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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 17.05.2024****1. CRA-S-3038-SB-2013 (O&M)**

Paramjit Kaur and others

...Appellants

versus

State of Punjab

... Respondent

2. CRA-S-3901-SB-2013(O&M)

Gurmeet Kaur

..Appellant

versus

Paramjit Kaur and others

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.S. Boparai, Advocate
for the appellants in CRA-S-3038-SB-2013

Mr. Jagjit Singh, Advocate
for the appellants in CRA-S-3901-SB-2013

Mr. Rishabh Singla, AAG, Punjab

HARPREET SINGH BRAR, J.(Oral)**CRA-S-3038-SB-2013 and CRA-S-3901-SB-2013**

1. This common judgment shall dispose of both the
abovementioned appeals as they arise from identical factual matrix.

However, for the sake of brevity, the facts are taken from CRA-S-3038-

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2013.

2. The present appeal is preferred against judgment of conviction dated 13.08.2013 passed by learned Additional Sessions Judge, Amritsar in FIR No. 30 dated 11.04.2011 registered under Sections 313, 316, 323, 341, 34 of the IPC at Police Station Bhindi Saidan, Ajnala.

3. Briefly, the facts are that on 07.04.2011, complainant-Chand Singh had gone to village Kotli Dasundhi to bring his wife-Gurmit Kaur, back home, who was five months pregnant. They reached the bus stand of village Kotli Dasaundhi and found appellants- Surjit Singh and Manga Singh, each armed with a wooden rod, along with Paramjit Kaur and Bhinder Kaur were already present there. Surjit Singh stopped the motorcycle of the complainant and stated that the complainant and his wife had been harassing his daughter-Bhinder Kaur. Thereafter, Manga Singh gave a blow with the wooden rod on the right leg of the complainant. Paramjit Kaur and Bhinder Kaur nabbed Gurmit Kaur, who was the pillion rider on the motorcycle. Surjit Singh gave a wooden rod blow on the leg of Gurmit Kaur, causing her to fall on the ground. Manga Singh and the other assailants also gave wooden rod blows on the left leg of Gurmit Kaur. The complainant raised hue and cry, attracting the attention of two passerby. Seeing them arrive at the spot, the accused fled away along with their weapons.

4. On assessing all the material available on record, the learned trial Court convicted the appellants vide the impugned judgment and

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sentenced each of them as follows:

Offence under Section	Sentence
341 IPC	Rigorous imprisonment for 1 month
323 IPC	Rigorous imprisonment for 6 months
315 IPC	Rigorous imprisonment for five years and a fine of Rs. 2000/- in default of which further rigorous imprisonment of 3 months

Aggrieved by the same, the appellants have preferred the present appeal bearing no. CRA-S-3038-SB-2013 while the victim has preferred appeal bearing no. CRA-S-3901-SB-2013 seeking enhancement of sentence and compensation under Section 357 Cr.P.C.

5. Learned counsel for the appellants in CRA-S-3038-SB-2013 contends that the complainant appeared as PW6 and did not support the case of the prosecution. Instead, he admitted that the miscarriage suffered by Gurmit Kaur was in fact a result of a fall in the bathroom and not the injuries inflicted by the appellants-accused. Further, the learned trial Court failed to appreciate that there was previous enmity between the complainant party and the appellant-Bhinder Kaur regarding partition of the family house, which is precisely the reason why the complainant has falsely implicated the appellants in the present case. Moreover, there was a delay of 5 days in lodging the FIR(supra) which remains unexplained on the part of the prosecution. Learned counsel also contends that the offence under Section 315 IPC is not made out against the appellants as the prosecution has been unable to prove that the child died due to the injuries inflicted by the

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appellants. As a matter of fact, the child stayed alive for 5 days after the alleged incident and unfortunately died later due to respiratory failure, as admitted by PW3- Dr. Jatinder Pal Singh, who conducted the postmortem on the infant. Further, in spite of being admitted to the hospital for 5 days, no medico-legal report is available on the record qua Gurmit Kaur that could substantiate the allegations of infliction of injuries on her person by the appellants. Finally, statement of PW2-Charan Singh, father of Gurmit Kaur holds no value as he is not an eye witness to the alleged occurrence.

6. Per contra, learned counsel for the appellant in CRA-S-3901-SB-2013 i.e. the complainant, contends that the appellant-Gurmit Kaur was pregnant when she was attacked by the accused. It was due to the injuries sustained by her in the alleged occurrence that her child could not survive. As such, the sentence imposed on the accused must to be enhanced and the appellant-Gurmit Kaur deserves to be compensated under Section 357 Cr.P.C. for the loss suffered by her.

7. Learned State counsel supports the impugned judgment dated 13.08.2013 and submits that the same has been passed based on correct appreciation of the evidence available on record, and therefore, does not warrant interference of this Court.

8. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court finds that Section 315 IPC needs to be analysed in order to adjudicate the present controversy



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in a just and fair manner. The same reads as follows:

Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth.

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

9. A perusal of the abovementioned provision would indicate that the offence under Section 315 IPC would only be attracted if the ingredient of intention is proved. The prosecution does not claim that the alleged injuries were inflicted by the appellants with an intention to harm the child carried by Gurmit Kaur. As a matter of fact, the child was born and not miscarried. He stayed alive for 5 days and the cause of his death, as opined by PW3- Dr. Jatinder Pal Singh, was respiratory failure on account of the injuries sustained by Gurmit Kaur. However, in his cross-examination, he stated that injury no.3 has been caused during labour and it was due to complications caused by obstructive labour and delivery that the child could not survive.

10. Further, it must be noted that the alleged incident itself does not stand proved beyond reasonable doubt. There is no medical evidence placed on record to prove injuries on the person of Gurmit Kaur. Moreover, the narrative put forward by Gurmit Kaur has been stated to be corroborated by



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her father PW2-Charan Singh, who was not present at the spot of occurrence. As such, the testimony of Charan Singh cannot be treated as a concrete proof of the alleged incident.

11. It is a settled law that FIR is neither a substantive piece of evidence nor an encyclopedia to carry every detail of the case of the prosecution. At the same time it has its own probative value for the purpose of recording a finding of a relevant fact on the basis of corroboration. Thus, it is an important piece of evidence for the corroboration of the oral evidence adduced during the trial. Any omission or delay in spelling out the circumstances in which the alleged crime has taken place including detailing the name of the accused and part played by them specially when the accused are known to the witnesses, would make the prosecution case questionable. A two Judge Bench of the Hon'ble Supreme Court in ***Maharaj Singh vs. State of Uttar Pradesh, 1994(5) SCC 188***, speaking through Justice Dr. A.S. Anand has observed the following:

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets benefit of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story."

12. The Hon'ble Supreme Court has examined the importance of



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naming the accused persons in the FIR and has laid down the ratio that any inordinate and unexplained delay in supplying vital information with regard to the identity of the accused would suffocate the case of the prosecution. In the present case, the FIR was lodged on 11.04.2011 while the alleged incident took place on 07.04.2011. No explanation regarding the 5 day delay is forthcoming on the part of the prosecution, especially when the accused were known to the complainant party.

13. A two Judge Bench of the Hon'ble Supreme Court in ***Rotash vs. State of Rajasthan, 2006 (12) SCC 64***, speaking through Justice S.B. Sinha, has dealt with the similar issue and has observed the following:

"15. The First Information Report, as is well known, is not an encyclopedia of the entire case. It need not contain all the details. We, however, although did not intend to ignore the importance of naming of an accused in the First Information Report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that P.W.1 did not name him in the First Information Report, we do not find any reason to disbelieve the statement of Mooli Devi-P.W.6. The question is as to whether a person was implicated by way of an after-thought or not must be judged having regard to the entire factual scenario obtaining in the case."

Furthermore, a two Judge Bench of the Hon'ble Supreme Court in ***Kirender Sarkar and others v. State of Assam, AIR 2009 SC 2513*** speaking through Justice Dr. Arijit Pasayat held as follows:-

"6. FIR is not substantive evidence and cannot be used for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting the maker of the report. Though the importance of naming the accused persons in the FIR cannot be ignored, but names of the accused persons have to be named at the



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earliest possible opportunity. The question is whether a person was impleaded by way of afterthought or not must be judged regard to the entire factual scenario in each case."

14. A two Judge Bench of the Hon'ble Supreme Court in ***Thulia Kali vs. The State of T.N., 1973 AIR SC 501***, speaking through Justice H.R. Khanna, has observed the following:

"12. ...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay of the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

15. Therefore, unexplained delay in registering the FIR and naming the accused in the present case would render the prosecution case unreliable as there exists a probability of manipulation regarding the narrative around commission of the alleged offence. Such unexplained delay is always looked at with suspicion and it would not be safe to convict the accused on the basis of such evidence as it goes to the root of controversy. In this regard reliance is placed on ***Mousam Singha Roy v. State of West Bengal, (2003) 12 SCC***

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377, where a two Judge bench of the Hon'ble Supreme Court has observed that it is a settled principle of criminal jurisprudence that more serious the offence, stricter the degree of proof, since a higher degree of assurance is required to convict the accused.

16. In view of the facts and circumstances of the case, this Court finds that the learned Court below has erred in convicting the appellants-accused. Accordingly, the appeal bearing no. CRA-S-3038-SB-2013 is allowed, the impugned judgment dated 13.08.2013 is set aside and the appellants are acquitted of the charges framed against them. Additionally, the appeal bearing no. CRA-S-3901-SB-2013 is dismissed, being bereft of any merit.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

17.05.2024
Ajay Goswami

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