

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

**CRA-D-510-DB of 2011(O&M)
Date of decision:-14.11.2018**

Ajit

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr.A.S. Gulati, Advocate
for the appellant.

Mr.Vivek Saini, DAG, Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 29.4.2011 passed by the Court of learned Sessions Judge, Sonipat vide which accused Ajit had been convicted for offences under Sections 364-A, 376(2)(f) and 302 IPC and order dated 5.5.2011 vide which he was sentenced as follows:

Under Section	Sentence Awarded
364-A IPC	Imprisonment for life and to pay a fine of Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for a period of ten months.
376(2)(f) IPC	Rigorous imprisonment for ten years and to pay a fine of

302 IPC	Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for ten months. Imprisonment for life and to pay a fine of Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for a period of ten months.
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The substantive sentences were ordered to run concurrently.

However, learned Sessions Judge, Sonipat acquitted co-accused Sumitra Devi whereas another co-accused Suraj Bhan had expired during the trial.

The accused-convict - Ajit, 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 on 15.6.2009, an information was received at Police Station City, Sonipat that dead body of a girl (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*') was lying on the back side of temple Baba Dham near the drain. A police party headed by Inspector Chhotu Ram (hereinafter referred to as the Investigating Officer) went there. The police party came across the complainant Tej Ram, who submitted a written application to Inspector Chhotu Ram contending therein that the victim

(since deceased) was his eldest daughter aged about 8 years; that on 14.6.2009 at about 8:00 p.m., the victim had come to his tea shop situated in front of Kali Mata Mandir on Kami Road, Sonipat, took some eatables and went home; that after about one hour, Anil son of Mahabir Singh came to his shop and gave him a slip saying that Amit son of Suraj Bhan had handed over that slip to him stating that only the complainant should read it; that when the complainant read the slip, he found that it was written therein that daughter of the complainant i.e. the victim was in custody of Amit and if the complainant required her in a safe condition, then a sum of Rs.50,000/- be sent to residence of Amit and in case the police was informed, the girl would not remain alive. In the application, the complainant had further contended that after reading the contents of the slip, he along with his wife and one Kapur went to the house of Suraj Bhan, where Ajit elder brother of Amit and his parents were present there; that they inquired about Amit but were informed that Amit was not at home as he had gone to meet his maternal uncle for the last 3-4 days, as such, the complainant, his wife and Kapur came back. When the complainant went to the roof of his house, he saw Amit (juvenile) having a stroll on the roof top of his house; accordingly the complainant immediately rushed to the house of Amit along with his wife and Kapur and caught hold of Amit, however, Amit did not provide any clue about the missing daughter of the complainant; that then the complainant contacted the police by making a telephonic call at No.100; the police came; the custody of Amit along with the paper slip handed over by Amit through Anil to the complainant was delivered to the police; thereafter, the complainant party again went to the house of

accused and found that Ajit along with his two sisters was not there, though parents of Ajit were available at home; the victim could not be located despite a massive search launched for that purpose; further on 15.6.2009, Sh.Bholar son of Neki Ram, an uncle of the complainant had gone towards the drain behind Baba Dham Mandir to answer the call of nature and he found dead body of the victim to be lying there; that Bholar accordingly informed Kapur, who was nearby having come there to ease himself, thereafter, Kapur informed the complainant and his brother Sanjay; on receipt of the information, the complainant, his wife, Kapur and Sanjay rushed to the spot and found the dead body of the victim lying near the drain; there were ligature marks around the neck of the victim as well as on her legs and other parts of the body. The complainant contacted the police telephonically by making call at No.100 at 7:30 a.m. The police arrived. The complainant suspected that his daughter had been done to death by accused Ajit and his parents, namely father Suraj Bhan and mother Sumitra in conspiracy with Amit and sought taking of action against them.

Inspector Chhotu Ram appended his endorsement below the written application submitted by the complainant and sent ruqa to the police station, on the basis of which formal FIR was registered. He summoned the FSL team to inspect the spot so as to get any possible clue about the culprit(s). Photographer was also called to the spot to take photographs of the site. The Investigating Officer took into possession a pair of *chappal* of victim after converting it into a sealed parcel. He conducted inquest proceedings with regard to unnatural death of the deceased and sent the dead body for getting post-mortem examination

conducted thereon. He recorded statements of witnesses.

On 15.6.2009, accused Suraj Bhan, Sumitra and Amit were produced before Inspector Chhotu Ram by PW Rakesh before whom they had made extra judicial confession. Such accused were arrested in this case. Accused Ajit was arrested on 19.6.2009. Accused Amit happened to be a juvenile, as such he was forwarded to Juvenile Justice Board, Sonipat to face necessary proceedings. After completion of investigation and other formalities, challan against accused Suraj Bhan, Sumitra and Ajit was prepared and filed in the Court of learned Chief Judicial Magistrate, Sonipat.

On presentation of challan in the Court of learned Chief Judicial Magistrate, Sonipat, 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 364-A/302/376 IPC are exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Sonipat vide his order dated 18.9.2009 committed the case to the Court of learned Sessions Judge, Sonipat.

On receipt of case in the Court, learned Sessions Judge, Sonipat, observing that prima facie charge for offences under Sections 364-A and 302 read with Section 34 IPC was made out against accused Suraj Bhan, Sumitra and Ajit and in addition to that charge for the offence under Section 376(2)(f) IPC was disclosed against accused Ajit 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 pendency of the case, accused Suraj Bhan had

expired and proceedings against him stood abated vide order dated 20.7.2010.

During the course of its evidence, the prosecution examined as many as 18 witnesses i.e. PW1 Tej Ram (complainant), PW2 Sanjay, PW3 Dr.Ginni Lamba, PW4 Dr.J.K. Tyagi, PW5 ASI Narender Kumar, PW6 Rajesh Kumar, Patwari, PW7 Constable Sudhir Kumar, PW8 EASI Ramesh Kumar, PW9 Lady SI Raj Rani, PW10 Constable Rajpal, PW11 Constable Rajbir Singh, PW12 Bhola alias Bholar, PW13 Rakesh Narwal, PW14 Kapur Singh, PW15 Constable Purshotam, PW16 Inspector Chhotu Ram, PW17 ASI Ramesh Chander and PW18 Anil Saini.

With that the prosecution evidence got concluded.

Statements of accused Ajit and Sumitra were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

In defence evidence, the accused examined Dr.Pandu Guguloth, Assistant Director (DNA) FSL, Haryana, Madhuban as DW1.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused Ajit as mentioned above, which left him aggrieved and he has filed the present appeal, whereas co-accused Sumitra had been acquitted of the charge framed against her.

We have heard learned counsel for the appellant – accused
- convict Ajit, learned Deputy Advocate General for the State of

Haryana besides going through the record and we are of the firm view that the impugned judgment of conviction and order of sentence are not sustainable and are liable to be set aside.

The present case is based upon circumstantial evidence. In such an eventuality the chain of events must be complete and if any link in the chain is missing, then conviction cannot be based. Furthermore, in such type of cases, a strong motive ought to be there. In the present case many vital links in the chain are missing and evidence brought on file by the prosecution does not result in proving its charge against the accused beyond a shadow of reasonable doubt.

As regards testimony of PW1 Tej Ram, admittedly, he had not seen the accused in the company of the deceased before she went missing or any time thereafter. He is not an eye witness of the incident. His testimony is mainly to the effect that Anil had given him a slip said to have been sent by Amit to the effect that daughter of the complainant, i.e. the victim was in his possession and in case he wanted her back, then a sum of Rs.50,000/- be sent at their residence. However, that slip has not been proved in evidence during the trial. Though as per the prosecution story and as mentioned in the judgment of the trial Court custody of Amit was handed over by the complainant to the police and the slip in question was also given to the police by the complainant but then that slip is not shown to have been made part of the challan. It has not been proved in evidence during the trial. Ideally the slip in question should have been sent to FSL along with admitted handwriting of Amit so as to find out as to whether the writing on the slip was in hand of Amit and if the query was answered in affirmative that would have

proved a very strong piece of evidence against Amit. But it was not done which gives a big jolt to the prosecution story. Tej Ram appearing as PW1 during the trial did tried to make improvements in his statement stating that he had seen Amit sitting in a rickshaw with his daughter and chatting with her but he was duly confronted with the written application submitted by him to the police Ex.PA wherein this fact was not found to be recorded. Therefore, this being a material improvement cannot be taken into consideration.

Similarly, testimony of PW2 Sanjay, a brother of the complainant is not much incriminating against the accused.

PW3 Dr.Ginni Lamba had provided the medical evidence having performed post mortem examination on the dead body of the deceased. Though injuries were found on the dead body and she was opined to have been subjected to a sexual assault but then the prosecution has failed to connect accused Amit with the said crime.

From the testimony of PW4 Dr.J.K. Tyagi, who had medico legally examined accused Ajit, it can at best be inferred that he was capable of performing sexual intercourse.

PW5 ASI Narender Kumar is a formal witness, who had recorded the FIR in this case and sent special report to the higher authorities through Constable Purshotam.

PW6 Rajesh Kumar, Patwari had just prepared a scaled site-plan of the spot.

PW7 Constable Sudhir Kumar had taken photographs of the dead body.

PW8 EASI Ramesh Kumar happened to be a formal

witness, who had tendered in evidence his affidavit Ex.PG.

The testimony of PW9 L/SI Raj Rani is also not much incriminating against the accused Ajit since she deposed about accused Suraj Bhan and Sumitra having suffered disclosure statements regarding the incident but those statements are clearly hit by Section 25 of the Evidence Act being statements made to police officer by accused in custody regarding involvement in the incident and cannot be relied upon, however, Sumitra has since been acquitted by the trial Court whereas Suraj Bhan had expired during the trial. The deposition of this witness does not help the prosecution in strengthening its case against the appellant/accused.

PW10 Constable Rajpal happened to be a formal witness, who had tendered in evidence his affidavit Ex.PJ.

Similarly PW11 Constable Rajbir Singh is also a formal witness.

The testimony of PW12 Bhola alias Bholar also does not connect the accused with the crime. He claimed to have seen the dead body of deceased behind Baba Dham Mandir near the drain when he had gone there to answer the call of nature and then informing the family members of the deceased. Though he stated that Tej Ram had told him that accused Amit, Ajit, Suraj Bhan and Sumitra had demanded Rs.50,000/- as ransom for releasing his daughter kidnapped by them but then it is nothing but hearsay evidence which cannot be relied upon.

PW13 Rakesh Narwal denied that on 15.6.2009 Tara Chand along with his niece Sumitra and Suraj Bhan husband of Sumitra had come to him and stated that on 14.6.2009, they had abducted daughter of

their neighbor out of greed and brought her to their home or that a message was conveyed to Tej Ram that in case he wanted his daughter alive, they should pay a ransom of Rs.50,000/- and that after some time, there was a commotion and they felt perplexed and sent their sons Amit and Ajit in order to commit murder of the girl and that their sons had thrown dead body of the girl after committing murder behind Baba Dham Temple near drain. The testimony of this witness does not help the prosecution in strengthening its case at all.

Statement of PW14 Kapur Singh, a cousin brother of complainant Tej Ram also does not provide legally admissible evidence to connect the accused with crime.

PW15 Constable Purshottam is a formal witness and nature of his testimony is more or less corroborative.

PW16 Chhotu Ram, Retired Inspector had carried out investigation and his deposition is mainly of supportive in nature.

PW17 ASI Ramesh Chander was part of the police team headed by Inspector Chhotu Ram, which had carried out investigation in this case. Again his statement is of corroborative nature only.

Coming to the testimony of PW18 Anil Saini aged about 12 years whom the trial Court found competent to depose on oath and capable of giving rational answers. He stated that on 14.6.2009, Amit brother of accused Ajit handed over a slip to him for giving it to Tej Ram and he accordingly gave it to Tej Ram. He stated that he does not know as to what was written in the slip and the dead body of the victim was found a day after he handed over the slip. This aspect has already been discussed in the earlier part of the judgment. In absence of the slip

being proved in evidence during the trial, no inference can be drawn as to what was written thereon and by whom.

Furthermore no cogent and convincing motive on the part of the accused to commit the crime is established on the record.

The prosecution had been unable to prove guilt of the appellant/accused to the hilt by bringing enough cogent, convincing and reliable evidence on file. But the trial Court by misappraisal of evidence and misinterpretation of law wrongly came to the conclusion that charge framed against the appellant/accused Ajit stood proved.

That judgment of conviction and order of sentence cannot stand judicial scrutiny and are hereby set aside by way of acceptance of the appeal. The appellant/accused Ajit is acquitted of the charges framed against him. He be released forthwith, if not required in any other case.

14.11.2018
Brij

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

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