

307

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRA-S-1030-SB of 2012 (O&M)
Date of decision: November 11, 2017**

Mohd. Nadeem

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Ms. Mayuri Lakhanpal Kalia, Legal Aid Counsel
for the applicant-appellant.

Mr. Ramandeep Singh Sandhu, Sr. DAG, Punjab.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the rival parties.

Being aggrieved by the judgment and order dated 02.06.2011 passed by the Additional Sessions Judge, Sangrur in Sessions Case No.45 of 2009 arising out of FIR No.128 dated 05.06.2009, by which the learned trial Court recorded conviction of the appellant for the offences punishable under Section 304 (ii) IPC. The applicant-appellant had sentenced to undergone rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-. The present appeal was filed by the appellant in this Court.

In support of the appeal, learned legal aid counsel appointed for the appellant vehemently argued assailing the evidence of PW-5/Kiran Bala-the alleged eyewitness. She argued that her brother Manjit Ram was also with her at the relevant time of the incident. According to

her the conduct of these two witnesses appears to be wholly improbable and natural in as much as none of them had deposed as to why they did not intervene when the girl Shalu was being allegedly thrashed by the appellant. According to her in an ordinary course Kiran Bala and her brother being together would have certainly prohibited the accused-appellant from thrashing the deceased. The evidence of her brother PW-2/Manjit Ram, he is also not consistent with the evidence of Kiran Bala/PW-5 and not corroborate with her. Therefore, the prosecution case ought to have been rejected by the trial Court in the entirety of the appellant and have been acquitted.

In the alternative, she submitted that the sentence awarded to the appellant is on a very higher side particularly because the conviction was recorded by the trial Court under Section 304(ii). According to her, the settled legal position is that the sentence to be awarded under Section 304(ii) cannot exceed seven years. She therefore alternatively prayed for reduction of sentence.

Per contra, learned State counsel, Mr. Ramandeep Singh Sandhu, Sr. DAG, Punjab, vehemently opposed the appeal and argued that the evidence of PW-5 Kiran Bala is trustworthy and has not been challenged in the cross-examination in material particulars. He submitted that on the incident proper there is absolutely the cross-examination and therefore her evidence as a sole witness for the prosecution is liable to be believed and that is what has been done by the trial Court. He submitted that there is no in-consistency in evidence of her brother Manjit Ram and Kiran Bala. Nevertheless, her evidence

being trustworthy has been rightly relied upon by the trial Court for recording conviction in question. He therefore prayed for dismissal of the appeal.

I have gone through evidence of Kiran Bala-Pw-5, her brother Manjit Ram/PW-2 and the evidence of Doctor-PW-6.

The quote the following from the evidence of Kiran Bala:-

“On 04.06.2009, Mohd. Nadim took Shalu with him at 7 a.m. Saying that he would take her to the house of a friend of his so that she may play with her peers. My brother Manjit Ram had come to me on that day. It was at about 8 p.m. that Mohd. Nadim returned with Shalu and the moment they entered our house he kicked Shalu down to the floor. When I and Manjit Ram asked as to why he was doing so, he denied of having felled Shalu to the floor saying that she had fallen by herself. Shalu started crying loudly. Where after Mohd. Nadim picked up Shalu saying that since she was continuously weeping, he would finish her for good. Accused took Shalu inside and within our sight thrashed her against the back of a wooden bed and as a result of that injury Shalu went unconscious. We lifted Shalu and laid her on the bed, but even there after accused Mohd. Nadim gave injuries with a danda to Shalu and tried to electrocute her with the wire of antenna of television saying that he would not spare Shalu. Upon clamour raised by I and Manjit, accused Mohd. Nadim fled from there along with wire of antenna and danda. Shalu was found dead.

I quote the following from the evidence of Dr. Daljinder

Singh/PW-6:-

“I have brought original post mortem reports register and tender into evidence carbon copy of report of post mortem of Shallu as Ex.PB. It was prepared with the help of a carbon paper while compiling the original.

Following injuries were noticed on the dead body:-

1. A red colored abrasion on the left side of neck of the size of 1cm x 0.2cm. 2cm below lobule of left ear.

2. Diffuse swelling over left parietal area of scalp with reddish blue bruise 2 cm x 1 cm in centre, 8 cm above left mastoid process.

3. blue colored bruise umbilical area of abdomen 4 cm x 3 cm.

4. A red colored linear bruise antero-medical surface of upper head of thigh.

In my opinion cause of death was subdural hemorrhage and anchored hemorrhage. All of the injuries on the person of Shallu were ante-mortem in nature and injury No.2 was sufficient to cause death in the ordinary course of nature. In my opinion, Shallu may have died within 24 hours from date of receipt of injury and another 24 hours may have elapsed between death and post-mortem.”

I have gone through the cross-examination of Kiran Bala carefully. I find in the entire cross-examination, the appellant has not at all enable to shatter her evidence much less even on material particulars regarding the actual incident that had taken place.

At this stage, on instructions from Shingara Singh, Paravi

Officer, ADGP, Jail, learned Counsel for the State submits that the appellant had expired on 22.12.2012 while in custody in the hospital.

In that view of the matter, the appeal is dismissed as abated.

Counsel for the appellant shall be paid her fees as per rules.

(A.B. CHAUDHARI)
JUDGE

November 11, 2017

anju rani

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No