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STATE OF PUNJAB

v.

JAGTAR SINGH AND ORS.

(Criminal Appeal No. 78 of 2003)

B

JULY 26, 2011

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

Penal Code, 1860 – s.304 Part-I r/w s.34 IPC and s.300, First exception –Culpable homicide not amounting to murder C *– Case of grave and sudden provocation – Four accused – Accused-respondents allegedly killed their sister 'P' and her lover 'G' – Bodies of the two deceased found in the courtyard of the house of the accused – PW5 claimed that he had last seen 'G' when he was being taken away by the respondents* D *on the pretext of serving him liquor – Trial court accepted the evidence of PW5 and convicted the respondents u/s.302 r/w s.34 and sentenced them to life imprisonment – High Court, however, found the evidence of PW5 to be unreliable and on the basis of the post-mortem report that semen was found in* E *the vaginal swabs of 'P', came to the conclusion that on the date of incident 'G' himself must have sneaked into the house of the accused persons and must have had sexual intercourse with 'P' and on seeing them in a compromising position, the accused persons must have killed them, and that* F *thus it was a case of grave and sudden provocation and accordingly altered the conviction to u/s.304 Part I r/w s.34 and converted the sentence to rigorous imprisonment for five years – On appeal, held: There was no error in the approach of the High court in disbelieving the evidence of PW5 – Also,* G *no reason to differ with the conclusion arrived at by the High Court that the offence was committed due to grave and sudden provocation and would fall under first explanation to s.300 and would amount to culpable homicide not amounting to murder – Thus, the offence would be covered under s.304*

H

Part-I r/w s.34 – However, the incident in question took place 18 years back – Further, considering the fact that the accused persons had not even crossed the age of 25 years at the time of the incident and the fact that they have already undergone rigorous imprisonment for five years and have come out of jail, quantum of sentence not interfered with by Supreme Court.

According to the prosecution, the four accused persons killed their sister – 'P' and the brother of PW4 - 'G' by strangulation because 'P' had sexual relations with 'G'. The dead bodies of 'G' and 'P' were found in the courtyard of the house of the accused. PW5 stated that prior to the incident, when he was sleeping in the threshing floor of his wheat field for guarding the wheat, he saw the accused persons coming there in a drunken condition and taking away 'G' with them on the pretext of serving him liquor. Accused 'N' pleaded that on the night of the incident he heard some muffled sound from the court yard and that when he went there, he saw 'G' strangulating 'P' and in order to save 'P' from the clutches of 'G', he picked up a rope lying nearby, put it around the neck of 'G' and strangulated him; however in the meanwhile, 'G' had already strangulated 'P'. The trial court negated the plea of the defence and accepted the evidence of PW5 and accordingly convicted the accused under Section 302/34 IPC and sentenced each of them to undergo imprisonment for life.

In appeal, the High Court found the evidence of PW5 to be unreliable and rejected the same. However, the High Court, on the basis of the post-mortem report that semen was found in the vaginal swabs of deceased 'P', came to the conclusion that it was deceased 'G' who himself sneaked into the house of the accused persons and must have had sexual intercourse with 'P' and on seeing them in a compromising position, the accused persons must have killed them. On this basis, the High Court

A came to the conclusion that even if this was proved, it was a case of grave and sudden provocation and as such it could not be a case of murder and would come under Section 304 Part-I read with Section 34 IPC on the basis of first exception to Section 300 IPC. Therefore, the High B Court converted the sentence of the accused to rigorous imprisonment for five years each. The State filed the instant appeal against the order of the High Court.

Dismissing the appeal, the Court

C HELD:1. The contention raised by the State that the version of PW5 was natural, as on the date of occurrence, he was guarding his threshed wheat crop in his threshing floor which was situated near the threshing floor of 'G' and he had all the opportunity of watching the D happenings in the field of deceased 'G', cannot be accepted. Had that been the case there was no question of semen being found in the vaginal swabs of deceased 'P'. Secondly, considering the distance between the field of deceased 'G' and the house of the accused there was E no necessity to take him upto their house. He could have been done away with in the way only. It was obvious that there was a sexual intercourse with deceased 'P' which was not possible if the accused had taken deceased 'G' with them. [Para 7] [501-A-D]

F 2. The evidence of PW5 cannot be accepted. PW5 in his evidence did not even mention that when he had accompanied PW4 to the house of accused 'N' on the next morning, he saw the two bodies in the courtyard of the house of accused persons. PW4 in his evidence G stated that on reaching the house of accused 'N', he came to know that both 'P' and 'G' were murdered by the accused persons. However, he also did not state as to from where he came to know that they were murdered. It is not a case of either PW5 or PW4 that they, in any way, H entered the house of the accused persons or talked to

anybody. Again, this Court is not satisfied with the explanation offered by the prosecution for delay in sending the copy of FIR to the Magistrate on 16..5.1993 at 10.30 p.m. when the same was registered in the morning at 9.15 a.m. [Para 8] [501-F-G]

3. There is no error in the approach of the High court in disbelieving the evidence of PW5. That would only give further credence to the theory that 'G' must have sneaked on the night of 15.5.1993 in the house of accused persons and he must have had sexual intercourse with 'P' which might have been seen by the accused persons and in a fit of rage, they killed both of them on the spot. There is no reason to differ with the conclusion arrived at by the High Court that the offence was committed due to grave and sudden provocation and would fall under first explanation to Section 300 IPC and would amount to culpable homicide not amounting to murder. Thus, the offence would be covered under Section 304 Part-I read with Section 34 IPC. [Para 9] [501-H; 502-A-C]

4. However, the incident in question took place in the year 1993 and thus 18 years have passed. Further, considering the fact that the accused persons had not even crossed the age of 25 years at the time when the incident took place and further considering the fact that they have already undergone rigorous imprisonment for five years and have come out of jail, this Court is not inclined to interfere with the quantum of sentence. [Para 10] [502-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 78 of 2003.

From the Judgment & Order dated 17.10.1997 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 319 DB of 1995.

A Kuldip Singh, Harinder Singh for the Appellant.

O.P. Khullar, R.C. Kohli for the Respondents.

The Judgment of the Court was delivered by

B **SIRPURKAR, J.** 1. This appeal is filed by the State of Punjab challenging the judgment dated 17.10.1997 in Criminal Appeal No. 319 of 1995 whereby the High Court, while partly allowing the appeal, altered the conviction and sentence of the appellants-accused from Section 302/34 IPC to Section 304 C Part-I read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for five years each and to pay a fine of Rs. 1,000/- each, in default of payment of fine to further undergo rigorous imprisonment for one year.

D 2. The prosecution case, in short, is as under:-

Desa Singh, Jessa Singh and Gurnam Singh were three brothers. On the night of 15.5.1993, Gurnam Singh, resident of village Pakan, Police Station Sadar Fazlika, District Ferozpur was sleeping in the threshing floor of his wheat field for guarding E the wheat. According to the prosecution, the accused persons came there at about 10 p.m.in a drunken condition and took Gurnam Singh with them on the pretext of serving him liquor. This was allegedly seen by Santa Singh (PW5). Next day i.e. on 16.5.1993, in the morning at 6 a.m., Desa Singh (PW4), F brother of deceased Gurnam Singh reached in the field to serve him tea. He did not find Gurnam Singh there. On enquiry, he was told by Santa Singh (PW5) of the adjoining field that last night at about 10 p.m., the accused persons had taken him away. The prosecution further alleges that on being told by G Santa Singh (PW5) that the accused persons had taken him away, Desa Singh along with Santa Singh went to the residence of accused Nishan Singh where they came to know that the accused persons had killed Gurnam Singh and their sister Paramjit Kaur by strangulation because Paramjit Kaur H had sexual relations with Gurnam Singh. Thereafter, Desa

Singh along with Santa Singh went for lodging the report of murder of Gurnam Singh and Parmajit Kaur. SI Talwinderjit Singh met them on bus stand to whom they reported the matter. That is how the FIR came to be recorded on 16.3.1993 at about 9.15 a.m. It is significant to note that a copy of this FIR reached the area Magistrate only on 16.3.1993 at 10.30 p.m.

3. Upon lodging of FIR, SI Talwinderjit Singh (PW7) went to the house of accused at "Dhani Gowarewali" in village Pakkan and found the dead bodies of Gurnam Singh and Paramjit Kaur lying in the courtyard of house of accused. It is on that basis that the investigation started. During investigation, the prosecution claims to have found an eye-witness Mohan Singh (PW6) who, on the night of 15.5.1993 is alleged to have seen the murder of Gurnam Singh and Paramjit Kaur by strangulation by putting a rope around their neck by all the accused persons but had never bothered to report the matter to any of the family members of the deceased Gurnam Singh though admittedly he himself was the first cousin of the deceased Gurnam Singh. He ultimately became available for recording the statement only on the third day. He has been disbelieved by both the courts below.

4. Trial court accepted the evidence of Santa Singh (PW5) to the effect that he had last seen the deceased Gurnam Singh with all the four accused when Gurnam Singh was taken away by them on the pretext of serving him liquor. The trial court also accepted the fact that thereafter the dead bodies of Gurnam Singh and Paramjit Kaur were found in the courtyard of house of accused. It did not accept the defence suggestion that accused Nishan Singh was living separately from his other three brothers. The trial court also believed the Chemical Analyser's report showing semen was found on the private parts of Paramjit Kaur.

5. The defence at the trial was novel. In his statement under Section 313 Cr.P.C., accused Nishan Singh stated that on the night of 15.5.1993, he heard some muffled sound from the court

A yard when he was sleeping on the roof of his house. He then corrected himself and said that the sound was coming from the room. When he went there, he saw Gurnam Singh strangulating his sister Paramjit Kaur and in order to save Paramjit Kaur from the clutches of Gurnam Singh, he picked up a rope lying B nearby, put it around the neck of Gurnam Singh and strangulated him. In the meanwhile, Gurnam Singh had already strangulated his sister Paramjit Kaur. The trial court did not accept the defence of the accused persons and proceeded to convict them for the offence under Section 302/34 IPC and C sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 1000/- each, in default to further undergo rigorous imprisonment for one year.

6. In appeal, the High Court has discussed the evidence of the all the witnesses threadbare. The High Court found the D evidence of Santa Singh (PW5) unreliable and rejected the same. However, the High Court, on the basis of the post-mortem report that semen was found in the vaginal swabs of deceased Paramjit Kaur which were sent for chemical examination, came to the conclusion that it was deceased Gurnam Singh who E himself sneaked into the house of the accused persons and must have had sexual intercourse with Paramjit Kaur and on seeing them in a compromising position, the accused persons must have killed them. On this basis, the High Court came to the conclusion that even if this was proved, it was a case of F grave and sudden provocation and as such it could not be a case of murder and would come under Section 304 Part-I read with Section 34 IPC on the basis of first exception to Section 300 IPC. Therefore, the High Court converted the sentence of the accused from imprisonment for life to rigorous imprisonment G for five years with fine of Rs. 1000/- each. Hence, this appeal by special leave by the State of Punjab.

7. Mr. Kuldip Singh, learned counsel appearing for the State very strenuously argued that this was a clear case of murder as there was no explanation offered by the accused H

persons having found two bodies in the courtyard of their house. Mr. Kuldip Singh further pointed out that the High Court has erred in disbelieving the version of Santa Singh (PW5). According to him, it was natural version of Santa Singh (PW5), as on the date of occurrence, he was guarding his threshed wheat crop in his threashing floor which was situated near the threashing floor of Gurnam Singh. He had all the opportunity of watching the happenings in the field of deceased Gurnam Singh. The argument is incorrect. Had that been the case there was no question of semen being found in the vaginal swabs of deceased Paramjit Kaur. Secondly, considering the distance between the field of deceased Gurnam Singh and the house of the accused there was no necessity to take him upto their house. He could have been done away with in the way only. It was obvious that there was a sexual intercourse with deceased Paramjit Kaur which was not possible if the accused had taken deceased Gurnam Singh with them.

8. We have carefully seen the evidence of Santa Singh (PW5). However, we are not in a position to accept the evidence of Santa Singh (PW5). In our view, Santa Singh (PW5) in his evidence did not even mention that when he accompanied Desa Singh (PW4) to the house of Nishan Singh on the next morning, he saw the two bodies in the courtyard of the house of accused persons. Desa Singh (PW4) in his evidence stated that on reaching the house of accused Nishan Singh, he came to know that both Parmajit Kaur and Gurnam were murdered by the accused persons. However, he also did not state as to from where he came to know that they were murdered. It is not a case of either Santa Singh (PW5) or Desa Singh (PW4) that they, in any way, entered the house of the accused persons or talked to anybody. Again, we are not satisfied with the explanation offered by the prosecution for delay in sending the copy of FIR to the Magistrate on 16..5.1993 at 10.30 p.m. whereas the same was registered in the morning at 9.15 a.m.

9. Be that as it may, we do not find any error in the

A approach of the High court in disbelieving the evidence of Santa Singh (PW5). That would only give further credence to the theory that Gurnam Singh must have sneaked on the night of 15.5.1993 in the house of accused persons and he must have had sexual intercourse with Paramjit Kaur which might have B been seen by the accused persons and in the fit of rage, they killed both of them on the spot. We do not find any reason to differ with the conclusion arrived at by the High Court that the offence was committed due to grave and sudden provocation and would fall under first explanation to Section 300 IPC and C would amount to culpable homicide not amounting to murder. Thus, the offence would be covered under Section 304 Part-I read with Section 34 IPC.

10. Mr. Kuldip Singh, then strenuously urged that the accused persons have been awarded only five years of rigorous D imprisonment and it is ridiculously less. He pointed out that even according to the High Court, this would amount to honour killing which cannot be taken lightly. The argument is undoubtedly correct. However, considering that the incident in question took place in the year 1993 and thus 18 years have E passed. Further, considering the fact that the accused persons had not even crossed the age of 25 years at the time when the incident took place and further considering the fact that they have already undergone rigorous imprisonment for five years and have come out of jail, we are not inclined to interfere with F the quantum of sentence and would choose to dismiss this appeal. We order accordingly.

B.B.B. Appeal dismissed.