

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

CRA-D No. 614-DB of 2003 (O&M)

Reserved on : 4.7.2019

Date of decision : 5.7.2019

Madan Lal Appellant
versus
State of Punjab ... Respondent

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

Present Mr. Vinod Ghai, Senior Advocate with
Mr. Amrit S. Kang, Advocate, for the appellant.
Mr. Aayush Sarna, Assistant Advocate General, Punjab.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 10.6.2002 and order dated 13.6.2002, rendered by learned Additional Sessions Judge, Barnala, in Sessions Case No. 41 of 13.7.1999, by appellant Madan Lal. He was charged with and tried for the offence under Sections 376 and 302 IPC. He was convicted and sentenced under Section 376 IPC to undergo rigorous imprisonment for a period of ten years and to pay fine of ₹ 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. He was also convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Banarsi Dass resident of Gandhi Basti, Tapa had lodged the complaint to the effect that on 31.3.1999, he along with his wife had gone to village Dhillwan for picking up potatoes. At about 8.00 P.M., they came back to their house at Tapa and saw that their elder daughter (name withheld), aged about 8 years,

was missing. Search for the victim was made during night. She was not traceable. On 1.4.1999, when Banarsi Dass, his brother Puran Chand and other persons from the locality were searching the victim in the fields of Shakri Dass Pandit, on the back side of the factory of Shivji Ram in the area of Tapa, her dead-body was found in the wheat crop field. The statement of Banarsi Dass was recorded. FIR was also registered. SI Gurbans Singh along with other police officials went to the spot. The dead-body of the daughter of Banarasi Das was lying there. The spot was inspected. Inquest report was prepared. The dead-body was sent for post-mortem examination. Investigation was initiated and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The accused was convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant 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 trial Court.

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

6. PW1 Dr. Ashok Kumar Bansal conducted the post-mortem examination. He had noticed the following injuries on the dead-body of the victim:-

“1. Multiple bruises were present on interior side of neck varying in size from 0.1 cm to 0.3 cm bluish

black in colour in an area of 6 cms x 5 cms. Multiple bruises were also present on right side of neck varying in size from 0.1 cm to 0.3 cm in an area of 3 cm x 3 cm. There were extravasation of blood in the subcutaneous tissue under the bruises. Hyoid bone was fractured on right side.

2. A linear abrasion 3 cm in length was present in middle of right cheek, 3 cms from angle of mouth and was placed obliquely 5 cms from right ear lobule.
3. An abrasion 1.5 cm x 0.3 cm was present on outer side of right eye, 1.5 cm from outer canthus of right eye.
4. Multiple abrasions present on left side of bridge of nose, varying in size from 0.2 cm to 1.2 cm in an area of 1.5 cm by 3 cm.”

PW1 Dr. Ashok Kumar Bansal also noticed bleeding present at the vaginal introitus. There was irregular tear at the vaginal introitus extending to the posterior vaginal wall. There was tear in the hymen which was irregular. Three vaginal swabs were lifted. The cause of death in this case was due to asphyxia due to strangulation, which was sufficient to cause death in ordinary course of nature. The probable time that elapsed between injuries and death was within few minutes and between death and post-mortem was more than six hours and less than 36 hours. The deceased was subjected to rape.

7. PW2 Dr. Asha Gupta was also the member of the Board, which conducted the post-mortem examination along with Dr. A. K. Bansal. She gave her opinion after seeing the Chemical Examiner's report. According to her, the deceased was subjected to rape.

8. PW3 Banarsi Dass is the father of the victim. He deposed that on 31.3.1999 he had gone to bazar and his wife had gone to Dhillwan. At about 8.30 P.M., when he came back, his daughter (victim) was missing. Other children were present in the house. They searched for her. They went during the night for her search. The dead-body of her daughter was lying with injury marks. He reported the matter to the police. He made statement, Ex.PE. The clothes of the deceased were taken into possession.

9. PW4 Dr. Sanjay Sethi had examined the appellant. According to him, he had noticed the injury on the abdomen of the appellant as per MLR dated 4.4.1999. The accused was capable of performing sexual intercourse.

10. PW5 Munshi Ram had seen the accused with the victim on 31.3.1999 at about 7.00 P.M. The appellant was holding the arm of the deceased. He asked the accused as to where he was taking the victim. He told that he was taking her for getting sweets (burfi) for her. He came back to the house.

11. PW6 Mangat Rai has deposed that the appellant had made extra-judicial confession before him that on 31.3.1999 he took the victim to Roshan Oil Mill, Tapa, on the pretext of getting sweets. He further confessed that he committed rape on her and thereafter strangled her with towel.

12. PW9 ASI Gurcharan Singh went to the spot. One piece of cloth being held in hand by the victim was removed and converted into a parcel. It was sealed with seal 'GS' of Gurbans Singh. It was taken into possession. The hair held in the left hand by the victim were removed and converted into a parcel. It was sealed with seal 'GS' of SI Gurbans Singh. The salvar

lifted from the spot was converted into a parcel. The buttons of the tail of the victim were lifted from the spot and were taken into possession. The same were sent for examination. The dead-body was sent for post-mortem examination. The accused was arrested.

13. PW11 Makhan Lal has identified the dead-body of the victim. It was lying in the fields. He took photographs of the dead-body.

14. PW12 HC Balbir Singh led his evidence by filing his affidavit, Ex.PZ. It is stated in the affidavit that on 1.4.1999 he was posted as MHC in Police Station, Barnala and the charge of Malkhana was with him. On 1.4.1999, the case property of the case, one sealed parcel of plastic box containing piece of cloth, one sealed parcel of plastic box containing hair, one sealed parcel of salwar, one sealed parcel of pigtail button, three sealed bottles of swab were deposited with him. On 4.4.1999 one sealed parcel of underwear with seal GS, one parcel of shirt sealed with seal GS along with sample seal were deposited with him. On 2.4.1999, the case property was taken out from the Malkhana and handed over to Constable Kuldeep Singh vide Road No. 60 dated 2.4.1999 for depositing with the Chemical Examiner, Patiala. The office of the Chemical Examiner, Patiala, raised certain objections. According to the office of Chemical Examiner, Patiala, the same were to be deposited with Forensic Science Laboratory, Chandigarh. On 22.4.1999, the case property i.e. three small bottles of swab sealed with seal AK, were sent to Chemical Examiner, Patiala, including parcel of underwear. The samples were sent through Constable Kuldeep Singh for depositing with Forensic Science Laboratory, Chandigarh. Certain objections were raised by the Chemical Examiner, Patiala. However, fact of the matter is that ultimately the case property was sent to Forensic Science

Laboratory, Chandigarh as well as Chemical Examiner, Patiala on 30.4.1999 and 17.5.1999, respectively.

15. PW13 SI Gurbans Singh deposed that he went to the spot. Dead-body was identified by Nathu Ram and Makhan Lal. He noticed a bluish mark on the throat of the dead-body, a wound behind the right ear, a blue mark on the right cheek and a wound on the right leg of the victim. He also noticed that the victim was holding a piece of cloth in the right hand and also some hair in the left hand. These were taken into possession. Salwar was also taken into possession. One button of *parandi* from the spot was also taken into possession. All these items were converted into parcels and sent for chemical examination. Underwear and towel of the accused were also taken into possession and sent for chemical examination.

16. Forensic Science Laboratory report is Ex.PCC. According to the result of examination, the hair contained in parcel 'A' show similar characters with the hair contained in parcel 'B'.

17. According to Forensic Science Laboratory report, Ex.PDD, the torn piece of lined cloth, a pocket A-1 contained in parcel 'A' and stated to have been recovered from the scene of crime is part parcel of the shirt B-1 contained in parcel 'B' and stated to have been recovered from the appellant.

18. Parcel 'B' containing underwear of the appellant was stained with human semen and blood and the result regarding its blood grouping was inconclusive as per Forensic Science Laboratory report, Ex.PEE.

19. As per Chemical Examiner report, Ex.PA, semen was found on the three sealed parcels containing exhibit-I (swab from vaginal introitus), exhibit-II (swab from the posterior vagina and fornices) and exhibit-III (swab around urethral orifice).

20. The victim, aged about 8 years, was allured by the appellant as per the statement of PW5 Munshi Ram. He had seen the victim in the company of the appellant. The appellant had also made confession before PW6 Mangat Rai.

21. According to the post-mortem report, the victim was subjected to rape and thereafter strangulated. There was no occasion for the prosecution to falsely implicate the appellant. FSL reports clearly establish that human semen was found on the underwear of the appellant. The pocket recovered from the spot also matched with the shirt of the appellant. Hair removed from the spot also matched with the hair of the appellant.

22. PW3 Banarsi Dass has testified that his daughter was missing. They searched for her during night. Dead-body of the victim was found lying with injury marks.

23. In view of the aforesaid discussed evidence, the prosecution has proved the case against the appellant beyond reasonable doubt. Accordingly, there is no merit in the appeal. The same is dismissed.

24. The sentence of the appellant was suspended vide order dated 14.9.2007. His bail bonds are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate to undergo remaining part of his sentence.

(Rajiv Sharma)
Judge

5.7.2019
vs

(Harinder Singh Sidhu)
Judge

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