

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl.Appeal-D No. 227-DB of 2004(O&M)

Date of Decision: March 17, 2015.

Diwan

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Vikram Punia, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant – Diwan son of Hukam Chand has been convicted and sentenced for the offences punishable under Sections 364/377/302/201 IPC by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat vide judgment of conviction dated 07.07.2003 and order of sentence dated 09.07.2003. Being aggrieved therefrom, appellant has preferred the present appeal impugning his conviction and sentence.

As per the prosecution story, appellant allegedly kidnapped Ajay @

Deepak son of Attar Singh, a minor child aged one year and two months, on the

intervening night of 17th and 18th June, 2001 at about 11-11.30 p.m., had carnal intercourse against the order of nature. Thereafter he murdered the child and buried the dead-body in Jowar fields.

FIR No.103 dated 18.06.2001 (Ex.PR) was registered on the statement (Ex.PB) of Attar Singh, father of the deceased child. He revealed that on 17.06.2001, he and his wife Sheela Devi went to sleep on cots in the street in front of their house after taking meals in the evening as it was warm inside the house. Their son Ajay @ Deepak one year and two months old, was sleeping on the cot with him. A towel was spread under the child and he was covered with a green shawl. Appellant – Diwan who resides in their neighbourhood was strolling in the street humming a tune. He passed through the street once or twice. Attar Singh and his wife went inside the room at about 11.00 or 11.30 p.m. for sexual intercourse while leaving their son Ajay @ Deepak sleeping on cot in the street. When they came after 15 to 20 minutes, they found their son Ajay @ Deepak missing alongwith towel and shawl. He went to inform his father. Thereafter, he and his father searched for Ajay @ Deepak and Diwan in the village as well as in the fields but neither his son nor Diwan was found. He recorded a strong suspicion that Diwan had abducted his son with an intention to kill him. SI Satbir Singh (PW15) recorded the statement of complainant – Attar Singh and the abovesaid FIR No.103 was registered under Section 364 IPC.

Statement of the complainant's wife Sheela and one Nav Ratan was recorded. Nav Ratan stated that he had seen the appellant-accused carrying the child on the intervening night of 17th and 18th June, 2001. Efforts were made for apprehending appellant – Diwan who was ultimately arrested by SI Satbir Singh

near outer road (Phirni) of village Ram Nagar on 18.06.2001 itself.

Disclosure statement (Ex.PG) was made by the appellant to the effect that on the intervening night of 17/18.06.2001, he had lifted the child Ajay @ Deepak alongwith towel on which he was sleeping from a cot in front of Attar Singh's house. He carried the child to the fields of Gram Panchayat where Jowar crop was grown. After having carnal intercourse against the order of nature with the child, he murdered him and buried the dead-body in Jowar fields itself.

SI Satbir Singh sent wireless message to the police station Murthal that an Executive Magistrate be requested to come to the spot. A photographer was also arranged. SI Satbir Singh requested for another Inspector to be deputed for further investigation.

Appellant proceeded to demarcate the place where dead-body of child was buried. He got recovered dead-body of child Ajay @ Deepak in the presence of SI Satbir Singh (PW15), Inspector Ram Kala (PW14), Rajender Singh Ahlawat, Executive Magistrate-cum-Tehsildar, Ganaur (PW13), Hardeep Singh Doon, then DSP (Headquarters) (PW11) among other officials. Dead body was identified by complainant Attar Singh to be that of his son Ajay @ Deepak. Dead-body as well as iron spade with wooden handle were taken in possession vide memo Ex.PG/1.

Dead-body of Ajay @ Deepak was sent for post-mortem examination with the inquest papers. Post-mortem examination was conducted on 19.06.2001 by Dr. P.K.Paliwal (PW12). As per post-mortem report (Ex.PM) cause of death was manual strangulation. Injuries around the anal area were found suggestive of forcible carnal intercourse. As per the FSL report (Ex.PN)

blood and semen (human) were detected on the swabs and slides taken from the inner area of the deceased. Dr. P.K.Paliwal (PW12) opined that Ajay @ Deepak was subjected to forcible carnal intercourse against the order of nature before his death by manual strangulation.

On completion of investigation, Challan/report under Section 173 Cr.P.C. was prepared. Case was committed to the court of Sessions on 05.01.2002 by the Judicial Magistrate First Class. Charges were framed against the appellant on 06.03.2002 in which the appellant pleaded innocence, false implication and claimed trial.

Prosecution examined as many as fifteen witnesses to prove its case.

Appellant-accused in his statement under Section 313 Cr.P.C. while denying the incriminating evidence against him, pleaded false implication in this case. No evidence was however led in defence.

Learned trial court on appreciation of the evidence on record found the appellant guilty of the offences as charged and sentenced him as noted above.

Learned counsel for the appellant vehemently argues that the entire prosecution case is based on conjectures and surmises and there is no evidence to connect the appellant with the offences as alleged. Much stress is laid on some of the witnesses turning hostile especially PW6 Dharambir who is grandfather of the deceased child Ajay @ Deepak. He further points out that PW8 Nav Ratan does not support the prosecution version and denies having seen the appellant-accused carrying the child on the intervening night of 17th and 18th June, 2001.

Learned counsel submits that the prosecution version becomes highly suspect on account of the deceased's own grandfather not supporting the

prosecution version. It is urged that witness PW8 Nav Ratan who allegedly saw the appellant carrying the child on the intervening night of 17th/18th June, 2001, has not supported the prosecution case. He has denied having made such a statement. He submits that in this situation evidence of the appellant having been last seen with the deceased is not established. He further submits that as per statement (Ex.PB) of complainant, incident took place on 17.06.2001 at about 11-11.30 p.m. whereas, the FIR records a different time. There is a discrepancy regarding the time of occurrence as per the statements of PW13 Rajinder Singh Ahlawat, Tehsildar, Ganaur, PW14 Inspector Ram Kala, CIA Staff and PW15 SI Satbir Singh.

It is further argued that recovery of dead-body from the Jowar fields at the instance of appellant is absolutely suspect as there is no independent witness at the time of the alleged recovery. Furthermore, blood or semen detected on the body of deceased child has not been proved to be that of appellant. It is incumbent upon the prosecution to have proved the same conclusively. He prays for acquittal of the appellant on the aforesaid grounds.

Learned counsel for the State vehemently refutes the above averments and submits that there is overwhelming evidence on record to prove the heinous crime committed by the appellant. Therefore, conviction and sentence imposed upon him deserves to be upheld.

We have heard learned counsel for the parties and gone through the record.

It is a matter of record that suspicion has been raised qua the appellant at the very outset by complainant Attar Singh at the time of recording

his statement on 18.06.2001. There is no reason for the complainant to falsely implicate the appellant in this manner. Information regarding missing of the child was given promptly without any delay. A perusal of the record reveals no discrepancy in the time of incident as argued. It is correctly recorded to be 11.00/11.30 p.m. on 17.06.2001. It is pursuant to disclosure statement (Ex.PG) by the appellant that dead-body of child Ajay @ Deepak was recovered from the fields of the Panchayat where Jowar crop was sown. This recovery is duly supported by PW11 Hardeep Singh Doon, the then DSP (Headquarters), PW13 Rajinder Singh Ahlawat, Tehsildar Ganaur, PW14 Inspector Ram Kala, CIA Staff as well as others. There is not an iota of evidence to dent the credibility of these official witnesses. There is no reason for them to falsely implicate the appellant. In fact, PW11 H.S.Doon is not even cross-examined by the accused despite opportunity having been given. No allegations of mala fide have been raised against the official witnesses who had no axe to grind with the appellant. Thus, their testimony cannot be doubted only on the ground that they are official witnesses. In the facts and circumstances, absence of an independent witness at the time of recovery is not relevant and does not raise any suspicion.

Furthermore, medical evidence on record corroborates the prosecution version. As per the post-mortem report following injuries were found on the body of deceased child:-

“Injuries:-

1. There was contusion left angle/left angle of mandula placed transversely measuring 3x2 c.m. Ecchymosis was present in underneath tissues.
2. Contusion over the neck right side 7 c.m. Below the angle of

mouth and all the underlying tissue were acchymasad measuring 5 x 4 c.m.

3. Centric nail marks was present over the neck at multiple places, placed transversely with ecchymosis underneath.
4. Multiple contusions were present over the face on both sides measuring .5 x 1 c.m. To 1 x 2 c.m.
5. Anus was loosened and there was gap of 4 x 3.5 c.m. The margins were contused, lacerated with tears present. Ecchyosis was very well appreciated in anal mucosa also. Typographic diagram was depicted.”

Cause of death was opined to be manual strangulation. The injuries around the anal area are suggestive of forcible sexual intercourse. Duration between death and post-mortem examination is 36 to 48 hours. Furthermore, as per the FSL report (Ex.PN), blood and human semen were detected on the blood swabs and slides taken from inner area of the deceased. Dr. P.K.Paliwal (PW12) has specifically opined that the child was subjected to forcible anal intercourse against the order of nature before his death by manual strangulation. His testimony is trustworthy, credible and unshaken.

Witnesses PW6 Dharambir, PW7 Karam Singh and PW8 Nav Ratan not supporting the prosecution case before the trial court does not create the slightest of a dent in the face of overwhelming evidence on record clearly pointing to the guilt of the appellant.

Contention of the learned counsel for the appellant that the non-examination of complainant's wife Sheela Devi renders the prosecution version doubtful, is absolutely fallacious and misconceived. Once Attar Singh, father of

the deceased, has deposed before the court, giving up of his wife Sheela Devi as an unnecessary witness before the trial court is of no consequence. It is the quality and not quantity of evidence that is material.

No other point has been raised on behalf of the appellant.

In the facts and circumstances of the present case, there is not an iota of doubt left in the mind of this Court regarding the culpability of the appellant in the commission of the offences in question.

Conviction and sentence imposed upon the appellant vide the impugned judgment and order is upheld. Consequently, this appeal being devoid of any merit is dismissed.

As the appellant is on bail, the learned Chief Judicial Magistrate, is directed to take necessary steps for taking the appellant in custody to undergo the rest of sentence imposed upon him.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 17, 2015.
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