

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-800-DB-2009(O&M)

Date of decision: 23.09.2015.

Kuldeep @ Bona

..... Appellant

Vs.

The State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

Argued by: Ms. Aditi Girdhar, Advocate as amicus curiae
for the appellant.

Mr. Rajesh Gaur, AAG, Haryana.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 29.11.2008 rendered by learned Additional Sessions Judge/Fast Track Court, Sonapat, whereby appellant-accused Kuldeep @ Bona was held guilty for committing offence punishable under Section 376 of Indian Penal Code (for short 'IPC') and under Section 302 IPC. Vide order of sentence dated 16.01.2009, he was sentenced to undergo RI for life and to pay a fine of ₹5,000/- for offence under Section 376 IPC. In default of payment of fine, he was further directed to undergo simple imprisonment for a period of 6 months. For offence under Section 302 IPC, he was sentenced to undergo RI for life and to pay a fine of ₹5,000/-. In default of payment of fine, he was directed to further undergo simple imprisonment for a period of 6 months.

Both the sentences were ordered to run concurrently.

On the statement of Deep Chand, which is Ex.PA, the present case was registered. Suraj Bhan is the youngest brother of Deep Chand complainant. The prosecutrix (name withheld) is daughter of Suraj Bhan. As per complainant, she was of the age of 13 years. On the day of lodging of this complaint i.e. 04.02.2006 at about 7:30 P.M., the prosecutrix had gone out of the house towards Kurdis side for answering the call of nature. Till 8:00 P.M. she did not return. At this, the complainant and his nephew Vijay along with neighbours had gone out in search of prosecutrix. When they reached near their plot (Gitwar) in which *Kabuli Kikar* trees were standing, they found prosecutrix lying dead. There were injuries on her head, forehead and face. Blood was also lying there in liquid form. *Salwar* and underwear of the prosecutrix were also lying nearby her. Complainant expressed that somebody had raped the prosecutrix and, thereafter, inflicting injuries on her head, killed her. Yash Pal Singh (PW13) SI/SHO made endorsement Ex.PA/2 on this complaint and sent the same to the police station for registration of the case, whereupon, formal FIR was recorded.

Investigating Officer along with complainant had gone to the spot and called the dogs squad. Photographs of the spot were obtained. Rough site plan of the spot was prepared, before that, from the fist of the prosecutrix, hair were lifted, made into a parcel and sealed with the seal of 'VP' and then taken into police possession vide memo Ex.PM. Blood stained earth from beneath the head of the prosecutrix was also lifted. It was also made into a parcel and duly sealed and, thereafter, taken into police possession vide memo Ex.PM/1. Blood stained brick was also lifted from

the spot, sealed in a parcel and then taken into possession vide memo Ex.PM/2. Tobacco coloured thread was also lifted from the thigh of the prosecutrix and made into a duly sealed parcel and then taken into possession vide memo Ex.PM/3. Blood stained polythene and hair pin of the prosecutrix were also recovered from the street, made into a sealed parcel and then taken into possession vide memo Ex.PM/4. '*Chapal*' of the prosecutrix after converting the same into a sealed parcel, taken into possession vide memo Ex.PM/5. Underwear and *salwar* were also made into a sealed parcel and then taken into possession vide memo Ex.PM/6. Statements of witnesses were recorded at the spot. Inquest report Ex.PD was prepared. Post-mortem of the dead body of prosecutrix was also got conducted vide post mortem report Ex.PB. After post-mortem, duly sealed parcels containing vaginal swabs and clothes of the deceased (prosecutrix), which were handed over by ASI Ramesh Chand to Investigating Officer, were taken into possession vide memo Ex.PN/1. DSP also verified the facts of the case. Case property was handed over to MHC of the police station. On identification of PW Rajesh, the accused was arrested. He was got medico-legally examined by moving application Ex. PN/3. On the same day, vial containing swab of the accused, pubic hair of the accused, underwear of the accused, scalp hair of the accused, were taken into possession along with sample seal vide memo Ex.PN/4. Case property was handed over to MHC of the police station.

On 07.02.2006, accused was interrogated. During the course of interrogation, he suffered disclosure statement Ex.PL to the effect that on 04.02.2006, there was a "*Manda*" ceremony of the marriage of Sanjay and

Ajit. Jaipal son of Chander, Sundu son of Dalip, Leelu son of Karan Singh, Vijay son of Raghbir, Sandhu's maternal uncle Prem Singh and he had taken drinks on the roof of Chopal of their Basti. At about 7:00 P.M. he got up and had gone to the shop of Balbir son of Sarupa for purchasing Bidi and matchbox. In the meanwhile, he saw prosecutrix coming out of her house and going towards plot for answering the call of nature. On seeing the prosecutrix going alone, he desired to have sex with the prosecutrix. With that intention, he followed her. When prosecutrix was near Kurdi, lying in the Panchayati plots, she had seen him and stood with her face towards Kurdi. When he made his advances towards prosecutrix, she became nervous and started running hither and thither for her safety. However, he caught hold of her tightly and lifted her in his arms. At that place both the footwear of the prosecutrix had fallen. The prosecutrix had pulled his hair in order to save herself. She had bitten his index finger but he, inspite of resistance from the side of the prosecutrix, after breaking the string of the *salwar* of the prosecutrix and removing her underwear, raped her forcibly without her consent. At that time DJ was going on. As such, nobody could hear the shrieks of the prosecutrix. He further disclosed that she may disclose this incident to her family members, as such, he picked up a brick and with that he killed her. His shoes and wearing apparels were stained with blood. However, he washed his shoes and then the same along with *pajami* and shirt, kept hidden under the mattresses of the bed, lying in the residential house of his sister Kanta, resident of Sanauli about which he alone knew. He further disclosed that he can give the *nishandehi* of the spot as well the place where he had kept hidden the aforesaid articles. In

pursuance with his disclosure statement, accused got recovered his shoes from beneath the mattresses lying on the bed of the house of his sister namely Kanta wife of Jitender by giving *nishandehi* of the place. The same were made into a sealed parcel and then along with sample seals taken into possession vide memo PL/1. Site plan of the place of occurrence was prepared as Ex.PN/5.

On 12.02.2006, on interrogation, accused again suffered disclosure statement Ex.PL/2 to the effect that on 04.02.2006 he committed rape on the prosecutrix in the plot of Suraj Bhan and, thereafter, hitting her with brick, killed her. At that time, his clothes and shoes were stained with blood. He had washed blood from his wearing apparels and also dried his clothes and then after putting the same in a red colour polythene, kept hidden in a big box lying in a room of his residential house about which he alone knew and could get the same recovered by giving *nishadehi*. In pursuance with this disclosure statement, he got recovered red colour polythene containing his clothes from the the big box lying in his residential house. The same were converted into a sealed parcel sealed with the seal of 'RC' and then taken into police possession vide memo Ex.PL/3. Scaled site plan of the spot Ex.PG was got prepared. After completion of necessary investigations the challan was put in the Court.

Finding a prima-facie case against the accused under Sections 302 and 376 IPC, he was charge-sheeted accordingly to which he did not plead guilty but claimed trial. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation appearing against him and

pleaded his innocence. Accused stated that about 10 years ago his widowed mother Kela was raped by Suraj Bhan, father of deceased Anju and one Puran son of Harphool Harijan, resident of village Kailana in front of him and one Rajinder @ Sundu son of Dalip, resident of village Kailana in the fields of one Jamindar of village Purkhas. On hearing her cries, he along with Rajinder tried to rescue her, both the aforesaid persons fled away leaving behind their bicycles at the spot. No action was taken on the complaint filed by his mother as Suraj Bhan and his other family members were influential persons. The present case is total blind one and that he has been framed in the present case with an ulterior motive, since the family members of said Suraj Bhan were apprehending danger at his hands. In defence, accused examined Rajiv Dutt Pande as DW1 and Kela Devi as DW2.

After hearing both the sides and appraising the entire evidence and material coming on record, the impugned judgment of conviction and order of sentence as mentioned in the earlier part of this judgment were recorded.

We have heard Ms. Aditi Girdhar, Advocate as amicus curiae, counsel for the appellant and learned State counsel besides going through the entire record.

It is a case of murder with rape i.e. too of the prosecutrix of the age of 13 years. It is a heinous crime. In fact, there is no eye witness to this crime. However, from the circumstance available on the file, the prosecution has well connected the accused-appellant with this crime. The scientific evidence is available on record so as to connect the accused with this crime

and which does not leave any reasonable ground for a conclusion consistent with the innocence of the accused.

First of all, it was argued by learned counsel for the appellant-accused that PW7 Deep Chand-complainant stated that appellant was present out of his house at the time of *Ghurchari* ceremony of two sons of Raghbir @ Bhira. He saw the appellant-accused standing in front of his house at about 10:00 P.M. Thus, if the appellant-accused was present at the aforesaid ceremony, the question of his committing the present crime does not arise and at least benefit of doubt has to be given to the accused. Learned trial Court has safely brushed aside this evidence by recording the finding that since no plea of *alibi* is taken by the appellant-accused, as such, no benefit of the same can be given to him.

The aforesaid contention of learned counsel for the appellant is not of much avail as it is the prosecution case that deceased Anju had left her house at around 7:30 P.M. on the day of occurrence and when she did not return at 8:00 P.M., the complainant along with his nephew Vijay had gone out in search of the deceased and, thereafter, found the deceased lying with injuries on her head, forehead and face in Suraj Bhan's plot. With this timing, it was quite possible for the appellant-accused to be present at the time of *Ghurchari* ceremony of the marriage of two sons of Raghbir @ Bhira. More so, it is the case in which evidence led by the prosecution is more convincing and points towards guilt of accused. In this case Kawal Singh as PW11 deposed that while he was going to village Lath, at around 7:45-8:00 P.M., he saw the accused coming out from *Kikar* shrubs and he could recognized him in the torch light. He also asked the accused about his

presence at that place to which accused replied that he had gone there for answering the call of nature. He also deposed that at that time, the clothes of the accused were smeared with blood. Besides this, the more clinching and scientific evidence is also available on the file. Hair were recovered from the fist of the deceased. The same were sent to FSL for examination with the hair of accused. Report FSL Ex.PK says that the hair recovered in Ex.2 (hair recovered from the hands of deceased) and Ex.11 (scalp hair) were examined and compared morphologically and microscopically. Based upon these examinations, the result was reported as that hair in Ex.2 (hair recovered from the hands of deceased) and in Ex.11 (scalp hair) were identified to be of human in origin and were similar to each other in most of their morphological and microscopical characteristics.

Thus, with this scientific evidence on the file, it is evident that hair of the accused were found in the fist of the deceased and from this fact it is further clear that the prosecutrix resisted the act of the accused and during the course of resistance she pulled the hair of accused. This scientific evidence establishes the fact which leads to an irresistible conclusion that it was the accused who was the present at the spot and it was he who had committed rape and murder of deceased Anju. Besides above, as per MLR Ex.PE injuries were also found on the person of appellant-accused. As per doctor Krishan Kumar (PW4) there was swelling and redness over the glance region. On general examination, he found the following and also given his opinion which is as follows:-

“Multiple scab formed linear abrasion present on skin layer deep on anterolateral aspect and antero-medical aspect of both thighs. A linear scratch was

present on right scapula and scratch mark on both the gluteal region. A contusion present with scab formation on knuckle on right index finger on dorsal aspect.

In my opinion I found nothing to suggest that the person examined was incapable to perform sexual act. All the injuries were of more than 48 hours duration.”

No explanation is coming forth from the side of accused as to how the aforesaid injuries were there on his person and further as the injuries were reported as of more than 48 hours duration, therefore, it is evident that the injuries on the person of accused co-relate with the time of occurrence. The injuries are neither fresh one nor very very old one. These injuries on the person of accused also establish the fact that it is the appellant-accused alone who committed rape on the deceased forcibly.

As per report FSL Ex.PK blood was also detected in the brick, hair recovered from the hands of deceased, salwar of the deceased, blood stained earth, hair clip and polythene bag, swab, shawl, lady's shirt and undershirt. Human semen was also detected on Ex.7a (swab), Ex.9 (smegma swab) and Ex.12 (underwear). Thus this evidence also points towards the guilt of the accused. In his disclosure statement Ex.PL, accused disclosed that the deceased had bit his right hand finger and this fact stands corroborated from MLR Ex.PE of the accused showing the contusion present with scalp formation on knuckle on right index finger on dorsal aspect. Thus, this injury also corroborates the prosecution story establishing the guilt of the accused. For the afore-discussed evidence on record even if as per PW7, appellant-accused was seen at 10:00 P.M. at the *Ghurchari* ceremony, it is of no consequence as after committing this crime, the

(PW2) gave cause of death due to injuries on vital organs (i.e. brain) which were ante mortem in nature and sufficient to cause death in normal course of life. Such injury was caused by the brick, recovered from the place of occurrence. The aforesaid brick was taken into possession by the police vide memo Ex.PM/2 and was also sent to FSL for examination. Vide report FSL Ex. PK, human blood was found on that brick. Doctor further opined that in addition, the possibility of sexual intercourse cannot be ruled out in this case. As such, since the deceased died due to the injuries caused to her by the accused with the brick on her head and forehead, therefore, the involvement of accused in this case is established.

It was the argument of learned counsel for the appellant-accused that neither the father nor the mother of the deceased were joined in the investigations of this case. This fact alone proves the defence version that the father of the deceased had raped the mother of the accused 10 years back and that the father of the deceased always feared retaliation by the accused and hence did not have the courage to face the accused in the Court and thus got the accused implicated falsely in this case so as to avoid any retaliation in future.

The above argument is based on mere suppositions. In fact, there is no evidence on record to show that the appellant-accused has been falsely implicated in this case. Short of repetition, there is clinching scientific evidence and medical evidence available against the accused so as to complete the chain of evidence which points to the guilt of the accused and excludes any hypothesis consistent with his innocence. Motive is a double edged weapon. It can afford the reason for the accused to commit

this heinous crime. At least for false implication of one's enemy no one would ever resort to kill one's daughter i.e. too after committing rape. Parents of the deceased are not the eye witnesses. It is PW11 i.e. Kawal Singh, who had seen the accused near the place of occurrence, wearing clothes smeared with blood. It is the evidence of Kawal Singh (PW11) that presence of hair of the accused in the fist of the prosecutrix, connects the accused with this crime besides injuries on the person of accused. Under these circumstances even if the parents of deceased have not been examined, it hardly makes any difference.

The next contention raised by learned counsel for the appellant-accused that in this case only interested witnesses have been examined by the prosecution. No independent witness i.e. either Numberdar or Sarpanch of the village or any other independent witness from the village was joined during the investigation. As such, it is not safe to base conviction only on the testimonies of interested witnesses alone, without any independent corroboration of the same. This contention is of no consequence in this case as the present case is the one of rape with murder. There is no eye witness of the occurrence. On the basis of circumstantial evidence, the prosecution could prove its case. The circumstantial evidence is in the form of scientific evidence as well the medical evidence besides statement of Kawal Singh (PW11). Under these circumstance, when the case is based on circumstantial evidence, the question of independent corroboration pales into insignificance.

It was next argued by learned counsel for the appellant-accused that it is highly unbelievable that had occurrence been taken place in the

manner the prosecution case is set out, the cries of the deceased must have been heard by the villagers. There is no evidence on the file to that effect and this creates doubt regarding genuineness of the prosecution case. This argument is devoid of any substance as there is evidence on record that the marriage of 2 sons of Raghbir was taking place in the village that very night. The house of aforesaid Raghbir was not far away from the place of occurrence. DJ was also being played. As such, due to the loud noise, on account of the marriage of 2 sons of Raghbir, it is quite possible that the cries of deceased must not have been heard/noticed by anybody.

Learned counsel for the appellant-accused argued that in the news item, Mark 'A'/Ex.DA, it finds mention that the shirt was found near the dead body of deceased but the police did not show any such shirt during the course of investigations. This fact shows that actual culprit was somebody else whose shirt was found near the dead body. Since the shirt did not belong to the accused, therefore, the prosecution case cannot be said to be free from doubt and the accused is entitled to acquittal.

The aforesaid news item though marked as Mark A initially in the statement of DW1 Rajiv Dutt Pande and then exhibited as Ex.DA. The aforesaid news remains unproved on the file. Even otherwise, DW1 Rajiv Dutt Pande deposed during the course of his cross-examination that it is not known, through whom the news Ex.DA in question was published. He further stated that he does not know about this incident as he was not posted at that time. He further deposed that he cannot say whether the news in question is true or false. There was no official record regarding the aforesaid news available in the office of newspaper. As such, correctness of this very

newspaper, even if any was in existence, is not free from doubt. Resultantly, the aforesaid contention of learned counsel for the appellant-accused is devoid of any force.

Scientific evidence regarding presence of hair of accused in the fist of the deceased, medical evidence regarding injuries on the person of accused and post-mortem report Ex. PB spelling out cause of death of the deceased and blood stained brick recovered from the spot complete the chain of circumstantial evidence, consistent with the guilt of the accused and inconsistent with the innocence of the accused. As such, the prosecution has succeeded in providing the complete chain which points to the guilt of the accused and excludes any hypothesis consistent with his innocence by proving all circumstances leading to an irresistible conclusion that the accused was present at the spot of occurrence and that it was he who had committed rape on the deceased and murdered her.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 29.11.2008 and order of sentence dated 16.01.2009, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 23 ,2015
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