

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-300-DB-2011 (O&M)

Date of decision: 04.12.2015

Karam Singh @ Karamjit Singh @ Karma

..... Appellant

Vs.

State of Punjab

..... 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: Mr. P.S. Sekhon, Advocate
for the appellant.

Mr. R.S.Randhawa, Additional Advocate General, Punjab.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 04.12.2010 rendered by learned Sessions Judge, Sangrur, whereby appellant-accused Karam Singh was convicted for committing an offence punishable under Section 376 (1) and under Section 306 of Indian Penal Code (for short 'IPC'). He was sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs. 10,000/- vide order of sentence of the same date for an offence under Section 376 (1) IPC. In default of payment of fine, to further undergo rigorous imprisonment for 6 months; he was also sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs. 10,000/-for an offence under Section 306 IPC. In default of payment of fine, to further undergo rigorous imprisonment of 6 months.

Brief facts of the case are like this; that on the statement of

Chander Kala, which is Ex. PA, this case was registered. As per prosecution case, Chander Kala stated before the police that she had 3 daughters and a son. Deceased Nisha was aged about 17 years. She came to know that Nisha was having love affair with the accused for the last four years, from the date of this occurrence. Accused Karam Singh used to allure deceased of marrying her. As such, she started going in the company of Karma. Deceased also told her mother Chander Kala that she got impregnated from the loins of the accused. On 06.07.2009, deceased told her mother that now the accused started putting off the matter of marrying her on one pretext or the other.

On the day of the occurrence i.e. 06.07.2009, at about 10:00 A.M., the complainant was sleeping in a room, when she heard the screams of deceased, the deceased came out of the kitchen screaming and engulfed in flames saying that Karma used torape her on the pretext of marrying her and spoiled her life; had been putting off the matter of marrying her on one pretext or the other. He was also threatening her that in case she discloses this fact to anyone, she would be defamed in the city. As per complainant, after putting off the fire by him and her son Rajesh, deceased was got admitted in Civil Hospital Dhuri from where she was referred to Government Rajindra Hospital, Patiala. She also disclosed this incident to her husband Deepak Kumar that the deceased was pregnant on account of her love affair with the accused.

On receipt of information from Civil Hospital, Dhuri, the Investigating Officer reached the hospital from where he came to know that deceased was referred to Rajindra Hospital, Patiala. On 07.07.2009, Investigating Officer reached Rajindra Hospital, Patiala, sought opinion of

the doctor as to if Nisha (deceased) was fit to make statement to which doctor opined her as unfit for statement. As such, the statement (Ex. PA) of Chander Kala, mother of the deceased, was recorded, who narrated the entire incident as mentioned above. After going to the spot with the complainant, the site plan of the spot was got prepared. Supplementary statement of complainant was recorded.

On 09.07.2009, Investigating Officer went to Rajindra Hospital, Patiala where doctor handed over body of a dead child in a duly sealed plastic container and a vial containing blood of Nisha for DNA test. The same was deposited with the MHC of the police station with the seals intact. On 29.07.2009, investigations of the case was entrusted to Sub-Inspector Parminder Singh, who prepared the inquest report regarding death of the child and accompanied with Sub-Inspector Massa Singh to FSL, Punjab, Chandigarh for DNA test of the foetus. As it was reported that the DNA test was not possible since the foetus was packed after applying formalin, the foetus was brought back and the same was deposited with the MHC of the police station. On 30.07.2009, the post-mortem examination of the dead foetus was got conducted and after the post-mortem examination the foetus was handed over to Kuldeep Singh. Accused was arrested. Statements of witnesses were recorded. Thereafter, investigations of the case were conducted by Sub-Inspector Massa Singh. On coming to know about the death of Nisha at PGI, Chandigarh on 08.08.2009, inquest report was prepared and post-mortem examination of the dead body of Nisha was got conducted. After completion of necessary investigations, the challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused for committing

offence punishable under Sections 376 and 306 IPC, accused was charge-sheeted to which he did not plead guilty but claimed trial. After taking entire prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation appearing against him and pleaded his innocence and false implication.

After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned trial Court recorded the impugned judgment of conviction dated 04.12.2010 and order of sentence of even date, as set out in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides going through the record of this case.

First of all, it was argued by learned counsel for the appellant-accused that the prosecution has failed to prove that the deceased was raped by accused as there is no dying declaration or suicide note left behind by the deceased to nail the accused. The DNA test of the foetus, allegedly delivered by the deceased, was not got conducted by the prosecution, therefore, the prosecution has also failed to connect the accused with this crime. This case is mainly based on the statements of PW1 Chander Kala, mother of the deceased, and PW2 Deepak Kumar, father of the deceased. Both are the related witnesses and said to be deeply interested in the case. As such, their statements are not worthy of placing credence. They were deeply annoyed with the accused as they believed that the accused had disgraced their family. Even otherwise, their evidence is that of hearsay evidence in nature.

Of course, the prosecution witnesses i.e. PW1 Chander Kala and PW2 Deepak Kumar are the parents of the deceased. In case of rape, nobody is expected to be present at the time of commission of crime. The

victim always confides in her mother and tells her the truth about the agony she has suffered on account of rape committed on her. It is the case of peculiar nature in which the deceased had love affair with the accused for four long years. As per the statement of Chander Kala (PW1), accused was visiting their shop which was run by her. Sometimes her daughter Nisha also used to sit in the said shop. During her cross-examination PW1 deposed that accused was having links with the deceased for the last four years from the death of Nisha. They had been professing their relationship as that of brother and sister. She came to know from Nisha that accused was blackmailing her for the last four years. Accused and Nisha used to have conversation with each other telephonically but the contents of their conversation was not known to her. Thus, from this statement of Chander Kala, it stands proved on the file that deceased was having love affair with the accused for the last four years from the date of this incidence. Even otherwise, as the defence has tried to make it a case of consent, therefore, also it is proved that it is the accused who was having love affair with the deceased. Even suggestion was given to PW1 and PW2 that as Nisha wanted to marry accused and since they were against the said marriage, therefore, Chander Kala and her son set Nisha on fire by hatching a conspiracy to avoid social stigma. There is no material on the file to make this version of defence probable so as to cause dent in the prosecution case. On the other hand, the fact that Nisha was pregnant at the time of this occurrence, stands proved with the statements of PW1 and PW2 besides medical evidence of doctor Rajesh Arora (PW3), who deposed that Nisha was admitted in Rajindra Hospital, Patiala on 06.07.2009 as she was referred from Civil Hospital, Dhuri. She was having 60% burns. During her admission in Rajindra Hospital, she delivered a dead

female child on 08.07.2009. Dr. Rakesh Kumar (PW4) deposed that he alongwith doctor D.S.Walia, conducted the post-mortem examination on the dead body of new born female fetus i.e. daughter of Nisha, resident of Dhuri, District Sangrur. Under these circumstances, when Nisha was pregnant and the accused was not ready to marry her and was putting off the matter of marrying her on one pretext or the other as stated by Chander Kala (PW1), Nisha ended her life by resorting to the incident of fire. Chander Kala as PW1 categorically stated that on the day of the occurrence she was sleeping in her room. She heard the shrieks of her daughter Nisha. She saw her coming from the side of kitchen and was in ablaze. At that time, she was crying and saying that Karma had committed rape on her person, time and again and threatened her of dire consequences if she discloses this matter to anybody. She was also stating that Karma had spoiled her life. Thus, the mother being natural witness whose presence at the house was very much expected and cannot be doubted in any manner in this case, when deposed about the cause of incident as uttered by the deceased, there is no reason to disbelieve her statement and this statement cannot be termed as hearsay evidence. There is settled proposition of law that merely because a witness is a relation of the victim is not sufficient to discard his testimony. On this point, there is judgment, titled as **Guli Chand and others Vs. State of Rajasthan, AIR 1974 SC 276.**In **Dalip Singh v. State of Punjab, 1954 SCR 145 at p. 152,** this Court said that:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would

be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

This is not to say that in a given case, a Judge for reasons special to that case and to that witness cannot say that he is not prepared to believe the witness because of his general unreliability, or for other reasons, unless he is corroborated. Of course, that can be done. But the basis for such a conclusion must rest on facts special to the particular instance and cannot be grounded on a supposedly general rule of prudence enjoined by law as in the case of accomplices".

In **Mukhtiar Singh and another Vs. State of Punjab, 2009 AIR (SCW) 1475**, conviction was upheld after taking into consideration the evidentiary value of relation witness. In that case, occurrence was witnessed by son and wife of deceased. Their presence at the spot duly proved. There is no reason to disbelieve and discard their evidence.

In another case cited as Shyam Vs. State of M.P through P.S. Bercha, 2009 (16) SCC, 531, also the question of interested witness was gone into. In that case, occurrence was witnessed by wife of deceased. There

was no reason to disbelieve her. She gave vivid description and withstood cross-examination. Under those circumstances, it was held that there is no proposition in law that relatives are to be treated as untruthful witnesses. If plea of partisan is raised, then reason has to be shown that witnesses had reason to shield the actual culprit and falsely implicated the accused. It was also held that if the relatives or interested witnesses are examined, the Court has a duty to analyse the evidence with deep scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased.

In the case in hand, there is no reason on record which could show that the parents of deceased would save the real culprit, also there is no material on the file to show that even if the accused was not involved in this case, there was any reason for the parents of deceased to see him convicted. In fact, there is not even an iota of evidence on the file to show that the complainant party was having some animus with the accused. As such, under the circumstances of this case as deceased was pregnant and the accused was putting off the matter of marrying the deceased on one pretext or the other, therefore, it gave a cause to the deceased to end her life. In fact for the last four years, accused had been having love affair with the deceased and had been violating her person on the pretext of marrying her but when she was impregnated with the loins of accused, he started putting off the matter of marrying her making the deceased believe that he would not marry her and thus under the compelling circumstances she had to take this deadly step of ending her life by setting herself ablaze. As a result, the contention of learned counsel for the appellant-accused that the statements of PW1 and PW2 i.e. parents of deceased are not worthy of placing any credence. They

being relation witnesses and interested witnesses; is devoid of any force as the word '*related*' is not equivalent to '*interested*'. A witness may be called an '*interested*' only when he or she derives some benefit from the result of litigation or seeing the accused person punished. In this case, there is no material on the file to show the same. Even otherwise PW1 and PW2 are natural witnesses and in the above discussed circumstances, they cannot be said to be '*interested*'.

The next point of argument raised by learned counsel for the appellant-accused is this; that even if it is accepted as correct for the sake of arguments that accused had sex with the deceased, it would not amount to rape as at the time of occurrence the deceased was above the age of 18 years as is evident from the school certificate Ex. PZ, proved by Usha Rani, Principal of Vishal Model School, Dhuri. Usha Rani as PW12 deposed that the date of birth of Nisha as per aforesaid certificate Ex PZ is 02.01.1991. If Nisha was not consenting party, she would not have kept quite for four long years. During which period, the accused is alleged to have had sex with her. As such, she being consenting party, no offence under Section 376 IPC is said to be made out against the accused. The school certificate Ex. PZ cannot be relied upon as the basis on which the date of birth of Nisha was recorded in Vishal Model School, Dhuri, was a certificate issued by school previously attended by Nisha. Usha Rani (PW12) deposed that Nisha, daughter of Deepak Kumar was admitted in her school on 01.04.2005 in matric. As such, she attended some other school prior to her admission in Vishal Model School, Dhuri. On the basis of certificate of previously attended school, the date of birth of Nisha was entered in Vishal Model School, Dhuri, at the time of her admission in matric class. Without bringing on record the basis

of recording of date of birth of Nisha in the school, certificate Ex. PZ cannot be said to be conclusive proof of the date of birth of Nisha. On the other hand PW1 and PW2 gave age of Nisha as 17 years on the date of this incident. The age given by the parents of deceased always has evidentiary value. Even otherwise, it is a case of prosecution that accused had been violating the person of deceased sexually for the last four years prior to the date of this incidence which would mean that the accused when first sexually abused deceased, she was below the age of 16 years. As per clause Sixthly of Section 375 IPC if a man has sexual intercourse with the woman with or without her consent, when she is under 16 years of age, he is said to have committed rape on her. Thus, since the deceased was below 16 years of age when the accused had committed rape on her, therefore, the factum of consent or no consent of the deceased becomes immaterial.

Apart from the above, in this case, of course the deceased had been having sexual relations with accused for four long years before the date of the occurrence yet it is established on the file that accused had obtained her consent by alluring her that he would marry her. Had that not been the position, the deceased would not have had relations with the accused. In fact, accused has been sexually abusing the deceased on the promise to marry her which he never intended to do. Not only this, by giving threats and by putting her under the fear of defaming her and her family, she had been exploited. Under these circumstances as the accused knew that the consent given by the deceased was in consequence of such fear or misconception of marrying her, therefore, this consent is of no consequence. There is difference between consent and submission. Every consent involves a submission but converse does not follow and a mere act of submission does

not involve consent. The reliance can be placed judgment titled as **Deelip Singh Vs. State of Bihar, AIR 2005 SC 203**, it has been held that :-

“While we reiterate that a promise to marry without anything more will not give rise to 'misconception of fact' within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375, Clause Secondly.”

Consequently, the contention of learned counsel for the appellant-accused is devoid of any force.

It was next argued by learned counsel for the appellant-accused that in fact accused cannot be convicted for an offence under Section 306 IPC as he was not present at the time of alleged commission of the crime. The alleged incident had taken place at the parental house of the deceased. Accused did not instigate the deceased in any manner to end her life. Since, the accused did not abet the deceased to commit this crime, therefore, no offence under Section 306 IPC is said to be made out against him. On the other hand, the real story is this that parents of deceased having come to know about the love affair between accused and deceased could not reconcile with it and in tandem with their son Rajesh hatched a conspiracy and in execution thereof put the deceased afire so as to save honour of the family and have planted this case falsely upon the accused so as to satisfy

their annoyance against him.

With the above argument, it is evident that it is the accused who is involved in this crime. It is he who sexually violated the person of deceased. It is he who later on did not keep his promise to marry her. He had been violating her person by alluring her to marry her which he never intended to do, right from the very beginning. Later on when she was impregnated through the loins of accused and when she pressed him to marry her under the given circumstance and further when the accused put off the matter of marrying her, under the compelling circumstances she had to put an end to her life by setting herself ablaze. The story of hatching conspiracy at the instance of PW1 and her son Rajesh already stands negated in the earlier part of this judgment. Of course, the accused was not present at the house of complainant, at the time of this incidence but the statement of Chander Kala (PW1) clearly establishes that the accused committed an offence under Section 306 IPC. She has stated that the deceased had while engulfed with ablaze stated that the accused had ruined her life and was blackmailing her and further that Karma (accused) had committed rape on her time and again and had threatened her that if she discloses this fact to anybody, she would be defamed in the city. Section 107 of IPC defines “abetement of a thing” in the following manner:-

“ A person abets the doing of a thing, who-

*First:- Instigates any person to do that thing;
or*

*Secondly:- Engages with one or more other person
or persons in any conspiracy for the doing of that
thing, if an act or illegal omission takes place in
pursuance of that conspiracy, and in order to the*

doing of that thing; or

Thirdly:- Intentionally aids, by any act or illegal omission, the doing of that things.

Explanation 1:- *A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is no Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2:- *Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”*

As such, since the accused willfully misrepresented before the deceased, who was a minor girl, that he would marry her and caused her to submit for sexual intercourse, therefore, the case of the accused is covered by Explanation 1 of Section 107 IPC and the accused is said to instigate the deceased in terms of Section 107 IPC.

However, we find in the merit of the argument of the Learned Counsel for the appellant that both the sentences should be made to order run concurrently. The appellant stands convicted for an offence under Section 376 and also for an offence under Section 306 IPC by a common

judgment. The offence under Section 306 is consequent to an offence under Section 376. Therefore, we find that conviction for both the offences should run concurrently. It is so ordered.

In view of the above, the present appeal is dismissed except that both the sentences shall run concurrently.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

04.12.2015
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