on 3.30 A.M., she heard cries for help, of deceased Mannu Mahant, injured Ranjit and Koyal, emanating from the room of the deceased Mannu Mahant, which ultimately led her to, in the above stated manner, arrive at the crime site. However, there she noticed, that only deceased

Mannu Mahant, injured Ranjit, and, Koyal being present there, but both the accused were not there.

15. The above made statement of PW-4, in her examination-in-chief, does reveal, that she obviously last saw both the accused to occupy the crime site even after hers exiting therefrom. Moreover, since it also reveals, that when she arrived at the crime site, only deceased Mannu Mahant, besides injured Ranjit, and, Koyal, were present there, but both the accused were not present there. Therefore, if the accused were innocent, as such, they were to be also available in the relevant room along with the deceased Mannu Mahant, besides with injured Ranjit, and, Koyal. However, both were evidently not found present there. The consequent effect thereof, is that, with PW-4 narrating, in the above manner qua hers last seeing the accused, in the company of the deceased, besides in the company of the injured concerned, especially when neither any pointed cross-examination, to that effect has been conducted upon her, nor any answer favourable to the defence, has been elicited from PW-4, thus, hers ably proving hers last seeing the accused in the company of the deceased, and, in the company of the injured.

Forensic team visits at the crime site

16. Ex. P-23, proven by PW-8, carries the hereinafter extracted narrations:-

- “1. Three keeners named as Mannu Mahant, Koyal and Ranjeet were started to get injured in fire and they were found shifted to GH Karnal for treatment.
2. Fire effected room door was found opened forcibly by villagers with kicks from outside and door was found broken.
3. Inside the room mattresses, blankets, quilts curtains etc. were found partially burnt and smoke soot was present all over the walls and ceiling of the room. POP of the ceiling was found separated and fallen on the floor.

4. *Maximum fire was noticed on the back of the door inside room and curtain of the door was found completely burnt.*
5. *Electrical fitting was internal and it was not found effected by fire. Hence fire due to short circuiting or sparking could be ruled out.*
6. *Samples from the spot were lifted and handed over to I/O.”*

17. The relevant narrations, as made therein, inasmuch as, that on the Forensic Team, visiting the crime site, theirs noticing latches on the doors of both the rooms at the first floor, being closed from outside. Moreover, further relevant observation therein, that the fire effected room door was found opened forcibly by the villagers, with kicks from outside, and, the door was found broken, does obviously capitalize an inference, that the fire effected room, as deposed by PW-4, to be forcibly unbolted from outside, with the help of the villagers, hence becoming cogently established. In consequence, Ex. P-23 corroborates the version, as deposed by PW-4, besides also assigns credence to the theory of last seen, as propagated by PW-4.

18. Be that as it may, the factum of occurrence of fire, inside the relevant room, is also but evident from the observations, as occurring in paragraph Nos. 3, 4 and 5 of Ex. P-23. Thus an irresistible conclusion is to be drawn that therethrough the deposition of PW-4, qua the relevant room, being set ablaze, rather becoming meted corroboration.

Dying declaration of the deceased

19. Prior to the deceased Mannu Mahant, ultimately succumbing to the burn injuries, she made a dying declaration, wherein she inculpated both the accused. Prior to the deceased Mannu Mahant making a dying declaration, as carried in Ex. P-46, she was declared fit, by the doctor concerned, to make a statement. The declaration of fitness of deceased

Mannu Mahant, to make a statement, is carried in Ex. P-15, and, has been proven by PW-1. It was on 17.1.2013, that deceased Mannu Mahant recorded her dying declaration, before the learned ACJM, Karnal, and, to which Ex. P-46 is assigned. The contents of the dying declaration, become extracted hereinafter.

“Stated that on yesterday Drummer Tasleem and younger boy Rijwan came with me at 9.45 P.M. Earlier also Tasleem had worked with us. He stayed with us in the night. Time is not known. In the night when I awake, the house was at fire and the door was closed from outside. Tasleem and Rizwan were missing and were not present in the room. On crying, Chelas who were outside, brake open the door and saved us. We remained lying there for about half hour, then police and ambulance reached there and shifted us in civil hospital thereafter we came there. Tasleem and Rizwan have set the fire, but cannot say why they do so. I have nothing to say any more.”

20. A reading of the above extracted contents of the dying declaration, recorded by the learned ACJM, Karnal, does clearly indicate, that she had assigned incrimination to both the accused in the crime event. Ex. P-46 became tendered into evidence by PW-15. PW-15, before whom the deceased made a dying declaration, on his stepping into the witness box, has proven Ex. P-46, and, Ex. P-47. He has spoken therein, that the dying declaration, as made before him, by the deceased, was read over and explained to the deceased, and, thereafter her great toe impression was obtained, as her hands were burnt. He also stated, that the doctor remained present throughout the phase of the deceased making the dying declaration to him. He also deposed that even subsequent to his recording the dying declaration of the deceased, the certificate of the doctor Ex. P-16 being obtained. However, no evidence to bely his rendering proof in respect of the validity of drawings of Ex. P-46, and, Ex. P-47, has been adduced by the defence, through the latter meteing suggestions to him, during the course of

his being put to cross-examination. Therefore, Ex. P-46 requires immense creditworthiness. Thus, the inculcation, as made therein against the present convict, is to be concluded to be cogently proven by the prosecution.

Disclosure and recovery memos and their effect

21. During the course of the custodial interrogation of the present convict, he as revealed by Ex. P-26, made a signed disclosure statement, before the investigating officer concerned, revealing therein his willingness to ensure recovery of a silver pajeb with ghungru, and, identification. Since in consequence thereof, through recovery memo, to which Ex. P-18 is assigned, the incriminatory items, as mentioned in disclosure statement Ex. P-26, became recovered. Resultantly both the disclosure statement, and, obviously the consequent therewith recoveries, as made, through recovery memo Ex. P-18, carry immense evidentiary vigour. The reason being that the accused has not been able to either ably deny his signatures, as carried on the disclosure statement, nor has been able to prove the denial, and, also when he has not been able to challenge the recoveries, as made in pursuance to the recovery memo. Thus, in the absence of the afore challenges, being made to the above memos, does beget a firm conclusion, that utmost evidentiary vigour, is to be assigned to the memos (supra). In consequence, with able proof emerging in respect of the drawings of the above memos, resultantly corroboration therethrough is meted to the theory of last seen, as propagated through PW-4, besides corroboration is also meted to the dying declaration, as becomes embodied in Ex. P-46, and, Ex. P-47.

Post Mortem report

22. The post-mortem report is embodied as Ex. P-32, and, has been proven by PW-12 Dr. Amritpal Kaur. In her examination-in-chief, she has

testified that on hers making autopsy on the body of deceased Mannu Mahant, her noticing thereons, the hereinafter extracted facts

“A dead body of a kinner measuring 5 feet x 2 inch wearing clothes as per police papers with white bandage on both arms and forearm, right leg, right foot and left foot, whole face was burnt with a line of redness present, at various places.”

23. She has also thereafter made an echoing, that the cause of demise of the deceased was owing to septicemia arising from underlying burns. The above extracted relevant portion of the post-mortem report reveals that the severe burn injuries, as were occurring on the body of the deceased, hence sequela the demise of Mannu Mahant. Thus, the above also does support the inculcation, as drawn against the accused in the dying declaration Ex. P-46/Ex.P-47. Moreover it also supports the theory of PW-4 last seeing the accused in the company of the deceased. In addition, support is also marshalled therefrom to the memos (supra). In consequence, the prosecution has been able to clinchingly prove the guilt of the present convict.

MLRs of injured Koyal and injured Ranjit

24. The MLRs of injured Koyal, besides of injured Ranjit, are respectively carried in Ex. P4, and, Ex. P6, and, are proven by PW-2 Dr. Neeraj Singh. A perusal of the relevant observations, as made therein, by the treating doctor, do clearly reveal, that they had also sustained burn injuries, on their respective persons. Therefore, when both the injured were also inside the crime site, at the relevant time. Thus, the existence of burn injuries, on their respective persons, is also attributable to both the accused. The reason being that in respect of their incriminatory participation, credible evidence has been adduced by PW-4, besides becomes comprised in Ex. P-46, carrying therein the dying declaration of the deceased.

Final order

25. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, and, the consequent therewith sentence(s), as becomes imposed upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. If the convict is on bail, thereupon, the sentence(s), as imposed, upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

26. Records be sent down forthwith.

27. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

September 14, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No