

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

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**CRM-21775-2019 in/and
CRA-D-1121-DB-2013 (O&M)
Date of Decision : 30.09.2019**

Shera Singh

... Appellant

Versus

Stte of Haryana

....Respondent

**CORAM:HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. L.S.Sekhon, Advocate for the appellant.

Ms. Palika Monga, DAG, Haryana.

AJAY TEWARI, J.(ORAL)

CRM-21775-2019

1. This is an application for fixing an actual date of hearing. Notice of the application was issued on 25.07.2019. Both the counsel have agreed that main case be taken up for hearing today. Thus, with the consent of the counsel for the parties, the case is taken up for final hearing today itself.

2. CRM stands disposed of.

CRA-D-1121-DB-2013

3. This appeal has been filed against the judgment of conviction dated 14.09.2012 and order of sentence dated 17.09.2012 passed by

Sessions Judge, Sirsa in case FIR No. 271 dated 25.12.2010, under Sections 302, 307, 201 IPC, registered at Police Station Sadar Dabwali whereby the appellant was convicted for the offences under Sections 302 and 307 IPC and sentenced as under:-

(i) To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for three months for the offence under Section 302 IPC.

(ii) To undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 307 IPC.

4. Essential facts are that a child was recovered from the canal by the guards. Ultimately it transpired that mother and sister of the child, who was recovered, had been pushed into the canal by the appellant. The child, namely, Sawanpreet was brought out alive but the other two could not be saved. It deserves mention here that body of the other child (younger sister) was not recovered at all. The appellant was nominated, tried and having been convicted and sentenced had filed the present appeal.

5. In order to prove its case, the prosecution had examined as many as 12 witnesses. In evidence, Gurdev Singh (PW5) father of the deceased women testified that his daughter along with her three daughters had been staying with him and he had sent the appellant to drop his daughter and two younger children back to her in-laws' house. The appellant accompanied the women and the two children to his daughter's-in-laws' house; stayed there for two days and the survivor child stated that the appellant had

accompanied her mother and her sister to her father's house; stayed there for two days and then her mother took her and her younger sister and left her husband's house with the appellant. After two days, the appellant took them to a canal bank and there first he pushed the mother, then he threw the younger child and then he threw her in to the canal but she was saved. It was primarily on the basis of the testimony of this child witness that the appellant was convicted and therefore it may not be necessary to discuss the other pieces of evidence.

6. The survivor (child), Shavanprit Kaur (PW-6) had answered the court questions and stated that she was giving her statement for the first time in Court. It was morning time but it was foggy. There was none present when they all three were thrown into the canal. Her younger sister had been eaten by the fishes. She was saved by two Beldars. After some time, police came there and stayed there for one hour. Beldars had given her warmth and something to eat. Then she left with Bhajan Kaur. She along with her mother and younger sister had been living with her father Joga Singh at village Sulhani (Punjab). Her mother used to perform domestic work. There were 3-4 other families living in the farm by the side of their house. Her mother had not told any of the inhabitants of farm that she had been forcibly taken from her husband's house. Her mother had no tiff with Kala-accused at the farm house before they came to BMB canal. They had come on foot. Her bibi Bhajan Kaur had served her eggs. She did not know where the dead body of her mother had been taken. She floated till the killa of the head. After a few days, she said to her maternal grand-mother that she would stay with Bhajan Kaur. Joga Singh met her at the house of her maternal grand-mother. She had also been examined at the house of Bhajan

Kaur on the same day. She had made her statement in three lines. She stated before the police that her father Shera had thrown her, her mother and younger sister into the canal. She had stated that they had been taken out from canal by the Canal Guards (Beldars) and was given first aid and dropped at the house of Bhajan Kaur.

7. PW10, Joga Singh stated that he was married with Kuldeep Kaur about 10/11 years back. Out of this wedlock, three daughters, namely, Sabanpreet Kaur, Akku @ Veerpal and Billo aged about 5/6 months were born. Accused Kala @ Shera had taken his wife and his daughter Sabanpreet Kaur and Billo from maternal house of his wife and the accused also stayed with them for about three days. His wife Kuldeep Kaur stated that Shera @ Kala was her mother's sister's son. After staying for about three days at his house, the accused eloped with his wife and two daughters. His one daughter had remained with her maternal grand mother. He searched for them, but could not find any clue. After 5-6 months, he along with his employer had gone to village Maujgarh and he had identified the photographs of his wife.

8. Learned counsel for the appellant has attacked the testimony of the child because in her first statement made before the police, she did not mention any details which she had mentioned for the first time in the Court. Hence, it is argued that the statement made before the police after the incident will have precedence over the later statement made in the Court. It is, therefore, stated that the child had, in her testimony before the Court, stated a tutored version.

9. We have gone through her testimony. She is a young child, aged about 6 to 8 years. She had been subjected to a lengthy cross-examination

(almost as tough the cross-examination of an adult witness). But she had stuck to her essential story that it was the appellant who threw all three of them into the canal. The arguments of the learned counsel for the appellant that she could have been tutored may have been accepted, had it not been for the very searching cross-examination that she was subjected to. The argument that there was no reason for the appellant to have committed this dastardly act just two days after he allegedly eloped with the deceased woman or that the husband of the deceased woman made no attempt to trace her or even to inform his in-laws that his wife had eloped, cannot overturn the solid testimony of the child.

10. The Supreme Court in State of Rajasthan Vs. Chandgi Ram and others, (2014)14 SCC 596, while dealing with the child testimony has held that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him or from giving rational answers by reason of tender age, extreme old age, disease whether body or mind or any other cause of the same kind. While relying upon its previous judgment in State of Madhya Pradesh Vs. Ramesh and another, (2011)4 SCC 786, it held as under:-

*“13. In this context, it is relevant to rely on a decision of this Court reported in **State of Madhya Pradesh v. Ramesh and another**, 2011(2) R.C.R.(Criminal) 582 : 2011(2) Recent Apex Judgments (R.A.J.) 397 : (2011)4 SCC 786 wherein it laid down as to how the evidence of a child witness should be assessed. Paragraphs 7, 11 and 14 which are relevant for our purpose, are as under:*

*"7. In **Rameshwar v. State of Rajasthan** this Court examined the provisions of Section 5 of the Oaths Act, 1873 and Section [118](#) of the Evidence*

Act, 1872 and held that (AIR p. 55, para 7) every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the court considers otherwise. The Court further held as under: (AIR p. 56, para 11)

"11. ... it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate."

*11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide **Himmat***

Sukhadeo Wahurwagh v. State of Maharashtra.)

14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

(Emphasis added)

*14. To the same effect is the decision reported in **Shivasharanappa and others v. State of Karnataka, 2013(3) R.C.R.(Criminal) 86 : 2013(3) Recent Apex Judgments (R.A.J.) 547 : (2013)5 SCC 705. Paragraph 17 can be referred to as under :***

"17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and

cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable."

11. In view of the above, we find no reason to interfere with the finding of conviction as recorded by the trial Court.

12. Seeing that we are not inclined to set-aside the conviction, learned counsel for the appellant has argued that the punishment imposed in the present case is disproportionate and illegal. He has argued that trial Court has imposed the sentence that the appellant would be imprisoned for a minimum of 20 years. This would, thus, mean that till the time the appellant has completed 20 years in custody, he would not be entitled to any remission also.

13. In our considered opinion, this argument deserves consideration. Keeping in view the totality of facts and circumstances of the case, while maintaining the conviction of the appellant as recorded by the trial Court, we alter the sentence under Section 302 IPC from 20 years rigorous imprisonment to life imprisonment.

14. Since the main case has been dismissed, the pending CRM, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

30.09.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No