

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

CRR-615-2006

Date of Decision: December 2, 2015

Suresh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

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

Present: Mr.Ankur Malik, Advocate for
Mr.Y.P.Malik, Advocate
for the petitioner.

Mr.Pawan Gaur, DAG, Haryana.

.....

NARESH KUMAR SANGHI, J.(ORAL)

Challenge in the present criminal revision petition filed by Suresh Kumar, the informant/complainant/father of Pooja (since deceased), is to the judgment, dated 16.09.2005 passed by learned Additional Sessions Judge, Karnal, whereby the private respondents were acquitted of the charges levelled against them in case FIR No.90, dated 14.03.1999, for the offences punishable

under Sections 201, 302, 364 and 376, IPC, registered at Police Station, Gharaunda, District Karnal.

Learned counsel for the petitioner submitted that two theories had emerged during investigation; first version was that Pawan Kumar (respondent No.2) had kidnapped Pooja, aged about 5 years, daughter of the petitioner and thereafter committed rape upon her and caused her death; the second version was that Rajo (respondent No.3) could not give birth to a child, therefore, with the connivance of her husband, Sube Singh (respondent No.5), Pooja (since deceased) was kidnapped and brought to the *Dera* of Ramesh Kumar (respondent No.4), where with the active connivance of Raghav Mianji, Pooja was sacrificed. He further submits that he fairly conceded that following circumstances had emerged on record to connect the respondents-accused with the crime:-

“(a) Pooja (since deceased) was last seen in the company of Pawan Kumar by Santosh (PW11) on 02.03.1999;

(b) Pawan Kumar (respondent No.2) had suffered extrajudicial confession admitting his guilt before Shiv Kumar (PW4), though he has turned hostile;

(c) that Suresh Kumar (PW15), father of Pooja (since deceased), was going to trace out his daughter Pooja at the *Dera* of Ramesh Kumar and on the way, Sube Singh (respondent No.5) and Rajo (respondent No.3) met him and when he asked about the whereabouts of his daughter, then they became perplexed. However, they showed their ignorance regarding the whereabouts of his daughter Pooja;

(d) after missing of Pooja (since deceased), Panchayat was convened in the village on 06.03.1999 and 09.03.1999. Raghav Mianji assured the Panchayat to trace out Pooja, dead or alive. At the assurance of Ramesh Kumar (respondent No.4), Raghav Mianji was allowed to go but on a subsequent panchayat on 14.03.1999, he (Raghav Mianji) did not turn up; and

(e) the police went to the *Dera* of Ramesh Kumar (respondent No.4) and found a bloodstained quilt as well as a bowl full of blood. The police burnt the quilt in the presence of Suresh Kumar (PW15) despite his resistance.

Learned counsel for the State very fairly conceded that

except the last seen together of Pooja (since deceased) with Pawan Kumar accused/respondent No.2, there is no legal evidence to connect the accused with the kidnapping, rape and murder of Pooja (since deceased).

I have heard the learned counsel for the parties and with their able assistance perused the record received from learned trial Court.

In order to substantiate its case, the prosecution examined as many as 16 prosecution witnesses.

Satish Kumar (PW1) had delivered the special report to the higher authorities.

Krishan Lal (PW2) was a witness to the inquest report (Ex.PA/3).

Dr.Vijay Pal Khanwal (PW3) had conducted the autopsy on the corpus of Pooja (since deceased).

Shiv Kumar (PW4) was declared hostile since he did not support the prosecution version regarding the alleged extra judicial confession suffered by Pawan Kumar-accused/respondent No.2.

Nar Singh (PW5) is the brother of Suresh (informant) and he deposed that the body parts of Pooja (since deceased)

and her clothes were recovered by the police on 18/19.03.1999.

Sub Inspector Ilam Singh (PW6) had partly investigated the case.

Deputy Superintendent of Police (since retired) Prem Singh (PW7) had also partly investigated the case.

Ishwar Singh (PW8) was the Sarpanch of the village and deposed regarding the Panchayat held on different dates.

Rama (PW9) is the grandfather of Pooja (since deceased).

Pirthi Singh (PW10) had attended the Panchayat on different dates.

Santosh (PW11) had seen Pooja (since deceased) in the company of Pawan -accused on 02.03.1999.

Sub Inspector Dharam Pal (PW12) had also partly investigated the case.

Inspector Mahesh Parshad (PW13) also remained associated with the investigation of the present case.

Sub Inspector Virender Singh (PW14) had also partly investigated the matter.

Suresh Kumar (PW15) is father of Pooja (since deceased) and he deposed regarding the missing of his daughter

and lodging of the report with the police.

Inspector Hari Singh (PW16) had also remained associated with the investigation of the present case.

After completion of the prosecution evidence, the incriminating evidence appearing against the accused were put to them in terms of Section 313, Cr.P.C., to which all of them denied and pleaded innocence.

No evidence in defence was led by the accused persons.

After hearing the arguments, learned trial Court acquitted all the accused vide judgment, dated 16.09.2005. Dissatisfied with the judgment of acquittal, father of Pooja (since deceased) has filed the present criminal revision petition.

The first incriminating evidence against the accused, Pawan Kumar, was that he was last seen in the company of Pooja (since deceased) by Santosh (PW11) and thereafter he suffered extrajudicial confession before Shiv Kumar (PW4).

In this regard it is apposite to mention that as per her deposition, Santosh (PW11) had seen Pawan Kumar (respondent No.2) and Pooja (since deceased) in the company of each other on 02.03.1999 while her statement under Section 161, Cr.P.C., by

the police was recorded on 28.05.1999, i.e. after delay of 2 months and 26 days. During her deposition, she was very specific that on the same day, i.e. 02.03.1999, she had disclosed the said fact to her husband and, in turn he (her husband) had passed the said information to father of the deceased within three days. If it was the position, then where was the hitch for the Investigating Agency for not associating Santosh (PW11) in the investigation. The recording of her statement by the police, after a delay of 2 months and 26 days speaks volume on the veracity of the Investigating Agency. Even otherwise, evidence of last seen together by itself would not be sufficient to hold a person guilty. This type of evidence becomes more unreliable when contradictory evidence is led during trial. The most important fact not to rely upon the *last seen together* evidence would be that prosecution has miserably failed to substantiate the date of murder of Pooja. It would be apt to mention here that as per prosecution case, Pooja (since deceased) was kidnapped on 02.03.1999 while her mortal remains, in abridged condition, were discovered on 18/19.03.1999. By no stretch of imagination the said piece of evidence can be held to be sufficient to hold Pawan Kumar (respondent No.2) guilty for the offences for which he had

been booked. Another glaring fact which is necessary to be discussed, even at the cost of repetition, that the prosecution itself is not certain about its first version that Pawan Kumar (respondent No.2) had kidnapped Pooja (since deceased) and thereafter committed her murder, since during investigation it was also revealed that Pooja (since deceased) was abducted for sacrifice by Smt.Rajo (respondent No.3) w/o Sube Singh (respondent No.5) since she was a childless woman. After her kidnapping with the active connivance of Ramesh (respondent No.4) and one Raghav Mianji (Tantrik) Pooja was sacrificed. In view of the contradictory circumstance of the prosecution, the learned trial Court was right in rejecting the last seen together theory, set up by the prosecution. In the matter of **State of Karnataka vs Chand Basha** 2015(4) RCR (Criminal) 718, Hon'ble the Supreme Court while dealing with the last seen theory held that it would be hazardous to come to a conclusion of a guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

Since Shiv Kumar (PW4) has failed to support the prosecution case regarding the admission of guilt by Pawan Kumar (respondent No.2), therefore, extrajudicial confession

theory also goes.

So far as the second theory of the prosecution that Pooja (since deceased) was kidnapped by Rajo (respondent No.3) wife of Sube Singh and thereafter with the active connivance of Ramesh Kumar (respondent No.4) and one Raghav Mianji, she (Pooja) was sacrificed, has no legs to stand. There is not even a single circumstance which would conclusively point out towards the guilt committed by the accused persons. The allegations that the Panchayat was convened in which Raghav Mianji assured the Panchayat to produce Pooja (since deceased) dead or alive by itself would not be a circumstance to presume that her murder was committed by the accused. Other material available on record would also not point out that the accused had kidnapped, committed rape and then caused murder of Pooja (since deceased).

Even otherwise, the scope to set aside the order of acquittal while exercising the revisional jurisdiction is very limited. What has been interpreted and ruled by Hon'ble the apex Court is that even if two views are possible from the order of an acquittal then also the judgment of acquittal should not be set aside. Reliance can be placed upon **Ganesh Dhawan Patel and another vs State of Maharashtra** (1978-82) Supp. C.L.R. 117, Hon'ble the apex Court

has held that even if upon the evidence adduced two reasonable views were possible- One favourable to the accused and the other against him- High Court held not justified in interfering with the order of acquittal.

In the case in hand there is only one view that prosecution has failed to connect the accused with the offences for which they have been booked and, as such, there is no merit in the present criminal revision petition, and the same is hereby dismissed.

December 2, 2015
meenu

(NARESH KUMAR SANGHI)
JUDGE