

CRA-D-1401-DB-2013 (O&M)

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

CRA-D-1401-DB-2013 (O&M)

Date of Decision: 02.11.2019

GUGGA @ BABA AND OTHERS

..... Appellants

versus

STATE OF PUNJAB

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MRS.JUSTICE ALKA SARIN**

Present : Mr.Jagdeep S. Chahal, Advocate
for Appellant No.3 and
for Appellant No.1 as amicus curie.

Mr.Sandeep Godara, Advocate for
Mr.Ajay Pal Singh Rehan, for appellant No.2.

Mr.H.S.Sullar, DAG, Punjab

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the conviction and sentence of the appellants in case FIR No.174 of 08.07.2009 registered under Sections 302, 376, 34 IPC at Police Station Sadar Khanna vide judgement and order dated 19/20.09.2013. The appellants were sentenced to undergo rigorous imprisonment for life under Sections 302 and 376 IPC.

2. As per the prosecution, on 08.07.2009 Ram Nand reported to the police that he was a milk man and in the morning when he had gone to cut the fodder there was a stink. When he look forwarded, he saw a partly decomposed body of a young girl aged about 6 to 7 years.

The police was informed and the postmortem of the child was conducted on 09.07.2009. As per the postmortem report, the deceased had been raped and murdered about 72 hours prior to the postmortem (i.e. to say on 06.07.2009). The girl was identified by her parents who had lodged a missing person report on 06.07.2009 to the effect that they were migrant labours and stayed at the shed in Khanna Market and their young daughter Pooja had gone missing from the shed at about 5:00 PM on that date.

3. Ultimately on 21.10.2009, the appellants were produced before the police by the witness PW-9 Jagjit Singh, who stated that they had made an extra judicial confession to the effect that they lured the young child on 06.07.2009 and raped and murdered her by strangulation. The appellants were charged and sent for trial.

4. The most important witnesses were PW-8 and PW-9. As regards PW-9 Jagjit Singh, he deposed that he was present at his house when the appellants came to him and all the three persons disclosed that on 06.07.2009 they took a girl aged about 6 to 7 years from Grain Market Khanna and took her towards Railway Line Bhattian where all of them committed rape with her and murdered her by way of strangulation he further deposed that the appellants were known to him earlier because they used to do labour work with him. As regards PW-8 Lachhman Singh, he deposed that on 06.07.2009, he had gone to Grain Market Khanna and went towards Railway Line for urination. He had noticed that the appellants were walking on the railway tracks with the young girl and when he asked them who was that girl, they replied that she was their own child. He further deposed that he knew the appellants because they used

to come to his shop to do labour job sporadically as daily wages on time basis.

5. Further the deposition of other PWs are as under:-

i) PW-1 Rama Nand deposed that on 8.7.2009 as usual at about 7:30 PM when he went to his land he noticed that deadbody of a girl aged about 7-8 years was lying there and her salwar was already put off and her neck was strangled with a piece of cloth. It seems as someone had committed rape upon her and after that she was murdered by strangulation. Maggots were moving on her deadbody.

ii) PW-4 Surinder Pal Singh deposed that on 8.7.2009 he was posted at PS Sadar Khanna as ASI and on the same day he alongwith Bhupinder Singh and other police officials were present near CIA Khanna on Samrala Road in connection with patrolling where complainant Ramanand met SI Bhupinder Singh and he got recorded his statement Ex.PA. SI Bhupinder Singh made endorsement Ex.PA/1 and he sent ruqa/ statement of complainant through HC Gurmej Singh. On the basis of statement of complainant, formal FIR was recorded by ASI Arjun Singh which is Ex.PA/2 and he made his endorsement Ex.PA/3 on the ruqa. They went to the spot and the I.O. Prepared inquest report, recorded statements of the witnesses and took into possession one plastic chapple which was sealed by him with the seal bearing seal impression 'BS' and he prepared rough site plan. Ex.PW4/A IO also got clicked the photographs of the dead body

iii) PW-5- ASI Arjun Singh Retired deposed that on 21.09.2010, he was posted at Police Station Sadar, Khanna and on that day he was present in the Police Station where Jagjit Singh produced accused namely Giga Baba, Rakesh and Gobinda before SHO/SI Bhupinder Singh, who recorded

the statement of Jagjit Singh Jaggi. They were arrested by SI Bhupinder Singh vide separate arrest memo Ex.PW5/A, EX.PW5/B and Ex.PW5/C. The said memo were witnessed by us. Upon conducting personal search of accused Ram Bharose, Gobinda Kumar and Guga alias Baba, nothing was recovered from them and the memo Ex.PW5/D, Ex.PW5/E and Ex.PW5/F were prepared and the same were witnessed by them on which all the accused put their thumb impression. Their statement was recorded by the I.O. And he identified all the accused persons in the court.

iv) PW-6- SI Ram Murti (Retd) deposed that on 09.07.2009, he was posted as P.S.Sadar Khanna and on that day he was member of police party headed by SI Bhupinder Singh, C.Bachchitta Singh and they were present at Civil Hospital, Khanna for conducting the postmortem of the deadbody of the prosecutrix, where SHO moved an application before SMO Civil Hospital, Khanna for conducting the postmortem of the body of prosecutrix and the Board of Doctors was constituted and the postmortem was conducted. After the postmortem, C.Bachittar Singh handed over one sealed parcel containing the clothes, with which the prosecutrix was throttled, before SHO alongwith one shirt of prosecutrix which was torn same was also converted into parcel and sealed and seal. C.Bachittar Singh also produced one parcel of viscera and one envelop before IO. The same were taken into police possession vide memo Ex.PW6/A and EX.PW6/B & PW6/C.

v) PW- 13-Inspector Bhupinder Singh No.25(JR) stated that on 8.7.2009 he was posted as SHO P.S.Sadar Khanna and on that day he alongwith ASI Surinderpal Singh, ASI Rammurti and other police officials were present at Samrala Road near CIA Staff Khanna for patrolling. Ramanand came their and recorded his statement Ex.PA, which read over to him and explained to him and signed by him. He endorsed his signatures Ex.PA/1 and sent ruqa

through HC Gurmeet Singh for registration of this case. On the basis of ruqa FIR Ex.PA/11 was registered by ASI Arjan Singh, whose signatures he identified. Police proceedings are Ex.PA/III. Thereafter, he alongwith complainant and police party went to the place of occurrence and inspected the place and prepared site plan Ex.PW13/A and prepared inquest report Ex.PW13/B and recorded the statement of the witnesses under 175 Cr.P.C. And 161 Cr.P.C. Photographer was called at the spot and photograph Ex.P1 to P6 were clicked by the photographer HC Desraj of the dead body. From the spot, one plastic chappal of right foot of deceased/prosecutrix was recovered. The same was converted into parcel and sealed. The dead body of deceased was kept in the mortuary of CH Khanna vide application Ex.PW13/C through ASI Ram Murti.

On 9.7.2009, one application Ex.PW13/D was moved before SMO CH Khanna for conducting the postmortem of deceased/prosecutrix. On application the Board of Doctors was constituted and postmortem was conducted. After postmortem of the deceased/prosecutrix, C. Bachittar Singh produced before him one sealed parcel containing viscera and one sealed envelope which was taken into police possession vide memo Ex.PW6/C. Memo was witnessed by ASI Ram Murti and C. Bachittar Singh. C. Bachittar Singh also produced before him one sealed parcel containing the clothe with which the neck of the prosecutrix was strangled, the same was taken into police possession vide memo Ex.PW6/B. Memo was witnessed by above said witnesses. C. Bachittar Singh also produced before him one torn shirt of prosecutrix/deceased. He converted the same into parcel and sealed. The dead body of prosecutrix was handed over to her mother vide receipt Ex.PW13/E.

On 10.7.2009, HC Desraj produced photographs Ex.P1 to P6 of the dead body, the same were taken into possession vide memo Ex.PW13/F. Memo was witnessed by HC Gurmej Singh. On 04.09.2009, he was present alongwith police party at Bija Chowk regarding VVIP duty, where Laxman Singh came there and recorded his statement u/s 161 Cr.P.C. After recording the statement of Laxman Singh, accused Gugga @ Baba, Gobindra, Ram Bharosey @ Raju Gorkha were nominated as accused in the case.

On 9.10.2009, he was present a P.S.Sadar Khanna, Ex.Sarpanch Jagjit Singh @ Jaggi produced before him all the above said three accused at P.S.Sadar Khanna, he arrested all of them vide arrest and information memo Ex.PW5/A, PW5/B and PW5/C. Their personal search memos are Ex.PW5/D, PW5/E and PW5/F. Memos were witnessed by ASI Arjan Singh and HC Sukhwinder Singh.

On 22.10.2009, the medical examination of all the accused were conducted from CH Khanna vide application Ex.PW13/G, PW3/H & PW13/I. He recorded the statement of witnesses on different days. After completion of the investigation challan was prepared by SI Sarup Singh, whose signatures he identified. He identified the accused persons in the court.

6. Having been convicted on the basis of these evidence, they are before this Court.

7. Learned counsel for the appellants has argued that the testimony of both PW-8 and PW-9 strains credulity. He points out to the testimony of PW-9 and particularly to that portion of the cross examination where PW-8 states that he had gone back to the Khanna Mandi on 9.7.2009 and he noticed about 20-25 people gathered over there and some women folk were crying. He made inquiry and was told that their child had been raped and murdered. In the examination in chief he

stated that '*I learnt on 09.07.2009 that the accused persons had committed the rape and murdered of the small girl*'. Learned counsel has argued that if this witness had indeed seen the appellants with the girl on 06.07.2009, and not only seen them but also noticed the young girl with them and found that fact so strange that he inquired from them who this girl was, in that case he would not have remained silent when he met the bereaved family on 09.07.2009 and would have immediately informed them about his suspicion. As per the learned counsel, not only did he not do that, he did not even inform the Police. Learned counsel has further argued that even if it is believed that he went to Rajasthan on 10.07.2009 for nine days there is no explanation why he did not inform the police or the family, on his return. He also points some strange circumstances under which he informed the police, the details of which are as under :-

“On 04.09.2009, SHO Bhupinder Singh was present in crossing of village Chahawa, where my shop is situated near to it. On seeing policy party, I went to them and made statement. SHO Bhupinder Singh was not known to me earlier.”

8. Learned counsel for the appellants has also emphasized on the admission of witness-PW-8 that the Police Chowki was at the distance of 500 meter from his place. Since extra judicial confession before PW-9 is also crucial, we deem it appropriate to reproduce his examination-in-chief:-

“I remained Sarpanch of Village Jaspal on and presently I am Panch of our village Jaspalon. On 17.10.2009, I was present at my house, Gugga @ Baba, Gobinda & Ram Bharosey came to me and all the three persons disclosed to

me that on 06.07.2009 they took a girl aged about 6/7 years from Grain Market Khanna and took her towards Railway Line Bhattian, where all of them committed rape with her. They further confessed before me that after committing rape with her, they murdered her by way of strangulation. Gugga, Gobinda and Ram Bharosey were known to me earlier because they used to do labour work with me. On that day I was busy as there was some dispute in the village regarding the cremation of Muslim. So I asked them to come after 2/3 days and promised them that I will produce them before the police.

On 21.10.2009, Gugga, Ram Bharosey and Gobinda came to me. I took them to P.S. Sadar Khanna and produced before SHO Bhupinder Singh. He recorded my statement. I identified all the accused present in the court.”

9. Learned counsel for the appellants has pointed out that the behaviour of the witness PW-9 was strange because as per him the appellants had approached him on 17.10.2009 when they had allegedly confessed to this heinous crime but he brushed them off by saying that he was busy. Thereafter, he took no steps to inform the police and as per him the appellants had gone to him after four days when he produced them before the police. Precise contention of the learned counsel for the appellants is that it would be most unsafe to base the conviction on this blind murder case on the basis of these witnesses.

10. Learned Deputy Advocate General is not in a position to deny that this is the only evidence which has been taken against the appellants.

11. In our opinion, the appeal must succeed. The testimony of PW-8 and PW-9 contains too many loop holes. There are too many links of the circumstantial evidence which point away from the guilt of the

appellants. Merely because a ghastly crime has been committed, the Court can not reduce the standard of burden of proof cast upon the prosecution. The inaction of both these witnesses leads to doubt about the involvement of the appellants.

12. We are, therefore, of the view that the conviction of the accused-appellants as recorded by the learned trial Court and the sentence imposed is not legally tenable. We, therefore, set aside the same, acquit the accused-appellants and allow the appeals.

13. The appellants are in custody. They be released forthwith, if not required in any other case.

14. Since the main case has been allowed, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

02.11.2019
raman

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