
(1975) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh

Pratap Kumar

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 22-01-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 324, 326, 34

Citation : (1976) CriLJ 818

Hon'ble Judges : Gurnam Singh, J

Bench : Single Bench

Judgement

Gurnam Singh, J.—Partap Kumar son of Prem Chand, and Madan Mohan Malhotra son of Ram Saran Dass, residents of Jullundur and Ram Nath son of Girdhari Lai resident of Dhampur (U.P.), were tried for the offence u/s 302 read with Section 34, Indian Penal Code, for causing the death of Harsh Kumari, aged 16 years, on 11-4-1972 at Jullundur. Ram Nath was convicted u/s 326, Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. Partap Kumar was convicted under Sections 324 and 323, Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 200/-, or, in default, to further undergo rigorous imprisonment for three months and to two months, respectively. Both of his sentences were ordered to run concurrently, Madan Mohan Malhotra was convicted u/s 302, Indian Penal Code and sentenced to pay a fine of Rs. 200/-, or, in default, to suffer rigorous imprisonment for three months. Ram Nath filed Criminal Appeal No. 829 of 1973, Madan Mohan Malhotra filed Criminal Appeal No. 619 of 1973 and Partap Kumar filed Criminal Appeal No. 410 of 1973. Since all these appeals arise out of one and the same judgment, the same will be disposed of by this single judgment.

2. The prosecution story, briefly stated, is that Ram Nath was a Sadhu in a temple in Partap Bagh, Jullundur and Madan Mohan Malhotra and Partap Kumar were his disciples. Ram Nath was living in a tent near the temple. Harsh Kumari deceased resident of Ali Mohalla Jullundur City had given up her studies about ten months prior to the occurrence and had become of adamant nature. The

women folk advised the mother of Harsh Kumari to take her to Ram Nath of Partap Bagh. The mother of Harsh Kumari took her to Ram Nath on 9-4-1972 and her son Inder Pal, P.W. also reached there at about 9.30 or 9.45 p.m. Kirtan continued for the whole night and the fire remained smouldering in the tent. In the morning Ram Nath appellant gave some ashes to Harsh Kumari and she with her mother and brother returned to her house. On 10.4.1972 Harsh Kumari asked her brother Inder Pal to take her to the same temple. Inder Pal and his younger brother Surinder Pal took Harsh Kumari to Ram Nath, where the other two appellants were also present. The fire was smouldering there and chimta Exhibit P. 2. was kept in it. Kirtan was going on and it finished at about midnight. During the Kirtan Harsh Kumari started weeping and Ram Nath questioned her about the cause and also if something was coming before her eyes. She started weeping loudly. On this Ram Nath asked Partap Kumar to get hold of Harsh Kumari by her long hair. Partap Kumar after holding her from her long hair moved her head and gave her slaps and challenged the evil spirit to come out. Ram Nath handed over the chimta Exhibit P. 2. which was lying inside the smouldering fire to Partap Kumar and he (Partap Kumar) gave chimta blows to Harsh Kumari on her back with force. Madan Mohan Malhotra caught Harsh Kumari from her hair and threw her down. Then Ram Nath exclaimed as to why the evil spirit was not coming out. He also asked Partap Kumar to strike the right heel of Harsh Kumari with the hot chimta. Partap Kumar struck the hot chimta on her right heel on which she cried out: "I am Narsingh Dass. I am Parkasho." Partap Kumar held Harsh Kumari by her long hair and sometimes faced her towards the smouldering fire and sometimes towards the back. Harsh Kumari asked for water. Both Ram Nath and Partap Kumar told that water could be supplied only if the evil spirit which was inside Harsh Kumari, comes out. Ram Nath then gave 2/3 more chimta blows to Harsh Kumari and also threw chillies in Karchi and administered the smoke of the same in the nostrils of Harsh Kumari. This treatment continued up to 2.30 A. M. Thereafter Ram Nath appellant asked Inder Pal and Surinder Pal to bring a quilt from their house. Inder Pal brought the quilt within 10/15 minutes while Surinder Pal remained at the house, Partap Kumar and Madan Malhotra also left the place. When Inder Pal reached the spot he found Harsh Kumari writhing with pain. Ram Nath asked him and others to get out of the tent, saying that when they would hear a loud weeping, he would call them in. After 10/15 minutes they heard the shrieks of Harsh Kumari and Ram Nath called them inside the tent. At that time Harsh Kumari was lying in a semi-conscious state. At about 6.30 A. M. Ram Nath asked Ganga Sagar to bring a rickshaw. Ganga Sagar brought a rickshaw and Ram Nath asked Inder Pal to take Harsh Kumari to his house. When Inder Pal and Ganga Sagar tried to lift Harsh Kumari, they found her dead, Inder Pal went to his house to inform about the incident. His elder brother Sital Parkash and mother accompanied by him, came to the spot. Inder Pal then went to police post No. 3, Jullundur, and made his statement Exhibit P.C. before Sub-Inspector Bachittar Singh. The statement of Inder Pal was sent to the Police station for registration of the case. Sub-Inspector Bachittar Singh came to the spot and prepared the inquest report. The

investigation was taken over by Shri Gurdarshan Singh City Inspector who reached the spot at 11 A. M. on 11-4-1972. and arrested the appellants. Partap Kumar got recovered chapti, Exhibit P. 1, after making his disclosure statement and it was taken into possession vide memo Exhibit P. N. Ram Nath got recovered chimta, Exhibit P. 2, by making his disclosure statement.

3. Post-mortem on the dead-body of Harsh Kumari was conducted by Dr. Chander Malhotra. In the opinion of the doctor death was due to shock caused by multiple burn injuries. The doctor further stated that burn mark injuries could be caused by hot iron chimta and that the other injuries could be caused by a wooden chapti.

4. Inder Pal and Surinder Pal, brothers of Harsh Kumari deceased have given the ocular account of the incident.

5. The appellants denied the allegations made against them. Ram Nath further stated that he was not a Sadhu and performed no Tantras. Madan Mohan Malhotra stated that at the relevant time he was working as a Stenographer to Shri Ghuman, Judicial Magistrate 1st. Class, Jullundur. Partap Kumar stated that he was falsely involved on suspicion.

6. The learned Counsel appearing for Ram Nath contended that even if the prosecution evidence is believed, Ram Nath never intended to cause the death of Harsh Kumari and whatever he did was for her benefit and in good faith. The counsel for Madan Mohan Malhotra appellant urged that Madan Mohan Malhotra appellant was not present at the spot and that the part attributed to him by both the alleged eye-witnesses is not consistent. The counsel for Partap Kumar also urged that he (Partap Kumar) was not present at the spot.

7. According to the prosecution evidence, the death of Harsh Kumari took place at about 6.30 A. M. Inder Pal, P.W. lodged the report with the police at 8.40 A. M. and he named all the appellants therein. It was argued that Inder Pal was not in the know of the names of the appellants and therefore, the first information report was recorded late and at the spot. Inder Pal in his statement explained that he came to know the names and particulars of the appellants during the night because they were addressing each other in his presence.

8. Sub-Inspector Bachittar Singh reached the spot after recording the statement of Inder Pal and found the dead body of Harsh Kumari lying there. Sh. Gurdarshan Singh, Inspector who arrested the appellants stated that Ram Nath himself came to the tent and he found him clad as a Sadhu He denied the suggestion that Ram Nath was working as a labourer employed for the construction of the temple.

9. The doctor found large number of burn injuries on the dead-body of Harsh Kumari. Inder Pal and Surinder Pal, P.Ws., have deposed that Harsh Kumari was given beating by hot chimta and chapti. In the opinion of the doctor burn injuries could be the result of hot chimta and the others with a wooden chapti. Both

Inder Pal and Surinder Pal had no animus against the appellants. The version given by them is corroborated from the medical evidence. Their presence at the spot is also natural because they had brought their sister for treatment. Thus it is established that Harsh Kumari died on account of injuries caused to her by Bam Natfe and Partap Kumar appellants.

10. The learned Counsel for the appellants pointed out that the injuries on the body of Harsh Kumari were simple and it is not known as to which injury resulted in her death, so the conviction of Ram Nath u/s 326, Indian Penal Code was bad. It has come in the evidence of Surinder Pal that Madan Mohan Malhotra, and Partap Kumar appellants went away from the spot at about 2.30 A. M. and that thereafter Ram Nath turned them out of the tent. He further stated that after 15 to 20 minutes, they heard the noise of beating from inside the tent and Harsh Kumari raising loud shrieks. It is alleged that Ram Nath continued beating Harsh Kumari with the hot iron chimta. A large number of injuries with a hot iron chimta had certainly endangered the life of Harsh Kumari and she died on account of the injuries and as such Ram Nath was rightly held guilty u/s 326, Indian Penal Code. Taking into consideration the graveness of the offence the sentence imposed upon Ram Nath cannot be held to be excessive. Regarding Partap Kumar it is established that he also caused injuries to Harsh Kumari with hot chimta and chapt and therefore, he was rightly convicted and sentenced under Sections 324 and 323, Indian Penal Code. The result is that the appeals filed by Ram Nath and Partap Kumar are dismissed in toto.

11. the version given by Inder pal 11. The version given by Inder Pal, P.W. against Madan Mohan Malhotra, is, that he caught hold of Harsh Kumari from her long hair and threw her down. During the trial, Inder Pal P.W. stated that Madan Mohan Malhotra was present when he went to the spot on the night of April 10, 1972 but in the Committing Court, his version was that he (Madan Mohan) arrived there after the initial beating had been given by Partap Kumar with chimta and chapti to Harsh Kumari. The version given by Surinder Pal, (P.W. 3), is that on the asking of Partap Kumar, Madan Mohan Malhotra appellant, after catching hold of the long hair of Harsh Kumari rotated her head violently. The learned Additional Sessions Judge while convicting Madan Mohan Malhotra appellant u/s 352, Indian Penal Code, sentenced him to pay a fine of Rs. 200/- and in default to suffer rigorous imprisonment for three months. Awarding sentence of imprisonment of three months in default of payment of fine of Rs. 200/- to Madan Mohan is illegal, as it could not exceed 1/4th of the term of imprisonment which is the maximum fixed for the offence. As the evidence of both the eyewitnesses is not consistent and reliable with regard to the participation of Madan Mohan in the crime and the sentence imposed in default of payment of fine is illegal, his appeal is accepted and he is acquitted of the charge. Fine if paid, be refunded to him.

One appeal accepted and other two dismissed.