

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

Crl. Appeal-D No. 77-DB of 2010(O&M)

Date of Decision: August 28 , 2015.

Ram Jatan

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

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

Present: Mr. Birinder Singh Khehar, Amicus Curiae
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.

Instant appeal has been filed by Ram Jatan son of Shri Parkash impugning judgment and order dated 19.11.2009 and 21.11.2009, respectively, passed by learned Additional Sessions Judge, Kurukshetra whereby he has been convicted for the offences punishable under Sections 376/302 IPC and sentenced to undergo life imprisonment, besides, fine of ₹5,000/- and in default thereof, to undergo rigorous imprisonment for two months for offence punishable under Section 302 IPC and to undergo rigorous imprisonment for ten years, besides, fine of ₹2,000/- and in default thereof, to undergo rigorous

imprisonment for one month for offence punishable under Section 376 IPC.

Both the sentences are ordered to run concurrently.

Brief facts are that, the complainant Bahadur Singh son of Chander Lal got his statement Ex.P38 recorded on 10.08.2008 to the effect that he was residing near Umri crossing alongwith his family for the last nearly five years. He has five sisters and a brother. His younger sister Sunita was washing clothes at a water tap installed near their residential tents on 09.08.2008 at about 10.00 a.m. She had gone missing since then. Despite efforts to locate her in the vicinity, they could not find her. On 10.08.2008 at about 1.30 p.m., they came to know that dead body of his sister was lying in bushes of a plot of Jagdish, resident of Mohan Nagar. He alongwith his family members found that his sister Sunita aged about 17-18 years had been ravished and murdered by unknown person by dragging and putting a Dupatta/Chunni around her neck. There was injury on her left eye, head and blood was oozing from her nose and ear. He prayed for legal action to be taken. On the basis of this statement, formal FIR, Ex.P48 was registered.

Officials of the crime team alongwith dog squad team reached the place of occurrence. Photographs, Ex.P20 to P27 were taken. Inquest report, Ex.P11 was prepared. Rough site plan, Ex.P12 was drawn. Body was sent for post-mortem. Application for post-mortem is Ex.P9. A pair of slippers Ex.P2, bracelet Ex.P3 and yellow handkerchief Ex.P4 were recovered from the spot and taken in possession vide recovery memo Ex.P1. Statement of Ranjit Singh son of Jeevan Dass who had first seen the dead body of Sunita when he had gone to answer the call of the nature was recorded.

The dead body was sent for post-mortem examination and a panel consisting of Dr. Shailender Kumar, Medical Officer, LNJP Hospital, Kurukshetra alongwith Dr. Sara Aggarwal, Medical Officer and Dr. Anupama Singh, Medical Officer was constituted. It was opined that the cause of death could not be ascertained because the body was in a state of decomposition. Therefore, the body was sent to the Professor and Head of the Department of Forensic Sciences, Pt. B.D.Sharma PGIMS, Rohtak for expert opinion. Post-mortem examination was conducted by Dr. (Prof.)S.K.Dhattarwal, Department of Forensic Medicine, Pt. BDS PGIMS, Rohtak alongwith Dr. Jitender Kumar Jakhar. Post-mortem report Ex.P13 was received. It was opined in the post-mortem report, Ex.P13 that there was evidence of sexual assault with the deceased and cause of death was smothering. Injuries mentioned in the post-mortem report are as under:-

- i) A contusion of size 8x5cm present over the left side of cheek 6cm lateral to nostril. On dissection underlying tissue found ecchymosed.
- ii) A Contusion of size 5x3cm present over the left side of the forehead just above the left eyebrow. On dissection underlying tissue found ecchymosed.

It was also mentioned that “body was emitting foul smell. Maggots of size 0.3 to 0.5cm crawled all over the body. Scalp hair of size 30-40cm long black easily plucked with slight traction. Eye balls softened, putrefied and protruded. Mouth opened, tongue protruded out of 4cm from the anterior row of teeth. Facial features bloated and partially identifiable. Breast was distended.

Abdomen was distended. Body and axillary hair peeled off. Pubic hair of size

3-4cm black in colour. Vulva distended, Rectum protruded out. P.M. Bullae present all over the body. Epidermis peeled off at places all over the body”.

Accused was arrested on 18.08.2008. His medical examination was conducted by PW10 Dr. N.P.Singh.

On completion of investigation of the case, report under Section 173 Cr.P.C. was presented. Charge was framed against the accused on 19.11.2008 for the offences punishable under Sections 376/302 IPC to which he pleaded not guilty and claimed trial.

Prosecution examined as many as 21 witnesses to prove its case against the accused. Appellant while denying the incriminating evidence put to him, pleaded innocence and false implication in his statement under Section 313 Cr.P.C. However, no evidence as led in defence.

Learned trial court on considering the facts and circumstances of the case concluded that the prosecution was successful in proving its case beyond reasonable doubt against the appellant-accused thereby, convicting and sentencing him as detailed above. Hence aggrieved, present appeal has been preferred.

Learned amicus curiae submits that the prosecution has miserably failed to connect the appellant with the commission of offence. There is no evidence on record which points to the complicity of the appellant in this case. Present case being based entirely on circumstantial evidence, prosecution has not been able to complete the chain of events which point only to the guilt of the appellant.

It is submitted that PW13 Rajbir i.e., the real brother of deceased

has not supported the prosecution version. No reliance can be placed on disclosure statement, Ex.P41 as the same is inadmissible in evidence. FIR in this case was registered against an unknown person. Complainant had not even raised a finger of suspicion qua the appellant at the outset. It is only at a subsequent stage that the appellant has been falsely implicated. There is no evidence on record to show that the accused-appellant has committed rape and murder of Sunita. He, therefore, prays for setting aside the impugned judgment and order consequently, acquitting the appellant of the charges against him.

Learned counsel for the State, on the contrary, submits that there is overwhelming, clear and cogent evidence on record to show the complicity of appellant in the commission of the offence. Prosecution has successfully proved its case beyond reasonable doubt. There is no ground to set aside the conviction and sentence imposed upon the appellant therefore, prays for upholding the same.

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

In the present case accused-appellant was not named at the very outset. His complicity in the matter came to light subsequently. PW12 Smt. Bhago Devi mother of deceased-Sunita has testified that her daughter had gone to wash clothes at a nearby water tap. She did not return for about 1-1½ hours but the clothes taken by her for washing were found lying near the tap on 09.08.2008 at about 10.00 a.m. Despite efforts, she could not be located. It was intimated by a police official on 10.08.2008 at 12.00 noon/1.00 p.m. regarding the dead body of a girl in a nearby plot. Dead body was that of her daughter.

Her clothes were torn. Injuries were there on eye, head etc. They had suspicion

that she was raped and then murdered. She has specifically stated that accused-appellant, who used to work at a meat shop (Khokha) at Umri Chowk situated at a little distance from their residential tents, used to tease her daughter. She asked him to desist but he did not pay any heed to her. Her supplementary statement was recorded on account of suspicion qua the accused because he had also disappeared from the shop/Khokha on the same day when Sunita went missing. It is a matter of record that statement of Bhago Devi @ Bhagwanti was recorded prior to the arrest of the appellant.

It is relevant to note that PW13 Rajbir son of Chander Lal, real brother of deceased-Sunita, though declared hostile has specifically testified in court that ten days after the disappearance of his sister, he was present in the police station from where he had gone with a police official to grain market Pipli near Hanuman Mandir. Accused Ram Jatan was arrested in his presence and he suffered a disclosure statement that he had been working on a meat shop/Khokha at Umri chowk for the last one year. He disclosed that he had a love affair with deceased Sunita. Accused further disclosed that he suspected that Sunita had developed relations with another person. Therefore, when Sunita was washing clothes at a water tap, he taken her to the nearby bushes and committed rape upon her. He caused injuries to her. He committed her murder by pressing her neck with a Dupatta/Chunni. Said witness Rajbir was declared hostile for having denied his earlier statement that appellant also disclosed that his handkerchief of yellow colour having a mark of Sikh religion had fallen at the spot and that on reaching the meat shop/Khokha, the appellant had changed his clothes and washed and dried his underwear, trousers and shirt after committing the crime. Rajbir also denied that the accused admitted to be

roaming here and there in a perplexed condition and had fled from the meat shop/Khokha on 10.08.2008 when the police came there. Recovery of the clothes i.e., trousers, shirt and underwear on the disclosure of accused were also not supported by this witness.

A bare perusal of the statement of PW13 Rajbir reveals that it is the disclosure/recovery of the clothes of the accused and leaving of a yellow handkerchief at the spot by the accused that has not been supported. However, he has stood by rest of the statement made by him earlier pertaining to the disclosure of the commission of the crime by the accused. It is a settled position of law that the entire testimony of a witness declared hostile need not be discarded. A Division Bench of this Court in **Pranab Bishwas v. State of Punjab, 2012(4) RCR(Criminal) 337** has held that the evidence of hostile witness would not be totally rejected but it can be subjected to a greater and closer scrutiny. It has been observed that:-

“..... To allay the fears of prosecution about the impact of the witnesses turning hostile, the law on the subject is very well settled that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The statement of a witness turning hostile recorded under Section 161 Criminal Procedure Code when confronted by the prosecution, can be taken into consideration by virtue of proviso to 162(1) Criminal Procedure Code. For the above principles, the reference can be made to ***State of Rajasthan v. Teg Bahadur and other, 2004(4) RCR(Criminal) 538: 2004(3) Apex Criminal 611: (2004) 13 SCC 300*** and ***Bhagwan Dass v. State (NCT of Delhi), 2011(2) RCR(Criminal) 920: 2011(3) Recent Apex Judgments (RAJ) 153: (2011) 6 SCC 396.***”

PW2 Madan Lal son of Rachna Ram owner of the meat shop/Khokha where the appellant was working, has deposed that he had employed the accused at his shop for a sum of ₹2,000/- per month. He noticed the appellant in a perplexed condition on 09.08.2008 but nothing was revealed by the accused despite his inquiry. PW2 Madan Lal did not find the accused present at the shop on 10.08.2008 when he came to the shop. He came to know that the girl Sunita, who used to reside behind his meat shop was killed by the accused after committing rape. Doubtlessly, statement of PW2 Madan Lal in isolation cannot be the foundation for convicting the accused but it is a strong circumstance coupled with other attending facts which complete the link in the chain of circumstances pointing to the guilt of the accused.

PW15 Harbans Singh, a photographer at Umri chowk, Kurukshetra has deposed that the accused was known to him. Accused used to come to his shop alongwith a girl of Bagri Lohar tribe (i.e., deceased) to get their photographs clicked together. It is explained by PW15 Harbans Singh that no negatives are there as photographs are taken with a digital camera. This witness had no axe to grind against the appellant. There is no proof of any enmity between them and neither has any been alleged. There is no reason to disbelieve him. PW15 Harbans Singh has succinctly proved the proximity between the accused/appellant and the deceased Sunita. It is relevant to note that the case of the appellant is of complete denial. In view of Section 106 of the Evidence Act, it was incumbent upon the accused to explain the circumstances once the prosecution had successfully established their proximity.

PW20 SI Sita Ram, CIA Staff, Kurukshetra who was the SHO, Police Station Sadar Thanesar on 10.08.2008 has supported the prosecution version completely. PW21 Inspector Yashwant Singh, who was subsequently posted as SHO Police Station Sadar Thanesar on 17.08.2008 has also supported the prosecution version qua recording of statement of Bhago Devi @ Bhagwanti, prior to arrest of accused as well as the recoveries effected on his disclosure.

Medical evidence on record points to sexual assault and death by smothering. It is contended by learned counsel for the appellant that as per FSL report, Ex.P8 no semen was detected on any of the clothes either of the victim or the appellant therefore, there is no evidence of sexual assault/rape having been committed upon the deceased. A bare perusal of the post-mortem report, Ex.P13 indicates that there is evidence of sexual assault upon the deceased. In the given set of circumstances, absence of semen by itself on the clothes cannot be conclusive evidence of absence of sexual assault. As far as the clothes of the accused are concerned, they had been washed and dried. Clothes of the victim were dirty and putrefied as reflected in the FSL report, Ex.P8. Furthermore, there is a specific opinion by the Board of Doctors, as proved by PW8 Dr. S.K.Dhattarwal that there was evidence of sexual assault on the deceased and the cause of death was smothering.

Similarly, contention on behalf of the appellant that prosecution case is of death by strangulation and not by smothering therefore, the appellant is entitled to benefit of doubt is also bereft of any merit. It has been proved on record that the appellant was working at the meat shop/Khokha of PW2 Madan

Lal. The deceased Sunita used to reside alongwith her family in the tents behind the meat shop. Proximity between the deceased and the appellant is proved by PW12 Bhago Devi @ Bhagwanti and further cemented by the testimony of PW15 Harbans Singh who is an independent witness worthy of credence. He is neither related to the deceased nor bears any animosity towards the appellant. All the circumstances conclusively point to the complicity of the appellant in the commission of the offence.

Prosecution has indeed succeeded in proving its case beyond any reasonable doubt. Chain of circumstances in this case is complete and point to the unequivocal guilt of the accused and permit of no other hypothesis. There is no infirmity or illegality in the conviction of the appellant for the offences as charged.

We do not find any merit in this appeal, which is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

August 28 , 2015.
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