

2024:PHHC:125858-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-119-2020 (O & M)
Reserved on: 06.09.2024
Pronounced on: 20.09.2024

Anil PanchalAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Manpreet Singh Dua, Advocate (legal aid counsel)
for the applicant-appellant.

Mr. P.P.Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the convict-appellant, against the verdict of conviction, as made on 07.01.2020, by the learned Additional Sessions Judge (Exclusive Court for heinous crimes against women and children) Yamuna Nagar at Jagadhri, upon, Session Case No. 343 of 2017, wherethrough, in respect of charges drawn for offences punishable under Sections 302/323/341/506 IPC, and, Section 25 of the Arms Act, he made a finding of conviction against the accused.

2. Moreover, through a separate sentencing order drawn on 10.01.2020, the learned trial Judge concerned, proceeded to impose

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upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

U/s 302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.25000/(twenty five thousand). In default of payment of fine, he shall further undergo RI for a period of three years.
U/s 326 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/-(ten thousand). In default of payment of fine, he shall further undergo RI for a period of one year.
U/s 341 IPC	To undergo RI for one year
U/s 506 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs. 5,000/-(five thousand). In default of payment of fine, he shall further undergo RI for a period of six months.
U/s 25 of Arms Act	To undergo rigorous imprisonment for one year and to pay a fine of Rs. 2,000/-(two thousand). In default of payment of fine, he shall further undergo RI for a period of four months

3. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon him, by the learned convicting Court concerned, and hence has chosen to institute thereagainst the instant appeal before this Court.

Factual background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PW2/F is assigned.

5. The case of the prosecution is that on 18.08.2017, a telephonic information was received in the Police Post regarding admission of one Sarita wife of Anil Panchal in Civil Hospital, Yamuna

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Nagar after being injured in a fight. On receiving this information, HC Sandeep Kumar reached Civil Hospital, Yamunanagar and moved an application to the doctor to obtain his opinion regarding the condition of injured, who declared the injured unfit to give the statement. Again on 19.8.2017 the injured was declared unfit to give the statement. On 20.8.2017, after obtaining opinion of the doctor, HC Sandeep recorded the statement of injured Sarita, who has stated that she has solemnized love marriage with Anil Panchal in the year 2015 and one boy namely Naman was born out of their wedlock. For some time, accused Anil kept her properly but for last one year he started fighting with her and stopped maintaining her. For the last three months, she is residing at her parental house in Harbanspura with her child. She has already filed an application seeking maintenance against the accused, which is pending in the court. On 18.8.2017 at around 7.30 p.m., she has gone to the shop of her friend Geeta for giving money and the moment she came out, her husband Anil Panchal came on his motorcycle and stopped her. He caught hold of her dupatta, which was in her neck and pushed her, on which she fell down. Thereafter, he started giving beatings to her. He gave kick blows to her in the stomach and then he brought a knife out and stabbed her in her stomach. She raised hue and cry, on which many people assembled at the spot. One boy namely Aryan son of Inderjit also reached there, who tried to rescue her but the accused gave a knife blow on his arm as well. The accused ran away from the spot when he saw the people assembling and while leaving the place he threatened

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her with dire consequences. Aryan and her family members got her admitted in Civil Hospital, Yamunanagar for treatment. On the basis of this statement, First Information Report under sections 323,341,506 IPC was registered.

Investigation proceedings

6. The investigation was set into motion. During investigation, the accused was arrested on 5.9.2017 and he got recovered the motorcycle bearing registration No. HR02M-1202. He was later on released on bail. On 10.9.2017, a rukka was received from GMCH, Sector-32, Chandigarh regarding the death of injured Sarita. The post- mortem examination of the dead body was got conducted and after that the dead body was handed over to her legal heirs. Later on, Section 302 IPC was added. During investigation, the accused was re-arrested on 13.9.2017, who again suffered a disclosure statement and got the knife recovered, which was used in the incident. Section 25-54-59 of Arms Act was also added later on. The accused got the place of occurrence demarcated. The opinion of the doctor regarding the injuries of the deceased was taken.

7. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C. against the accused, before the learned Committal Judge concerned.

Committal proceedings

8. Finding the offence punishable under Section 302 of the

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committal Court vide order dated 06.12.2017, committed the case for trial to the Court of the learned Sessions Judge, Yamuna Nagar at Jagadhri.

Trial Court Proceedings

9. On finding a *prima facie* case, charges under Sections 341/326/506/302 IPC and Section 25 of the Arms Act became framed, against the accused concerned, to which he pleaded not guilty, and, claimed trial.

10. In support of the prosecution case, the prosecution examined fifteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge Yamuna Nagar at Jagadhri, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examine any witness in his defence.

11. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellant.

Submissions of the learned counsel for the convict-appellant.

12. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as

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imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing 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

13. On the other hand, the learned State counsel has argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

Case based on the statement of deceased Sarita (Dying Declaration).

14. Prior to the deceased-Sarita, ultimately succumbing to the injuries, she made a dying declaration, wherein, she inculpated the convict-appellant. Prior to the deceased Sarita making a dying declaration, as carried in Ex. PW2/D, she was declared fit, by the doctor concerned, to make a statement.

15. However, for the reasons to be assigned hereinafter, this Court comes to the conclusion, that the dying declaration, as embodied in Ex. PW2/D, is worthy of acceptance. The prime reason being that the police official concerned, on 18.08.2017, thus moved an application, to which Ex. PW2/B becomes assigned, rather before the doctor concerned, whereby he sought an opinion from the doctor concerned qua whether the injured was fit to make a statement. The doctor concerned, made his apposite opinion on 18.08.2017 (Ex.PW2/B/1),

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whereins, the injured was initially declared unfit to make a statement. Thereafter, vide opinion Ex. PW2/C/1 of the doctor concerned, thus made on 20.08.2017, the injured was declared fit to make the statement. The makings of Ex.PW2/C (application for opinion) and Ex.PW2/C/1 occur on the very same day when the declarant, through a dying declaration, as embodied in Ex. PW2/D, rather inculpated the convict. The declaration of fitness of deceased Sarita, to make a statement, as carried in Ex.PW2/C/1, has been proven by PW-2. Therefore, the statement of the deceased Sarita (Ex. PW2/D), becomes a potent piece of evidence, as it is a validly made dying declaration, and, thereto a grave evidentiary solemnity is to be assigned.

16. Be that as it may, the hallmark of gravest evidentiary solemnity becoming assignable to it is, qua it, being provenly authored by the deceased, and, that too when she was in the fittest mental state to make it.

17. For determining the above facet, an allusion is to be made to the deposition of PW-11, who, on the request of HC Sandeep Kumar, made a proven opinion, as embodied in Ex.PW2/C/1, that the patient Sarita, was fit to make a statement. The above statement was made by her, during the course of her receiving treatment at the hospital concerned, whereins, she assigned an incriminatory role to the accused in the extant crime event. The original of the dying declaration is carried in Ex. PW2/D. Since the original of the dying declaration has been placed on record, therefore, it comprises the apt primary evidence,

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in respect of the incriminatory echoings made therein against the accused concerned.

18. Moreover, reiteratedly the apposite best proof in respect of authenticity of its contents, besides in respect of the fit cognitive abilities, of the declarant, rather at the relevant time, thus becomes comprised in the apposite opinion Ex. PW2/C/1, wherein, the declarant has been unrebuttedly declared to be fit to make a statement. Resultantly, reiteratedly the dying declaration, as made by deceased Sarita, is to be concluded, to be free from any vices of her being coached, and, goaded to make it. In nutshell, the proven dying declaration, as embodied in Ex. PW2/D, does constitute a potent incriminatory evidence against the convict-appellant and, also hence thereby, the charge drawn against him, becomes proven to the hilt.

Corroboration lent to the dying declaration by the testimony of PW-1 (eye witness).

19. For proving the charges (supra) drawn against the convict, the prosecution also made reliance upon the deposition of the ocular witness to the occurrence namely one Aryan, who stepped into the witness box, as PW-1. The relevant parts, as occur in the examination-in-chief of PW-1 are ad verbatim extracted hereinafter.

“I am resident of ITI Yamuna Nagar. I am doing B.A. from MLN College Yamuna Nagar. On 18.08.2017, I went to Indira Garden for offering prayer at Peer. I found that Anil Panchal, accused present in the court was beating one lady. I rushed towards them. When I tried to rescue that lady from the clutches of accused, he said that it is their family matter. Accused Anil Panchal, present in the court caused

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injuries to that lady with the help of knife. People gathered there. On seeing them, accused rushed from there. Accused gave knife blow in the stomach of that lady. Two-three ladies present there and they helped the injured lady. Next day, I came to know from the newspaper that the name of that lady was Sarita. She was taken to hospital for medical treatment by the persons gathered at the spot. My statement was recorded by the police."

20. PW-1 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition (supra), as, comprised in his examination-in-chief rather being engineered, false, or, contrived. Therefore, the statement Ex PW2/D, as made by the deceased Sarita is fully corroborated by the deposition of PW-1, who is also an independent witness to the occurrence.

DISCLOSURE STATEMENT OF ACCUSED AND CONSEQUENT THERETO RECOVERY.

21. During the course of investigations, being made into the appeal FIR, convict Anil Panchal made a signed disclosure statement, to which Ex. PW2/1 is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

"In the presence of the following witnesses, Anil Panchal son of Som Pal, caste Lohar, resident of House No. 314, Aadarsh Nagar Camp, police station, Farakpur, District Yamuna Nagar, duly arrested, under police custody, on my enquiry, by denying the disclosure statement already given by him, has made again disclosure statement without any fear, and greed that "During the year 2015, I had solemnised the love marriage with Sarita daughter of Nam

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Lal, caste Harijan, resident of House No. 304, Harbanspura, police station, Farakpur, District Yamuna Nagar, as per my desire. My parents were severely displeased with this marriage because I am already married, whose two children, one boy and one girl, who reside with my parents. I was dispossessed by my parents from house, by agreeing for my second marriage. After some time of marriage, a dispute arose between me and wife Sarita. Sarita has a son aged 1-1/2 years, born from the marriage with me. I could not provide maintenance allowance to Sarita at that time and quarrel took place so many times between husband and wife in our house. Sarita has filed a case of maintenance allowance against me in Jagadhri court about one year ago. I used to say Sarita again and again to withdraw the case, who had refused flatly to withdraw the case and my wife Sarita had gone to her parents for about three months. On 18.08.17, when I was passing through Harbanspura on my motor cycle the I saw Sarita from the front side. It was at about 7.30 P.M. I, after stopping Sarita, gave leg and fist blows to her on her stomach, by pushing down her by holding duppatta from her neck and told her that I will release you on withdrawing the case of maintenance allowance, but Sarita had flatly refused to withdraw the case. Due to this grudge, I had inflicted injuries, with the knife holding in my hand, from the handle side, on the right side of stomach of Sarita. Many people were gathered at the spot. On seeing the crowd gathering at the spot. I had fled away from the spot alongwith my motor cycle and knife. I have got recovered the motorcycle on 05.09.17. The knife, by which I had wounded Sarita by inflicting injuries with it on her stomach, that knife has been kept by hiding by me in

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the rental room at Muzafar Nagar U.P. No one, except me knows about this, which can be got recovered by accompanying you, by demarcating the room and that place can also be got demarcated where I had inflicted injuries on the stomach of Sarita with legs, fists and knife by pushing her down, on which the disclosure statement of accused was recorded. The accused as well as witnesses put their signatures on the memo.”

22. Pursuant to the above signed disclosure statement, convict Anil Panchal ensured the effectuation of the recovery of the weapon of offence i.e. knife, which was taken into police possession, through recovery memo Ex. PW2/J.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT AND RECOVERY MEMO(S).

23. The disclosure statement (supra), carries thereons the signature, in English, of the convict-appellant. In his signed disclosure statement (supra), the convict-appellant, confessed his guilt in committing the crime event, by inflicting fatal injuries on the deceased concerned, hence with the user of the incriminatory weapon of offence. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, at the place concerned, and, qua his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon of offence to the investigating officer concerned, thus from the place of his hiding, and, keeping the same.

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24. The above disclosure statement, does acquire, the utmost evidentiary solemnity, as thereons exists the signature, in English, of the convict-appellant, which, however, he has neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald nor a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through proven recovery memo Ex. PW2/J, the convict-appellant, caused the recovery of the incriminatory weapon of offence, to the investigating officer concerned.

25. Since the recovery of the incriminatory weapon of offence, as made through recovery memo Ex. PW2/J, has not been proven to be false or a contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict-appellant to place it there. Thus, the above recovery is not only to be concluded to be a validly made recovery, but is also to be concluded to be of the very same incriminatory weapon, which did become used by convict-appellant, in causing the relevant fatal assault.

MLR of injured/deceased Sarita

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26. Dr. Sunil Kumar, who medico legally examined the injured/deceased Sarita wife of Anil Panchal, has stepped into the witness box as PW-9, and, during the course of his examination-in-chief, he has proven the MLR of the said injured-deceased, to which Ex. PW9/B, is assigned. He also proved the existence thereons of his valid signatures. He has also proven the existence of the hereinafter extracted injuries on the person of injured Sarita (since deceased).

“1. C/o pain right thigh, no ext. injury seen, advised ortho opinion.

2. Multiple reddish scratch over right side of neck, advised ENT opinion.

3. Lacerated wound 1.5 cm x 0.5 cm x 0.5 cm right inguinal region of abdomen with active bleeding present, advised surgeon opinion.”

27. The said witness was also shown the incriminatory weapon of offence i.e. iron knife, whereupon, he vide his opinion comprised in Ex. PW9/D stated that the possibility of injury No. 1 being caused by this weapon cannot be ruled out. Moreover, vide his opinion comprised in Ex. PW9/E, he stated that injuries No. 2 and 3 are simple in nature whereas the possibility of injury No. 1 being dangerous to life, thus cannot be ruled out.

Post-mortem report

28. The post-mortem report, to which Ex. PW8/A is assigned, became proven by PW-8. PW-8 in her examination-in-chief, has deposed that on her making an autopsy on the body of deceased Sarita, thus her noticing thereons the hereinafter ante mortem injuries-

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“1. Obliquely placed stitched infected wound 3.5 cm x 1 cm. Peritoneal cavity deep present over left iliac fossa. The lower medial end being 7 cm above left anterior superior iliac spine. The surrounding skin shows puckering with erythematous changes.

2. Midline laparotomy wound with bagota bag in situ. On exploration, underlying intestinal coils shows gangrenous changes in the form of blackish discoloration with foul smelling greenish yellow discharge. Margins of the wound are infected.

3. Oval wound of size 6 cm x 5 cm present over right side of front of the abdomen, 6 cm away from right margin of the laparotomy wound and 6.5 cm above the right anterior superior iliac spine with end of small intestine coil stitched to its margins.

4. Triangular shaped wound of size 1.8 cm x 1 cm. Peritoneal cavity deep present over right iliac fossa, 5 cm above right anterior superior iliac spine and 1.5 cm below the injury number 3. Margins are clean cut. Few stitches were present near the terminal end of the track.”

29. Furthermore, PW-8 also made a speaking in his examination in-chief, that the cause of demise of the deceased was owing to *Septicemia Consequent to Perforation Peritonitis*.

30. The above made echoings by PW-8, in her examination-in-chief, became never challenged through any efficacious cross-examination, being made upon her, by the learned defence counsel. Therefore, the opinion, as made by PW-8 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoing, as made by PW-8, in her examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

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31. Conspicuously also when besettings of fatal *septicemia* arising from *perforation peritonitis*, thus has a direct link with the ante mortem injuries, as became pronounced by the doctor concerned, who conducted the post mortem on the body of the deceased.

32. Thus, conjoint readings of the report of the doctors concerned, who respectively proved the apposite MLR, and, of the post-mortem report of the deceased concerned, thus with the efficaciously proven signed disclosure statement (Ex. PW2/1) as made by the convict-appellant, besides also with the consequent thereto made valid recovery through recovery memo (Ex.PW2/J), does thereby foster an inference, that thereby there is *inter se* corroboration *inter se* the dying declaration (Ex.PW 2/D) with the medical account, besides with the memos supra. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final Order of this Court.

33. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convict by the learned Convicting Court, is affirmed and maintained.

34. If the convict (supra) is on bail, thereupon, the sentences(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

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35. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.
36. Since the main case itself has been decided, therefore, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

20.09.2024

kavneet singh

(KULDEEP TIWARI)
JUDGE

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