

2024:PHHC:101008-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-16-DBA-2003 (O & M)
Reserved on: 02.08.2024
Date of decision: 07.08.2024

STATE OF PUNJAB ...Appellant

Versus

SAPNA AND OTHERS ...Respondents

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

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. H.S.Jugait, Advocate
for respondents No. 2 to 5.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the State of Punjab, against the verdict drawn on 12.08.2002, upon Sessions Case No. 52 of 30.11.1998 by the learned Additional Sessions Judge, Rupnagar, wherethrough in respect of charges drawn for offences punishable under Sections 306, 120-B and 376 IPC, he made a verdict of acquittal qua all the accused.

FACTUAL BACKGROUND

2. The prosecution story becomes embodied in appeal/FIR, to which Ex.PG-2 is assigned, therein, the complainant Harpal Singh, who is the father of the deceased Gagandeep Kaur, has made narrations that he was working as a

2024:PHHC:101008-DB



contractor in the Department of Railways, for construction of buildings on contract. His younger daughter Gagandeep Kaur was unmarried. About three months ago, her daughter Gangandeep Kaur was enticed away by accused Rahul. The complainant did not took any legal action out of the fear of the society to save the honour of her daughter. The daughter of the complainant and Rahul returned on the next day. His daughter told him that the mother of Rahul namely Shashi Kiran, and neighbour of the complainant tried to entice her to elope with the said Rahul on the pretext that they would solemnize her marriage with Rahul. However, her daughter Gagandeep Kaur refused to comply. One day the mother of Rahul and his sister Gudia came to the residence of the complainant and called his daughter. Since the door of the house was opened by her daughter Gagandeep Kaur, thereupon, they informed her that since she had refused to elope with Rahul, thereby Rahul had consumed something. His daughter Gagandeep Kaur being in a puzzled condition went with them and the above persons took her to a vacant house, where accused Yogesh alias Bobby, Sunil alias Sonu and Rahul were present. The said Rahul was absolutely fine. Sonu son of Parshotam also arrived there. The mother, sister and the brothers of accused Rahul tried to persuade Gagandeep Kaur, to elope with Rahul. Subsequently, the ladies left the place. The accused Rahul, his brother Sonu and accused Sonu son of Parshotam forcibly committed rape, on the person of Gagandeep Kaur. Thereafter, accused Sonu son of Parshotam took Rahul and Gagandeep Kaur to bus stand from where they boarded the bus for Hoshiarpur. From Hoshiarpur both Gagandeep Kaur and Rahul came on a bus to Mohali where accused Kaka also reached and told them that the police was searching for them. Thereafter, the accused Rahul and Gagandeep Kaur returned to Ropar

2024:PHHC:101008-DB



on a taxi. Gagandeep Kaur informed the complainant that the accused had spoiled her life and that she was not in a position to face the society and could commit suicide. The accused persons taunted her when she was passing through the bazar, therefore Gagandeep Kaur was not in a position to tolerate any further insult. On 12.05.1998, the brother of the complainant Dr. Gurvinder Singh and his maternal uncle Jasbir Singh also told him that Gagandeep Kaur had also disclosed them that she was being taunted by accused Rahul etc. while she was passing from the market and they were black mailing her and they had made her life miserable. Therefore, she was not willing to live any further. The deceased was consoled by them. On the previous night, after taking meals, Gagandeep Kaur went to sleep in her room in chaubara and the complainant went to sleep in the adjoining room. Today i.e. on 14.05.1998 at about 04.30 A.M. the complainant got up to answer the call of nature, then he noticed foul smell emitting from the room of Gagandeep Kaur. When the complainant went inside, he noticed that Gagandeep Kaur was vomiting and Sulphas tablets in a glass container were lying on her bed. His daughter Gagandeep Kaur was lying unconscious. The complainant alongwith other members of the family took her to Civil Hospital, Ropar but the Doctor declared her brought dead. The complainant brought the dead body of Gagandeep Kaur to his residence and kept the same on the floor. The daughter of the complainant has committed suicide by consuming poisonous tablets on account of the harassment at the hands of the accused.

3. Gurnam Singh A.S.I. from police station City Ropar alongwith other police officials was present at old Sabzi Mandi Chowk, on the said date in

connection with patrol duty when the complainant had arrived there and got

2024:PHHC:101008-DB



recorded his statement (Ex. PG) regarding the occurrence. The said statement was signed by the complainant, which was attested by the investigating officer, who sent the same to the police station with his endorsement Ex. PG/1.

INVESTIGATION PROCEEDINGS.

4. On the basis of the said statement, FIR was registered. On completion of the investigation and necessary formalities, the challan against the accused was presented before the learned Committal Court.

COMMITTAL PROCEEDINGS

5. Since the afore offences were exclusively triable by the Court of Session, therefore, the learned committal Court, committed the case for trial, to the Court of the learned Additional Sessions Judge, Rupnagar.

TRIAL COURT PROCEEDINGS.

6. On finding a *prima facie* case, charges under Sections 306, 120-B IPC became framed, against all the accused, whereas, charge under Section 376 IPC became framed against accused Sonu, Rahul and Neeraj. All the accused pleaded not guilty, and, claimed trial.

7. In support of the prosecution case, the prosecution examined ten witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Rupnagar, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. In their defence, the accused examined eight witnesses.

8. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Rupnagar, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondents.

2024:PHHC:101008-DB

**SUBMISSIONS OF THE LEARNED STATE COUNSEL.**

9. The learned counsel for the State, has made a vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS.

10. Contrarily, the learned counsel for the respondents has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

11. Before proceeding to delve into and also for making an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur in the impugned judgment of acquittal.

Circumstantial evidence based case.

19. There is overwhelming evidence on record led by both the parties and also document that is letter Ex.DB of Gagandeep Kaur to hold that Gagandeep Kaur and Rahul were deeply attached to each other and were in love despite the fact that they belonged to different religions and Gagandeep Kaur was conscious of opposition of her parental family and made a mention of the same in Ex. DB. **It can also be safely concluded that Gagandeep Kaur of her own accord had gone with Rahul and that was the reason for her making a statement to the police showing her consent and she was major and it also explains the reason for not taking any action against Rahul and PW-5 Parampal Singh SHO at the**

2024:PHHC:101008-DB



relevant time cuts at root the story of the complainant that Gagandeep Kaur was abducted by deceitful means.

XXXX XXXX

Now, I would like to take up the charge of rape. **If the Gagandeep Kaur had been called by deceitful means and forcibly raped by Rahul. Sonu alias Sunil and another Sonu son of Parshotam she would not have gone further from Ropar to Hoshiarpur and then to Mohali and finally back to Ropar. And it is not explained that why Gagandeep Kaur made statement favouring Rahul at Police Station even when Rahul had been with police and she had the protection of her father and residents of the locality. ”**

20. I would now advert to fact as to whether the death of the prosecutrix took place at Ropar due to abetment. As already noticed there is nothing on record to show that Gagandeep Kaur returned to Ropar earlier to 14.5.1998. Even according to own showing of Harpal Singh (PW-5) he noticed the letter of Gagandeep Kaur lying on the bed before making statement to police but in his statement (Ex. PG) there is no mention of the letter of Gagandeep Kaur. **If Gagandeep Kaur had already told Harpal singh (PW5) regarding her ill treatment and taunting or Jasbir singh had told him regarding the alleged disclosure by Gagandeep Kaur of taunting by accused then Harpal singh (PW5) would have reported the doctor that it was a police case and would not have brought back the dead body from hospital to his residence.** The conduct of the doctor R.K. Gupta is also not free from doubt. He examined Gagandeep Kaur and declared her dead and the death in this case was unnatural and therefore the doctor was duty bound to report the matter to police and could not have allowed dead body to be removed. According to Harpal Singh he did not suspect any foul play till death and therefore brought back the body to his residence

2024:PHHC:101008-DB



and came to know about the letter only thereafter also does not appeal to reason. xxxx xxxx

Apart from the contradictions in the testimony of Harpal singh (Pw5) the investigation is also not upto mark. **The Investigating officer did not seal the letters nor recorded the statement of any person conversant with the handwriting of Gagandeep Kaur regarding specimen writing. Even the specimen writing had not been taken from her college record which as available. The investigating officer did not take sample of vomit. He also did not record the statement of any person to elaborate the circumstances in which Gagandeep Kaur was taken back from hospital.** Moreover, there was complaint to the police on the next day of occurrence i.e. on 15.05.1998. xxxx xxxx

So far as the evidence of handwriting expert Dr. Seema Sharda is concerned. In the first instance the prosecution was duty bound to show that the material used for comparison was in the hand of Gagandeep Kaur. The first possible material could be taken from the college record and the identification should have been from the teacher or class follow having the opportunity to notice her writing. **The investigating officer however took the material after one month of the occurrence and did not record the statement of anyone conversant with the hand writing.** Apart from this the science of handwriting is not perfect science and moreover the expert gave only opinion regarding comparison without giving the grounds of opinion and the opinion without the grounds does not carry the case any further. Therefore the evidence of expert is of no help in this case. xxxx xxxx

Inferences of this Court.

12. The above made reasons by the learned trial Judge after making an incisive analysis of the deposition of the complainant PW-5 Harpal Singh, and the deposition of other witnesses besides analyzing the documents on record,

2024:PHHC:101008-DB



thus do not suffer from any gross infirmity. Resultantly this Court finds no merit in the appeal.

13. On perusal of the testification of DW-1-Harmohan Singh, who is the Clerk of Government College, Ropar, where the deceased studied, it is unfolded that the date of birth of the deceased was 01.01.1979. Hence, she was a major at the time of commission of the alleged offences. Further, a perusal of the testification of DW-5 Parampal Singh, DSP Morinda, reveals that prior to the said incident, the father of the deceased, had made a complaint to the police, that his daughter had eloped with some boy. In pursuance to the said complaint, both Gagandeep Kaur and the boy appeared before the police and the girl stated that she had out of her own will accompanied the boy.

14. The above narrations beget an inference that the deceased, being a major, was in a close relationship with one Rahul and that out of her own will she accompanied the accused.

15. Further, admittedly after the said incident, the deceased was taken to Nawanshahr for staying with her uncle. However, the prosecution did not lead any evidence to prove that Gagandeep Kaur had returned to Ropar prior to the date of occurrence. In this regard, a perusal of the cross examination of the investigating officer PW-9 ASI Gurnam Singh, reveals that when he reached the place of occurrence, then there were 10-15 persons present in that house. Dr.Gurvinder Singh, the brother of the complainant is also stated to be then present there. Since the deceased after the taking place of the first incident, stayed at the house of Dr. Gurvinder Singh, thereby the examination of Dr.Gurwinder Singh was also necessary for proving the prosecution case.

However, the non examination of the said material witness leads to an inference

2024.PHHC:101008-DB



that *prima facie*, the prosecution was trying to hide the fact that the death of the deceased took place at Nawanshahr instead of Ropar. Consequently therebys, a grave doubt seeps into the veracity of the prosecution version and the benefit of doubt has to be assigned to the accused.

16. Further, a perusal of the impugned verdict reveals, that in the first statement made by the complainant to the police, there was no mentioning, by the complainant vis-à-vis the letters written by the deceased. Moreover, the alleged letters written by the deceased, as became recovered by the investigating officer, from the place of occurrence, were never sealed by him nor did he mention the place wherefroms they became recovered. Furthermore, the investigating officer never recorded the statement of any person conversant with the handwriting of the deceased nor he took the specimen writing from the college record where the deceased was studying, thus to enable the handwriting expert to make a well comparison of the disputed writings, thus with the proven admitted standard signatures of the deceased.

17. The effect of the non collection of the provenly admitted standard writings of the deceased, is that, the comparisons made with such unproven standard admitted writings of the deceased, thus with the disputed writings, rather were in aptly made comparisons. Therefore, the report of the hand writing expert has no incriminatory weight so as to constrain this Court to conclude that therebys, the verdict of acquittal, as pronounced by the learned trial Judge concerned, is required to be reversed by this Court.

18. Moreover, the doctor PW-4 R.K.Gupta, who conducted post mortem on the dead body of the deceased, in his cross examination has, stated

that the dead body of the deceased was brought earlier in the hospital, in the

2024:PHHC:101008-DB



morning and taken back to the house of the complainant. He admitted that at that time there was no information and allegation as to how the death occurred. In addition, he revealed that the interval between the death and postmortem, could be within 24 hours.

19. The above declaration(s) as made by the doctor concerned, also raises a suspicion on the veracity of the prosecution version, inasmuch as, whether the death of the deceased, occurring respectively at Nawanshahr and/or at Ropar. Reiteratedly the consequent effect thereof, is that, grave doubt seeps into the veracity of the prosecution version. Resultantly the benefit of doubt is to be assigned to the accused.

FINAL ORDER OF THIS COURT.

20. In consequence, there is no merit in the appeal, and, is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.

21. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

22. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

07.08.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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