
(2022) 03 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 5312 Of 2015

Surat Singh & Others

APPELLANT

Vs

State Of Haryana & Another

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 323, 482

Indian Penal Code, 1860 — Section 148, 149, 302, 304, 323, 325

Citation : (2022) 03 P&H CK 0065

Hon'ble Judges : Jasjit Singh Bedi, J

Bench : Single Bench

Advocate : Pawan Kumar, Parveen Kumar, Sanjay Vashisth

Final Decision : Dismissed

Judgement

Jasjit Singh Bedi, J

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside of the order dated 08.01.2015 (Annexure P-3) passed by the learned Additional Sessions Judge, Sonapat, by which in a criminal revision, the Court has set aside the order of the learned trial Court dated 03.04.2013 (Annexure P-2) dismissing an application moved under Section 323 Cr.P.C. filed by the complainant and remanded back the case to the learned trial Court for fresh adjudication.

2. The brief facts of the case are that the statement of the complainant-Narain Singh S/o Rijku was recorded to the effect that he and his brother Randhir had a dispute regarding a plot of land in the village. As per him, on 02.05.2011, the accused persons namely, Surat Singh S/o Rijku, Randhir S/o Rijku, Surender S/o Surat Singh, Sandeep S/o Surat Singh, Rani W/o Randhr Singh, Mukesh W/o Surender and Ram Rati W/o Surat assaulted him and his son Virender and Rohtash. His wife Satwanti is also said to have been assaulted by the accused leading to her death. The specific injuries said to have been caused to his deceased wife Satwanti are culled out from the FIR and reproduced below:-

"then my wife was caught hold by Mukesh, Rani and Ramrati and she fell down in the street, after that Mukesh gave brick blow in the chest of my wife and Rani gave blow in the stomach of my wife. Sandeep gave a kick blow to my wife and Ramrati gave a kick blow on the chest and stomach of my wife then all four persons lifted Satwanti and threw her on the metaled road were pull down to my wife in the hard road."

3. Based on the said complaint, initially the FIR was registered under Sections 148, 149 and 302 IPC. Pursuant to the post-mortem and the opinion of the PW1-Dr. Poonam Dahiya taking into account the Histopathological Report, it was opined that the cause of death of Satwanti was due to cardiogenic/neurogenic shock and therefore, the report under Section 173 Cr.P.C. was submitted under Sections 148, 149 and 323 Cr.P.C.

4. During the course of the trial, the statement of PW1-Dr.Poonam Dahiya was recorded and an application under Section 323 Cr.P.C. was moved by the complainant for committing the case to the Court of Sessions on the ground that an offence of either Section 302 or 304 IPC was made out.

5. The trial Court passed a detailed order and came to the conclusion that the statement of PW1-Dr. Poonam Dahiya did not in any way suggest that an offence under Section 302/304 IPC was made out and after a detailed discussion dismissed the application of the complainant vide order dated 03.04.2013 (Annexure P-2).

6. The complainant challenged the same before the learned Additional Sessions Judge, Sonapat. The learned Additional Sessions Judge, Sonapat, however, remanded the case back to the trial Court for reconsideration but made observations to the effect that a prima facie case under Section 302 IPC was made out and that the case should have been committed to the Court of Sessions. It is this order which is in challenge in the present petition.

7. The learned counsel for the petitioners/accused has contended that the deceased-Satwanti did not receive any visible injury on her person as per PW1-Dr. Poonam Dahiya. The Histopathological Report was also inconclusive about the cause of death and therefore, she opined that cardiogenic/neurogenic shock could not be ruled out as the possible cause of death. This was because the deceased was suffering from severe anemia. Thus, the petitioner's counsel contended that no offence under Sections 304/302 IPC was made as observed by the learned Sessions Court while remanding the case back to the trial Court.

8. On the other hand, the learned counsel for the complainant contended that there was sufficient evidence to establish that an offence under Sections 302/304 IPC was made out. A reading of the FIR would reveal that the deceased was assaulted and that resulted in her death. Therefore, it would be a matter of trial as to whether the assault on the deceased was one for which they could be liable under Sections 302/304 IPC or in the alternative under Section 323 IPC.

9. The learned State counsel has supported the stand of the complainant and has stated that the impugned order of the learned Additional Sessions Judge, Sonapat (Annexure P-3) remanding the case back to the trial Court cannot be found fault with.

10. I have heard the learned counsel for the parties at length.

11. A perusal of the post-mortem (Annexure P-5) of the deceased Satwanti would reveal that no external injury marks on her body were seen. Therefore, the cause of death was to be given after the Histopath Report. The opinion of the doctor (Annexure P-6) after the examination of the Histopath report reads as under:-

"After going through PMR 9/PD/11 & Histopathology P-407/11 still the possibility of Cardiologic/Neurogenic shock cannot be ruled out leading to sudden death pathological it takes to 12-24 hours to histopathological findings to develop in @ course of disease/event but patient died suddenly some time for their chances to develop.

D/- Poonam Dahiya

17.06.2011"

Further, as per the old ailment bed head ticket of the deceased, mentioned in the challan (Annexure P-4), the deceased-Satwanti was suffering from severe anemia and she died due to deficiency of blood due to her old ailment.

12. Thus, it is apparent that not only did the deceased not receive any external injury or internal injury but that she was also an old case of anemia, which would have precipitated her death on account of cardiogenic/neurogenic shock. Para 15 of the order dated 03.04.2013 (Annexure P-2) is reproduced below:-

"15. Furthermore, as per the report under Section 173 of Code of Criminal Procedure the cause of death of Satwanti Devi has been disclosed to be "severe anemia" and she was undergoing treatment for the same as is evident from the bed head ticket dated 26.08.2010, 02.04.2011 and the instant incident has taken place on 2.5.2011 and not much time has lapsed between 2.4.2011 and 2.5.2011 and the possibility of death due to "severe anemia" cannot be ruled out when the disease of Satwanti Devi was continuing for such a long period of time."

The Hon'ble Allahabad High Court in "SRI PARKASH VS. THE STATE, 1989(2) CRIMES 379" in almost similar circumstances held as under:-

"15. Relying upon the evidence given by P.W. 2 Dr. M. Hussain, learned Sessions Judge has observed that the spleen on Bachu deceased was enlarged. Learned counsel for the revisionist has challenged the same and has on the other hand urged that there was no material on the record which may show that the spleen of Bachu was enlarged. In this respect it may be observed that Dr. M. Hussain P.W. 2 has stated in his evidence that whereas normal weight of the spleen of a boy is four ounces, the weight of the spleen in this case was six ounces. On the

basis of the same the said doctor has stated that the spleen of Bachu was enlarged. The view expressed by P.W. 2 Dr. M. Hussain was not challenged by the prosecution before the trial Court and with regard to the same not a single question was put to the doctor by the prosecution by way of clarification or otherwise in our view there are other circumstances as well which tend to show that probably spleen of Bachu was enlarged. As observed by Sri N.J. Modi in Modi's Text Book of Medical Jurisprudence and Toxicology in his twentieth edition (page 288) on account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height; in such cases it is usually associated with injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may sometimes be ruptured by the broken ends of a rib which may be fractured by a severe kick or by a blow from a blunt weapon. In our view the situation of a normal spleen in the body is so secure that normally, it is not ruptured unless there is crushing of the body or there has been a fall from very great height etc. In this case, on the other hand, we find that no serious injury was caused to Bachu so much so that I.O. at the time of preparing 'Photo Lash', and the doctor at the time of the post-mortem examination did not find any outward visible injury on the body. In our opinion had Bachu been given a severe beating either by kicks or elbows, he must have in normal course sustained some visible injury like contusion. The fact that Bachu had no visible injury on his body shows that he was not subjected to any severe beating. When this was so his spleen had the same been normal and not enlarged would not have been ruptured.

16. Learned counsel for the State, on the other hand has referred to us the evidence of P.W. Dr. Trilok Chand, who tried to depose that when Bachu was brought to him on 16-3-1976 he had observed some visible injury on his body. In our view the said evidence, which doctor gave from his memory after a lapse of more than a year could not be believed, firstly, because he did not make any note of the same in his register and, secondly because both the I.O. at the time of the preparation of 'Photolash' and P.W. 2 M. Hussain, at the time of conducting post-mortem examination did not observe any visible injury on the dead body.

17. The fact remains that Bachu did not suffer any visible injury. This would have been possible only if he was not subjected to any severe beating by kicks and elbows as alleged by the prosecution in our view when in absence of any such visible injury the spleen of Bachu was ruptured, the same shows that his spleen was enlarged as deposed by Dr. M. Hussain P.W. 2.

18. It is not the case of the prosecution that the fact that the spleen of Bachu was enlarged was known to the appellant. When this is so the appellant could not be said guilty under Section 304 Indian Penal Code Therefore this is not a case in which enhancement of punishment of the appellant is warranted. The revision is liable to be dismissed.

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23. Learned counsel for the appellant has urged before us that even if the appellant had beaten Bachu and caused injuries to him then the case which was made out against him was not a case under Section 325. Indian Penal Code but was a case under Section 323 Indian Penal Code This argument has got substance. It may be observed that Bachu had not sustained any visible injury. From the internal injuries sustained by Bachu. It is clear he has not suffered fracture etc. The injuries sustained were obviously simple. Therefore, the learned Sessions Judge has committed an error in holding that the appellant was guilty under Section 325 Indian Penal Code In our opinion the only offence which is made out against the appellant is the offence under Section 323 Indian Penal Code."

[Emphasize supplied]

13. The absence of any injury on the deceased shows that she was not subjected to any severe beating. When this was so, had she not had a pre-existing medical condition she in all probability would not have died.

14. It may also be relevant to mention here that there is not even a whisper in the report under Section 173 Cr.P.C. that any of the accused/petitioners, were aware of the pre-existing medical condition of the deceased at the time when the occurrence took place. The liability of an accused would arise for assaulting a person, who was suffering from a disorder disease or bodily infirmity thereby accelerating the death of the other only if it could be said that the accused had the knowledge thereof as has already been submitted hereinabove. There is nothing to suggest that the accused persons were aware of the medical conditions of the deceased. Thus, an offence under Section 302/304 IPC cannot be made out.

15. The learned Sessions Court on the other hand has remanded the case back with the observations that the trial Court would reconsider the application under Section 323 Cr.P.C. while observing that a prima facie case was made out.

16. A perusal of the order of the learned Additional Sessions Judge, Sonipat (Annexure P-3) would show that the Court has remanded the case back without actually providing any reasoning for the same. Para Nos.12, 13 and 14 of the order dated 08.01.2015 (Annexure P-3) are reproduced hereinbelow:-

"12. There is no doubt about the fact that no external injury was found on the dead body of deceased Satwanti either in the crime scene visit report Ex.PW-3/A or in the inquest report dated 02.05.2011 or in the post mortem report Ex.PW-1/A. But, Dr. Poonam Dahiya PW-1 has given her opinion Ex.PW-1/B, according to which, still the possibility of cardiogenic/neurogenic shock cannot be ruled out leading to sudden death.

13. From the allegations contained in the complaint dated 02.05.2011 of the complainant Narain Singh and from the opinion Ex.PW-1/B of Dr. Poonam Dahiya PW-1, a prima facie case under Section 302 IPC is made out against all the

accused and the case should have been committed to the court of sessions by the trial Court.

14. In view of my above said discussion, I accept the present criminal revision filed on behalf of revisionist/complainant and set aside the impugned order dated 03.04.2011 passed by the trial Court and the trial Court is directed to reconsider the application under Section 323 Cr.P.C. filed on behalf of the revisionist/complainant in view of the observations made above. Parties are directed to appear before the trial Court for 20.02.2015, the date already fixed before the trial Court. Lower Court record be sent back along with a copy of this judgment and Criminal Revision file be consigned to record room after due compliance."

17. In view of the aforesaid discussion, I am of the opinion that the learned Additional Sessions Judge, Sonapat ought not to have remanded the matter back for reconsideration with the observations to the effect that a prima facie case under Section 302 IPC was made out because it left the learned Magistrate with virtually no discretion in the matter to objectively assess the evidence on record and then pass an order.

18. In view of the above, the order of the learned Additional Sessions Judge, Sonapat dated 08.01.2015 (Annexure P-3) is hereby set aside.

19. The trial Court shall proceed with the matter and decide the same expeditiously in accordance with law.