

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

CRA-D No. 1246-DB of 2015 (O&M)

Reserved on : 7.12.2018

Date of Decision : 19.12.2018

Pawan Kumar and another

.... Appellants

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. N. S. Shekhawat, Advocate, for the appellants.
Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. Though the application filed by appellant no.1- Pawan Kumar was listed for suspension of sentence but with the consent of learned counsel for the parties, the main appeal itself was heard on merits.

2. The present appeal is instituted against the judgment dated 6.4.2015 and order dated 13.4.2015, rendered by Additional Sessions Judge, Rewari, in Sessions Case No. 25RT of 2013/ 2014, vide which the appellants Pawan Kumar and Geeta Devi, were charged with and tried for the offence punishable under Sections 306, 376, 34 IPC and Sections 4 and 6 of the POCSO Act. They were convicted and sentenced under Section 306/34 IPC to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹ 20,000/- each and in default of payment of fine, to

further undergo imprisonment for three month. Accused Pawan Kumar was also convicted and sentenced under Section 376 IPC to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹ 10,000/- and in default of payment of fine, to further undergo imprisonment for three months.

3. The case of the prosecution in a nutshell is that complainant-Jaswant Singh (grand-father of the deceased) filed a complaint to the SHO, Police Station, Dharuhera to the effect that on 27.5.2013 at about 7.23 P.M., he received a telephonic call from the mother of the deceased (name withheld) that the victim had committed suicide. Thereafter, he reached the house. He saw that the victim was lying on the cot. This incident was the outcome of illicit relations between the mother of the deceased and Pawan Kumar @ Banti. Name of deceased's mother is Geeta Devi. FIR, Ex.PV, was registered. Post mortem examination was conducted. Suicide note, Ex.PP, was also recovered from the spot. It was sent to FSL, Madhuban for comparison with the handwriting of the deceased. Photographs of the spot were also taken. Investigation was completed and challan was put up after completion of all the codal formalities.

4. To prove its case, the prosecution examined 18 witnesses. The statements of the accused were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The accused were convicted and sentenced, as noticed above. Hence, the present appeal.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and

order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW1 Jaswant Singh has testified that he received a phone call from Geeta Devi wife of Satish Kumar on 27.5.2013 at about 7.23 A.M. that his grand-daughter had committed suicide by hanging. He informed the police. He reached the spot along with the police and saw that dead-body of victim was lying on the cot. There was dispute between Satish Kumar and Geeta Devi. Satish was residing with him. The cause of dispute between Satish Kumar and Geeta Devi was that Pawan Kumar was residing with Geeta Devi. He had developed illicit relation with Geeta Devi. On 22.4.2011, Geeta Devi had given in writing that in future she will not indulge in these activities. However, Geeta Devi continued living with Pawan Kumar. She did not mend her ways. The deceased used to live with Geeta Devi. On 20.5.2013, the victim had also told him about the rape. On 25.5.2013, the victim had made a telephonic call to him and asked to come to the residence. He could not go. On 27.5.2013, he received information about suicide committed by the victim. In his cross-examination, he deposed that he served as a teacher. The distance between the Police Station, Dharuhera and house of Geeta Devi is about two kilometers. He further deposed that on 27.5.2013, Pawan alias Banti was seen at the house of Geeta Devi.

8. PW2 Satish Kumar is the father of the deceased. He deposed that his daughter was student of Government Girls Senior Secondary School, Dharuhera. Her date of birth was 2.12.1996. His wife had developed illicit relations with Pawan Kumar. His relation with Geeta Devi were

strained. He started living with his father. Accused Pawan Kumar used to live with Geeta Devi. He was present in his house when his brother Sunil Kumar told him that his daughter had committed suicide. He reached the spot. He deposed that the victim had come to the house of his parents on 20.5.2013 and told that she was given beatings by Geeta Devi and Pawan Kumar. He had started living separately from his father since December, 2008 to March, 2010.

9. PW3 Sunil Kumar deposed that Geeta Devi had started living with Pawan Kumar. On 22.4.2011, Geeta Devi had undertaken to mend her ways. He had seen Pawan Kumar coming out of the house of Geeta Devi on 27.5.2013 at about 4.00/5.00 P.M. The victim had committed suicide after being raped by Pawan Kumar.

10. PW6 Sakar Lata, Junior Lecturer, Government Girls Senior Secondary School, Dharuhera, deposed that she was working as officiating Principal. The police had moved an application seeking date of birth of the deceased. She had given date of birth of the deceased as 2.12.1996 vide endorsement, Ex.PE.

11. PW7 ASI Jitender Kumar deposed that Pawan Kumar was interrogated in his presence by the Investigating officer. He made disclosure statement, Ex.PG. According to him, the Investigating officer had also collected one answer-sheet, Ex.P3, of the victim of her 9th class examination.

12. PW8 HC Ram Chander has deposed that he was posted as MM at Police Station, Dharuhera on 27.5.2013. On that day SI Harpal had deposited one *chunni*, one drum, one knife and one suicide note in the malkhana.

13. PW9 EHC Dharampal has prepared the site plan.

14. PW11 LHC Sobha Rani deposed that two *chunnis* (veils) tied with the girder of the roof and one piece of *chunni* lying near the body of the deceased were taken into possession. She identified the same in the Court.

15. PW12 Dr. Pankaj Yadav has medically examined accused Pawan Kumar. He proved MLR report, Ex.PM. He deposed that there was nothing suggestive that Pawan Kumar was incapable of doing sexual intercourse.

16. PW14 Dr. Reetu Yadav has conducted the post mortem examination on the body of the victim along with Dr. Pawan and Dr. Jai Parkash. She noticed the following injuries on her body:-

“Eyes congested conductive haemorrhage present.

Tongue pale, tongue bite, oral mucosa and lips cyanosed.

Bruise over lower lip at centre. Two bruises of 2x1 cms over right shoulder, bite marks over left side of neck, bite marks over right side 4 cm below nipple 1.5 x 1 cm in size.

PMS over dependent areas, RM present (12 to 24 hours).

Local examination :- Vagina admits two fingers loosely.

Bruise present over labia majora and minora.

Hymen ruptured at 7 O' Clock position and 9 O' Clock position.

(Swabs with blood stained vaginal discharge made and two slides were prepared. All sealed and sent for examination).

UPT negative.

All abdominal organs congested as mentioned at page no.4 of PMR.

Uterus healthy and normal in size.

Opinion :-

In our opinion cause of death in this case is asphyxia due to hanging which is ante mortem in nature and sufficient to cause death in ordinary course of life. However, vaginal and cervical smear/ swab has been sent to FSL, Madhuban for presence of semen, if any, along with deceased's underwear as findings were suggestive of sexual assault.

Probable time between injury and death is less than 10 minutes.

Probable duration of time between death and PME is within 24 hours.”

17. As per the opinion of the doctors, the cause of death was asphyxia due to hanging, which was ante-mortem in nature and sufficient to cause death in ordinary course of life. The time lapsed between injury and death was less than 10 minutes. The time lapsed between the death and post-mortem examination was within 24 hours. PW14 has also referred to FSL report, Ex.PX.

18. PW15 Sub-Inspector Sukhbir Singh has prepared report under Section 173 Cr.P.C. In his cross-examination he stated that he did not know that the victim had written suicide note mentioning no one was responsible for her death.

19. PW16 SI Harpal Singh was the Investigating officer. He received post-mortem examination report. He had obtained answer-sheet of the victim. He arrested accused Pawan Kumar. He has also arrested accused Geeta Devi on 2.6.2013.

20. What can be gathered from the statements discussed hereinabove is that the victim was born on 2.12.1996. She was living with

her mother Geeta Devi. Her mother had illicit relations with accused Pawan Kumar. The victim's father was living with his parents. The case of the prosecution precisely is that Pawan Kumar had raped the victim and due to this reason, she committed suicide.

21. According to post-mortem examination report, the cause of death was asphyxia due to hanging, which was ante-mortem in nature and sufficient to cause death in ordinary course of life. The probable time between injury and death was less than 10 minutes. The possibility of sexual assault could not be ruled out.

22. PW1 Jaswant Singh is the grand-father of the victim. PW2 Satish Kumar is father of the victim and PW3 Sunil Kumar is the son of the complainant. He had seen Pawan Kumar on 27.5.2013 coming out of the house of Geeta Devi i.e. on the day of occurrence. Pawan Kumar had also made disclosure statement. The statement made by PW1 Jaswant Singh is duly corroborated by medical evidence including PMR, Ex.PO, and FSL report, Ex.PX.

23. The handwriting on the suicide note was sent to Forensic Science Laboratory, Madhuban, Karnal. The report is Ex.PZ. It has come in the report that it was not possible to express any opinion on questioned signatures marked Q2 in the absence of standard signatures of the person concerned. It was also not possible to express any opinion on questioned writings marked Q3 as the supplied admitted English writings of the person concerned were not sufficient. The opinion was that the person who wrote red enclosed admitted writings stamped and marked A1 to A5 also wrote the red enclosed questioned writings similarly stamped and marked Q1. The suicide note has no date. The same was found near the dead-body. The

prosecution has duly proved that the victim was raped by Pawan Kumar and thereafter she committed suicide. The numerous injuries on the body of victim have not been explained by the appellants.

23. As far as not referring the matter to the police by the grand-father and father of the deceased is concerned, it is not fatal to the prosecution case because the Indian society set up is that such like matters are always tried to be hushed up to save the honour of the family. The victim was minor at the time when the offence was committed. Merely that semen was not detected on the clothes of the deceased it cannot be said that the rape was not committed. Post mortem report and FSL report, Ex.PX, duly support the case of the prosecution.

24. The loose translation of the suicide note, Ex.PP, reads as under:-

“I am happily committing suicide at my own. I am tying rope myself in my neck. After my death they should not be sent to Jail. Neither Grand-father, Father and Uncle (*Bade Papa*), grand-mother, mother, Aunti (*Badi Mummy*) of Sector 6 may not be arrested.

Nor Buntty Uncle, as they have not done anything wrong to me. None should be arrested.”

25. It cannot be believed by any stretch of imagination that any person will commit suicide happily. There is reference in the suicide note that action be not taken against grand-father, father and mother, however, the name of Pawan Kumar @ Buntty (chacha) also finds mentioned in the suicide note. Accused Geeta Devi has also not explained the circumstances under which her daughter has committed suicide as the victim was residing with her.

26. In view of our aforesaid discussion, there is no merit in the present appeal. Accordingly, the appeal is dismissed. However, the sentence imposed upon appellant Pawan Kumar shall run concurrently. The sentence awarded to appellant Geeta Devi was suspended vide order dated 21.11.2017 during the pendency of the present appeal. Said bail order is revoked. She is directed to surrender before the trial Court to undergo her remaining sentence.

(Rajiv Sharma)
Judge

19.12.2018
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No