SUPREME COURT OF INDIA

Ronal Kiprono Ramkat

Vs.

State of Haryana

Crl.A.No.464 of 1999

(R.C. Lahoti and Shivaraj V. Patil JJ.)

31.07.2001

JUDGMENT

Shivaraj V. Patil, J.

1. This appeal by special leave, is aggrieved by and directed against the judgment and order of the High Court of Punjab and Haryana dated 4.9.1997, upholding the order of conviction and sentence passed on the appellant by the trial court.

2. The appellant was tried by the Additional Sessions Judge, Ambala, for the offences under Section 376 read with Section 511 IPC and for an offence under Section 302 IPC. The prosecution case, as unfolded during trial is that at about 1.30 P.M. on 17.11.1993, Betty, the deceased informed her friend Caroline (PW-4) that Ramkat Ronald (the accused), the appellant, who was Betty's friend, wanted her to see him at his house No. 823, Sector 2, Panchkula. Accordingly Betty went to the said house. At about 2.30 P.M., Caroline informed Elisha Siele (PW-5), Betty's brother that his sister had been stabbed in house No. 823, Sector 2, Panchkula. She did not inform who gave that information to her. PW-5 then rushed to the place and found the appellant and the deceased lying in a pool of blood and that Betty managed to tell him that the accused had tried to rape her and on her resistance, he had stabbed her on the neck and head with a kitchen knife. PW-5 alongwith Kenneth put Betty in a Maruti Car and rushed her to the Government hospital, Sector 6, Panchkula. The doctor found Betty in a serious condition and referred her to the P.G.I., Hospital, Chandigarh, where she was found to be dead on arrival. ASI Pale Ram (PW-10) reached P.G.I. Chandigarh and took the report (Exbt. P-E) from the PW-5 at 7.00 P.M. which formed the basis of formal first information report registered at 7.30 P.M. in the police station, Panchkula for the offences under Section 376 read with Sections 511 and 302 of the IPC. The case was investigated by Inspector Kanhiya Lal (PW-11) and charge-sheet was filed.

3. The trial court found the appellant guilty and convicted him fro the offences already mentioned above and passed consequent sentence on him. The appellant failed before the High Court in the appeal filed by him. hence, this appeal.

4. The learned counsel for the appellant contended that the trial court as well as the High Court have concurrently and manifestly erred in holding the appellant guilty. The so-called dying declaration said to have been made by the deceased could not be accepted as truthful for several reasons. Admittedly, there are no eyewitnesses to the incident. Besides, material witnesses also were not examined. We were taken through the evidence in support of these submissions. The learned counsel for the State made submissions supporting the impugned judgment and order.

5. There are no eyewitnesses to the incident. The prosecution, to support its case mainly relied on the oral dying declaration said to have been made by the deceased to PW-5 and the evidence of PWs 4-5. The defence of the appellant was that the deceased and he were friends and they had love affair among them. The deceased came to his house on that fateful day. Some unknown person came and assaulted the deceased and in the process to save her he was also assaulted and suffered injuries. According to him, Betty died on the spot itself. PW-5 was not tolerant of the love affair between him and the deceased and that a false case was foisted against him after due deliberation and consultation.

6. We are conscious if dying declaration passes the test of reliability and truthfulness it can form basis of conviction even without further corroboration. But in the case on hand, after examining the dying declaration in all its aspects, having due regard to surrounding circumstances, we find it unreliable as it suffers from number of infirmities stated hereinafter.

7. PW-5 was the first informant, who gave report Exh.P-E in which it is stated that on 17.11.1993 Betty informed PW-4, her friend, that the appellant wanted to see her (deceased) briefly. The deceased left alone at about 1.30 P.M. to House No. 823, Sector 2, Panchkula, where the appellant has been staying. On the contrary both PW-4 and PW-5 in their evidence stated that the deceased went to the house of the appellant of her own accord to say goodbye to him. This changes the complexion of the entire case. PW-5 stated that PW-4 informed him at about 2.30 P.M. on 17.11.1993 that she had received information that the deceased had been stabbed in house No. 823 but the name of the informant was not given. PW-4 in her evidence stated that one Petric informed her about the incident. Apart from this contradiction the said Petric was also not examined. PW-5 stated that on getting information from PW-4 he along with Kenneth went to the house of the appellant and found that the deceased in a naked condition lying in a pool of blood on the floor in the corridor of the room, which was in the occupation of the appellant. He himself and Kennith took the deceased in a nearby Maruti car. The said Kennith has also not been examined. There is one other disturbing feature. From the perusal of Exh.P-E, the complaint given by PW-5, it is clear that the last words, that the appellant has also tried to commit suicide by stabbing himself in the stomach, appears to have been inserted later, in the space between the lines when compared with the rest of the document. The High Court also found it so but lightly brushed aside this infirmity saying "it cannot be concluded as after-thought and added later on as there are similar additions in other parts of the document as well". It is stated in Exh.P-E that "Betty managed to tell me that Ramkat tried to rape her but she refused, so Ramkat stripped and stabbed her with kitchen knife on neck and head". After giving the details in the last but one paragraph of

Exh.P-E it is stated, "she died due to deep head injuries caused by Ramkat. Ramkat also tried to kill himself stabbing on the stomach". This portion of the statement appears to be the assessment of PW-5 and not part of the dying declaration. Ramkat tried to kill himself by stabbing by knife on the stomach are also additions made in Exh.P-E as already stated above. In the absence of explanation as to the serious nature of injuries sustained by the appellant giving rise to serious doubt as to the very genesis of the incident, the said portion of the statement appears to have been inserted after deliberation and consultation. This insertion probablises the defence version that the appellant and the deceased were in love. The very fact that the deceased was totally naked and underclothes of both the deceased and the appellant were found in the same room probablises the theory of intercourse by consent and negatives the story of rape. PW-5 did not tolerate his sister having sex with Ramkat and that might have lead to an attack on both of them on that day.

8. Dr. Deepak bakshi (PW-8), who examined the appellant, found several serious incised wounds on him including the one on the right interior superior iliac spine in the right lumber region. Looking to the seriousness, location and nature of injuries, in particular, the incised wound in the lumber region, it could not be said that they could be self-inflicted injuries. It is in the evidence of PW-5 that the appellant tried to kill himself by jumping from the upper floor. The doctor, of course, says that the possibility of injury Nos. 6 and 7 found on the appellant could not be ruled out by fall from upper floor. It is difficult to believe how the appellant with several serious injuries could walk to the upper floor and jump from there and that apart in the earliest version given in the Exh.P-E there is no mention about the appellant's jumping from the upper floor. In view of the injuries found on the deceased and the defence taken by the appellant that she died on the spot and in the absence of any other evidence except the statement of PW-5 it is difficult to accept that the deceased was alive or at any rate she was in a position to make the statement to PW-5 as sought to be made out. The theory that the appellant tried to kill himself does not appear to be probable as both PW-4 and PW-5 admitted that the deceased and the appellant knew each other; the deceased voluntarily went to the house of the appellant to say goodbye, since we was going back to her country. PW-4 did state before the police that the appellant and the deceased had love affair, however, she denied this in the court in her deposition having made such a statement.

9. In this background it appears improbable that the appellant forcefully tried to rape the deceased, It appears that both the appellant and the deceased may have been in a compromising position and were surprised and attacked by an assailant. Since the injuries found on the appellant could not be said to be self inflicted, as already noticed above, his defence, that he sustained injuries at the hands of unknown person when he tried to save the deceased, appears to be probable. The trial court expected the appellant to establish his defence by the same standard that the prosecution should establish the guilt of an accused beyond reasonable doubt. It was enough to show that the defence was probable in the given circumstances. In this case the defence statement is probablised by the surrounding circumstances and the evidence brought on record. The so-called dying declaration does not appear to be in the words of the deceased. It does not inspire confidence. There was considerable delay in registering the FIR and the explanation given for the delay is not convincing. The incident took place between 1.30 to 2.30 p.m. and FIR reaches at 10.00 P.M.

Further, except the interested statement of PW-5 there is no other evidence to corroborate the dying declaration. The material witnesses Petric and Kennith, named above, who could have thrown light in this regard, were also not examined for reasons but known to the prosecution.

10. Having regard to all these infirmities, improbabilities and contradictions found in the case we are of the view that it is unsafe to act upon the said dying declaration. In view of what is stated above the impugned judgment and order does call for interference. Hence the appeal is allowed. The impugned judgment and order is set aside. The appellant shall be set at liberty forthwith if not required in any other case.
Appeal allowed.