

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-709-DB of 2010

Date of decision : 11.5.2017

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Gabrail

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajeev Sharma, Advocate for
Mr. K.D.S. Sodhi, Advocate for the appellant

Dr. Deipa Singh, Additional Advocate General,
Punjab.

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H. S. Madaan, J.

This appeal has been filed against judgment and order dated 4.5.2010, passed by the Court of Additional Sessions Judge (Adhoc), Fast Track Court, Jalandhar, vide which he had convicted accused Gabriel, for offences under Section 302, 366A, 376/511 and 201 IPC, sentencing him as follows :-

u/s 366-A IPC

To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-, in default of payment of fine, to undergo further rigorous imprisonment for three months.

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| u/s 376/511 IPC | To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-, in default of payment of fine, to undergo further rigorous imprisonment for three months. |
| u/s 302 IPC | To undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo further rigorous imprisonment for six months. |
| u/s 201 IPC | To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default of payment of fine, to undergo further rigorous imprisonment for two months. |

All the substantive sentences were ordered to run concurrently.

The accused – convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 2.11.2008, SI Surinder Pal, SHO, Police Station Maqsudan, Jalandhar, heading a police party, was present at Pathankot Road in connection with patrolling and checking, where complainant Lachhman Singh son of Chaunda Singh, Caste Gaund, resident of Village Agara, Police Station Batuagarh, District Damauhe, Madhya Pradesh, then residing

at Kahanpur Colony, Police Station Maqsudan, Jalandhar, aged about 24 years, came across him and got his statement Exhibit PA, recorded, wherein he stated that he is a labourer by avocation and accused Gabriel son of Baijmin, caste Munda, resident of Kumhari, Police Station Basihar, District Gumla, Jharkhand, had been residing in his neighbourhood in the same courtyard; that on 1.11.2008, at about 7.00 P.M., Gabriel offered to buy toffees for his minor daughter Kalpana, aged about 7 years and took her alongwith him. However, thereafter, neither Gabriel, nor Kalpana returned home. According to the complainant, they searched for them at their own level, but to no effect and that Gabriel had enticed away his daughter Kalpana; that he was going to Police Station to lodge report, on the way he came across the police party and got his statement recorded. Said statement was signed by complainant Lachhman Singh in Hindi. His signatures were attested by SI Surinder Pal, the Investigating Officer. The Investigating Officer, appended his endorsement Exhibit PA/1 below such statement and observing that offences under Sections 363, 366A IPC were made out against the accused, sent *ruqa* to Police Station through HC Kulwant Singh, from Pathankot Chowk, at 4.00 P.M., on the basis of which formal FIR Exhibit PA/2, was recorded at Police Station Maqsudan, Jalandhar, by SI Kirpal Singh, who had made an endorsement in that regard on the *ruqa* and sent it back alongwith copy of FIR to the Investigating Officer.

Then the police party accompanied by complainant went to Kahanpur Colony, the place from where minor Kalpana had been kidnapped. The Investigating Officer prepared rough site plan of that

place as Exhibit PW-12/A. He recorded statements of witnesses. In the meanwhile, the Investigating Officer received a secret information that accused Gabrial was present at Nurpur Adda, Jalandhar, as such the police party accompanied by complainant Lachhman Singh and Sarpanch Resham Lal went there. Accused Gabrial was apprehended from that place. He was formally arrested and interrogated. Necessary documents in that regard were prepared. During the course of interrogation, Gabrial made a disclosure statement to the effect that on 1.11.2008, at about 7.00 P.M. he had kidnapped Kalpana, a minor girl on allurement of giving her toffees, brought her near the drain of Village Raowali and attempted to commit rape upon her. But when Kalpana threatened to tell this fact to her parents, he became afraid and gave a blow of brick on her face, as a result, she died at the spot and he concealed her dead body near the drain, under the heap of paddy straw, about which he had knowledge and he could get the same recovered. The Investigating Officer recorded such disclosure statement of accused as Exhibit PC, which was signed by the accused and witnessed by ASI Surjit Singh and Sarpanch Resham Lal. Thereafter, the accused, while in police custody, led the police party to the specified place and got recovered dead body of Kalpana there from, as well as brick used in the crime. The Investigating Officer converted the brick into a parcel and sealed it with the seal of Investigating Officer, having impression SP. Thereafter, dead body of Kalpana and parcel of brick were taken into possession vide recovery memo Exhibit PD. From the right hand of the dead body of Kalpana, hair allegedly of accused Gabrial, were recovered. A separate parcel

of such hair was prepared, which was sealed with seal of Investigating Officer, having impression SP and that parcel was seized vide memo Exhibit PE. From the spot, the Investigating Officer took into possession blood stained earth, which was converted into a parcel, sealed with seal of the Investigating Officer and then that parcel was seized vide memo Exhibit PW 12/B. The Investigating Officer had summoned a photographer and got photographs of the spot clicked from him, which are Exhibits P1 to P5. He conducted inquest proceedings with regard to dead body of Kalpana, preparing report Exhibit PB in that respect. He scribed an application Exhibit PW-7/E, for the purpose of getting post mortem examination conducted on dead body of the deceased, handing over application alongwith dead body to HC Nishan Singh and HC Hardeep Singh, for getting the needful done. On reaching the police station, the accused was put in the lock-up, whereas the case property was deposited with MHC. An addition of offence under Section 302 IPC, was made vide an entry in the DDR bearing report No. 29 dated 2.11.2008, copy Exhibit PW-12/E.

On 3.11.2008, while the accused was produced before the Illaqa Magistrate, an application Exhibit PW-12/F was submitted there for permission to take sample of his hair for the purpose of comparison. That application was accepted by learned Illaqa Magistrate, vide order Exhibit PW 8/A and sample of hair of accused was taken in the Court. Those hair were converted into a parcel sealed with seal of Investigating Officer, having impression SP and then that parcel was taken into possession vide memo Exhibit PW

12/G. On that very day, HC Hardeep Singh, produced before the Investigating Officer the clothes of the deceased after post mortem examination. Those were also converted into a parcel sealed with the seal of Investigating Officer, having impression SP and seized vide memo Exhibit PW 5/A.

During investigation of this case, the Investigating Officer recorded statements of witnesses, sent samples to the office of Chemical Examiner, for examination. The scaled plan of the place of incident was got prepared which being Exhibit PW 12/H.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Jalandhar, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. and then finding that some of the offences, for which the accused had been challaned, were exclusively triable by the Court of Sessions, he vide his detailed commitment order dated 10.2.2009, committed the case to the Court of learned Sessions Judge, Jalandhar, from where it was entrusted to the Court of learned Additional Sessions Judge, Jalandhar.

When the case was received in the Court of learned Additional Sessions Judge, Jalandhar, then finding prima facie charge for offences under Sections 363, 366-A, 376/511, 302 and 201 IPC was disclosed against the accused, charge sheeted him accordingly, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, the prosecution examined, as many as 12 PWs, as per details below.

PW-1 Lachhman – complainant deposed as per prosecution story.

PW-2 Resham Lal, witness of statement under Section 27 of the Indian Evidence Act, made by the accused before SI Surinder Pal on 2.11.2008, deposed in that regard, stating that such statement had been signed by the accused and attested by him (this witness) and ASI Surjit Singh and subsequently, the accused had got recovered dead body of Kalpana and one brick, which was blood stained. The brick was converted into a sealed parcel, which was taken into possession vide recovery memo Exhibit PD, attested by him and ASI Surjit Singh. The hair were recovered from right hand of deceased Kalpana, which were also converted into sealed parcel. That parcel was sealed with seal SP and that same was taken into possession vide recovery memo Exhibit PE.

PW-3 Raj Kumar @ Rana, photographer, proprietor of Rana Studio, Pathankot Road, Jalandhar, who on 2.11.2008 at about 6.15 p.m., had taken photographs of the dead body from drain in the revenue estate of Village Raowali, deposed in that regard proving photographs Exhibits P1 to P5, stating that he had handed over those photographs to the police on 4.11.2008.

PW-4 HC Lakhwinder Singh, who on 2.11.2008 was posted as HC at Police Station, Maqsudan, deposed that on that day at about 5.00 p.m., MHC Kamaljit Singh handed over to him special reports for delivering those to the higher officers and he accordingly

delivered such reports to Illaqa Magistrate, SSP, DSP Control Room.

PW-5 HC Hardeep Kumar, who had been deputed to get post mortem examination conducted on dead body of Kalpana, deposed that on 3.11.2008, after getting the needful done, he had produced before the Investigating Officer, clothes of deceased, which were converted into a sealed parcel, taken into possession by the Investigating Officer, vide recovery memo Exhibit PW 5/A, attested by him and ASI Surjit Singh and that on 21.11.2008, a sealed envelope alongwith two parcels of slides and two small bottles, were handed over to him by MHC, for depositing the same in FSL, Kharar. He accordingly took those articles to FSL, Kharar, but some objections were raised and articles were returned. He deposited the same with MHC on reaching the Police Station. Again on 28.11.2008, after removing the objections, such articles were given to him by MHC for depositing the same at FSL, Kharar and he did so and on return handed over the receipt to the MHC. He stated that so long as the case property remained with him, neither he tampered with the same, nor allowed any body else to do so.

PW-6 Sahil, a barber, son of Nathu, resident of Jinda Road, Maqsudan, Jalandhar, stated that he is running a barber shop at Nagra Road, Maqsudan; that on 3.11.2008, he had joined the investigation of this case; that he had cut hairs of accused Gabriel as per orders of Court of Judicial Magistrate Ist Class, Jalandhar and he had handed over the hairs to SI Surinder Pal.

PW-7 Dr. Damanjeet, Medical Officer, Civil Hospital, Jalandhar, deposed that on 3.11.2008, a board of doctors was

constituted, which included her, Dr. B.P.S. Randhawa and Dr. K.S. Bawa of Civil Hospital, Jalandhar, as per orders of Medical Superintendent, on application Exhibit PW 7/E. The said medical board had conducted post mortem examination on dead body of baby Kalpana, daughter of Lachhman Singh, aged 7 years, female, resident of Kanpur Colony, P.S. Maqsudan, District Jalandhar; that HC Nishan Singh and HC Hardeep Singh had brought the dead body of Baby Kalpana, aged about 7 years; that the post mortem was conducted at 10.30 P.M. on 3.11.2008. She stated that her role was to examine the dead body from gynecological point of view and upon her examination, she found her external genitalia, swollen, .5 x .2 cm laceration transversely place was observed on the posterior wall of the vagina, hymen was torn posteriorly. According to this doctor, she had taken two vaginal smear slides and two vaginal swabs for chemical examination. She proved copy of post mortem report as Exhibit PW 7/A, adding that as per opinion of the medical board, the cause of death was hemorrhage and head injury and that all the injuries were ante mortem in nature. This doctor further deposed that on receipt of result of Chemical Examiner Exhibits PW 7/B and PW 7/C, she opined that child was subjected to vaginal, as well as anal intercourse; that she had given her report that the victim had been subjected to sexual intercourse. She further proved her opinion Exhibit PW 7/D, stating that she had handed over the vaginal swabs and anal swabs and slides to HC Nishan Singh and HC Hardeep Singh.

PW-8 Sanjiv Kumar, Ahlmad attached to the Court of

SDJM, Nawanshahar, deposed that on 3.11.2008, while he was posted as Ahlmad attached to the Court of Judicial Magistrate Ist Class, Jalandhar, on that day hair of accused were cut by barber, as per order of the Court. Those cut hair were put into plastic box, which was converted into a parcel, sealed with seal of the Investigating Officer having impression SP; that it was so done on application moved in the Court on which the Presiding Officer had passed an order dated 3.11.2009, allowing the application.

PW-9 Dr. S.S. Nangal, Medical Officer, Civil Hospital, Jalandhar, deposed that on 4.11.2008, while working as such, he had medico legally examined Gabriel son of Baijmin, resident of Kumhari District Gumla, State Gharkhan, then at P.O. Kahanpur Colony, P.S. Maqsudan and he had noted the following things :-

1. Hair of the chest and in axillary and public region were well developed.
2. Testis and penis were well developed.
3. Prepuce was retractable.
4. No sign of injury to the back.

In the opinion of the doctor, there was nothing to suggest that the accused could not do the rape. He proved his report in that regard as Exhibit PW 9/A.

PW-10 HC Kamaljit Singh, Police Station Division No. 6, Jalandhar and PW-11 HC Ranjit Singh, Police Station, Mehatpur, Jalandhar, both formal witnesses, tendered in evidence their affidavits Exhibits PW 10/A and PW 11/A, respectively.

PW-12 Inspector Surinder Pal, the Investigating Officer of

this case, testified regarding the investigation conducted by him, proving various documents.

Additional Public Prosecutor tendered in evidence, report of Forensic Science Laboratory, Exhibit PZ and closed the evidence of the prosecution.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations contending that he is innocent and has been falsely involved in this case by interested persons with ulterior motive.

During his defence evidence, accused appeared as his own witness stating that he does not know anything about this case and police has falsely implicated him in this case from Kahanpur Colony, Pathankot Road, when he was returning after purchasing vegetables from the market.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal praying that the same be accepted, the impugned judgment of conviction and sentence be set aside and he be acquitted of the charges framed against him.

We have heard learned counsel for the appellant, learned Additional Advocate General for the State of Punjab, besides going through the file and we are of the considered view that there is no merit, whatsoever in the appeal.

This instant case is based upon circumstantial evidence, but chain of events in this case is complete, which is compatible with the

hypothesis that the accused is guilty. The first and foremost incriminating circumstance against the accused is in the form of testimony of PW-1 Lachhman Singh, father of Kalpana deceased, who had set the machinery of law in motion, reporting that accused Gabriel, living in his neighbourhood had taken away his minor daughter Kalpana, giving her allurements of getting toffees for her and thereafter, neither accused Gabriel nor minor Kalpana had returned home and they could not be located despite their best efforts. Therefore, on the basis of his statement, formal FIR for offence of kidnapping had been registered against accused Gabriel. Then the accused had been arrested by the police and he had suffered a disclosure statement under Section 27 of the Indian Evidence Act, regarding the incident, having concealed dead body of Kalpana, near the drain under heap of paddy straw, as well as, concealing the brick used by him in the incident. Such statement, Exhibit PC was signed by accused and attested by witnesses. Then the accused, in the police custody, had got the dead body of Kalpana and brick used by him in the crime, recovered. The brick which was blood stained, had been covered into a sealed parcel and then taken into possession. Some hair were found to be there in hand of dead body, which were also taken into possession. The very fact that accused had suffered a disclosure statement and got the dead body of Kalpana recovered, so also the brick, used by him in the incident, which was blood stained, goes a long way in proving that it was the accused, who had caused death of Kalpana. As regards, the offence of rape stated to have been committed by accused with the deceased, as deposed by PW-2

Resham Lal and PW-12 Inspector Surinder Pal, those recovered hair alongwith sample of hair of accused Gabriel had been sent to Forensic Science Laboratory, Punjab, Chandigarh, and as per report Exhibit PZ, received there from, the hair recovered from hand of deceased Kalpana showed similar characteristics, as that of sample of hair of accused. That also corroborates the prosecution story, as regards accused having committed rape on the deceased and committing her murder.

The medical evidence also corroborates the prosecution story. PW-7 Dr. Damanjeet, Medical Officer, Civil Hospital, Jalandhar, who was member of board of doctors, which had conducted post mortem examination on dead body of Kalpana, stated that she had found external genitalia of the deceased to be swollen and .5 x .2 cm laceration transversely placed was observed on the posterior wall of the vagina and hymen was torn posteriorly. She, while proving a copy of post mortem report, Exhibit PW 7/A, stated that as per opinion of the medical board, the cause of death was hemorrhage and head injury and that all the injuries were ante mortem in nature. She further stated that on receipt of result of Chemical Examiner Exhibits PW 7/B and PW 7/C, the child was subjected to vaginal as well as anal intercourse and she had given her report that the victim had been subjected to sexual intercourse. She further stated that she had handed over the vaginal swabs and anal swabs and slides to HC Nishan Singh and HC Hardeep Singh. If we see the report of FSL, then spermatozoa were found to be there in such swabs, which points out towards rape of the victim. A seven year old small girl

cannot possibly be habitual to sexual intercourse with her hymen being torn.

The photographs Exhibits P1 to P-5 also corroborate the prosecution version, since the accused in custody (in some photographs), is shown to be getting the dead body of Kalpana recovered. From the statement of PW-9 Dr. S.S. Nangal, who while working as Medical Officer, Civil Hospital, Jalandhar, on 4.11.2008, on police application had medico legally examined the accused, he had found accused fit to perform sexual intercourse.

The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly and to challan him falsely. The accused has not been able to render any reasonable or plausible explanation for his alleged false implication in this case. Rather the accused is proved to have kidnapped an innocent minor girl and committed a very heinous crime of raping her and then committing her murder. From the evidence adduced by the prosecution, in light of other facts and circumstances, it can safely be taken that it was accused Gabrial, who had kidnapped Kalpana, a minor girl aged about 7 years with intention to commit sexual intercourse with her and had in fact performed sexual intercourse with her, thereafter committing her murder and then concealing her dead body in heap of paddy straw, so as to make the evidence of his crime disappear, to save himself from conviction.

However, since the prosecution has not filed any appeal, therefore, the judgment cannot be modified to the disadvantage of the

accused, as regards giving finding of rape instead of attempt to rape. However, we find that there is no illegality or infirmity in the impugned judgment and decree, which is well reasoned one based upon proper appraisal and appreciation of evidence and correct interpretation of law. The appeal is found to be without any merit and is dismissed accordingly.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

11.5.2017
chugh

Whether speaking / reasoned

Whether reportable

Yes / No

Yes / No