

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

CRA-D-1200-DB-2012

Date of decision:-14.11.2018

Manjit Singh @ Kala

....Appellant

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Ms.Raminder Pratap Kaur, Advocate
for the appellant.

Ms.Tanisha Peshawaria, DAG, Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 1.10.2012 passed by the Court of learned Sessions Judge, Sonipat vide which accused Manjit Singh alias Kala had been convicted for offences under Sections 376 and 302 IPC and order dated 4.10.2012 vide which he was sentenced as follows:

Under Section	Sentence Awarded
302 IPC	Imprisonment for life and to pay a fine of Rs.15,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one year.
376 IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for eight months.

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 facts of the case, as per prosecution version are that criminal machinery in this case was set into motion by complainant Shamsher Singh, who in his statement recorded with the police of Police Station Sadar, Gohana on 8.6.2010 contended that his maternal niece (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court in case titled **State of Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC)** and referred to as '*the victim*'), aged about 10 years, a student of 4th class had come to their house 4-5 days earlier during summer vacations; that on 7.6.2010 at about 4:00 p.m., the deceased-victim went to the temple in the village for playing with other children; that Sunil Kumar, a brother of the complainant and other inhabitants of the village were present there; that at about 5:00 p.m., the complainant returned home after performing his official duty; he also went to the temple and found that accused Manjit Singh alias Kala was playing with the children, which included son of Manjit Singh alias Kala aged about 2 ½ years as well as the deceased; that after some time, the complainant returned home while the children were still playing in the temple premises, though all other children had come back to their respective houses but it was not so with regard to the deceased; that the

complainant inquired from the children, who were playing with the deceased regarding her whereabouts but to no effect, then the complainant along with his brother Sunil, father Ramlal and other villagers searched for the victim at various places in the village but she could not be located; that they had gone to the house of accused Manjit Singh alias Kala also in that connection but he was not found to be present there; while searching for the deceased – victim, the complainant and other persons accompanying him went to the temple premises, where they found rubber slippers of the deceased near staircase of the temple; they inquired from Priest of the temple with regard to the deceased but he could not provide any information, then they went towards the *CHAUPAL*; that accused Manjit Singh alias Kala was seen coming out of a *KOTHRI* under the staircase of the *CHAUPAL* and running away after scaling over the wall; that the complainant and other persons peeped into the *KOTHRI* and observed that deceased was lying in the *KOTHRI* in an unconscious condition; they took the deceased from the *KOTHRI* and found that she had been raped and some bruises were there on her neck.

The deceased was shifted to CHC, Gohana, where the doctor declared her brought dead. In his statement, the complainant stated that they suspected that Manjit Singh alias Kala had committed rape upon the deceased and thereafter strangled her to death.

On the basis of this statement, formal FIR was registered. The investigation in the case commenced, during the course of which, the accused was arrested. He was interrogated and he suffered a disclosure statement demarcating the place of occurrence. The post-

mortem examination was got conducted on the dead body of the deceased. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Gohana.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Gohana, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offences under Sections 302 and 376 IPC are exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Gohana vide his order dated 19.8.2010 committed the case to the Court of learned Sessions Judge, Sonipat.

On receipt of case in the Court, observing that prima facie charge for offences under Sections 376 and 302 IPC was made out against the accused the Court directed that the accused be charge-sheeted accordingly. Charge was framed, to which, the accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as 15 witnesses i.e. PW1 Shamsher Singh, PW2 Dalbir, PW3 Satbir, PW4 EHC Rajesh Kumar, PW5 Dr.Randeep Kumar, PW6 HC Jasbir Singh, PW7 Constable Sonee Kumar, PW8 SI Raj Singh, PW9 Dr.I.S. Punia, PW10 Constable Pardeep Singh, PW11 Sunil, PW12 ASI Pawan Kumar, PW13 SI Mahender Singh, PW14 Dr.Adarsh Sharma and PW15 DSP Ramphal.

With that the prosecution evidence got concluded.

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 had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant – accused - convict, learned Deputy Advocate General for the State of Haryana besides going through the record and we find that there is no merit in the present appeal.

Admittedly, there is no eye-witness of the incident in the present case and it is based upon circumstantial evidence. The prosecution has been able to complete the chain of events clearly leading to the irresistible conclusion that it was accused Manjit Singh alias Kala, who had committed rape upon the deceased-victim and thereafter committed her murder by strangulating her.

The first and foremost incriminating circumstance against the accused is that the complainant and his brother Sunil Kumar had observed accused playing with children, which included infant son of the accused and the deceased, that means, the accused was in company of children including the deceased, when the deceased was last seen playing with the children by the complainant and his brother.

The second strong incriminating circumstance against the accused is that when the deceased did not return home in the evening and a search was launched for her by the complainant and his family

members, during the course of which, they had gone to house of the accused, however the accused was not found to be present there.

The third and most crucial incriminating circumstance is that the accused was observed to be seen coming out from a *KOTHRI* and then running away after scaling over a wall with the deceased lying in the *KOTHRI* in an unconscious condition having been ravished in a sexual assault. The very presence of the accused at the spot and his running away on seeing the complainant and others coming there clearly indicates his guilty conscience. If for a moment, it is taken that the accused had not done anything wrong then there was no occasion for him to run away from the spot in such a manner. The minor girl having been subjected to brutal sexual assault and then smothered to death with accused found nearby at the time of incident, clearly goes to show that it was the accused, who had committed the crime. Applying principle of *res gestae* in terms of Section 6 of the Evidence Act, the accused gets clearly connected with the crime.

The prosecution had brought sufficient evidence though circumstantial to establish that on 8.6.2010 in the area of village Saragthal, accused committed rape upon the deceased daughter of Tejbir, aged about 10 years and then committed her murder by intentionally causing her death.

The medical evidence corroborates the ocular evidence. 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, challan him falsely or to depose against him to secure his conviction. The other evidence also supported the prosecution

story. A minor innocent girl had been subjected to a brutal sexual assault and then murdered in a gruesome manner, Shamsher Singh – complainant having lost his maternal niece would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for rape and death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

No motive has been suggested or proved prompted by which the accused might have been involved in this case wrongly to secure his conviction.

The prosecution had successfully proved the charge against the accused beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein as well as in the order of sentence. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

14.11.2018
Brij

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No