

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

Crl. Appeal No.D-427-DB of 2006 (O&M)

Date of Decision: December 11, 2018

Naresh Dass

...Appellant

VERSUS

Union Territory, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sudhir Sharma, Advocate
for the appellant.

Mr.J.S.Toor, Addl. Public Prosecutor
for respondent-U.T. Chandigarh.

INDERJIT SINGH, J.

This appeal was heard by Hon'ble Division Bench of this Court comprising Justice Rajive Bhalla and Justice Amol Rattan Singh. Justice Rajive Bhalla dismissed the appeal, whereas Justice Amol Rattan Singh accepted the appeal and acquitted the accused-appellant. Now, the present appeal has been listed before this Bench for third opinion.

The present appeal has been filed by the appellant against respondent Union Territory Chandigarh, challenging the judgment of conviction and order of sentence dated 25.04.2006 passed by learned Addl. Sessions Judge, Chandigarh, whereby he was held guilty and convicted and sentenced to undergo imprisonment for life and to pay fine of ₹500/- and in

default of payment of fine, to undergo rigorous imprisonment for a period of

one year under Section 302 IPC and further, to undergo rigorous imprisonment for a period of three years and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 376 read with Section 511 IPC and also to undergo rigorous imprisonment for a period of two years and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 201 IPC. All the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that 10 year old daughter of Pappu had gone to forest of village Faidan on 29.01.2004 at about 4.00 p.m. to fetch fuel wood but did not return. Her father searched for her till 8.00 p.m. and finally reported the matter to the police. He kept on searching his daughter along with 6-7 persons throughout the night but did not find her. At about 7.00 a.m. on 30.01.2004, when the complainant and other persons reached near *ganda nullah* (dirty water drain) in the area of village Faidan, they saw the dead body of prosecutrix lying there. Police was informed and thereafter, 10-12 police personnel came there headed by Inspector Ram Gopal, who asked SI Satnam Singh to conduct the investigation. Police photographer was requisitioned and photographs were taken. On the basis of the ruqa, formal FIR was registered. During the course of investigation, Surjit Singh brought accused Naresh Dass to the police station and told that Naresh Dass had suffered an extra judicial confession before him of murdering the prosecutrix by throttling her when she was trying to raise hue and cry on being sexually assaulted by him. It further transpired during investigation that Raja Ram, 9 years old and Pintu,

prosecutrix. They stated that accused came there and they were asked by the accused to pick up their fuel wood and return to their respective house and himself stayed back in the forest with prosecutrix. Post-mortem examination was conducted on the dead body of the prosecutrix and it was found that cause of her death was asphyxia as a result of throttling. Accused was arrested. Statements of the witnesses were recorded. After completion of necessary investigation, challan was presented against the accused.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 302, 376 read with Section 511 and 201 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Pappu who deposed that her daughter had gone to fetch fuel wood but did not return. He waited for her till 8.00 p.m. and reported the matter to the police thereafter, his statement Ex.P1 was recorded. He further deposed that he searched for his daughter along with 6-7 other persons but could not find her. At about 7.00 a.m., when all of them reached ganda nullah in the area of village Faidan, they saw dead body of prosecutrix lying there with her face towards the earth. His wife turned the dead body making the face towards the sky and then he informed the police telephonically, upon which 10-12 police personnel came there. The police got the dead body photographed and the photographs are Ex.P2 to Ex.P17. The complainant further deposed that the police took the dead body to General Hospital and on next day, post-mortem was conducted. PW-2 Head Constable Raj Pal, is

a formal witness, who tendered into evidence his affidavit Ex.P19. PW-3

Dr.Adarsh Kumar, who was one of the member of the Board of Doctors who conducted post-mortem examination on the dead body of prosecutrix, deposed that following injuries were found:-

1. *1.5 x 1 cm reddish abrasion present over middle of forehead 6 cm above bridge of nose.*
2. *2 x 0.5 cm reddish abrasion present over left side of forehead 1 cm above outer aspect of left eye brow.*
3. *1 x 0.5 cm reddish abrasion present near outer angle of left eye.*
4. *1 x 1 cm cutaneous abrasion reddish present over left side of face 4 cm from left angle of mouth over left jaw bone.*
5. *1.5 x 1 cm cutaneous reddish abrasion present 1 cm below left angle of jaw over left side of neck.*
6. *1 x 0.5 cm cutaneous reddish abrasion present 2 cm outer to injury no.5 over left side of neck.*
7. *1 x 0.5 cm cutaneous reddish abrasion present vertically over left side of neck 4 cm below and 1 cm outer to injury no.6.*
8. *Multiple abrasions with contused areas in between present over right side of neck in an area 4 x 1 cm running obliquely from right angle of jaw downwards and outwards.*

In the opinion of the Board, the cause of death in this case was asphyxia as a result of throttling which was sufficient to cause death in the ordinary course of events. Vaginal and rectal swabs were preserved and sent for biological examination. PW-4 Surjit Singh, Lambardar deposed that he owned agricultural land in village Faidan. Naresh Kumar accused was serving with him as labour. Naresh Kumar came to him in fields and suffered extra judicial confession that on 29.01.2004 at about 4.00 p.m., he

girl and two boys at that place. Boys left after picking fire-wood leaving the girl behind. Accused further told him that finding the girl, he advanced sexually towards her on which that girl started raising hue and cry. To prevent her from making noise, he gagged her mouth but since the girl kept on crying even thereafter, he violently pressed her neck. The accused also confessed before him of having dragged that girl and he was just about to rape her but the eyes of the girl protruded out and she died there and then. This witness further deposed that accused confessed before him of having thrown the body of the girl in the nullah and returned to his house. The accused cried before him and prayed to save him. Surjit Singh deposed that he expressed his helplessness in saving him and asked him to accompany to the police. When he was taking the accused towards Police Station, Sector-31, Chandigarh, police party headed by SI Phool Chand met him in Sector-48, Chandigarh and he produced accused Naresh before the police and told them about the extra judicial confession suffered by the accused before him. The accused was formally arrested vide memo Ex.P25. His statement was recorded. PW-4 Surjit Singh further deposed that on the way towards Police Station, Raja and Pintu met them and they were boys who were with the deceased girl and picking up firewood on 29.01.2004 and they identified the accused as the person who was also picking up firewood at that time. In cross-examination PW-4 stated that he is Lambardar of the village for the last 18-20 years. PW-5 SI Satnam Singh mainly deposed regarding initial investigation in this case. PW-6 Constable Yash Paul mainly proved the scaled site plan Ex.P26. PW-7 SI Partap Singh, who was with the police party, deposed regarding the fact that Surjit Singh brought the accused present in the Court and told that accused had confessed his guilt before him

and handed over accused and got recorded his statement with him. He also deposed that accused was arrested. In the meantime, Pintu and Raja Ram identified the accused, who had come to them on 29.01.2004 when they were picking up fuel wood along with the prosecutrix (deceased). PW-8 Mohinder Singh mainly deposed regarding photographs Ex.P2 and Ex.P9 and proved negatives Ex.P2A to Ex.P2A/9 and also deposed regarding photographs Ex.P2A/10 to Ex.P2A/17 and proved negatives Ex.P10/A to Ex.P17/A. PW-9 Head Constable Jaspal Singh mainly brought the Daily Diary Register and proved DDR reports. PW-10 Dr.Sukh Raj deposed regarding medico-legal examination of the accused. PW-11 Inspector Ram Gopal, Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. PW-12 Raja Ram, aged about 9 years deposed that he knew prosecutrix (deceased) and Pintu. He used to go with them in forest near Air Force Station, Chandigarh, for picking up fuel wood. On one such day, he, prosecutrix and Pintu had picked up fuel wood. Accused present in the Court came there and asked him and Pintu to return with the fuel wood and himself stayed back at the same place with prosecutrix. He further deposed that he has seen the photographs and the girl lying in the photographs is prosecutrix above-said. This witness also deposed that on the following day, when he and Pintu were going from Sector 47 towards their house, they saw a dead body being carried to cremation ground. He went after the funeral procession and when dead body was laid on the pyre he saw the dead body to be that of prosecutrix above-said. This witness also deposed that he had not identified the accused before the police but it was so done by Pintu. PW-13 Pintu, aged about 13

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence. Accused further pleaded that he is innocent and has been falsely implicated. In defence, accused himself stepped into witness box as DW-1 and deposed that he used to do sweeping job in the houses. On 31.01.2004, the police picked him up from a house at about 9.00 p.m. He does not know Surjit Singh nor he ever met him. The police had enquired about this incident and when he claimed no connection with this incident, he was beaten up badly and electric shocks were also given to him. He further deposed that after beating him, he was given the allurement of being let off and he was made to append signatures on the blank papers. He was shown Surjit Singh but he did not know him. Accused also deposed that after wrongfully confining him in the police station for four days, he was produced in the Court having been falsely implicated in this case.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that extra judicial confession is a weak type of evidence. As, accused was not knowing PW-4 Surjit Singh, therefore, there was no question of making extra judicial confession before him. He next argued that accused never worked with Surjit Singh nor there is any cogent evidence regarding the same. He further argued that the fact that Surjit

Singh produced accused before the police, is also not corroborated from any

evidence as there is no signature or thumb impression of Surjit Singh on the arrest memo Ex.P25. He also argued that when the accused was produced, no independent person/witness was joined by the police party. Learned counsel for the appellant contended that PW-12 Raja Ram and PW-13 Pintu are minors, who have been tutored by the police and police has also told them to identify the accused in the Court, therefore, he argued that their statements cannot be relied upon. He further contended that no identification parade has been conducted in the present case. There are also discrepancies in the statements of minors as they have stated that on the following day, they saw the dead body, whereas occurrence took place on 29.01.2004 and post-mortem was conducted on 31.01.2004 and the accused was produced on 01.02.2004 before the police, as per prosecution version. Therefore, the statement that on following day, they saw the dead body being taken for cremation, is major discrepancy. Learned counsel for the appellant next argued that accused has appeared as defence witness and he has deposed regarding his false implication. He further argued that PW-4 has given the date as 11.02.2004 when he produced the accused before the police whereas, as per prosecution version, the accused was produced on 01.02.2004. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that there is nothing in the cross-examination of PW-4 Surjit Singh, which may make his statement unreliable. He was Lambardar of the village for the last 18-20 years and he has deposed that accused was working with him. Similarly,

deposed regarding prosecution version and nothing came out in the cross-examination of these minor witnesses, which may make their version unreliable. He further argued that mere fact that one of them has deposed that police told him to identify the accused in the Court, itself, will not amount to tutoring of the witness. The accused has no enmity either with Surjit Singh or with children. Learned State counsel also argued that why they will depose against him. The defence version is belated one. No complaint etc. has been filed by the accused at any time to higher officers/authority that he has been falsely implicated. He further contended that the discrepancy regarding the date i.e. 11.02.2004 instead of 01.02.2004, may be occurred due to typographical mistake. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the record, I find that neither PW-1 Pappu, complainant nor PW-4 Surjit Singh nor minors have enmity or motive to depose falsely against the accused. Secondly, PW-4 Surjit Singh, who was Lambardar of the village for the last 18-20 years, has deposed that accused was working with him as labourer and he has also deposed regarding extra judicial confession in detail. Only defence taken by the accused is that this witness has friendly relations with the police but nothing has been brought on record that he ever appeared as a witness in support of the prosecution version in any other case etc. nor there is any type of evidence to show that PW-4 has any close relations with any of the police official. Rather, PW-4 Surjit

Singh has denied this suggestion. Further, mere fact that in the chief-

examination, the date is written as 11.02.2004 instead of 01.02.2004, it can be a clerical mistake. The statement of the witness is to be read as a whole and one line is not be read in exclusion. I have gone through the cross-examination of PW-4. There is nothing in the cross-examination, which may make his statement unreliable. There is no material improvement or contradiction in the statement of PW-4 Surjit Singh. There is nothing on the record to disbelieve statement of Surjit Singh.

Next, I find that mere fact that signatures of Surjit Singh, on the arrest memo Ex.P25, were not obtained, will also not falsifies the statement of PW-4, especially, when, there is nothing in the cross-examination to doubt his statement. Moreover, when the accused was produced by Surjit Singh, Lambardar, there was no necessity to join independent witness at that time by the police. Therefore, the argument of learned counsel for the appellant that no independent witness was joined, has no merit. As regarding statements of PW-12 Raja Ram and PW-13 Pintu, I find that they are minor boys aged about 9 years and 13 years respectively. They have consistently deposed regarding prosecution version. Both these minor PWs have been cross-examined by the defence counsel but nothing came out from their cross-examinations, which may create any doubt in the prosecution version or which may make their version unreliable. There are no contradictions in their statements nor there are any improvement in their statements. These minor children have consistently deposed regarding prosecution version. There is nothing as to why their statements should not be relied upon. There is also nothing as to why these minors aged about 9 years and 13 years, have deposed falsely against the accused with whom they have no enmity etc. Mere fact that in cross-examination PW-12 Raja

Ram deposed that accused was shown to him by the police on 17.09.2005 and he was asked to identify him in the Court, will not be sufficient to disbelieve his statement, in view of the evidence on record. Otherwise also, there is nothing in the cross-examination favourable to the accused. Similar is the case, so far as, PW-13 Pintu is concerned. The discrepancy in the statement of PW-12 and PW-13 in chief-examination that on the following day they have seen the dead body of prosecutrix being taken towards the cremation ground, cannot be held as material discrepancy. Such type of discrepancy can occur in the statement, keeping in view the age of witness.

As regarding defence statement, I find that statement of the accused as DW-1 is not supported and corroborated by any evidence. He has not made any complaint to the higher authorities nor he contacted Gram Panchayat etc. nor he filed any complaint to the Court regarding his false implication. Otherwise also, oral statements of the PWs have been duly supported and corroborated by the medical evidence as well as investigation of this case. There is nothing on the record as to why PWs have deposed falsely against the accused. The statements of the PWs are consistent on material facts and there is no material discrepancy or material improvement in their statements. There is nothing on the record as to why their statements should not be relied upon.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction and order of sentence dated 25.04.2006 passed by learned Addl. Sessions Judge, Chandigarh, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is

dismissed.

Resultantly, I agree with the decision given by Justice Rajive
Bhalla.

December 11, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No