

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

(1) CRA-D-1120-DB of 2009
Jitender alias Satish alias Sethi
.... Appellant

Versus

State of Haryana
..... Respondent

(2) CRR-716 of 2010
Balinder Singh
.... Petitioner

Versus

Jitender alias Satish alias Sethi and others
..... Respondents

Reserved on : 12.03.2020

Date of decision : 17.03.2020

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

Present: Mr. Udayveer Singh Rana, Advocate,
for the appellant.

Ms. Shubhra Singh, Addl. A.G., Haryana.

Mr. Baldev Singh, Advocate,
for the petitioner-complainant.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-1120-DB of 2009 and CRR-716 of 2010, therefore, these are taken up

together and being disposed of by a common judgment.

2. CRA-D-1120-DB of 2009 is instituted against judgment dated 18.11.2009 and order dated 25.11.2009, rendered by learned Additional Sessions Judge, Karnal, in Sessions Case No. 31 of 2009. Appellant Jitender alias Satish alias Sethi was charged with and tried for the offence punishable under Sections 376, 302 and 201 of the Indian Penal Code (for short, 'IPC'). He was convicted and sentenced as under :-

U/ 302 IPC	Rigorous imprisonment for life without parole for 14 years and to pay fine of ₹ 10,000/- (Rupees Ten Thousand) and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.
U/ 376 (i) IPC	Rigorous imprisonment for life without parole for 14 years and to pay fine of ₹ 10,000/- (Rupees Ten Thousand) and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.
U/ 201 IPC	Rigorous imprisonment for a period of seven years and to pay fine of ₹ 5,000/- (Rupees Five Thousand) and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

All the substantive sentences were ordered to run concurrently.

3. Co-accused Kanshi Ram and Satpal were convicted under section 176 IPC and were released on probation on their furnishing probation and surety bonds in the sum of ₹ 20,000/- (Rupees Twenty Thousand) each for a period of one year subject to their depositing prosecution charges of ₹ 1,000/- (Rupees One Thousand) each.

4. CRR-716 of 2010 has been filed by complainant Balinder Singh praying that the accused be awarded capital punishment.

5. The case of the prosecution, in a nutshell, is that on 22.12.2008,

Station House Officer, Police Station, Indri, received a telephonic message that a girl, who was missing from village Mukhali since 21.12.2008, regarding which a Rapat No. 14 dated 21.12.2008 was registered, was found dead from the area of MITC drain, near village Mukhali. SHO Harbans Lal along with other police officials reached the spot. Complainant Balinder Singh got his statement recorded to the effect that he was resident of village Mukhali. He was father of two children. On 21.12.2008, his daughter, who was six years of age, had gone out to play at about 11.00 AM. She did not come back for about 1 ½ hours. All the family members started searching her. A missing report was lodged at about 5.00 PM. On 22.12.2008 at about 7.00 AM, he and his family members, while searching his daughter, found the dead body of his missing daughter in MITC drain near the fields of Jaipal Singh. FIR Ex.P8 was registered. Accused were arrested. Accused Jitender made disclosure statement. FSL reports regarding the DNA test of the accused were obtained from Forensic Science Laboratory, Madhuban (Karnal). The investigation was completed and challan was put up after completing all the codal formalities.

6. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated.

7. The appellant as well as co-accused Kanshi Ram and Satpal were convicted and sentenced, as noticed above. Hence, this appeal and revision petition.

8. Learned counsel appearing on behalf of the appellant has

vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned trial court. Learned counsel for the complainant has vehemently argued that the accused be awarded capital punishment.

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

10. PW.3 Dr. Seema Sharma led her evidence by filing affidavit Ex.P3. She along with Dr. Lalit Kumar and Dr. G.L. Dhall conducted post-mortem examination. They noticed following injuries on the body of the deceased :-

1. An irregular contusion of size 3 cm x 2 cm in front of neck just below the level of thyroid cartilage. Reddish brown in colour.
2. A contusion above the level of thyroid cartilage of size 2 cm x 1 cm.
3. A contusion 2 cm x 0.7 cm just below right pinna. Reddish brown in colour.
4. Three contusions parallel to each other 5 cm x 1 cm each in size. The uppermost contusion is just below the angle of mandible on right side. Other two contusions lie .5 cm below each other. All contusions were oblique and going upwards and outwards. Subcutaneous tissues below all the four contusions were ecchymosed.
5. An irregular wound with irregular margins 7 cm x 4.5cm on left side of cheek involving lateral angle of upper and lower lip. No extra vasation of blood in underlying tissue, pale in colour and muscle deep.
6. Clotted blood was present around thigh, perineum and around vaginal introitus. On separation of labia majora there was a tear in posterior fourchette 1 cm x 0.5 cm

sub-cutaneous deep. Lower end of labia majora and minora was bruised. Hymen was intact. Swab was taken from introitus. Another swab was taken from clotted blood present on thigh.

The cause of death, according to the members of the Board, was asphyxia because of throttling. All the injuries, except injury No.5, were ante-mortem in nature. Injury No.5 was post-mortem in nature. The injuries were sufficient to cause death in the ordinary course of life. She proved the post mortem report Ex.P6. She categorically deposed in her deposition that possibility of sexual assault on the person of the prosecutrix could not be ruled out. She also deposed that upto the age of 10 years, hymen usually escapes injury of sexual assault, because it is deeply situated. So, according to her, the hymen was intact in this case and there was injury on the posterior fourchette.

11. PW.1 Balinder Singh deposed that he was father of two children. The prosecutrix (name withheld) was about six years of age. She had gone out to play on 21.12.2008 at about 11.00 AM, but she did not come back for about one and half hours. They started searching for her. At about 5.00 PM, he lodged missing report. He along with his family members and villagers, while searching his daughter, on the next day at 7.00 AM found the dead body of his daughter in MITC drain near the fields of Jaipal Singh. She was naked from lower half. The body was having injuries on left cheek. It appeared that she was killed after rape. Police reached the spot. He lodged report Ex.P1. Police arrested the accused. He admitted in his cross-examination that initially he had got recorded that some unknown person had killed his daughter.

12. PW.2 Yash Pal had identified the dead body of the prosecutrix.
13. PW.5 Head Constable Vir Shakti Singh had prepared the scaled site plan Ex.P10.
14. PW.10 Ram Chand deposed that the prosecutrix was aged about six years. She had gone for playing on 21.12.2008 at about 11.00 AM. Thereafter, she went missing. Balinder Singh informed the police. When they reached near the field of Jai Pal on 22.12.2008, they found the dead body of the prosecutrix in the drain. One yellow colour crate of plastic, one plastic bag and one blue coloured *Loi* were lying near the dead body. Police came to the spot. Police checked the crate and found the name of Kanshi Ram written thereon. Jitender alias Sethi was present in the tubewell. He confronted him what he had done, he replied that he had done a mistake and committed murder of the prosecutrix after committing rape upon her. Jitender alias Sethi had consumed some pesticide which was in his hand. Thereafter, he ran away after throwing the bottle of pesticide in the tubewell.
15. PW.11 Rajesh Kumar testified that he and Parvesh Kumar saw near Khukhni bridge on 22.12.2008 that two men, namely Satpal and Kanshi Ram of village Mukhali, were talking to each other. They were known to him. They heard them saying that their son Sethi had committed some mistake and this mistake should not be disclosed to anybody.
16. PW.12 Rishi Pal deposed that a crate, on which 'Shiva Gold' was written and name of Kanshi was also written, was found near the fields of Jaipal. A plastic *katta* of white colour, on which ISI Mark and Ultra Tech was written, was also recovered. A *Loi* was also recovered from bushes.

These were taken into possession vide memo Ex.P16. A condom and the lower (Pajami) were also got recovered from near the house of Balinder Singh. These were converted into separate parcels and were taken into possession vide memo Ex.P17.

17. PW.13 Gulab Singh testified that on 21.12.2008, he came to know that the prosecutrix had gone to play out of her house at about 11.00 AM. She had gone missing. He along with Mukesh went outside the village on 22.12.2008 to search the prosecutrix. They met Jitender alias Sethi, who was scared. He was in tears. He told them that he had committed rape upon the prosecutrix, who had become unconscious. He had strangled her neck and murdered her. He told that dead body of the prosecutrix was kept in a plastic *katta* and put in a crate, and covered with a *loi*.

18. PW.14 SI Ishwar Chand deposed that accused Jitender alias Sethi was taken out from the police lock up for interrogation. He made disclosure statement Ex.P18 to the effect that he could get recovered the belongings which he was wearing at the time of occurrence. Accused Jitender alias Satish took them to his village in his house. He got recovered his belongings, i.e. one T-shirt, Pant and Sweater. These were taken into possession, along with a cycle Hero Jet, which was also got recovered by the accused. Accused Jitender alias Satish alias Sethi got the place of occurrence demarcated. He took them to the place near the MITC canal where dead body of the prosecutrix was thrown.

19. PW.15 Constable Jagdish Kumar deposed that on 24.12.2008, after medical examination of accused Jitender alias Sethi, the doctor handed over to him a parcel containing pubic hair along with sample seals. He

handed over the same to Inspector Harbans Lal.

20. PW.16 Harbans Lal deposed that on 22.12.2008, he was posted as Inspector/SHO in Police Station Indri. He had come to Police Line, Karnal, for general parade. He received a telephonic message that dead body of a girl, who went missing on 21.12.2008, was lying in the MITC drain near the field of Jai Pal Singh. He reached the spot. Balinder Singh, father of the prosecutrix, along with many other villagers, was found there. FSL team and dog squad were called from Madhuban. Statement of Balinder Singh was recorded vide Ex.P1. FIR was registered. A crate, on which 'Lord Shiva' was printed and word 'Kanshi' was written with a sketch pen was taken into possession. A white empty cement plastic bag along a *Loi* was also taken into possession. A condom and Lower (Pajami) were also taken into possession vide memo Ex.P17. Body was sent for post-mortem examination. He came to know that accused Jitender had consumed some poisonous substance and he was admitted in CHC, Indri. He was referred to General Hospital, Karnal, for further treatment. He moved an application to Medical Officer, General Hospital, Karnal, to join the investigation of Satish alias Jitender in the present case. Doctor gave his opinion that the patient was fit to make statement. Case property was handed over to MHC Police Station Indri. On 23.12.2008, accused Jitender was interrogated. He was discharged from General Hospital, Karnal, on 26.12.2008. He was again interrogated. He made disclosure statement Ex.P18. He got recovered a T-shirt, Sweater, a Pant and a bicycle. He got demarcated the place, where he committed rape on the prosecutrix. He led the police party to the place, where a condom and Lower were thrown by him. These were taken into

possession. On 29.12.2008, DNA test of accused Jitender alias Satish was conducted in FSL, Madhuban.

21. The FSL report is Ex.P15. According to it, the allelic pattern of item No.3 matched with allelic pattern of item No.1 and did not match with allelic pattern of item No.2. According to the conclusion, the autosomal STR analysis indicated that the DNA profile of seminal stains on source of item No.1 (*Loi*) was biologically related to the DNA profile of Jitender alias Satish alias Sethi.

22. According to PW.1 Balinder Singh, the prosecutrix had gone missing on 21.12.2008 at about 11.00 AM. Her dead body was found in the morning on 22.12.2008 in MITC drain. PW.1 Balinder Singh got his statement recorded vide Ex.P1. PW.2 Yash Pal had identified the dead body of the prosecutrix. The appellant had made extra-judicial confession before PW.10 Ram Chand. PW.10 Ram Chand also deposed that the appellant had consumed some pesticide and ran away. Thereafter, he was admitted in CHC, Indri and referred to General Hospital, Karnal. The appellant had also made extra-judicial confession before PW.13 Gulab Singh, disclosing the manner in which he had committed the crime. The recoveries were got effected by the appellant on the basis of his disclosure statement Ex.P18. PW.16 Harbans Lal deposed that the appellant was admitted in CHC Indri and thereafter, was referred to General Hospital, Karnal. He was discharged on 26.12.2008. He made disclosure statement, as noticed above, vide Ex.P18. DNA test of the appellant was conducted in FSL Madhuban on 29.12.2008. A Board of three doctors, including PW.3 Dr. Seema Sharma, had noticed a number of injuries on the person of the deceased. According

to PW.3 Dr. Seema Sharma, possibility of sexual assault on the person of the prosecutrix could not be ruled out. She had also considered the FSL report Ex.P7, while giving her opinion. According to the FSL report Ex.P7, human semen was detected on exhibit-3 (*Loi/Chadar*), exhibit-5 (condom), exhibit-10a (Pants) and exhibit-10b (T-shirt). According to another FSL report Ex.P7/A, exhibit-1 (crate/vegetable bucket) was stained with blood stains. Blood was detected on exhibit-2 (*Katta*). Blood was also detected on exhibit-6a (Jersey), exhibit-6b (Sweater), 6e (Swab) and exhibit-6f (Slides). Blood was also detected on exhibit-10b (Sweater) and exhibit-10c (T-shirt).

23. The medical evidence is duly supported by ocular evidence. The appellant has made extra-judicial confession before PW.10 Ram Chand and PW.13 Gulab Singh, whereby he had admitted his guilt.

24. The plea taken by the appellant in his statement under Section 313 Cr.P.C. was that he was falsely implicated due to old rivalry in the village and party fiction. He did not lead any evidence to substantiate this plea. There was no occasion for father of the prosecutrix, to falsely implicate the appellant. While giving his statement as PW.1 in the Court, he had broken down. Semen was detected on the clothes of the appellant, including the *Loi*, as per the FSL report. DNA report also proves the involvement of the appellant in the crime. There was no occasion for him to consume pesticide, if he was innocent. He has committed rape on the prosecutrix and thereafter killed her.

25. The prosecution has proved its case against the appellant beyond reasonable doubt. Accordingly, there is no merit in the instant appeal and the same stands dismissed. The conviction and sentence of

appellant Jitender alias Satish alias Sethi are upheld. He is in custody.

26. So far as the revision petition filed by complainant Balinder Singh is concerned, this case does not fall in the ambit of rarest of rare case. No case has been made out by the petitioner – complainant warranting imposition of death sentence upon Jitender alias Satish alias Sethi. Accordingly, the revision petition also stands dismissed.

(RAJIV SHARMA)
JUDGE

March 17, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

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