

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-268-2022

Date of Decision: 21.10.2022

State of Haryana

.....Appellant(s)

Versus

Dilbag and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Hitesh Pandit, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present application has been preferred by the State under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment of acquittal dated 28.09.2021 passed by the Additional Sessions Judge, Sonapat in FIR No. 221 lodged on 29.04.2017 qua the incident dated 20.04.2017.

The reasoning which weighed with the trial Court was that the statement of the prosecution witnesses namely the complainant PW-1 Jyoti and PW-9 Ramesh, father of the complainant, did not inspire confidence and there were a number of material contradictions and inconsistencies in their statements. It was noticed that the complainant had stated that she was standing in front of her house when the accused, who are the relative i.e. Uncle (*Tau*) had tried to install the gate adjacent to their house. On her raising objection, her aunt caught hold of her by the hair and thereafter dragged her inside her house. It was noticed that while appearing in Court, she had deposed that she was present in the house and was doing domestic work and when she heard noise in the street and she moved in the street to see

what had happened. Her allegation was that her cousin namely Parveen had administered some poisonous substance in order to kill her and admitted that there were many disputes in the past between the family. It was noticed that there was a dispute as to whether she vomited after consumption of poisonous substance in the street or in the hospital. It was noticed that she had been shifted to the hospital in the car of a resident of the village namely Ram Kumar but this person had neither been joined in the investigation nor he had been cited as a witness or examined in order to substantiate the prosecution story. Resultantly, in the absence of any independent witness and keeping in view a number of inconsistencies, it was held that the statements cannot be considered as gospel truth and required further corroboration from other cogent evidence and it was held that it was a case of after thought, deliberations and consultations. Resultantly, ingredients under Sections 307 and 328 IPC not being made out, benefit as such was given by even holding that the investigation was found to be tainted and the whole of the prosecution case was open to serious doubts and challenges.

Counsel for the State has vehemently argued that there was an eye witness account and, therefore, the benefit has been wrongly granted to the respondents-accused.

We have gone through the record and are of the considered opinion that the trial Court was well justified in coming to the conclusion that the discrepancies in the statement of the witnesses necessarily gave reason for giving the benefit to the accused. A perusal of the statement of the complainant would go on to show that she had heard a noise in the street while doing some domestic work and she moved to the street to see what was

the gate in front of their house. Her father was not at home at that time. She stopped her *Tau* from installing the gate and at that point, her aunt (*Tai*) had caught hold of her from her hair and both her *Tau* and *Tai* had caught hold of her hands and they had taken her inside their house. Co-accused namely Parveen, who is her cousin, had also reached there and caught hold of her legs and she was over powered and he had administered some poisonous substance. Persons who were passing through the street heard her noise and reached the place and the said passerbys took her in the street. In the meantime, her father reached there and took her to BPS, Khanpur for medical treatment.

The police party had met them their on 21.04.2017 at GPS Khanpur and recorded her complaint and on 27.04.2017, they visited their house and on 29.04.2017, prepared the site plan and the FIR was lodged accordingly. In cross examination, she admitted that there were many disputes between them and the gate was one of the primary reasons. She also admitted that she was helped by a neighbourer who, in turn, had informed her father and many people including some neighbourers and outsiders were present but she did not recall their names, especially ones who had helped her and neither she had disclosed the names of the neighbourers to her family members. The poisonous substance caused irritation to her and she was admitted but she did not vomit in her house after consumption of the poisonous substance which had been administered through a bottle which was like one which was used for spraying in the fields. The substance had caused heat (*jalan*) on her tongue and she did not had a chance to vomit the substance which had been taken in by her completely. She admitted that her

time after the incident. When her father had come, she was sitting outside the gate. She had become unconscious thereafter and regained her consciousness in the hospital and in between she had vomited. She admitted that she was given first aid and was medically examined while she was unconscious and doctors used to give her injections which used to cause acidity in her stomach and she used to vomit. The bottle was stated not to be transparent and was a one litre bottle and was emitting smell but she could not tell how much quantity of substance she had swallowed.

It is to be noticed that as per the report of the forensic laboratory, the result of the examination sheet show that it was “Morphinan (Psychoactive drug consisting opiate Analgesics), which was detected in Ex.PX. It has also come on record that as per the statement of the police witnesses including witness No.4 Constable Anil Kumar, no recovery was effected in pursuance to the disclosure statement (Ex.PW-4/A) wherein Dilbag had confessed about the commission of crime. As per the statement of PW-7 S.I. Baljeet Singh who had investigated the incident and in his cross examination, he admitted that he had recorded the statement of Jyoti at 10.30 a.m. and father of Jyoti had met him in the hospital but refused to give any statement in this regard. She had been discharged in the evening on 20.04.2017 and that he had collected two sealed bottles, two envelopes from the doctor and that he had not collected any type of physical evidence or scientific evaluation from the crime spot.

Even as per the statement of PW-8 ASI Satbir Singh, nothing was recovered in pursuance of the disclosure statement of accused Dilbag and that no independent witness had been joined in the investigation at the time of

interrogation of accused. The statement of the father, PW-9 namely Ramesh

would also go on to show that he was not present and was in the fields and, therefore, his version that she was dragged to the house and administered some poisonous substance cannot be accepted since it is admitted that he had come to know about the same and reached the place. He also admitted that his daughter was not having any injury mark but was found lying unconscious in the street in front of the house and was surrounded by many co-villagers. She was shifted in the car of Ram Kumar, who was residing at *Pana* of the village and he had been called by someone. He had admitted that there was vomit lying in the street and she had also vomited in the BPS Khanpur. He also admitted that the fields were one kilometer away and the police had firstly record the statement of Jyoti and thereafter his statement had been recorded and he admitted that his confrontation was going on with Dilbag even before the said incident. He could not tell as to who had made telephonic contact with him and he stated that Jyoti had regained consciousness on 22.04.2017 and there is contradiction in the date of discharge of Jyoti, as such

Apparently from the above statements, it would be clear that it was a case which has been blown out of proportion on account of the dispute *inter se* the family. The forensic laboratory report would also go on to show that apparently it was on account of a medication which was granted to Jyoti which had led her to throwing up and even the police as such had not stated that he had collected any samples from the street. Even the container from which the alleged poisonous substance as such was administered was not recovered.

In such circumstances, keeping in view the fact that the

happened, it is apparent that the trial Court was well justified in granting the benefit of acquittal to the accused. Resultantly, we find no illegality or perversity in the order of the trial Court where the said benefit has been extended keeping in view the fact that there is a double presumption of innocence on account of the acquittal which has been recorded in their favour. There is also a delay in lodging of the FIR though the police had reached the spot on the same day and it has also not been explained by the police officials as to the reason why it occurred.

Accordingly, we find no reason to grant leave to appeal against the judgment granting benefit to the accused-respondents and the present application is accordingly dismissed.

(G.S. SANDHAWALIA)
JUDGE

21.10.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No