



CRA-S-1931-SB-2003

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1931-SB-2003
Date of decision: 14.11.2024

VINOD KUMAR ... APPELLANT

STATE OF HARYANA ...RESPONDENT

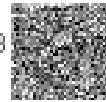
CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rahul Vats, Advocate for the appellant.
Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J.

1. Present criminal appeal is filed against the judgment of conviction dated 22.07.2003 and order of sentence dated 24.07.2003 passed by the learned Additional Sessions Judge, Gurgaon in Sessions case No.66 of 2002. The appellant was convicted under Sections 307, 452, 354, 506 and 316 of the IPC and Section 25 of the Arms Act and sentenced as under:-

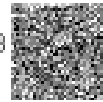
Sr. No.	Offence under Sections	Imprisonment	Fine (in Rs.)	In default of fine imprisonment
1	307 IPC	RI for 7 years	1000/-	RI for 1 month
2	452 IPC	RI for 3 years	1000/-	RI for 1 month
3.	354 IPC	RI for 1 year	--	--
4.	506 IPC	RI for 1 year	--	--
5.	316 IPC	RI for 7 years	1000/-	RI for 1 month
6.	25 of Arms Act, 1959	RI for 1 year	500/-	RI for 15 days

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All the sentences imposed upon the Appellant were ordered to be run concurrently.

2. The case of the prosecution emanates from the FIR No.104 dated 28.05.2002 registered under Sections 316, 307, 452, 354, 506, 323 of IPC and Section 25 of the Arms Act, at Police Station Pataudi, District Gurgaon, Haryana. The case of the prosecution as set out in the FIR is that a medical memo was received in the police station on 27.05.2002, upon which ASI Nand Ram along with Constable Moti Singh reached the Kalyani Hospital, Gurgaon but the victim Sunita (victim) was not fit to make the statement. As such the case was registered later on the statement of complainant Pawan Kumar son of Om Parkash. He stated that on 27.05.2002 at about 2.00 PM, when he was irrigating the fields, he heard the cries of his wife Sunita, who was 8 months pregnant and was sleeping in the room. When he reached on the spot, he saw the appellant giving knife blows on the belly of his wife, who ran away with the knife in his hand, upon seeing him, and while running the appellant extended threat to kill him, if the matter is reported to the police. He was informed by his wife that the appellant molested her and when she tried to resist, he gave knife blows on her belly. He along with his grandfather, Azad Singh and Chander Singh took his wife to the hospital at Pataudi, who was referred by the doctor to Gurgaon. In the night, the doctor informed that the child in the womb of his wife Sunita died due to the injuries caused to her.

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3. On his statement, case under Sections 452, 354, 307, 323, 506 and 316 of the IPC was registered by the police and later on Section 382 of the IPC was added to the case during the investigation of the case. After completion of investigation, police filed a charge sheet against the appellant.

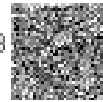
4. The trial Court framed charges under Sections 307, 452, 354, 323, 506 and 316 of the IPC and Section 25 of the Arms Act against the appellant.

5. The trial Court vide impugned judgment held the appellant guilty of the charges framed against him and convicted and sentenced him in the manner as narrated hereinabove.

6. Challenging his conviction and sentence imposed upon him vide the impugned judgment of conviction and order of sentence, the appellant filed the present appeal before this Court.

7. I have gone through the record of the case containing the evidence and all relevant case material with the assistance of the learned counsel for both the sides.

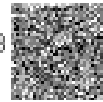
8. The prosecution in order to prove the case against the appellant examined 15 witnesses. PW-10 (Complainant) Pawan Kumar being the husband of the victim and eye witness to the incident, in his testimony deposed in tandem with his statement whereupon the FIR was lodged in the present case. He deposed that after hearing the cries of his wife while he was irrigating his field, he reached his house and saw the appellant was harassing and teasing her wife, whereafter he stabbed her in the belly with a knife, and ran

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away with the knife towards the fields. He further deposed that while running away the appellant threatened to kill him, if he informed about the matter to the police. The victim also told him that the appellant came to her with bad intentions and harassed her. He took the victim to the hospital where she was operated upon and the unborn child in her womb died due to the injuries inflicted upon her by the appellant. During his lengthy cross-examination, his version in his Examination-in-Chief remained unimpeached. In his cross-examination, he stated that he was 10-15 feet away from the accused when he saw the occurrence. He stated that he could not catch the accused as the condition of his wife was serious. He stated that his wife became unconscious after an hour of the incident. He denied the suggestion that he has not seen the incident and that his wife was found in injured condition and that his neighbours took her to the hospital.

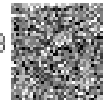
9. The victim of the case, PW-11 herself was examined by the prosecution as a witness in the case. She deposed in line with the case set up by the prosecution. She thoroughly supported the prosecution version. She stated that she was pregnant of 8 months. The appellant saw her with bad intentions and entered her house, molested her and pumped her breast. The accused took out a knife, gave 3 blows of knife on her belly and snatched her Jhumki, which she was wearing. Upon seeing her husband, the accused ran with the knife in his hand and threatened to kill them if the matter was reported to the police. She was moved to the hospital by her husband

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and grandfather Raja Ram at Government Hospital Pataudi, and from there she was further moved to Kalyani Hospital at Gurgaon. She was operated in the hospital and her unborn child had died due to the injuries caused by the appellant with the knife. She stated that she was conscious at the time of the incident. She told the doctor at hospital that injuries to her had been caused by the appellant with a knife. Nothing substantial has been culled out in her cross-examination, which would adversely effect the case of the prosecution. She denied that somebody caused injuries to her when she was sleeping in her house.

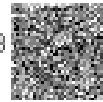
10. PW-13, Raja Ram, grandfather of the complainant, who saw the appellant running with a knife in his hand immediately after the attack has also supported and corroborated the version of the complainant and victim in the case. He stated that on 27.05.2002 at about 2.00 PM, he was coming from Pataudi where he had gone for his personal work. When he reached near the farmhouse of Jagmal on the road leading from Pataudi to Mau Lokri near G.S. School, he heard the cries coming from the right side. He stopped his scooter and saw the appellant with a knife in his hand coming from the side of Kothi of Jagmal. He heard him extending a threat that in case police are informed he will kill them. After that, he was informed by the complainant that the appellant gave 3-4 knife blows to the victim Sunita in her belly. He went with the complainant into the room and saw the victim lying on the cot in pool of blood. He then went to hire the jeep and thereafter brought the victim to the civil hospital Pataudi,

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from where she was taken to the private hospital at Gurgaon. The victim got unconscious on the way to the hospital. He showed the place of occurrence to the police and police recovered the baan (cords) of the cot and blood-smeared earth from the place of incident in his presence. The scooter which was left behind by the accused was also taken into possession by the police. He proved the recovery memos as Ex. PC, PD, and PE. On 02.06.2002, he was again joined in the investigation by the police and the appellant in his presence made a disclosure statement Ex.PJ/1. In pursuance of this disclosure statement, the accused got recovered the knife. The knife was taken in police possession vide memo Ex.PI, which also bears his signature. On 03.06.2002 he was going with Om Parkash when a police party met them, near the bus stand in Pataudi. Appellant was also with the police in a Jeep at that time, when he made the disclosure statement Ex.PJ/3. In pursuance of the said statement accused got the Jhumkis recovered, which were taken into police possession vide Memo Ex.PJ/2. He saw the knife Ex.P-16 in Court and deposed that it was the same knife that was recovered at the instance of the accused by the police. Nothing discrediting his version has come up in his lengthy cross-examination.

11. The trial Court after taking into account the entire evidence led by the prosecution concluded that the date, time and place of the occurrence are well proved by the statement of the witnesses as well as the victim herself. The trial Court further concluded that the injuries on the victim PW-11 Sunita have been

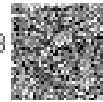
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well proved by the prosecution. The trial Court took into account the statement of the victim wherein she stated that the injuries suffered by her had resulted into the death of her unborn child. Statement of PW-9 Dr. Subhash Sindhu, who conducted post mortem of the still born child of victim Sunita proved the cause of death of the child to be due to injuries caused to the mother i.e. victim Sunita. The post mortem report is Ex.PK. The trial Court after taking into account the evidence led by the prosecution concluded the recoveries of the knife used as a weapon in crime as well as the Jhumkis of the victim, at the instance of the accused proves the case of prosecution against the accused beyond reasonable doubt.

12. At the time of arguments before this Court, the learned counsel for the appellant submitted that the death of a child in the womb, belly injuries suffered by the victim and the recovery of the knife at the instance of the accused are the admitted facts of the case and as such are not being controverted. The said argument on the part of the appellant fortifies the case of the prosecution and the findings returned by the trial court on these issues of the case.

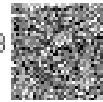
13. However, the learned counsel for the appellant submitted that despite the above admitted facts of the case he still has a case demonstrating his false involvement in the case. It is argued that the appellant has been falsely implicated in the case. While referring to the statement of the victim PW-11 it is argued that she stated that the appellant remained at the place of occurrence for more than 1 hour. During this 1 hour, she did not try to protect herself, while her

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residence i.e. place of occurrence is near a school. In view of these facts, the victim was caught red handed with her paramour and that was only the Complainant, who had caused injuries to her being her husband as he caught her red-handed. This argument on the part of the appellant is ex-facie an absurd argument. In cross-examination of the victim as well as the complainant, no such suggestion was put to them. Perusal of the statement of the appellant recorded under Section 313 of the Cr.P.C. also shows that no such stand was taken by him in his said statement. Even otherwise it is highly improbable that the victim will rope in the appellant as the culprit falsely in the incident by absolving the real perpetrator of the crime, which has even resulted in losing her 8 months of pregnancy. This argument is contrary to the appellant's own case, wherein, he has admitted that the recovery of the knife used in the crime was made at his behest during the investigation of the case on his disclosure. It is totally incomprehensible that if the husband of the victim had caused the injuries on her person then how the weapon of crime was got recovered by the appellant. The knife recovery memo Ex.P-16 which is duly proved on record of the case by dint of the statements of its attesting witnesses leaves no room for doubt qua its recovery at the instance of the appellant. The said recovery being admissible in evidence under section 27 of the Indian Evidence Act, has correctly been relied upon by the trial Court.

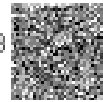
14. The argument on behalf of the appellant that the appellant remained at the house of the victim for more than 1 hour

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and she did not try to save her is advanced contrary to the evidence led on record of the case. It is duly proved on record of the case that when the appellant molested the victim, she raised cries, upon hearing them, the complainant immediately reached the place of incident and eye-witnessed the appellant giving injuries to person of the victim. The duration regarding the stay of the appellant at the place of occurrence as stated by her in her testimony, cannot be termed as a circumstance having any adverse impact on the case of the prosecution. The insignificant discrepancies in the statements of the witnesses cannot be made basis for discarding their otherwise trustworthy evidence. The circumstance of the presence of the appellant at the house of the victim for more than 1 hour prior to the incident does not in any manner impair the case of the prosecution. It cannot be termed a circumstance creating doubt in the case of the prosecution to wipe off the entire evidence given by the victim. The Hon'ble Supreme Court in a case titled ***State of U.P. vs. Krishna Gopal 1988 (4) SCC 302***, held as under:

“A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to 'proof' is an exercise particular to each case. Referring to of probability amounts to 'proof' is an exercise the inter-dependence of evidence and the confirmation of one piece of evidence by another a learned author says: (See "The Mathematics of

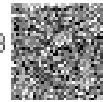


Proof 11" : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)).

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts. are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case."

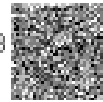
15. It is next argued by the learned counsel for the appellant that PW-13 Raja Ram, grandfather of the complainant, is a planted witness. It is argued that neither the complainant nor Raja Ram tried to catch the appellant, whereas both have seen him running after the

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incident. It is submitted that Raja Ram having worked with the police was in a position to catch the appellant. However, the said arguments are bereft of merit. It has duly been deposed by the complainant that he did not try to catch the appellant as his wife, victim in the case, was in a serious condition having suffered knife injuries at the hands of the appellant. As far as Raja Ram is concerned he also deposed in his testimony that he was a pensioner and retired from police. He further deposed that he did not make an effort to catch the accused as he had gone a considerable distance away. As such both the witnesses have given plausible reasoning for not chasing the appellant at the time of the incident and their testimonies cannot be faulted on this flimsy ground.

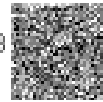
16. It is next argued on behalf of the appellant that the incident took place on 27.05.2002 at 2.00 PM. and victim was taken to hospital immediately thereafter. But the FIR was lodged in the case at 2.30 PM on 28.05.2002. It is submitted as such the FIR has intentionally been lodged with considerable delay to save the real perpetrator of the crime who is the husband of the victim. It is argued that the appellant who was paramour of the victim was falsely roped in the present case due to this delay. This argument on behalf of the appellant again lacks merit. As already held by me it is highly improbable that the victim in view of the facts and circumstances of the case would absolve the real perpetrator of crime by falsely roping in the appellant. The stand taken by the appellant in the arguments before this court of being a paramour of the victim is without any

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substance. The appellant has not adduced an iota of evidence in the case to show that the victim was in promiscuity with him. No suggestion in this regard was given to her in her cross-examination. The delay that occurred in the lodging has very well been explained by the prosecution. The trial court while dealing with this aspect of the case has rightly held that there is nothing on record to prove the motive with the witnesses and the victim to implicate the accused falsely in this case. The delay in lodging the FIR is quite reasonable. victim was at an advanced stage of pregnancy at the time of occurrence. Due to the severity of the injuries suffered she remained unconscious and police after waiting for reasonable time for the victim to gain consciousness lodged the FIR within reasonable time, as after the incident the foremost endeavour on the part of the complainant was to save the victim and get her treated. She was taken to Civil Hospital Pataudi at first instance, from where she was taken to a private hospital at Gurgaon.

17. It is next argued on behalf of the appellant that no offence under Section 307 is made out in the facts of the present case as PW-14 Doctor Usha Sikka in her cross-examination deposed that she cannot say that due to injuries mentioned in MLR of victim death could result or not. In my considered opinion this argument on behalf of the accused is also liable to be rejected. The Trial Court has rightly held that the accused is proved to have given three knife blows on the belly of the victim, as a result of which she became unconscious and her child of 8 months in the womb lost life and was



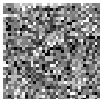
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born still. In the said circumstances it can well be inferred that the injuries given to the victim with sharp edged weapon i.e. knife, which was caused on vital part of the body, were given by the appellant with intention to cause her death. The *mens rea* on part of the appellant can well be gathered from the circumstance that he approached the victim equipped with the knife, which was capable to causing grievous injuries on person of the victim. The ambiguity in the statement of PW-14, Doctor in not giving any definite opinion with regard to injuries being dangerous to life of victim cannot enure any benefit to the cause of the appellant.

18. The testimony of the victim witness i.e. PW-11 in this case is to be accorded special status. Her testimony otherwise also has remained unblemished. Her sole testimony is sufficient to inculcate the appellant of the offences he is charged under. Hon'ble Supreme Court in the case of ***State of U.P. versus Naresh and others, 2011(4) SCC 324***, while dealing with the aspect of appreciation of the testimony of the injured witness has held as under:

“The evidence of an victim witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an victim witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an victim witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the victim witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and



discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, 2009(1) RCR (Criminal) 768 : 2009(1) R.A.J. 493 : (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, 2010(3) RCR (Criminal) 430 : 2010(4) R.A.J. 18 : (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, 2011(1) RCR (Criminal) 550 : 2011(1) R.A.J. 266 : (2010) 10 SCC 259].”

19. In view of the above findings the present appeal being bereft of any merit is dismissed. The judgment of conviction dated 22.07.2003 and order of sentence dated 24.07.2003 passed by the learned Additional Sessions Judge, Gurgaon, being based on sound reasoning and cogent evidence are upheld. The appellant, who is on bail in the present case, is directed to surrender in the case to undergo the remaining part of the sentence awarded by the trial Court. His bail bonds are accordingly cancelled. The trial Court is directed to take necessary requisite steps to procure the custody of the appellant in the case in hand.

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

(SUMEET GOEL)
JUDGE

November 14, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No