
to confirm the highest bid without assigning any valid reason and/or by giving erratic, irrational or irrelevant reasons.

(20) As regards locus-standi of the petitioner to maintain the writ petition, we have already held that every highest bidder has a right to assail the action of the State Government or its authorities by contending that his bid has been turned down for arbitrary, illegal or perverse reason, though in such like matters, heavy onus would lie on the petitioner to establish his allegations as the State action shall always be presumed to be in accordance with law.

(22) We answer the reference accordingly.

(23) Let the main writ petition be listed for hearing before an appropriate Bench as per Roster.

R.N.R.

Before Adarsh Kumar Goel and H.S. Bhalla, JJ

SURESH PAL AND OTHERS,—*Appellants*

versus

STATE OF PUNJAB,—*Respondent*

Criminal Appeal No. 550/DB of 2002

12th February, 2007

Indian Penal Code, 1860—Ss.302/201/34 and 376—Blind murder of a woman—Conviction of accused under sections 302/201/34 and 376—Prosecution case based on two chance witnesses—Non-disclosure of occurrence by eye witnesses to anyone for more than two months—No explanation offered for such non-disclosure—Conduct of these witnesses to the part of incident is highly unnatural and improbable—Non-disclosure creating a serious infirmity in the prosecution version, which destroyed the creditability of the testimony of the witnesses and no reliance can be placed on such type of weak evidence—Appeal allowed, appellants acquitted of the charges levelled against them.

Held, that the statements of chance witnesses should be subjected to very close and careful scrutiny. Though the chance

witness is not necessary a false witness, but it is proverbially rash to rely upon such evidence. If by coincidence or per chance, a person happens to be at the place of occurrence at the time, it is taking place, he is called a chance witness and such an evidence requires cautious and close scrutiny.

(Para 7)

Further held, that conduct of two eye witnesses to the part of the incident is highly unnatural and improbable when Tej Kaur was being assaulted by the accused persons. They even did not try to seek assistance of the people in the village around the house of the appellants and they even did not follow the appellants. These witnesses had made deliberate improvement at the trial and the same cannot be dismissed as amounting merely to omissions. The mode and the manner in which these witnesses alleged to have witnessed the occurrence does not appear as easily acceptable.

(Para 7)

Further held, that delay in recording the statements of eye witnesses by few hours or few days, may not, by itself amount to serious infirmities in the prosecution case, but, the delay of two months in recording the statements of the eye witnesses, which was recorded on 8th May, 1998 clearly spells out that the investigator was deliberately marking time with a view to decide about a shape to be given to the case and the eye witnesses to be introduced. Delay in recording the statements of the material witnesses casts a cloud of suspicion on the credibility of the prosecution story. It appears that the prosecution has suppressed the genesis of the origin of the occurrence and has, thus, not presented the true version.

(Para 8)

Further held, that non—disclosure of the occurrence by the alleged eye witnesses to anyone for more than two months and no explanation has been offered for the same and such non—disclosure certainly creates a serious infirmity in the prosecution version, which destroyed the creditability of the testimony of the witness and no reliance can be placed on such type of weak evidence.

(Para 11)

Vinod S. Bhardwaj, Advocate, *for the appellants.*

Daldeep Singh, DAG, Punjab assisted by M.S. Sidhu,
Advocate for the respondent.

H.S. BHALLA, J,

(1) This appeal is directed against the judgment dated 29th May, 2002/3rd June, 2002 passed by Additional Sessions Judge (Ad hoc), Patiala, whereby he convicted appellants, namely, Ran Singh and Nayaka under Sections 201/34 of the Indian Penal Code and sentenced to the period already undergone. Appellants, namely, Suresh Pal and Baldev Singh were convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and they were ordered to pay fine of Rs. 2000 each; in default thereof, they were directed to further undergo rigorous imprisonment for one month each. Appellant Suresh Pal was convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and he was ordered to pay a fine of Rs. 500; in default thereof, he was directed to further undergo imprisonment for a period of 15 days. Appellants, namely, Suresh Pal and Baldev Singh were convicted under Sections 201/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years each. The sentences awarded by the trial Court shall run concurrently. However, appellants Ran Singh and Nayaka were acquitted of the charges framed against them under sections 201/34 of the Indian Penal Code by giving them the benefit of doubt. However, they were convicted and sentenced for the period already undergone under sections 201/34 of the Indian Penal Code.

(2) As per the prosecution, on March 11, 1998, a police party headed by Inspector Rachhpal Singh, the Station House Officer, Police Station Sadar, along with other Police officials, was present on the bridge of Canal, Pasiana, where Ran Singh, son of Chuhar Singh along with Naurang Singh appeared before the police party and disclosed that he has four sons and two daughters, out of them, Ujjagar Singh is the eldest son, next to him are Jagmel Singh, Baldev Singh and Suresh Pal. Ujjagar Singh and Jagmel Singh are serving in the Indian Army. Both are married. He further disclosed that Ujjagar Singh was married to Tej Kaur daughter of Ram Niwas and

Jagmel Singh was married to Angoori daughter of Ujjagar Singh and his other sons, namely, Baldev Singh and Suresh Pal were unmarried and daughters of Ran Singh were also married. Ujjagar Singh was married to Tej Kaur for the last 14-15 years. He had two children, i.e., one son aged 08 years and one daughter, aged 03 years. On the morning of March 11, 1998, his daughter-in-law Tej Kaur had gone outside in the fields to ease herself and when she did not return for a long, they started searching for her. He also sent his son Suresh Pal to the house of parents of Tej Kaur to know her whereabouts. They also started making search of Tej Kaur around the village. On reaching near the well of the village, they noticed that Salwar and rubber shoes of Tej Kaur were there. On the basis of suspicion, they searched for the body of Tej Kaur from the well of the village. On finding the dead body of Tej Kaur from the well of the village, it was found having injuries on chin, nose and the lips besides on the left cheek. Both the knees of the deceased were having abrasions signs. Ran Singh further reported to the police that his daughter-in-law was murdered by some one and thereafter she was thrown into the well to destroy the body of the deceased. He also disclosed that from the injuries suffered by the deceased, it appears that she was raped by some body. Naurang Singh, son of Ram Niwas, Bhagwan Singh, Bhajan Singh and Wazir Singh reached the spot, who were apprised about the facts and thereafter Naurang Singh stayed there for the protection of the dead body and he left towards the police party for reporting the matter. Statement of Ran Singh was recorded by the police and thereafter, matter was investigated and during the course of investigation, salwar and plastic shoes were taken into possession and post-mortem examination on the dead body was conducted. Police also recorded the statement of the witnesses and the investigation was carried out by the Deputy Superintendent of Police, Patiala. During the course of investigation, the signs of the teeth on the left cheek of the deceased were found to be of Suresh Pal after medical examination on the basis of which, Suresh Pal was arrested. During the investigation, it was found that on March 11, 1998, Suresh Pal had raped his sister-in-law Tej Kaur. Tej Kaur wanted to raise a hue and cry, but Suresh Pal and his brother Baldev Singh besides their father Ran Singh and mother nayaka stopped Tej Kaur from doing so. Since Tej Kaur was still adamant, they srangulated Tej Kaur and threw her dead body in the well of the village to destroy the evidence. All the four accused

were thereafter arrested. After completion of investigation and other formalities, all the accused were sent up for trial.

(3) All the accused were charge-sheeted under sections 302/201/34 of the Indian Penal Code and Suresh Pal accused was also charge-sheeted under section 376 of the Indian Penal Code. They did not plead guilty and claimed trial.

(4) The prosecution, in order to prove its case, examined Dr. O.P. Aggarwal (PW-1), Inderdresh Khanna (PW-2), Joginder Singh (PW-3), Naurang Singh (PW-4), Ram Singh (PW-5), Head Constable Bachna Ram (PW-6), Constable Tarsem Singh (PW-7), Sampuran Singh (PW-8), Ms. V. Neerja, IPS, Superintendent of Police (PW-9), Head Constable Sahib Singh (PW-10), Head Constable Bhupinder Singh (PW-11), Constable Chet Ram (PW-12), Dr. Jagmohan Lal (PW-13), Dr. Parmeel Goyal (PW-14), Satinder Kumar Gupta (PW-15), Constable Jaswant Singh (PW-16), Ashish Kapoor (PW-17), and Rachhpal Singh, Deputy Superintendent of Police (PW-18).

(5) In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied the prosecution allegations and pleaded that they have been falsely implicated. Appellant Suresh Pal has pleaded that he is suffering from urinary trouble since 1996. He will produce treatment slip and prescription slip in that regard. He has been operated four time by the doctor for the said disease. He has been allowed interim bail for the said purpose. His brother and his father had strained relations with the parents of Tej Kaur. He has been falsely implicated at the instance of the complainant party. His left is badly polio effected since his childhood. He is innocent. It is a false case. The appellants, in their defence, have examined Ujjagar Singh (DW-1) and tendered documents, Exs. DY and DZ. Ujjagar Singh is the husband of the deceased and relation of other co-accused of Suresh Pal. He has deposed that he was in the Army service during the days when occurrence had taken place and he complained to the higher authorities, including the Human Rights Commission and received letter Ex. DX dated 17th August, 1997 along with copy of the order dated 11th August, 1998 Ex. DX/1. He also received letter Ex. DE to the effect that the complaint has been disposed of.

(6) We have heard the learned counsel for the parties and have also gone through the record of the case minutely.

(7) The ocular testimony consists of Joginder Singh (PW-3) and Sampuran Singh (PW-8), who were chance witnesses to the occurrence. In assessing and evaluating the evidence of eye witnesses, the two important considerations are; (i) Whether in the circumstances of the case, it was possible for the eye witnesses to be present at the scene and (ii) whether there are anything inherently improbable or unreliable in their evidence. Each case must be judged on its own facts. The statements of chance witnesses should be subjected to very close and careful scrutiny. Though the chance witness is not necessary a false witness, but it is proverbially rash to rely upon such evidence. If by coincidence or per chance, a person happens to be at the place of occurrence at the time, it is taking place, he is called a chance witness and such an evidence requires cautious and close scrutiny. In the instant case, both Joginder Singh (PW-3) and Sampuran Singh (PW-8) have deposed in a similar fashion and they have disclosed that on March 11, 1998 at 5.00 A.M. They were going to Bus Stand of village Pasiona to meet a person at the bus stand and when they reached near the house of Ran Singh accused, they heard an alarm, 'Maarti Maarti'. They did not enter the house of Ran Singh even after hearing the noise, 'Maarti Maarti', but they came in front of that house, where Tej Kaur was standing in the House. Tej Kaur was crying that she had been raped by her Devar Suresh Pal Singh and she will tell about it to her husband and to her brother. Nayaka, wife of Ran Singh was also standing there. She was the mother-in-law of Tej Kaur and she was telling Tej Kaur that even if she had been raped by Suresh Pal, then she should not give more importance to it. If she raised an alarm accused Suresh Pal will not be married, but Tej Kaur was insisting and was saying that she was not married with all as she was married only with Ujjar Singh. Then Ran Singh accused who also there told her that they will be disgraced in the village. He asked his sons Suresh Pal and Baldev Singh, who were present there that Tej Kaur be finished for ever. On this, Nayaka caught left arm of Tej Kaur, Ran Singh accused caught the right arm of Tej Kaur. Suresh Pal and Baldev Singh put the shawl in the neck of Tej Kaur and they pulled it in their presence. Tej Kaur died in their presence at the spot. Then they proceeded towards the bus stand. Ram Singh came there after about half an hour. Ram Singh told them he had seen Suresh Pal and Baldev Singh carrying the dead body of Tej Kaur. During the course of cross-examination, Sampuran Singh (PW-8) has

categorically admitted that he does not know the bus fare from his village to village Pasiana, as they had come on motor-cycle. It is further admitted by this witness that the entire occurrence took place within 10-15 minutes. He and Joginder Singh did not raise any alarm to save Tej Kaur from the clutches of the accused persons nor they went to any neighbour as they were afraid of. It is also categorically admitted by this witness that he did not report the matter to any Panch, Sarpanch or Lambardar of the village and he did not talk to any of the persons of that village or in the bus about this occurrence. It is further categorically admitted that they passed in front of Police Station Samana, but they did not report the matter to the Samana Police and when they reached their village at 9.30 A.M., they did not report the matter to the Panch, Sarpanch or Lambardar of the village as they were perplexed. It is further admitted by him that he had suffered a statement on May 8, 1998. This statement is Ex. DD and as per this statement, it is recorded in portion 'A to A' that he and Joginder Singh had entered the house of Ran Singh, whereas when they stepped into the witness box to depose they denied this fact. The eye witness account is improbable and incredible as it is, keeping in view the conduct of the witnesses and a material improvement in the Court with regard to the fact that as per the statement before the police, they entered the house, but when they stepped into the witness box, they denied this fact and took a stand that they witnessed the entire occurrence while standing in the street. No attempt was made by them to save Tej Kaur, nor they raised any alarm and the presence of the witnesses has been rightly made the subject of pointed criticism by the learned counsel appearing for the appellants. It seems unlikely and unacceptable that if they were present, they would not have attempted to raise an alarm or to intervene and would remain there as a silent spectator. The conduct of these two witnesses to the part of the incident is highly unnatural and improbable when Tej Kaur was being assaulted by the accused persons. They even did not try to seek assistance of the people in the village around the house of the appellants and they even did not follow the appellants. As already discussed above that these witnesses had made deliberate improvement at the trial and the same cannot be dismissed as amounting merely to omissions. The mode and the manner in which these witnesses alleged to have witnessed the occurrence does not appear to us as easily acceptable.

(8) There is another fact, which stands out prominently as a circumstance which may be said to tilt the scale in favour of the appellants. The statements of these two star witnesses of the prosecution were recorded after a lapse of about two months on 8th May, 1998 with the sole motive to make these witnesses to the occurrence. There is in the circumstances considerable force in the argument of the learned defence counsel that the entire case of the prosecution is the result of consultations and confabulations keeping in view the delayed recording of the statements of the eye witnesses for which no explanation has come forward. In the instant case, we do not find any justifiable reason as to why these witnesses were not examined for about two months. The witnesses, however, were found to be telling falsehood on material aspect of this case and also concealed their conduct, as discussed above, it becomes difficult to place any reliance on such testimony. The evidence to which we have referred, would show that the eye witnesses have not come out with the truth and it would be unsafe to rely on this statement. We are conscious of the fact that delay in recording the statements of eye witnesses by few hours or few days may not, by itself, amount to serious infirmities in the prosecution case, but in the instant case, the delay of two months in recording the statements of the eye witnesses, which was recorded on 8th May, 1998 clearly spells out that the investigator was deliberately making time with a view to decide about a shape to be given to the case and the eye witnesses to be introduced. Delay in recording the statements of the material witnesses casts a cloud of suspicion on the credibility of the prosecution story. It appears that the prosecution has suppressed the genesis of the origin of the occurrence and has, thus, not presented the true version.

(9) Now the prosecution case rests on the slander thread of the testimony of the two eye witnesses, namely, Joginder Singh (PW-3) and Sampuran Singh (PW-8). As per their statements, they witnessed the entire occurrence, but their conduct after the occurrence appears to be abnormal. There is no evidence whatever to suggest that they were struck by terror or fear and it would be strange to expect that they would stand silent and watch deceased Tej Kaur being killed and would not disclose this fact to anyone for more than two months. All this would be utterly unbelievable. It appears unreal. It would be normal for them if they had actually witnessed the entire occurrence to inform someone particularly when there was no aspect of fear. These features

indicate the infirmities as to truthful evidence of Joginder Singh (PW-3) and Sampuran Singh (PW-8). At the face of it, it looks rather improbable that they would recognise all the accused through the door of the house and as already discussed above, the conduct of these two witnesses in not informing the police, particularly when it is categorically admitted that they crossed Samana Police Station what they had heard or seen at that time and their omission to report about it to anybody in the village are also significant. In the circumstances, it is unsafe to rely on their own testimony.

(10) Seeing the occurrence of murder, but not telling about it to anybody on the date of occurrence clearly spells out that the evidence of such a witness is not worthy of acceptance and no explanation has come forward as to why they disclosed the entire incident after a lapse of two months to the police. This reasoning of ours is supported by the law contained in **State of Orrisa versus Brahmananda Nanda**, (1) wherein their Lordships of the Apex Court have observed as under :—

“Where in a murder case, the entire prosecution case depended on the evidence of a person claiming to be eyewitness and this witness did not disclose the name of the assailant for a day and a half after the incident and the explanation offered for nondisclosure was unbelievable, held that such non-disclosure was a serious infirmity which destroyed the credibility of the evidence of the witness and that the High Court was correct in rejecting it as untrustworthy and acquitting the accused.”

(11) In the instant case, non-disclosure of the occurrence by the alleged eye witnesses to anyone for more than two months and no explanation has been offered for the same and such non-disclosure certainly creates a serious infirmity in the prosecution version, which destroyed the credibility of the testimony of the witnesses and no reliance can be placed on such type of weak evidence.

(12) We would also like to examine this case from another angle. The report dated August 10, 1998, Ex. DE, submitted by the Senior Superintendent of Police, Patiala to the Inspector General of

(1) AIR 1976 S.C. 2488

Police, Litigation, Punjab, Chandigarh has added another nail to the coffin of the prosecution case, As per this report, inquiry was made by Superintendent of Police (Detective), Patiala as well as Ms. Neerja IPS, A.S.P., Patiala. The parents of Ujjagar Singh and his family members were joined in the inquiry and interrogated, but no clue was found and they were freed after inquiry. The report further spells out that the allegations of harassment, torture and trying to implicate the family members of Ujjagar Singh in this case have not been proved during the inquiry. Meaning thereby that on August 10, 1998, as per this inquiry report, no incriminating evidence could be collected against the present appellants, whereas the statements of the eye witnesses were recorded on May 8, 1998. Both these things cannot go together and it appears that the prosecution created the statements of the eyewitnesses ante-dated. In such like circumstances, no reliance can be placed on the statements of the eye witnesses, which were alleged to have been recorded on May 8, 1998, especially when inquiry report whereby appellants were freed during interrogation, was submitted on August 10, 1998. In view of these circumstances, it could be said that the prosecution story was conceived and constructed after a good deal of deliberation and delay in a shady setting and is not free from doubts and suspicion. Furthermore, the statement of Joginder Singh (PW-3), who is stated to have witnessed the occurrence suffers from material contradictions. As per the evidence recorded in the Court, he stated that he was at Phirni at that time when he heard these words of Tej Kaur and was not inside the house. He was confronted with his statement, Ex. DA, wherein it has been recorded that he had heard these words when he alongwith Sampuran Singh entered into the house and not in the Phirni. He has further disclosed that he had stated in his statement made before the police that door of the house of Ran Singh was open, but he does not know if police recorded it or not. He was again confronted during the course of cross-examination with the statement Ex. DA, wherein it was not so recorded. The testimony of this witness again cannot be relied upon for the reasons that he has strained relations with the appellant-accused on account of litigation between the parties, while appellant-accused Ran Singh filed a suit for recovery for more than Rs. 40,000. This witness has filed a suit for injunction against the accused. There are number of unnatural instances of conduct of the witnesses, which are sufficient to conclude that Joginder Singh (PW-3) and Smpuran Singh (PW-8) were not present at the time of alleged incident and are deposing falsely at the instance of the police and at the cost of repetition, their

statements were recorded on May 8, 1998 after a delay of two months and then again, these statements do no form part of the inquiry report, Ex. DA, meaning thereby that they were antedated. The case of the prosecution is again doubtful as no efforts were made by these two witnesses to rescue Tej Kaur and even they did not raise any hue and cry, particularly when there was no threat of any kind to them at that time. The incident is stated to have taken place at 5.00 A.M. on March 11, 1998, yet they chose to remain quiet till May 8, 1998 for a period of two months. No explanation has come forward as to why they opened their mouth after a lapse of two months. It is also highly improbable that accused-appellants would carry the deceased in a broad day light and threw her in the well and expose themselves for the risk of being seen and if the body could be thrown in the well, then there was no occasion for the appellants to keep salwar and rubber shoes of the deceased near the bank of the well. Appellant Suresh Pal has been convicted under Section 376 of the Indian Penal Code only on the basis of denture of Suresh Pal matching with the teeth bite marks on the cheek of the deceased.

(13) Dr. Jag Mohan Lal (PW-13) has categorically deposed that he cannot say if these study models were prepared by him or by any person under his direction or if these study models relate to Suresh Pal appellant. He has further disclosed that he cannot say if these study models were given by him to police, which are mentioned in his record.

(14) A perusal of the evidence of Dr. Jag Mohan Lal clearly spells out that it would be pre-mature to relate the denture model to accused Suresh Pal and moreover, the report of the Prosthetic Dentistry Department is not a perfect science. There is nothing on record to show as to how and when the denture of the accused-appellant Suresh Pal were prepared and in whose presence they were prepared. Apart from this, vagina swabs was taken in possession by the police for chemical examination. Sperms were detected. The participation of appellant Suresh Pal in the commission of offence could have easily been proved by analyzing the spermatozoa of accused with the sperms detected on the swab. The prosecution had the samples of the sperms of accused Suresh Pal and even when the objective scientific test was available, the prosecution did not opt for the same, which could have established about the commission of the offence by the accused, particularly when prosecution had developed the denture and for matching the bite

marks, they could have also opted for the objective scientific test. The absence of this test has created a doubt in the mind of the Court with regard to the conviction of accused Suresh Pal for committing the offence of rape.

(15) In view of the discussions made above, we are of the opinion that the entire picture of the occurrence, as presented by the prosecution and its witnesses, is very much suspicious and doubtful. The appeal is, accordingly, allowed. Appellants are acquitted of the charges levelled against them. The appellants, if in custody, be set at liberty forthwith, if not required in any other case.

(16) The result is unfortunate, but it cannot be helped. It is pity that brutal murder is going unpunished.

R.N.R.

Before T.P.S. Mann, J.

AMRIT LAL AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

Cr. Misc. No. 52240/M of 2005

18th January, 2007

Code of Criminal Procedure, 1973—Ss. 293(2) and 311—Accused failing to lead their defence despite a number of opportunities granted—Report of expert, FSL admitted in evidence—No objection by accused—Prayer for summoning expert, FSL declined—Challenge thereto—S. 293(2) permits summoning of the expert for his examination as to the subject matter of his report—Discretion—Exercise of—Judiciously—Justice should not be done but it should appear to have been done—Request of accused ought to have been accepted to give sufficient opportunity to defend him in the trial—Petition allowed.

Held, that though the report prepared by Dr. R.K. Kaushal of FSL was admitted in evidence without there being any objection from the accused and the said report thereafter put to the accused while they were examined under Section 313 Cr. P.C. yet an objection was raised by them during the stage of defence and arguments that