

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-616-DB-2018 (O&M)
Date of decision: 28.02.2019

Kashmir Singh

.....Appellant

versus

State of Punjab

.....Respondent

**CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldeep Singh**

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Abhishek Bajaj, Advocate for the appellant
Mr.S.P.S.Tinna, Additional Advocate General, Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Appellant has appealed against the judgment and order dated 9.5.2018 passed by learned Additional Sessions Judge, Ludhiana, vide which, he was convicted under Section 304IPC and Section 4 of the Protection of Children from Sexual Offences Act 2012 (in short, “POCSO Act”) and sentenced to undergo Rigorous Imprisonment for life and fine of Rs.one lakh, in default thereof, to undergo further Simple Imprisonment for one year on each count. Both the sentences were directed to run concurrently.

The case was registered on the statement (Ex.PW7/A) made by

Malti Gupta on 11.5.2017, mother of the deceased Aman Kumar @

Avinash. In the statement to the police, she stated that her husband Vipin Kumar Gupta remains at home due to illness. Her younger son, namely, Aman Kumar @ Avinash is working as a helper in the workshop, namely, Wheel Point at Gill Nehar Di Patri, Nirmal Nagar, Dugri, Ludhiana owned by Sartaj Kaur. On 10.5.2017, in the morning, her son Aman Kumar @ Avinash went to the factory for the work. At about 10.30 a.m. a Gorkha (guard) of the workshop approached Malti Gupta and informed that her son Aman Kumar @ Avinash is serious due to injuries. Her husband was unable to walk due to injury and stayed at home. She reached the factory and saw that her son Aman Kumar @ Avinash was lying. He told the complainant to save him as Kashmir Singh accused has filled air in his private part (Anus). At that time, Kashmir Singh, Tejbir Singh son of Sartaj Kaur took his son to Pancham Hospital. During the treatment, her son died on the same day. Then at about 9.00 p.m. Sartaj Kaur called the complainant, her husband Vipin Kumar Gupta and daughter Simran to the workshop, where Kashmir Singh accused closed the shutter of the workshop and snatched their mobile phones. Sartaj Kaur reached there and told them to cremate the deceased till morning otherwise she will get conducted the police proceedings. They were forcibly kept confined in the workshop. Next morning i.e. 11.5.2017, at 5.00 a.m., Kashmir Singh scaled wall of workshop and fled away. Then Sartaj Kaur told them as to why they allowed Kashmir Singh to run away. At 6.00 a.m., she opened the gate and allowed them to go. On 11.5.2017, ASI Jatinder Kumar along with police officials was present at Dugri Canal Bridge in connection with the checking of bad elements, where Malti Gupta approached him and got recorded her statement. ASI made his endorsement at 5.00 p.m. (Ex.PW7/B) and sent the same to police station, where a case

under Section 304, 342, 356 IPC was registered against Kashmir Singh. Regarding Sartaj Kaur, it was stated in the endorsement that after interrogation and investigation, further legal proceedings will be conducted qua Sartaj Kaur.

On the same day, the police visited the spot and prepared the site plan (Ex.PW7/D). White colour plastic pipe used in the crime along with compressor tank and gate valve were taken into possession from the Wheel Point Workshop, Gill Canal, Nirmal Nagar, Dugri, Ludhiana vide memo (Ex.PW7/H). Rough site plan of place of recovery was also prepared. Police also prepared the inquest report. Postmortem of the dead body was got conducted. During the course of investigation, statements of the witnesses were recorded. Accused Kashmir Singh was arrested on 12.5.2017.

On 19.5.2017, during investigation, Sartaj Kaur handed over to police a pen drive containing the recording footage of CCTV camera of 10.5.2017 installed in her workshop Wheel Point, Gill Nehar Di Patri, Nirmal Nagar, Dugri, Ludhiana, which was taken into possession through recovery memo (EX.PW14/2). Police also took into possession the record of Ultra Sound Diagnostic report and the report of Pancham Hospital.

After completion of investigation, challan was presented against Kashmir Singh and Sartaj Kaur was found innocent.

After the commitment of the case, learned Additional Sessions Judge, Ludhiana charge sheeted the accused under Section 304, 342, 356, 506 IPC and Section 4 of *POCSO Act*, to which accused pleaded not guilty.

In support of its case, prosecution examined Malti Devi (PW1), Sonu-eye witness (PW2), Deepak Kumar (PW3), Joginder Singh (PW4),

Abhishek Kumar (PW5), Dr.Ripudaman Kaur (PW6), ASI Jatinder Kumar (PW7), Avtar Singh, Draftsman (PW8), Dr.Parampreet Kaur (PW9), Dr.Sanjay Puri (PW10), Dr.J. Edmund Moses (PW11), Gobind Kumar (PW12), Pardeep Kumar (PW13), SI Dalbir Singh (PW14), Nathaniel (PW15) and Vipin Kumar (PW16). Remaining witnesses were given up as unnecessary.

When examined under Section 313 Cr.P.C., accused denied as incorrect the evidence led against him. He pleaded that he is innocent. Deepak aged about 18 years, Sonu aged about 20 years and Aman aged about 15 years were throwing water and fighting with each other on 10.5.2017 at 10.30 a.m. He was not present at the time of occurrence. When he came to know, then he immediately, took Aman Kumar @ Avinash to the hospital for treatment. He claimed that he is 35 years old and has got two small children.

Accused did not lead any evidence in defence.

After hearing the prosecution, the learned defence counsel and going through the evidence, learned Additional Sessions Judge, Ludhiana convicted and sentenced the accused as aforesaid.

We have heard learned counsel for the parties and have also carefully gone through the record.

In this case, Malti Gupta, complainant, mother of the deceased Aman Kumar @ Avinash had reached the workshop on receiving intimation regarding injuries to her son. She has claimed in the first information report that her son Aman Kumar @ Avinash who was lying there told her to save him as Kashmir Singh has filled air in his private part (Anus). Then she further stated that Kashmir Singh alongwith Tejbir Singh son of Sartaj Kaur

took her son to Pancham Hospital, where he succumbed to injuries at about 9.00 p.m. In this case, there are two eye witnesses also, namely, Sonu and Deepak Kumar. Even in the statement under Section 313 Cr.P.C., accused has admitted presence of Sonu and Deepak Kumar by saying that Sonu and Deepak Kumar and Aman Kumar @ Avinash were throwing water and fighting with each other. When Malti Gupta was examined as PW1, she turned hostile. She stated that she has no knowledge regarding death of her son. She never suffered any statement before police. She was declared hostile by the prosecution. During questions in the nature of cross-examination by the prosecution, she admitted her signatures on her statement made before the police but claimed that her signatures were obtained by the police on blank papers and statement was not read over to her. She cannot read or write Punjabi. The other eye witnesses, namely, Sonu (PW2) and Deepak Kumar (PW3) also turned hostile and stated that they had no knowledge regarding occurrence. They never made any statement before the police. When the prosecution was allowed to put the questions in the nature of cross examination to these witnesses, the witnesses denied to have witnessed the occurrence. They also denied the entire prosecution story as incorrect. The other witnesses Joginder Singh (PW4) and Pardeep Kumar (PW13), who took the injured to hospital, also turned hostile and stated that they have no knowledge regarding occurrence. Abhishek Kumar (PW5) also turned hostile and did not support the prosecution case.

Crucial in this case is the statement of SI Dalbir Singh (PW14) and pen drive (Ex.MO/1), which was produced by Sartaj Kaur before the police. When pen drive (Ex.MO/1) was produced during examination of

Dalbir Singh, no objection was raised by the defence counsel regarding its admissibility. Therefore, at a later stage, accused is precluded from claiming that the pen drive containing CCTV footage was not properly proved. Therefore, plea raised at this stage that DVR was not taken into possession and that Sartaj Kaur was not examined, is also to be discarded. In fact, during statement of SI Dalbir Singh (PW14), pen drive (Ex.MO/1) was played in the Court, which shows that Kashmir Singh was present at the spot. In the CCTV footage, two other workers were seen throwing water on each other. The occurrence took place at 10.30 a.m. During cross-examination, SI Dalbir Singh further claimed that he got the CCTV footage downloaded in pen drive from some private person by calling him in the workshop. From the pen drive, it is clear that Kashmir Singh accused was present at the spot at the time of commission of crime. Learned Additional Sessions Judge, Ludhiana, who had advantage of watching of CCTV footage (Ex.MO/1), has taken the view that in the CCTV footage, few male employees are seen while washing vehicles, including Innova car. Out of the employees working in the workshop, there is only one child employee, who is victim and one Sikh employee wearing turban who is accused Kashmir Singh. Except Kashmir Singh, no other employee or person present in the workshop is Sikh by appearance wearing turban. At 11.05 a.m. accused is seen removing jack from Innova Car and rolled the same aside. At 11.07 a.m. accused is seen opening the door of the driver side of Innova Car and sat on the driver side. At 11.37 am accused is seen going inside the Innova Car along with the valve, where the compressor air pipe is seen installed. In the meanwhile, two cars, including one Innova car entered into the workshop from the main gate. Driver from each two cars

alighted. Thereafter, accused Kashmir Singh brought the victim child while carrying him in his arms from front of the Innova Car already stationed in the workshop for service/ washing. At 11.38 a.m. accused Kashmir Singh hurriedly took the victim child in the Innova Car out of the workshop to the hospital. Learned Additional Sessions Judge concluded that occurrence took place between 11.30 a.m. and 11.38 a.m. during that period Kashmir Singh and the victim child were behind the Innova Car stationed in the workshop for service/ washing and in the adjoining wall, the compressor air pipe was installed. It is not the plea of the accused that somebody else filled the air in the Anus of the deceased nor the deceased could do it himself. In fact, the deceased was drying the clothes with compressor pipe as his clothes got wet, when he and other co-employee were throwing water on each other. Accused Kashmir Singh felt aggrieved of the act of the victim of drying cloths with the compressor pipe. Therefore, the CCTV footage falsified the plea of the accused that he was not present at the time of occurrence. The actual time of occurrence is also material in view of the CCTV footage.

The medical evidence to be discussed in next paragraphs clearly shows that air was filled in the Anus of the deceased with compressor pipe, which damaged his vital organs and ultimately resulted in his death. Accused was present at the spot. Though the actual occurrence is overshadowed by the Innova car as it took place behind the Innova vehicle but except the accused and the deceased, nobody else was present there and the compressor pipe was also there. Therefore, all the facts regarding incident were within the knowledge of the accused. Therefore, under Section 106 IPC presumption is to be raised and it was for the accused to explain as to how air was filled through the Anus of the deceased. Accused

has miserably failed to furnish any explanation. Rather his plea is that he was not present at the spot. Then there is no reason why he immediately took the injured victim Aman Kumar @ Avinash to hospital.

Now, we will discuss the medical evidence. Statement of Dr.Ripudaman Kaur, Medical Officer(PW6) shows that following findings were recorded:-

The body was 62 inches long and was of a young child, was bloated. Swelling of the face, chest and abdomen was present along with blisters containing air present on chest and abdomen. The deceased was wearing pant, hospital sheet. Rigor mortis was absent. Early signs of decomposition were present. Mouth, pharynx, esophagus, larynx, trachea were congested. No external mark of injury was present except bilateral surgical wound on the chest about 2 cm x 1cm in size. Scalp, skull, brain and meninges were healthy. Chest wall was distended with air. Bilateral both pleural cavities contained blood and lungs were congested. Diaphragm was retracted around hiatus. Abdominal wall was distended with air. Early signs of decomposition were present on the whole body. Peritoneum was full of blood. Large intestine was congested and large red patches in the sigmoid colon were present with rupture of colon. Fecal matter was present in the abdomen. Both side scrotal tissue was swollen with air.

In our opinion cause of death in this case was due to hemorrhage and shock due to injury to vital organs i.e. large intestine, diaphragm, lungs. All injuries were anti mortem and were sufficient to cause death in ordinary course of nature. Time between injury and death was about 12 hours approximately as per record. Time between death and postmortem examination as more than 72 hours approximately.

In the cross-examination, she stated that possibility of so much bloating of the body by air cannot be accidental.

Dr.Sanjay Puri (PW10) had conducted the ultrasound of abdomen which affirmed the presence of air in the body.

Therefore, from the medical evidence, it is clear that it was on account of filling of compressed air in the body of the deceased through Anus that the vital organs of the deceased were damaged, which, ultimately resulted in his death on the same day.

Therefore, after scanning the entirety of the evidence, we are of the view that there is no illegality or infirmity in the judgment of conviction recorded by learned Additional Sessions Judge, Ludhiana under Section 304 IPC and Section 4 of *POCSO Act*, except that the accused is liable under Section 304 Part I IPC.

Faced with these circumstances, learned counsel for the appellant has prayed for leniency.

Considering the facts and the circumstances and the manner of commission of crime, resulting in the death of 14 years old boy, we are of the view that the ends of justice will be met if the sentence of the accused is reduced from life imprisonment to Rigorous Imprisonment for Ten years under Section 304 Part I IPC and Section 4 of *POCSO Act*, while the remaining part of the sentence under these Sections is maintained.

With above mentioned modification in the sentence, the present appeal is dismissed.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

28.02.2019

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes