

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No. 610-DB of 2017 (O&M)

Reserved on : 13.3.2019

Date of decision : 25.3.2019

Rakesh Kumar and others Appellants

versus

State of Haryana ... Respondent

Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Kuldip Singh

Present Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate, for the appellants.
Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 19.5.2017 and order dated 22.5.2017, rendered by learned Additional Sessions Judge (Exclusive Court), Bhiwani, in Sessions Case No. 81 of 2016 (RBT), by appellants Rakesh Kumar, Anil Kumar, Mahender, Kamal Singh and Shamsheer Singh. They were charged with and tried for the offence punishable under Sections 201, 302, 297, 328, 120-B IPC. They were convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence imposed</i>
302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- each and in default of payment of fine, to further undergo the imprisonment for a period of one year.
120-B IPC	To undergo rigorous imprisonment for two years and to pay a fine of ₹ 1,000/- each and in default of payment of fine, to further undergo the imprisonment for a period of three months.

<i>Under Section</i>	<i>Sentence imposed</i>
201 IPC	To undergo rigorous imprisonment for two years and to pay a fine of ₹ 2,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months.
297 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 200/- each and in default of payment of fine, to further undergo simple imprisonment for a period of one week.
All the sentences were ordered to run concurrently.	

2. The case of the prosecution in a nutshell is that on 29.6.2016, SA Rajiv 400 BWN (Security Agent) was present in village Jamalpur, in connection with some secret investigation. He was informed by the secret informer that Pooja daughter of Jagdish had been killed by administering some poisonous substance by her family members in collusion with each other as she had lived out of home with one boy resident of village Kalanaur for 7/8 days about 3/4 months ago. Her family members had brought her home in the village and since then she was not allowed to go outside the house. She was kept under strict supervision and on that day i.e. 29.6.2016, she was, however, murdered. In the night of 27.6.2016, dead-body of Naresh son of Bhana Ram was also found in the agricultural field, who related to the family of deceased Pooja. There was a rumor in the village that Naresh might also have been killed by them because on that day i.e. 29.6.2016 at about 10.00 A.M., his dead-body was cremated without any medical examination or information to the police, while dead-body of Pooja was taken by her family in Maruti vehicle to the cremation ground. Her dead-body was burnt in the same funeral pyre along with Naresh by pouring kerosene so as to conceal the factum of death of Pooja from the society. On the basis of secret information vide application, Ex.PW8/A of Secret Agent Rajiv, formal FIR, Ex.PW15/A, was registered under Section 302/201 IPC

by Inspector Ramesh Kumar. On the same day, he accompanied by HC Anil Kumar and Constable Parveen visited Cremation Ground of village Jamalpur and inspected the scene of crime. FSL team was summoned. FSL team visited the spot. Ash and bones of dead-body of Pooja were taken by Dr. Ravinder Pal, Incharge, Scene of Crime Team, SP Office, Bhiwani. Ash and bones were converted into five sealed parcels. Inspector Ramesh Kumar along with other associates also visited the house of Jagdish, father of deceased Pooja, from where Dr. Ravinder Pal collected vomit smeared cotton, two *chunnis* (yellow colour and indigo/blue colour) and broken pieces of red colour glass bangles from underneath the bed (*diwan*). All the materials were converted into separate sealed parcels. On 30.6.2016, accused Mahender was produced by Satbir Singh, husband of Sarpanch of village Jamalpur, along with written complaint, Ex.PW5/A. He made disclosure statement, Ex.PW5/B, regarding his involvement in the commission of crime. In pursuance to his disclosure statement, one plastic-can of kerosene and *fawada* (spade), which were used in the commission of crime, were recovered from the place of concealment i.e. bushes situated near Cremation Ground of village Jamalpur. Rough sketch, Ex.PW9/C, of recovered *fawada* and rough site plan, Ex.PW15/D, of the place of recovery were prepared. On 30.6.2016 itself, accused Mahender disclosed about the involvement of his other companions, namely, Sunita wife of Jagdish, Ashish son of Shamsher, Pankaj son of Jagdish, Jain @ Balwant son of Dalbir, Rakesh Kumar son of Jugti Ram, Kamal Singh son of Ram Dass, Anil Kumar and Shamsher Singh sons of Bharat Singh in the commission of crime. Investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the appellants were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution and pleaded that they were falsely implicated in the case due to political rivalry. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. 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 trial Court below.

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

6. PW1 Dharmender Singh prepared the site plan, Ex.PW1/A.

7. PW3 SPO Rajesh Kumar has led his evidence by filing affidavit, Ex.PW3/A. According to the contents of affidavit, on 8.9.2016, EASI Ram Mehar had handed over one sealed parcel canny of kerosene oil, one sealed parcel of bangles to him for depositing at Forensic Science Laboratory, Madhuban. He deposited the same at FSL, Madhuban.

8. PW4 Constable Satish Kumar has also led his evidence by filing affidavit, Ex.PW4/A. According to the contents of the affidavit, on 9.9.2016, MM Ram Mehar had handed over parcels – one swab of vomit, one parcel of *chunni* and parts of broken bangles. He deposited the same in FSL, Sunaria.

9. PW5 Satbir deposed that he was husband of Sumitra, who was Sarpanch of the village. In the panchayat affairs, he attended the panchayats and other activities along with his wife. Accused Mahender was not

produced by him before SHO, Police Station Bawanikhera and he did not disclose anything about this case to him. He was declared hostile and was cross-examined by the learned Public Prosecutor. He had seen the complaint, Ex.PW5/A. However, according to him, the contents of the same were not read over to him. He denied that Mahender son of Sajjan had stated before him that the police was searching for the offenders, who committed the murder of Pooja. (Confronted with portion A to A1 of Ex.PW5/A, wherein it is so recorded). He did not mention in complaint, Ex.PW5/A, that accused Mahender along with his family members committed murder of Pooja and he was absconding. He was ashamed. (Confronted with portion B to B1 of Ex.PW5/A, wherein it is so recorded). He also did not mention that accused Mahender stated to him that he should be produced and he would disclose all the facts regarding the murder of Pooja before the police or that he confessed his guilt. (Confronted with portion C to C1 of Ex.PW5/A, wherein it is so recorded). He did not mention in complaint that he brought accused Mahender and produced him before the police and requested the police to make enquiry from him. (Confronted with portion D to D1 of Ex.PW5/A, wherein it is so recorded). He has admitted that he had heard the contents of disclosure statement, Ex.PW5/B, made by accused Mahender. He denied the suggestion that accused Mahender confessed his guilt along with his co-accused and manner in which they committed the crime and disposed of dead-body of Pooja. He denied his statement, Ex.PW5/C. He did not state to the police in his statement that on 30.6.2016, he produced accused Mahender before the police. (Confronted with statement, Ex.PW5/C, wherein it is so recorded). In his cross-examination by learned defence counsel, he admitted that he was summoned by the SHO on

telephone. He also stated that he visited the cremation ground along with DSP and at that time. Two pyres were burning in the cremation ground.

10. PW7 Constable Virender Singh deposed that he was joined in the investigation. Accused Kamal suffered his disclosure statement, Ex.PW7/A. He got recovered Maruti car bearing registration no. DL-3CZ-0471 and demarcated the place of occurrence. Accused Anil suffered disclosure statement, Ex.PW7/D. He got recovered Pick-Dala vehicle bearing registration no. HR-39B/0905 from village Jamalpur. In his cross-examination, he deposed that no public witness was present at the time of arrest of accused Anil. Both the accused were arrested from the shop of accused Anil.

11. PW8 Constable Rajeev is the material witness. He deposed that on 28.6.2016, he was present in village Jamalpur in connection with patrolling duty. In the meantime, secret informer met him and told that Pooja daughter of Jagdish was murdered by her family members because she eloped from her house with one boy of Kalanaur about 3-4 months ago. She remained with that boy for 7-8 days. Thereafter, her family members inquired about Pooja and they brought her back. She was confined in the house by her family members. She was not allowed to go out from the house. On the same day, she was murdered by her family members. On 27.6.2016, dead-body of Naresh son of Bhana, resident of village Jamalpur was found in the field. Naresh was murdered and no treatment/ post-mortem examination was conducted and no information regarding his death was given by anyone to the police. Naresh belonged to the family of Pooja. On 28.6.2016 at about 10.00 A.M., Naresh was cremated in the cremation ground. The dead-body of Pooja was carried in the Maruti Car. Dead-body

of Pooja was put on the burning pyre of Naresh. Kerosene oil was also poured. In his cross-examination, he admitted that he did not mention in his complaint that he was present in village Jamalpur on 28.6.2016. He also admitted that he submitted, Ex.PW8/A, on the information given by secret informer. He did not verify the facts from any person.

12. PW9 Constable Parveen Kumar deposed that he along with other police officials went to the cremation ground of village Jamalpur. They took into possession ashes and burnt bones of deceased Pooja and Naresh. These were put in plastic containers. Thereafter, they went to the place of occurrence/ house of Jagdish. They took into possession residue of vomit, broken bangles of red colour and two *chunnis*. On 30.6.2016, accused Mahender got recovered one container of kerosene oil containing some kerosene and one *fawda* (spade) from nearby the cremation ground of village Jamalpur. Sarpanch Satbir was present there but his signatures were not obtained. Accused Mahender was produced by Sarpanch on 30.6.2016 at evening time in the police station.

13. PW10 EHC Satpal Singh deposed that SI Subhash Chander arrested accused Shamsher and Rakesh from near the bus stand of village Jamalpur in his presence. They made disclosure statements, Ex.PW10/A and Ex.PW10/B, respectively, in his presence. Accused Rakesh demarcated the place of occurrence where dead-body of Pooja was put on the burning dead-body of Naresh.

14. PW13 SI Subhash Chander deposed that accused Rakesh made disclosure statement, Ex.PW10/B. He demarcated the place where dead-body of Pooja was cremated by pouring kerosene oil. Accused Shamsher also suffered his disclosure statement, Ex.PW10/A.

15. PW14 ASI Vinod Kumar deposed that on 30.6.2016, he arrested accused Kamal and Anil. Accused Kamal suffered his disclosure statement, Ex.PW7/A regarding his involvement in the crime. He got recovered one car. Accused Anil made disclosure statement, Ex.PW7/B. Accused Anil got recovered Pick-up Dala vehicle.

16. PW15 Inspector/SHO Ramesh Kumar deposed that FIR, Ex.PW15/A, was registered by him. He visited the place of occurrence i.e. cremation ground of village Jamalpur along with HC Anil Kumar and Constable Parveen. He inspected the spot and called FSL Team. Dr. Ravinder Pal took into possession ashes and bones of dead-body of Pooja and the same were put into plastic *dibi*. He converted the same into sealed parcels. Thereafter, they went to the house of Jagdish, father of deceased Pooja, where from Dr. Ravinder Pal took swab of vomit, *chunnis* and pieces of broken bangles. The same were handed over to him by Dr. Ravinder Pal. He prepared rough site plan of house of Jagdish. On 30.6.2016, PW5 Satbir Singh husband of lady Sarpanch of village Jamalpur produced complaint, Ex.PW5/A, along with accused Mahender before him. He interrogated Mahender. Mahender got recovered one plastic-can of oil, *fawada* (spade). These were taken into possession. In his cross-examination, he has categorically admitted that during his investigation, it was found that Naresh was not murdered. His death was natural. He tried to join independent witnesses at the time of recovery, however, they refused to join investigation.

17. The case of the prosecution precisely is that secret information was received that Pooja daughter of Jagdish had been killed by her family members in collusion with each other as she had lived out of home with one

boy resident of village Kalanaur for 7/8 days about 3/4 months ago. Dead-body of Naresh son of Bhana Ram was also found in the agricultural fields. Her dead-body was burnt in the same funeral pyre along with Naresh. On 30.6.2016, PW5 Satbir Singh produced accused Mahender before the police along with written complaint, Ex.PW5/A. He made disclosure statement, Ex.PW5/B, regarding his and other co-accused's involvement in the commission of crime.

18. We have gone through the statement of PW5 Satbir Singh. He categorically deposed in his examination-in-chief that accused Mahender was not produced by him before SHO, Police Station, Bawanikhera. He had not disclosed anything to him. He was declared hostile and was cross-examined by the learned Public Prosecutor. The contents of his complaint, Ex.PW5/A, were not read over to him. He had not narrated that Mahender wanted to confess his crime. The disclosure statement made by accused Mahender is Ex.PW5/B. In his disclosure statement, accused Mahender had stated they had made a mistake. They wanted to produce themselves before the police. In these circumstances, he produced them in the police station. However, the fact of the matter is that, as noticed hereinabove, PW5 Satbir Singh has stated that he had not produced accused Mahender before SHO, Police Station, Bawanikhera. It creates doubt on the alleged disclosure statement of accused Mahender. PW5 has also disowned his statement, Ex.PW5/C. In his statement, he has not stated that on 30.6.2016, he had produced accused Mahender before the police.

19. As far as role of accused Kamal is concerned, he was asked to drive the car after putting the dead-body in it, as per his disclosure statement, Ex.PW7/A. This statement has been signed by Constable

Virender and not by any independent witness.

20. The role assigned to accused Anil is that he was asked to load wood in his Pick Dala vehicle near the pyre of dead-body. His disclosure statement is Ex.PW7/D. His statement was also signed by Constable Virender and not by any independent witness.

21. In so far as the role of accused Shamsher, as per his disclosure statement, Ex.PW10/A, is concerned, it is that when on 28.6.2016, cremation of Naresh was held, he received a telephonic call from accused Mahender in which he told that they had killed Pooja. Thereafter, he along with accused Anil and Jain went to the fields to take wood. This statement was signed by Head Constable Satpal Singh and not by any independent witness.

22. The role assigned to accused Rakesh, as per his disclosure statement, Ex.PW10/B, is that he was present in house. He received a call from accused Mahender to come to the house of accused Shamsher. When he reached at the house of Jagdish, he met accused Mahender. They had taken a can of kerosene oil from the house of accused Shamsher. He along with accused Anil and Jain @ Balwant went to cremation ground with Pick Up Dala.

23. As per the prosecution version also Naresh son of Bhana Ram was found murdered in the agricultural fields. His dead-body was cremated without any medical examination or information to the police. However, it has come in the statement of PW15 Inspector/SHO Ramesh Kumar that during investigation, it was found that Naresh was not murdered. His death was natural.

24. The case of the prosecution is also that Pooja was administered

some poisonous substance by the accused. PW15 Inspector Ramesh Kumar along with other associates also visited the house of deceased Pooja, from where Dr. Ravinder Pal collected vomit smeared cotton, two *chunnis* and broken bangles. The same were sent to Forensic Science Laboratory for examination. FSL Report is Ex.PA. According to it, kerosene was detected in exhibit-4 (plastic canny). Kerosene, petrol, diesel and their residues could not be detected in exhibits-1(ash) and 3 (*a wooden stick having attached at one end flat iron stated to be Belcha/ Fawara*). According to Ex.PB, blood could not be detected on exhibit-5 (broken bangles). As per Ex.PC, no opinion regarding species of origin could be given as bones recovered from exhibit-2 (piece of bones) were too small and fragmentary.

25. As per report of Regional Forensic Science Laboratory, Sunaria, Rohtak, Ex.PD, no common poison was detected in exhibit-1 (one multi coloured synthetic chunni, one yellow coloured net chunni and some pieces of red coloured glass bangles) and exhibit-2 (one cotton swab). Thus, the case of the prosecution that Pooja was killed by administering some poisonous substance, is not proved.

26. It has also come on record that one pyre was not burning in the cremation ground, rather two pyres were burning simultaneously in the cremation ground.

27. Further no one has either witnessed the accused committing the crime; keeping the dead-body in Maruti car; loading the woods in the Pick-Up Dala vehicle and keeping the dead-body on the pyre of Naresh.

28. It is a case based on circumstantial evidence. It is necessary for the prosecution to complete the chain. All the circumstances must exclusively points towards the guilt.

29. In Registrar General, High Court of Karnataka, etc. vs. Prakash Jadav, etc. 2006 Criminal Law Journal 3393, Karnataka High Court has held that the principle embodied in Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of this special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. The relevant paragraph of the judgment is extracted below:-

“18. The true rule is that the circumstances alleged must be established by satisfactory evidence as in the case of the other evidence and the circumstances proved must be conclusive in character. In other words, the chain of circumstances established must be so complete as to leave no reasonable doubt about the guilt of the accused. While it is true that there should be no missing links in the prosecution case, it is not the law that every one of the links must appear on the surface of the evidence adduced. Some of these links may have to be inferred from the proved facts. Those links may be termed as inferential links. In drawing those inferences or to be more accurate, presumptions, a judge of fact is required to have due regard to the common course of natural events, to human conduct and their relation to the facts of the particular case. If that is not so, Section 114 of the Evidence Act would become otiose, which in its own would make the laws ineffective. A reference may also be made to the legal principle enunciated or adumbrated in Section 106 of the Evidence Act, which prescribes that when any fact is especially within the knowledge of any person,

the burden of proving that fact is upon him. True, the principle embodied in Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is now well settled that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the special knowledge of the accused. In the case of Shambhu Nath Mehra v. The State of Ajmer reported in 1956 S.C. 404, the Hon'ble Supreme Court has stated the legal principle thus:

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "'especially' stresses that. It means facts that are preeminently or exceptionally within his knowledge".

30. Their Lordships of Hon'ble the Supreme Court in Vikramjit Singh alias Vicky vs State of Punjab 2006 (12) Supreme Court Cases 306, have held that only when the prosecution case has been proved the burden

in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same subject to certain statutory exceptions. The relevant paragraphs of the judgment are extracted below:-

“13. In the instant case, there are two versions. The learned Sessions Judge proceeded to weigh the probability of both of them and opined that the appellant having not been able to prove its case, the prosecution case should be accepted. In our opinion, the approach of the learned Sessions Judge was not correct. The High Court also appeared to have fallen into the same error. It invoked Section 106 of the Indian Evidence Act although opining:

"The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

14. Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.

15. It may be that in a situation of this nature where the

court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.

16. In Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116], this Court laid down the law in the following terms :

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [1973 (2) SCC 793,

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any

other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

It was further observed :

"179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.

180. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

31. Their Lordships of Hon'ble the Supreme Court in Prithipal Singh and others vs State of Punjab and another 2012 (1) Supreme Court Cases 10, have held that Section 106 of the Evidence Act does not relieve prosecution of its burden to prove guilt of accused beyond reasonable doubt. The relevant paragraph nos. 53 and 79 of the judgment are extracted below:-

“Burden of proof under Section 106.

53. In State of W. B. v. Mir Mohammad Omar etc.

etc., AIR 2000 SC 2988, this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. (See also: Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404; Sucha Singh v. State of Punjab, AIR 2001 SC 1436; and Sahadevan @ Sagadevan v. State rep. by Inspector of Police, Chennai, AIR 2003 SC 215)”

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79. Both the courts below have found that the accused /appellants have abducted Shri Jaswant Singh Khalra. In such a situation, only the accused person could explain as what happened to Shri Khalra, and if he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered. All the accused/appellants failed to explain any inculpatory circumstance even in their respective statements under Section 313 Cr.P.C. Such a conduct also provides for an additional link in the chain of circumstances. The fact as what had happened to the victim after his abduction by the accused persons, has been within the special knowledge of

the accused persons, therefore, they could have given some explanation. In such a fact-situation, the Courts below have rightly drawn the presumption that the appellants were responsible for his abduction, illegal detention and murder.”

32. The case of the prosecution is that Jagdish, father of Pooja had hatched conspiracy along with accused to kill her, but no challan was put up against him. The theory of conspiracy has also not been proved against the accused at all. There is no corroborative material produced on record by the prosecution, except the disclosure statements made by the accused, which do not inspire confidence.

33. In view of our aforesaid discussion, the prosecution has failed to prove the case against the appellants beyond reasonable doubt. The appeal is allowed. The appellants are acquitted. They are directed to be released forthwith.

34. However, before parting with the judgment, it would be pertinent to mention here that during the course of investigation, the police has used the caste of the accused/ witnesses as well as of the victim. This is not permissible. Mentioning of caste/status separately in the criminal proceedings is a colonial legacy and requires to be stopped forthwith. Right to dignity is a fundamental right and a basic human right. Human dignity is one of the basic features of the Constitution. The Constitution of India also guarantees a casteless and classless society. Segmentation of the society into groups can not be determined by birth. All are born equal.

35. The expression, “right to life”, includes right to live with human dignity. It is the bounden duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. In the

German Constitution, human dignity under Article 1 is 'inviolable'. Human dignity is the foundation of constitutional rights/ values.

36. In Jeeja Ghosh and another vs Union of India and others, (2016) 7 SCC 761, their Lordships of Hon'ble the Supreme Court have held that human dignity, which is the core value of human right, is treated as a significant facet of right to life and liberty. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Their lordships have held as under:

“37. The rights that are guaranteed to differently abled persons under the Act, 1995 are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of

human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption “Fundamental Rights”. One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfillment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak [2] (former Chief Justice of the Supreme Court of Israel) in the following manner:

“The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.”

38. All the three goals of human dignity as a constitutional value are expanded by the author in a scholarly manner. Some of the excerpts thereof, are reproduced below which give a glimpse of these goals:

“The first role of human dignity as a constitutional value is expressed in the approach that it comprises the foundation for all of the constitutional rights. Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights. According to Christoph Enders, it is the constitutional value that determines that every person has the right to have rights...

The second role of human dignity as a constitutional value is to provide meaning to the norms of the legal system. According to purposive interpretation, all of the provisions of the constitution, and particularly all of the rights in the constitutional bill of rights, are interpreted in light of human dignity...

Lastly, human dignity as a constitutional value influences the development of the common law. Indeed, where common law is recognized, judges have the duty to develop it, and if necessary modify it, so that it expresses constitutional values, including the constitutional value of human dignity. To the extent that common law determines rights and duties between individuals, it might limit the human dignity of one individual and protect the human dignity of the other.”

37. The founding fathers of the Indian Constitution, were of utmost belief that the caste system would come to an end with the passage of time. However, unfortunately, the caste system is still prevalent. There

is no scientific, intellectual, social and logical basis for caste system. The caste system is profoundly illogical and is also against the basic tenets of the Constitution.

38. Accordingly, we direct the Secretaries (Home) to the Governments of Punjab, Haryana, and Union Territory, Chandigarh, to issue instructions to all the Investigating Officers not to state/mention the caste of the accused, victims or witnesses in recovery memos, FIR's, seizure memos, inquest papers and other forms prescribed under the Code of Criminal Procedure, 1973 and Punjab Police Rules. The Registrar General of this Court is also directed to issue instructions to all the Judicial Officers to follow the aforesaid directions while dealing with cases. We should, as a public policy, shun the caste system.

(Rajiv Sharma)
Judge

25.3.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No