

STATE OF PUNJAB

v.

CHATINDER PAL SINGH & ORS.

(Criminal Appeal No. 352 of 2002)

NOVEMBER 11, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

PENAL CODE, 1860:

ss. 376, 366, 363 and 308 – Accused prosecuted on the basis of dying declarations and statements of eye witnesses – During trial, eye witnesses did not support prosecution version – Acquittal by trial court finding discrepancies in two dying declarations – Upheld by High Court – HELD: Reasons recorded by courts below do not warrant interference – Evidence – Dying declarations.

The respondents were prosecuted for commission of offences punishable u/ss 376, 366, 363 and 308 IPC. An FIR was lodged against the accused-respondents on the basis of the statement made by the deceased victim of the crime. She alleged that she was taken under the threat of her brother's life and was ravished by the accused and as she had been defamed, she poured kerosene on her clothes and set herself afire. Another dying declaration of the victim was recorded by the Executive Magistrate. The trial court found discrepancies in the dying declarations and acquitted the accused. The High Court upheld the acquittal.

Dismissing the appeal filed by the State, the Court

HELD: 1.1. PWs 13 and 15 the so-called eye-witnesses, who happen to be the brother and the friend of the deceased did not support the prosecution version and resiled from their statements made during

A investigation. Therefore, the residual question is the acceptability of the two dying declarations. The trial court did not place any reliance on the dying declarations. [Para 7] [27-B-C]

1.2. When two courts on analysis of the evidence
B found the respondents not guilty, there is no scope for interference in the appeal. The reasons indicated by the trial court and affirmed by the High Court discarding the two dying declarations do not suffer from any infirmity. [Para 9] [27-F-G]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 352 of 2002.

From the Judgment and Order dated 20.12.1999 of the High Court of Punjab and Haryana at Chandigarh in CrI. Appeal No. 167-DBA/1991.

D Ajay Pal for the Appellant.

Naresh Bakshi, D.P. Singh and Subramonium Prasad for the Respondents.

The Judgment of the Court was delivered by

E DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of the Punjab and Haryana High Court upholding the judgment of acquittal passed by learned Additional Sessions Judge, Ropar. The respondents faced trial for alleged commission of offences punishable under Sections
F 376, 366, 363 and 308 of the Indian Penal Code, 1860 (in short IPC).

The background facts as projected by the prosecution during trial are as follows:

G The FIR, Exhibit PD-3 in this case was recorded on July 29, 1989 at 9.30 P.M. in Police Station Mohali under Sections 383 and 378 IPC on the basis of statement (Exhibit PD) made by Kumari Poonam (since deceased) recorded by Head Constable Bishnu Dutt in PGI Chandigarh at 1.30 P.M. on July 29, 1989. In the said statement it was alleged by Kumari
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Poonam (since deceased) aged about 16-1/2 years that she was a student of 9th Class in Senior Secondary School, Mohali and that on that date i.e. on July 29, 1989 at about 10.15 A.M. she had committed suicide by putting kerosene oil on her clothes and putting the same on fire on account of misbehaviour by accused Honey who was resident of H.No. 112, Phase II, Mohali. It was alleged that on July 17, 1989 when she was going to the school at about 7.00 a.m. along with her brother Anil, on the way Honey accused met them and he asked her to accompany him, failing which he would not spare her brother and out of fear she went with him and he took her to Rose Garden, Chandigarh in an Ambassador car. It was further alleged that on that previous day i.e. July 28, 1989, in the same manner she was coming to the school at about 7.00 a.m. along with her brother Anil and her friend Rajni when accused Honey along with two others who she could recognise met them in white coloured Ambassador car and they made her brother Anil sit in the said car and told her that if she wanted her brother then she should sit with them and out of fear she sat in the car and they also made Rajni sit in the said car. Thereafter they took them to a hotel in Sector 22, Chandigarh and there they forcibly committed rape on her and thereafter they left them at Mohali at about 1.00 P.M. on that day. It was further alleged that thereafter she had told the entire occurrence about these two dates to her mother. It was further alleged that on that day i.e. July 29, 1989, the said boy i.e. Honey came to their house and rang the door bell and went away after giving a signal to her and at that time there was no one else in the house.

Her mother had stopped her from going to the school. It was alleged that she put herself on fire as she had been defamed in the eyes of the public and it was useless to live. She further alleged that on hearing her cries, another tenant Darshan Singh who was residing in the adjoining room came there and he put off the fire and he also called her mother and thereafter they brought her to PGI Chandigarh where she was under treatment. She further stated that she had put herself on fire because of the earlier incident concerning Honey accused

- A and hence accused Honey and his friends were responsible for the same. This statement Exhibit PD was recorded by Head Constable Bishnu Dutt in the presence of PW3 Dr. A.S. Bawa. Further, Head Constable Bishnu Dutt recorded the statement Exhibit PD of Kumari Poonam after obtaining opinion Exhibit PC/1 of Dr. A.S. Bawa about the fitness of Kumari Poonam to make the statement.

- C After recording the said statement, HC Bishnu Dutt sent the same to Police Station Mohali as the case pertained to the said Police Station. Thereafter, ASI Avtar Singh of Police Station, Mohali moved an application before the SDM for making necessary arrangements to record dying declaration of Kumari Poonam by a Magistrate. Thereupon, Shri P.K. Sharma, Executive Magistrate, Chandigarh was deputed for this purpose. Shri P.K. Sharma moved application Exhibit PH to the Doctor in charge about the fitness of Kumari Poonam and the doctor on duty declared her fit to make the statement at 7.30 P.M. on July 29, 1989 vide endorsement Exhibit PH/1. Thereafter Shri P.K. Sharma, Executive Magistrate recorded the statement Exhibit PJ of Kumari Poonam at 8.10 P.M. on July 29, 1989 in PGI Chandigarh in English.

E After completion of investigation, charge sheet was filed. The accused persons pleaded innocence and therefore trial was held.

- F In order to establish the accusations, prosecution examined 17 witnesses. After considering the materials on record, learned Additional Sessions Judge, Ropar directed acquittal of the four accused persons of the various charges. State filed an appeal before the High Court. The stand of the State before the High Court was that even though Pws 13 and 15 i.e. the brother of the deceased (Anil Kumar) and her friend (Rajni) had not supported the prosecution case, the two dying declarations PDI and PJI clearly established the accusations. The accused persons took the stand that in the so-called two dying declarations there were various inconsistencies which were irreconcilable. Therefore, the trial court was justified in directing
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the acquittal. The High Court accepted the plea of the accused persons and upheld the acquittal. A

The stand taken before the High Court by the prosecution and the accused persons have been reiterated in the present appeal.

We find that two so-called eye-witnesses examined by the prosecution i.e. Pws 13 and 15 who happen to be the brother and the friend of the deceased did not support the prosecution version and resiled from their statement made during investigation. Therefore, the residual question is the acceptability of the two dying declarations. The trial court did not place any reliance on the dying declarations. B C

The discrepancy pointed by the trial court is that in Ex. PD there is mention about one incident of rape on her on July 28, 1989 in a hotel at sector 22 Chandigarh by Honey and two other accused. She does not state in the dying declaration in Ex PJ that she was raped on July 17th and stated that accused Honey had simply taken her to Rose Garden. In ExPJ she does not mention the date of the first incident as July 17th but states that her friend Rajni was also with her and they were taken to some unknown hotel while Honey raped her and accused Longowal raped Rajni. She also did not mention the second incident to have taken place on 28th July and stated that it was 2/3 days ago and not yesterday, when the boys took them to a hotel in Sector 22 and raped them. There are several inconsistencies and contradictions in the Ex PD1 and PJ1. D E F

Above being the position, when two courts on analysis of the evidence found the respondents not guilty, there is no scope for interference in this appeal. The reasons indicated by the trial court and affirmed by the High Court discarding the two dying declarations do not suffer from any infirmity. The appeal fails and is dismissed. If the respondents have been released on bail pursuant to the order dated 20th April, 2001, the bail bonds stand discharged. G