

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-675-DB-2003 (O&M)

Reserved on: 29.8.2024

Date of Decision: 12.09.2024

Rajesh Kumar and others

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Saransh Sabharwal, Advocate
for appellant No.1.

Proceedings qua respondent Nos.2 and 3 stand abated.

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

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 10.06.2003, upon Sessions Case No.43 of 10.10.2000, by the learned Sessions Judge, Bhiwani, wherethrough in respect of charges drawn against the accused qua offences punishable under Section 302 read with Section 34 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts vis-a-vis an offence punishable under Section 302 read with Section 34 of the IPC. Moreover, through a separate sentencing order of 12.06.2003, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

“xxx

Looking to the age, character and other antecedents, I

sentence each of the convicts to undergo imprisonment for life and a pay a fine of Rs.5000/- and in default of payment of fine, to undergo further imprisonment for a period of six months under Section 302 read with Section 34 of the Indian Penal Code.

xxx”

2. The period spent in prison by the convicts, thus during the investigation or trial of the case, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst criminal appeal bearing No.CRA-D-675-DB-2003.

4. Since appellant Nos.2 and 3 namely Girijesh and Prem Chand, thus died, during the pendency of the appeal, therefore, the proceedings qua them stand declared to become abated vide order dated 22.07.2024.

Factual Background and investigation

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PA/1 is assigned. The narrations carried in Ex.PA/1 are, that on the intervening night of 22/23.6.2000, Smt. Anju 30 years old, and her husband Girijesh (now accused) with the burn injuries on their bodies were brought to General Hospital, Bhiwani. The medical officer sent ruqqa to the police. In the morning of 23.6.2000, upon receipt of ruqqa, Sub Inspector Ram Chander of Police Station, City Bhiwani, along with officials reached at G.H. Bhiwani and obtained opinion of doctor sahib, but Smt.

Anju was declared unfit to make her statement and as such, her statement

could not be recorded. On the same day, he moved second application to the medical, officer, but injured Smt. Anju had been referred to P.G.I.M.S., Rohtak (Post-Graduate Institute of Medical Sciences, Rohtak). He went to Rohtak, where the medical officer concerned, advised for getting recorded the dying declaration of Smt. Anju. He moved an application to the learned Judicial Magistrate Ist Class (Duty), Rohtak who subsequently went to PGIMS, Rohtak and recorded the statement of injured Smt. Anju. To the said dying declaration Ex.PJ is assigned.

6. Upon the basis of above statement of injured Smt. Anju (since deceased), a case was got registered for the offence under Section 307 of the Indian Penal Code. Sub Inspector Ram Chander inspected the place of occurrence and prepared rough site-plan. From the spot, he took into possession a plastic cane of white colour, a match box in burnt condition and some burnt clothes. He arrested accused Rajesh on 24.6.2000. He took the draftsman to the place of occurrence. Smt. Anju died on 26.6.2000. On receipt of necessary information, the offence was converted to Section 302 of Indian Penal Code. The inquest proceedings on the dead body were performed. The dead body was sent for post-mortem examination. The other two accused, namely, Girijesh and Prem Chand were arrested on 27.6.2000 by Inspector Darshan Lal. The burnt pieces of clothes, match box, sticks and plastic can were sent to the Forensic Science Laboratory for analysis of the contents. After the necessary investigations were over, the case was sent up for trial of the accused.

Committal Proceedings

7. Since the offence punishable under Section 302 of the IPC, was exclusively triable by the Court of Session, thus, the learned committal

Court concerned, through a committal order made on 03.10.2000, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

8. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of offences punishable under Sections 302 read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 18 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused led four witnesses in their defence evidence.

Submissions of the learned counsel for the appellant-convict

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict-appellant, are well merited, and, do not require any interference, being made by this Court, thus in the

exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convict-appellant, be dismissed.

The prosecution case is based upon the dying declaration made by the informant who subsequently died, to the said statement Ex.PJ becomes assigned

12. The statement of the victim/deceased (Ex.PJ) was recorded by PW-8 (JMJC, SDJM, Gohana) on 23.06.2000, statement whereof becomes extracted hereinafter. Thereins the victim has made echoings vis-a-vis the incriminatory participation of all the three appellants-accused, thus in the crime event. Since pursuant to the making of the said statement thus by the informant the latter died, thereby the said made statement is to be construed to be a dying declaration of the informant/deceased, wherebys, grave evidentiary solemnity is to be assigned to Ex.PJ.

“Statement of Anju wife of Girijesh, aged 28 years, resident of Bhiwani, on S.A.

Stated that from behind husband gave a slap, Devar Rajesh lit a match stick. There is one boy, namely, Chinnu, who is my husband’s Tau’s son. My in-laws’ started doubting my relations with this boy. My father-in-law demanded Rs.30,000/-, which I refused to bring. Then he stamped me as characterless and a bad woman. Earlier, on several times, we brought money from my parents. My Devar Rajesh and my father-in-law Prem Chand jointly poured kerosene oil upon me. When the oil was poured, my small child Munna, myself, my mother-in-law, Sunita Devi and our tenant were present. Father-in-law, Devar and husband all wanted to kill me by pouring oil. Poonam, a resident of the street, who is an old man, had excited them. I raised noise. I was wearing petticoat and blouse. A son of Tauji of the same Mohalla, Chinnu brother and Rattan Rickshaw-wala saved me. Munna should be sent to my mother’s house in village Kharsiya, otherwise they would kill him.

*Sd/- Sunita,
JMJC/Rohtak, 23.6.2000”*

13. PW-8 recorded the statement of the deceased, on 23.06.2000 but after her being declared fit to make a statement. The said declaration of fitness has remained unchallenged. Moreover, no evidence has been adduced by the defence, that the thumb marks of the deceased as made on Ex.PJ rather becoming declared by the Fingerprint Expert, but after the latter making comparisons thereof with the admitted thumb marks of the informant/ deceased, to rather not belong to the deceased, as such Ex.PJ become aptly construed, thus by the learned trial Judge concerned to be a dying declaration. Resultantly, reiteratedly immense solemnity is to be assigned to Ex.PJ.

14. Fortified vigor to the above ensues from the doctor, who made the declaration of fitness, and, who upon stepping into the witness box as PW-11, thus during his examination-in-chief, hence has spoken qua his making the relevant declaration in Ex.PH/1. Since the said made echoing by PW-11 in his examination remains uneroded vis-a-vis its efficacy, despite his becoming subjected to a grilling cross-examination. Therefore, immense evidentiary vigor is to be assigned to the declaration of fitness as made in the apposite exhibit.

MEDICAL EVIDENCE (POST MORTEM REPORT)

15. The autopsy upon the body of deceased Anju was conducted on 26.06.2000 by PW-9 along with Dr. Surender Singh. PW-9 has proven *qua* his, authoring Ex.PQ, as relates to the autopsy as made upon the body of deceased.

16. This witness has also proven *qua* the cause of death of deceased, was extensive burns and their complications, and were sufficient

to cause death in the ordinary course of nature. The injuries were declared to be ante mortem in nature. The relevant ante mortem injuries, as noticed by PW-9, on the body of deceased are extracted hereinafter.

“1. There were superficial to deep burns present all over the body except soles, which were partly spared and legs, which were also partly spared in the front, Scalp hair, pubic hair, eye brows, eye laces and were singed, skin was peeled off at places, slough pus pockets were present at places. There was red line of demarcation present between healthy and burnt area. There were 95% burns over the body. Internal organs were healthy and congested.”

17. On the basis of the above extracted echoings made in the PMR (Ex.PQ), the learned counsel for the appellant argues that the thumb impressions made on Ex.PJ by the victim-deceased are fabricated.

18. However, the said made argument appears to be bereft of vigor. The reason for drawing the said conclusions stems from;

a) A reading of the above extracted portion of Ex.PQ though reveals that though the deceased suffered 95% burns over her entire body besides also though PW-4 in her cross-examination has stated that the fingers and thumbs of both the hands of Anju were burnt in such a condition that it was not possible to take her thumb impressions. However, since PW-8, in whose presence the dying declaration was made by the victim/deceased, has in her examination-in-chief, stated that the victim/deceased had made her thumb impressions in her presence at mark A of Ex.PJ. Moreover, when the said witness also in her cross-examination has deposed that the victim/deceased was fit to make a statement and that she could also speak properly,

besides when she volunteered to express that some white ointment was applied on the entire body including the hands of the patient, whereafter she made her thumb impression on her statement, thereupon the existence of 95% burn injuries over the body of the victim/deceased, becomes thereby completely underwhelmed. Resultantly, the making of thumb impressions by the deceased on Ex.PJ appear to be made by her in the presence of PW-8.

19. Since PW-11 also declared the victim to be fit to make a statement, and, also while stepping into the witness box he did prove the said made declaration. Moreover, when despite his suffering an inexorable cross-examination rather he remained unscathed in the said ordeal. Resultantly, thereby a conclusion, is to be made, that irrespective of 95% of the body of the deceased, becoming burnt excepting her soles, yet she retained the ablest cognitive faculties whereby she could make an incriminatory dying declaration vis-a-vis the accused. Predominantly also given the makings of the above *suo mottu* statement by PW-8, during her cross-examination, thereupon irrespective of 95% burns occurring over the body of the victim-deceased, yet when reiteratedly she expresses therein that on application of white ointment of the body of the victim/deceased, she made her thumb impressions in her presence at mark A of Ex.PJ, thus does not erode the efficacy of the making of Ex.PJ, at the instance of the victim/deceased. The reason being that the said fact remains uncontested by the defence nor when no expert evidence becomes adduced, that even on application of white ointment on the burnt thumb of the victim-deceased, she given the extensive burns occurring thereovers, thus became disabled to

make her thumb impressions at mark A of Ex.PJ.

FINAL ORDER

20. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellant-convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the apposite appeal, and, the same is dismissed.

21. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

22. Miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 12th 2024

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