

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

CRA-D-1461-DB-2015 (O&M)
Reserved on : July 19, 2019
Date of Decision: September 17, 2019

Anwar and others ...Appellants

Versus

State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Ms. Deepa Singh, Advocate for the appellants.

Mr. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 03.08.2015/05.08.2015 rendered by the Additional Sessions Judge, Faridabad in Sessions Case No.61 of 2015 whereby the appellants, who were charged with and tried for offences punishable under Sections 302, 201, 120B, 376D and 404 read with Section 34 of the Indian Penal Code (in short 'the IPC'), have been convicted and sentenced as under:-

<i>Offence u/s</i>	<i>Period of imprisonment</i>	<i>Amount of fine</i>	<i>Imprisonment in default of payment of fine</i>
302 r/w S.34 IPC	Imprisonment for life	Rs.25,000/- each	RI for two years
376D r/w S.34 IPC	RI for twenty years	Rs.15,000/- each	RI for two years
404 r/w S.34 IPC	RI for three years	Rs.10,000/- each	RI for six months
201 r/w S.34 IPC	RI for five years	Rs.10,000/- each	RI for six months
120B IPC	RI for five years	Rs.10,000/- each	RI for six months

2. The sentences were ordered to run concurrently.
3. The case of the prosecution in a nutshell is that one Rajender Sharma resident of village Mawai P.S. Bhupani, District Faridabad lodged a complaint with the police stating that on 07.10 2013 at about 3.00/3.30 PM he was going on his Scorpio car from village Mawai to Faridabad. When he reached ahead of Kathpula on Agra Canal he noticed that some dogs were grappling on the left side (eastern side) of the canal. Some passersby were also stopping there to have a look. He stopped his vehicle and noticed that dead body of a girl was lying. The head was lying separate from the body. The dogs were eating the flesh from the body. Both the hands of the dead body were tied. On the body there was peason coloured suit salwar. The hair of her scalp and the skin of her face had been removed so that she could not be identified. Her Salwar was also removed upto knee level. She appeared to be 15-16 years of age. It appeared that somebody had murdered her and thrown her dead body in the bushes so that its identity could be concealed. On the basis of the said information FIR Ex.PL under Sections 302/201 IPC was registered. The police visited the spot. Site plan was prepared. The body was sent for post mortem examination. Statements of witnesses were recorded. The accused were arrested who during investigation got recorded their disclosure statements. Accused Anwar got recovered ornaments of deceased from his house in Sehnawaj town. Offences under Section 376D/ 120-B/34 were added. On completion of the codal formalities, report under Section 173 Cr.P.C. was presented.
4. The prosecution examined number of witnesses in its support. The statements of the accused under Section 313 Cr.P.C. were recorded. They denied the allegations levelled against them and pleaded innocence. They stated that they

had been falsely implicated in the case on account of enmity and suspicion. However, they did not lead any evidence in their defence.

5. The appellants were convicted and sentenced as referred here-in-above. Hence, this appeal.

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

7. PW1 HC Dinesh Kumar in his affidavit Ex.PW1/A stated that on 30.10.2013, 31.10.2013 and 06.11.2013 case property was handed over to him which was sent to FSL Madhuban through Constables.

8. PW2 Constable Ajay Kumar in his affidavit PW2/A stated that on 31.10.2013 vide RC No.452 one Jar containing two seals and one envelope containing documents were handed over to him by MHC Dinesh Kumar for depositing the same with HOD PGIMS, Rohtak which were deposited on the same day.

9. PW3 Sanjida, wife of Shri Fakruddin (mother of the deceased) stated that the deceased was her daughter. Anwar accused never came to meet her. She had not identified her dead body. She denied any knowledge that if anybody had raped her. She was declared hostile and cross examined by the Public Prosecutor.

10. In her cross examination, she denied that the statement Ex.PA had been made by her before the police. She denied that she had stated before the police that accused Anwar Khan present in the court used to come to their house along with Bhure Khan and that Anwar Khan had developed intimacy with her daughter and they used to talk with each other on telephone. She was confronted with portion A to A of Ex.PA where it was so recorded. She admitted that her

daughter had gone away from her house on 06.10.2013 after which she did not

return and that she had lodged a missing report in Jyoti Nagar, Delhi. She however denied that she had stated before the police that they had gone to Anwar accused for tracing her daughter and that he had misled them. She was confronted with portion 'B to B' of Ex.PA where it was so recorded. She denied that she had stated before the police that she identified dead body of her daughter on 28.01.2014 on the basis of clothes, chappals and rings. She was confronted with portion 'C to C' of Ex.PA where it is so recorded. She refused to identify the chappals etc. produced in court as belonging to her daughter.

11. PW4 Rajinder Sharma son of Chet Ram stated that on 07.10.2013 at about 3.00/3.30 PM he was going in his Scorpio vehicle from village Kathupula to Faridabad alongwith Agra Canal. He noticed that some dogs were struggling in the bushes. He then noticed that dead body of a lady was lying and her head had been severed from the body. Her skin was scratched and her hands were tied. Her salwar was also removed upto knee level. She appeared to be 15-16 years of age. It appeared that somebody had murdered her and thrown her dead body in the bushes. He admitted that he had made statement Ex.PC before the police in this regard.

12. In cross-examination, by counsel for the accused, he stated that he did not notice any ring or chappal on the body of the deceased.

13. PW5 Constable Parveen Kumar deposed regarding delivery of the Special Report to the Ilaqa Magistrate without any delay.

14. PW6 ASI Ramesh Chand stated that on 07.10.2013 he was posted in PP Khedi Pul. On that day SHO Vikas Kumar, SI Gulam Mohd. and he were present at Khedi Pul Naka. Rajinder r/o Mawai gave information that near

Kathupula Pul alongwith Agra Canal dead body of a lady was lying. They reached

the spot and recorded the statement of the complainant on the basis of which the case was registered. Blood stained earth was lifted from the spot vide memo Ex.PD. A pair of chappals, a hand bag, handkerchief and a small towel were also lifted from there vide memo Ex.PE. Postmortem examination was got conducted from PGIMS Rohtak. After postmortem examination packet of clothes, viscera etc. were deposited by him with SHO Vikas Kumar which were taken into possession vide memo Ex.PH.

15. PW7 Surinder Kumar brought the summoned record in respect of mobile phone No.9639660308 which was in the name of Johny son of Ram Sudhar resident of 389 Nagar Palika Wilici Badaun, UP. The other mobile phone number 9540591034 was in the name of Israr Ali son of Ansar Ali, resident of Mohalla DahleejAnsh Ma O Na 01 Sahaswan Baduan, UP. He proved the Customer Application Forms Ex.PG and Ex.PH and their call details Ex.PG/1 and Ex.PH/1 respectively. He also proved Ex.P1 i.e., the certificates under section 65-B of Evidence Act.

16. PW8 Anoj Kumar draftsman deposed that he visited the spot and prepared scaled site plan Ex. PJ on the demarcation of SI Bhim Singh.

17. PW9 Inspector/SHO Hans Raj deposed that after completion of investigation he had prepared the final report under Section 173 Cr.P.C.

18. PW11 ASI Rajkumar deposed that he had recorded formal FIR Ex.PL and made endorsement Ex.PL/1 .

19. PW12 Inspector Vikas Bhola stated that on 07.10.2013 he was posted as Inspector/SHO in PS Bhupani. That day he along with other police officers was on patrolling duty at Khedi Pul. On receipt of intimation from Rajinder they

reached in the area of Kathpulla, where Rajinder made his statement Ex.PC which

was forwarded for registration of the case under endoresment Ex.PC/1 through Ct.Rakesh. The body and the head of deceased were totally separated. A lock of hair of the deceased which were found lying was taken into possession along with a pair of chappal etc. vide memo Ex.PE. He had also taken into possession blood stained earth vide memo Ex.PD. He prepared the rough site plan of the place of occurrence Ex.PM. A crime team was called to the spot which inspected the place of occurrence. He also called the photographer who took the snaps of spot. He inquired about the dead body but nobody came forward in his presence to identify the dead body.

20. On 09.10.2013 the dead body was sent to PGIMS Rohtak for postmortem examination as it was referred by the Board of Doctors of BKH, Faridabad. After postmortem examination, ASI Ramesh Chand handed over to him all the documents related to the postmortem examination of deceased which were taken into possession vide recovery memo Ex.PF. He deposited the case property with MHC Bhupani. He identified the case property in the court. He also identified the accused present in the court.

21. PW13 Dr.Manish Dayal has stated that on 11.03.2014 he had taken blood sample of Sanjida wife of Fakruddin, mother of the prosecutrix on asking of police for conducting DNA test for the matching of DNA of mother with that of daughter whose dead body was referred from BK Hospital Faridabad to PGIMS Rohtak as dead body was in the advance stage of putrefaction.

22. PW14 Dr.Tarun Dagar tendered his affidavit Ex.PW14/A. He stated that on 08.10.2013 at about 3.30 PM he along with Dr.Ashish Tyagi conducted the post mortem examination. The date and time of discovery of death as per police

papers was 07.10.2013 at 4.00 PM. Both hands of the body were tied by a bluish-

white chunni with a fixed knot. The other end of chunni was having a fixed knot. The loop appeared to be cut and was smudged with blood like stains. Body was emitting foul smell. Epidermis was peeled off over front aspect of chest wall and upper and lower back region. Anterior abdominal wall showed greenish discoloration. Rigor mortis was passed off. Post mortem lividity was present over backside of body over available skin except over pressure areas.

23. After conducting the post mortem examination, it was opined that:

“The dead body sent for Post Mortem Examination was of a young adult female. No definite opinion can be given regarding cause of death at this stage as the available viscera has been sealed and preserved for chemical analysis and histopathological examination. All the injuries as described were ante-mortem and recent in duration”

The probable time that elapsed between death and autopsy was 1 to 3 days.

24. PW15 Hemraj son of Birbal Singh stated that some time in the first week of October, 2013 he was coming in his car along the bank of canal from Palla side to Bharat Colony for his office. The accused present in the court and a lady were standing there on a deserted place. An Alto car was parked there. He stopped his car and inquired as to why they were standing there. One of the accused told him that the lady was his wife. He then left the place and came to his office. Next day he learnt that dead body of a lady was lying there. He went there and gave information of the earlier date to the police. He had identified the said lady as the same who was with the accused. Her face was totally disfigured. He had identified the dead body from her dress. The police recorded his statement.

25. In his cross examination, by Counsel for the accused, he stated that he did not know any of the accused prior to the date of the incident. He had stopped

the car when he had noticed the accused and the lady at about 5.30 PM. He had stopped to inquire as one lady was standing with four persons. He did not remember the registration number of the Alto car. He stated that he came to know of the murder on the next day at about 10.00/11.00 AM. His statement was not recorded by the police on that date. His statement was recorded about one month thereafter. He denied that he was a stock witness and that he had deposed as a witness in several cases as a witness of the prosecution.

26. PW 17 SI Bhim Singh stated that on 29.01.2014 he was posted as SI in CIA Central Zone, Faridabad. On that day, Inspector Sanjeev Kumar interrogated accused Mohd. Anwar, Hasmudden, Rashid Hussain and Asim who suffered disclosure statements Ex.PO, Ex.PP, Ex.PQ and Ex.PR respectively which bear his signatures. Accused Anwar got demarcated the place of occurrence regarding which memo Ex.PS was prepared. Remaining accused also demarcated the place of occurrence vide memo Ex.PT.

27. On 02.02.2014 the disclosure of accused Anwar led to recovery of jewellery i.e. golden ring, tikka of gold and silver payjeb of deceased which were taken into possession vide memo Ex.PU. The recovered jewellery was got identified by mother of deceased vide memo Ex.PV.

28. On 11.03.2014 blood sample of mother of deceased was taken in B.K.Hospital Faridabd for DNA test vide recovery memo Ex.PW. He also deposed that he had moved an application for conducting TIP of accused. He recorded the statement of witnesses under section 161 Cr.P.C.

29. In cross examination, he stated that all the accused were arrested on 29.01.2014 and were interrogated. No recovery was effected on 29.01.2014 as the

police was busy in Mela duty. On 02.02.2014 accused Anwar got recovered the

ornaments of the deceased from his house in Sehnawaj town. Some other ornaments of the same kind were mixed up at the time when identification of the ornaments was conducted on 02.02.2014.

30. PW18 Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services Ltd. brought the customer information record and call detail records in respect of mobile phone No.8585946228 which was in the name of Sahabudin and No.8585946229 which was also in the name of Sahabudin.

31. PW19 SI Narender Kumar stated that on 06.10.2013, DD No.69B Ex.PY was entered with regard to the missing of Danishta on the complaint of her mother in Police Station Jyoti Nagar, New Delhi.

32. PW20 MHC Anil Kumar tendered his affidavit Ex.PW 20/A in which he deposed that on 11.03.2014 SI Bhim Singh, CIA Central Bhupani had deposited with him blood sample sealed with the seal of MO BKH Faridabad. He had handed over the same to Constable Ajay Kumar on 21.03.2014 who deposited the same vide receipt dated 21.03.2014.

33. PW21 SI Jagphool Singh, CIA Central Zone, Faridabad stated that on 02.02.2014 in his presence Sajida, the mother of the deceased, had identified a pair of silver pajeb, one ring of gold and a tika of gold as belonging to her deceased daughter vide identification memo Ex.PV which he had signed as a witness. He also identified the said case property in the court.

34. PW22 Constable Devinder tendered his affidavit Ex.PW22/A in which he stated that on 06.11.2013 MHC Dinesh Kumar had handed over to him case property for being deposited with FSL Madhuban, Karnal which he deposited on that very day and handed over receipt to MHC in the evening of the same day.

PW23 Ms.Mansi Dhiman, Ld. JMIC, Faridabad deposed that on

06.02.2014 she had gone to Neemka Jail and conducted Test Identification Parade of the accused. She proved the report Ex.PZ/1. Accused were identified by the witnesses.

36. PW24 Fakruddin son of Sharafat Ali (father of the deceased) stated that he had nine children. Danishta since deceased was his daughter and was aged about 19 years. Accused Anwar Ali was a friend of brother-in-law of his married daughter Gosbi. Because of this there was contact between the accused Anwar Ali and his daughter Danishta. Because of financial problems he had come to Delhi for labour work. In his absence accused Anwar Ali took his daughter Danishta. He reported the matter to the police. Ultimately, her dead body was recovered from Faridabad area. He had identified the dead body on the basis of photograph and her clothes, chappal and ring. He proved the Memo Ex.PB prepared in this regard. He identified accused Anwar Ali in the court.

37. PW25 Inspector Sanjeev Kumar stated that on 27.12.2013 he was posted as Inspector PS Central Zone, Bhupani. On that day investigation file pertaining to this case was entrusted to him. On 28.01.2014 he made investigation on the angle of Zip Net Website and from there he obtained the list of missing girls and their addresses. Same day he went to the house of Sanjida wife of Fakruddin. She identified the deceased on the basis of the clothes and photographs vide memo Ex.PB. He further stated that on 29.01.2014 accused Anwar, Hasmuddeen, Rashid and Asim were arrested. During interrogation they made disclosure statements Ex.PO, Ex.PP, Ex.PQ and Ex.PR respectively. Pursuant thereto accused Anwar got demarcated the place of incident Ex.PS. The other three accused also got site demarcated vide memo Ex.PT. He identified the accused in the court.

and FSL reports Ex.PX, PX/1 and Ex.PX/2.

39. The case is based on circumstantial evidence.

40. From the evidence on record it is clear that the deceased left her house at about 7.00 PM on 06.10.2013. When she did not return, her parents searched for her. They lodged a missing person report at Police Station Jyoti Nagar vide DD No.69B. PW19 SI Narender Kumar deposed that he had recorded the said missing person report Ex.PY on the complaint of PW3 Sanjida, the mother of Danishta.

41. On 07.10.2013 Rajender Sharma (PW4) while going from village Mawai to Faridabad in his Scorpio car at about 3.00 PM noticed some dogs fighting in the bushes on the left side of the road adjoining the Agra Canal. Large number of passers-by had gathered there. He stopped his car. He saw the dead body of a girl lying in the bushes. The head had been severed from the body. Dogs were eating the flesh from the dead body. Both the hands of the dead body were tied. The *salwar* had been removed upto her knees. The dead body appeared to be of a girl aged about 15-16 years. He got recorded his statement Ex.PC on the basis thereof FIR Ex.PL was recorded.

42. PW15 Hemraj deposed that in the first week of October, 2013 he was coming in his car along the bank of Canal towards Pala to Bharat Colony to his office. The accused along with a lady were standing on a deserted place. A car was also parked there. He stopped his car to enquire as to why they were standing at that place. One of the accused told that the lady was his wife. He then left for his office. Next day he learnt that the dead body of a lady was lying there. He went to the spot and gave information to the police that she was the same woman who had been seen with the accused on the previous day. He identified the dead body

43. There is no reason to doubt the testimony of PW15. As per his deposition his statement was recorded by the police about one month after the incident i.e., on 07.11.2013. This was much before the identification of the body of the deceased by PW24 Fakhrudin (her father) on 28.01.2014 vide memo Ex.PB. On 28.01.2014 the police also recorded the statement of Fakhrudin u/s 161 Cr.P.C. wherein he had stated that brother-in-law (Dewar) Bhure of Gosbi (his eldest daughter) works at Faridabad. Anwar accused was a friend of Bhure and used to visit their house with Bhure for the last one year. Anwar had developed friendly relations with his daughter and they used to talk over the telephone. On 06.10.2013 after his daughter Danishta did not return they had gone to Anwar at Faridabad in her search but the latter had misguided them and stated that he had not spoken to Danishta for a long time as he had been engaged with a girl resident of Mumbai. They met Anwar several times, but he denied any knowledge about Danishta. He stated that he had strong suspicion that his daughter had been murdered by accused Anwar. In his deposition in court, he reiterated that accused Anwar was a friend of brother-in-law of his daughter Gosbi because of which there was contact between Anwar Ali and his daughter Danishta. The accused were arrested on 29.01.2014 i.e., a day after the identification of the body and recording the statement of PW 24 Fakhrudin.

44. Test Identification Parade was conducted wherein PW15 Hemraj identified all the accused. He also identified the accused in court. The deceased was thus last seen in the company of the accused by PW15 Hemraj. There is no explanation by the accused as to how and when she left their company. The very next day at about 10.00/11.00 AM, PW15 learnt that she had been murdered. Her

Her dead body was seen by PW4 Rajinder Sharma on 07.10.2013 at about 3.00 PM

who informed the police, his statement was recorded on the basis of which FIR Ex.PL was registered.

45. PW17 SI Bhim Singh stated that on the disclosure statement of accused Anwar jewellery i.e golden ring, tikka of gold and silver pajeb of deceased was recovered on 02.02.2014 from his house in Sehnawaj town. It was taken into possession vide memo Ex.PU. The recovered jewellery was identified by mother of deceased vide memo Ex.PV. Some other ornaments of the same kind were mixed with it at the time when identification of the ornaments was conducted on 02.02.2014. PW21 SI Jagphool Singh CIA Central Zone Faridabad also testified that on 02.02.2014 in his presence Sanjida, the mother of the deceased, had identified a pair of silver pajeb, one ring of gold and a tika of gold as belonging to her deceased daughter vide identification memo Ex.PV which he had signed as a witness.

46. From the above evidence it is clear that the case against all the accused is not on the same footing.

47. As regards accused Asim, Rashid Hussain and Hasmudden the only evidence against them is that the deceased was last seen with them and accused Anwar on the evening before her death by PW 15 Hemraj who also identified them in Court.

48. In the case of Anwar accused apart from the deceased having been last seen with him and the other co-accused there is also circumstance of the recovery of the jewellery of the deceased from his house on his disclosure statement. The recovered jewellery was duly identified by the mother of the deceased as proved by the deposition of PW17 SI Bhim Singh and PW21 SI Jagphool Singh. PW 24

Hasmudden father of the deceased in his evidence had stated that Anwar Ali was a

friend of the brother- in- law of his elder daughter Gosbi. He was in contact with the deceased. In his absence Anwar Ali had taken his daughter Danishta (deceased).

49. In regard to the last seen evidence there was no explanation by accused Anwar as to when she parted company with him. Accused Anwar in his statement under Section 313 CrPC has stated that he has been falsely implicated in the case due to enmity and suspicion. He has not disclosed as to what is basis or cause of this enmity between him and the family of the deceased.

50. Thus as regards accused Anwar it is clear that the circumstantial evidence brought on record unerringly points to his guilt and is incapable of any other explanation or hypothesis other than his guilt. Thus the prosecution has proved the guilt of the accused Anwar for the offences under Section 302, 404 and 201 IPC beyond reasonable doubt.

51. However, merely on the basis of the last seen evidence of PW 15 Hemraj the case against accused Asim, Rashid Hussain and Hasmudden cannot be held to have been proved beyond reasonable doubt. There is no evidence that there was meeting of minds between them and co-accused Anwar to commit the murder of Danishta. There is no proof of any conspiracy between them and accused Anwar. Thus they are acquitted of the charges under Sections 302, 404, 201 read with Section 34 IPC and Section 120B IPC.

52. All the accused have also been convicted for the offence under Section 376D read with Section 34 IPC. There is no evidence about the rape of the prosecutrix by any of the accused. As per the FSL report no semen was detected on Ex.2a ('Two microscopic glass slides') and Ex.2b ('Cottonwool swab on sticks

kept in an airtight tube described as vaginal swab.'). Accordingly all the accused

are acquitted of the charge under Section 376D read with Section 34 IPC.

53. Resultantly, qua appellants - **Asim, Rasid Hussain and Hasmudden** the appeal is allowed. They are acquitted of all the charges framed against them. They be released forthwith, if not required in any other case.

54. Qua appellant **Anwar** the appeal is allowed only to the extent that he is acquitted of the charge under Section 376D read with Section 34 IPC. In view of the acquittal of his co-accused the charge under Section 120B IPC does not survive. He is accordingly acquitted of the same.

55. However, conviction of **Anwar** under Sections 302, 404 and 201 read with Section 34 IPC is converted to that under Sections 302, 404 and 201 IPC for which he would serve the following sentence, which shall run concurrently :

Offence	Period of Imprisonment	Fine	Imprisonment in default of payment of fine
302 IPC	Imprisonment for life	Rs.25,000/-	RI for two years
404 IPC	RI for three years	Rs.10,000/-	RI for six months
201 IPC	RI for five years	Rs.10,000/-	RI for six months

56. The appeal stands disposed of accordingly.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 17, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No