

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1387-DB-2013 (O&M)
Reserved on: 08.12.2022
Date of decision: 13.12.2022

AYODHYA PARSHAD ...Appellant
Versus
STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Raj Kaushik, Advocate (Amicus Curiae)
Mr. J.S. Rattu, Advocate (Legal Aid Counsel)
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J.

1. Through the impugned verdict made on 29.04.2013, upon Sessions Case No.66 of 13.05.2008, the learned Additional Sessions Judge, Ludhiana, proceeded to, in respect of charges drawn for offences punishable under Sections 365, 377, 302 of the IPC, hence make a verdict of conviction, upon, the convict/appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge proceeded to impose upon the convict (supra), both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Sr. No.	Offence	Sentence
1	302 IPC:	To undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo RI for one year.
2	364 IPC:	To undergo imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo SI for six months.
3	377 IPC:	To undergo imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo SI for six months.

2. The convict (supra) becomes aggrieved from the above made verdict of conviction, besides becomes aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon him, thus is led to institute thereagainst the instant appeal (supra) before this Court.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is embodied in the FIR to which Ex.PB is assigned, therein, it is narrated that on 29.12.2007, the complainant Ravinder Shah got recorded his statement before the police, to the effect that he has got four children i.e. three sons and one daughter. The age of his younger son Dhiraj was about five years. On the previous day i.e., on 28.12.2007, at about 8 a.m., the complainant and his wife Binda Devi had gone to their respective places of work. His daughter aged about 13/14 years used to look after the younger siblings. The accused Ayodhya Parshad son of Jagan Nath had also been residing in the same mohalla. However, he had left the said area about two months ago. On 28.12.2007, at about 6 p.m., the accused came to his mohalla and he started playing with his son Dheeraj Kumar and later on, he took away Dheeraj Kumar with him. The complainant was informed regarding these facts by Shabi Parshad son of Gopali, who is running his shop in the said Vehra. Thereafter, he had been searching for his son Dheeraj Kumar, but he could not find him. He further stated that his son Dheeraj Kumar had been kidnapped by the accused Ayodhya Parshad for some illegal purpose. On the basis of said complaint, the instant FIR was registered against the accused.

INVESTIGATION

4. During the investigation of the case, the Investigating Officer recovered the dead body of Dhiraj Kumar from a vacant plot in the area of

Civil Hospital for postmortem examination. The accused was arrested on 29.12.2007. On completion of the investigation and necessary formalities, the challan against the accused was presented before the learned Committal Court.

COMMITTAL PROCEEDINGS

5. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 28.04.2008 the learned Chief Judicial Magistrate, Ludhiana, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

6. The prosecution examined as many as 8 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

7. The learned counsel for the convict-appellant, has made a vigorous submission before this Court that, the impugned verdict of conviction suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

**CIRCUMSTANTIAL BASED EVIDENCE CASE ANCHORED, UPON
THE THEORY OF LAST SEEN TESTIFIED BY PW-2 AND PW-7.**

EXAMINATION-IN-CHIEF OF PW-2.

9. Through the stepping into the witness box of PW-2 the prosecution strived to prove the genesis of the prosecution case, as becomes embodied, in the appeal FIR to which Ex.PB is assigned. In his examination-in-chief he articulates that, he is well known to accused Ayodhya Parshad, as he was also residing in the relevant premises about two months ago, whereafter he left the relevant premises. It was on 28.12.2007 when he was present in his shop, that PW-2, narrates that at about 5:00 p.m., of the aforesaid day, the accused Ayodhya Parshad visited his premises, and, that he then noticed qua his starting to play with deceased Dheeraj Kumar son of Ravinder Shah aged about 5 years. Moreover, he also testifies that the accused after alluring the deceased child with biscuits and toffees weaned him to his company. He continues to testify that in the evening when the father of the deceased child Ravinder Shah came from duty and made a search for his son Dheeraj Kumar, that then he disclosed to him, that he was taken by Ayodhya Parsad, as, he had seen Ayodhya Parsad to take the deceased in his company. He also identified the accused, in Court. Moreover, he states that the body of the deceased Dheeraj Kumar was recovered on 29.12.2007. The above made echoings, by PW-2, in his examination-in-chief, do most visibly candidly speak, about his seeing together the accused and the deceased. Since a day subsequent to PW-2 seeing the accused and the deceased together, and/or his also testifying, that the accused had taken the deceased child to his company through his alluring him with toffees and biscuits, rather the body of the deceased child become recovered from an open site through memo Ex.DA. Thus, when the recovery of the body of deceased, is in the closest proximity to PW-2 seeing both deceased and the accused together, as but a

natural corollary, the prosecution has well established, that PW-2 has proven qua his last seeing the accused and the deceased together. Therefore, the defence was to explain through meteing suggestions, to PW-2, in his cross-examination, whether the above made testification is ridden with a grave falsity. If the above efforts did not succeed, thus this Court would be bound to make an inference, that the accused had murdered the deceased child, and, also subject to availability of credible medical evidence on record, to also make a concomitant inference that he had also sodomised him.

CROSS-EXAMINATION OF PW-2.

10. In the above endeavour, this Court has incisively scrutinized the echoings made by PW-2 in his cross-examination. However, there are no suggestions meted therein to him nor obviously any answers became elicited from PW-2, rather devolving, upon the above made testification by PW-2, in his examination-in-chief hence being completely ridden with any aura of falsity or being prevaricated. Contrarily, in his cross-examination, he has made an echoing, that except on the day of occurrence, the accused did not stay with him. Furthermore, he has also stated therein, that he had seen Ayodhya Parshad on the day of occurrence, and, not the day prior thereto. The above echoings when do not apparently become contested by the defence, through any further clarificatory suggestions being meted to PW-2. Therefore, it has to be then concluded that the defence, has conceded to the factum qua the accused being found together, on the relevant crime date, and in proximity to the site of recovery of the body of the deceased child.

CONCLUSIONS FROM THE ABOVE

11. In addition, there is also an echoing in the cross-examination of PW-2, that he had made an intimation to the father of the deceased child, that

Ram Avadh had taken the accused in his company. Even the above echoing remained uncontested by the defence, through thereafter any suggestions being meted to PW-2 nor obviously hence any answer favourable to the accused emanated from PW-2. Resultantly, when even the above fact, is construable to be conceded by the defence. Thus, it has to be concluded that the prosecution theory of last seeing of the accused and the deceased together, in the immediate proximity to the dead body of the deceased becoming recovered from an open place, does become unflinchingly established. Therefore, it suggests, that the accused had an incriminatory role in the demise of deceased Dheeraj Kumar.

TESTIFICATION OF PW-7.

12. The testification as made by PW-2 is completely supported by the testification made by PW-7. In his examination-in-chief he has stated, that when at about 6:00 p.m., of 28.12.2007, he was going from village Gobindgarh, to PhaseVIII, Focal Point, Ludhiana via kacha path for his domestic work, then on the way, he came across the accused, who is stated to be previously known to him, and, whom he identified, in Court. He has also testified that he was being accompanied by a boy aged 4-5 years, and, he noticed that the child was crying, and on his asking the child, the reason for his crying, resulted rather in the accused replying that he is going to leave the boy at his house. Further at about 8:00 p.m., when he was returning to his house via the same path after completing his domestic assignments, he speaks that, then also the accused met him, but he noticed that he was nervous. He testifies that though he asked him, the reason for his being nervous, but he did not gave any satisfactory reply. Thereafter, though he even states that he asked the accused, that whether he had left the child at his house but yet to the said query, the accused replied in the affirmative. Subsequently, PW-7 testifies, that he left to his house, but on the

subsequent day at 9.30 a.m., when he was going to Phase-VIII, Focal Point, and when he reached near the jhuggis of Munish Factory, that then he noticed that many people had gathered there. He speaks that he saw the dead body of the child lying there, in a naked condition, and that the anus of the child was bleeding. He further echoed that when he closely watched the dead body, he noticed that the dead body was of same child, who on the previous day was seen in the company of the accused.

CONCLUSION FROM THE ABOVE

13. Enigmatically none of the above candidly spoken facts by PW-7, in his examination-in-chief, rather became ever unattempted by the learned defence counsel, to be provenly suffering from any taints of any falsity. The effect of, non meteings, by the learned defence counsel of any apposite suggestions to PW-7, while putting him to cross-examination, is that, the defence obviously conceding to the above spoken facts by PW-7, in the latters' examination-in-chief. Resultantly, even through PW-7, the prosecution has proven, that the accused and the deceased were last seen together. Moreover, when the evident factum of both being last seen together hence happened in the immediate proximity to the body of the deceased child becoming recovered. Thus, it has to be concluded that the accused did murder the deceased child.

FURTHER CONCLUSIONS FROM THE TESTIFICATIONS OF PW-2 AND PW-4.

14. Since the testification(s) of PW-2 and PW-4, do not apparently suffer from any rife or open embellishments from their previously made statements in writing nor when their respective examination(s)-in-chief and cross examination(s) are tainted with any intra-se contradictions. Contrarily, when their respective testification(s) are rendered with the completest inter-se corroboration. Thus, completest evidentiary vigor is to be assigned to their

respectively made testification(s). Reiteratedly rather the ablest proof becomes rendered by PW-2 and PW-4 about both last seeing the accused and the deceased together. Thus, the same begets an inference that the charge against the accused hence becomes cogently established.

MEDICAL EVIDENCE (POST MORTEM REPORT)

15. The post mortem upon the body of deceased Dheeraj Kumar, was conducted on 30.12.2007 by PW-1 along with other members of the Medical Board. PW-1 has proven *qua* hers, co-authoring Ex.PW1/B, besides has proven the signatures thereons of other members of the Board concerned. Ex.PW1/B relates to the autopsy as made upon the body of deceased Dheeraj Kumar.

16. Moreover, she has also proven, that the cause of death of deceased Dheeraj Kumar, was owing to hemorrhage and shock, as a result of crush injuries (against vertebral column) of the vital organs which were ante mortem, and sufficient to cause death in the ordinary course of nature. The relevant ante mortem injuries as noticed by PW-1, on the body of deceased are extracted hereinafter.

“1. Contusion (bluish) present around the anus with marked dilatation of anal canal underlying tissue was congested (muscles). Anal tone was absent. Rectal swabs were taken.

On exploration of abdominal cavity frank blood measuring approximately 700 to 800 ml was present in abdomen in both paracolic gutters and pelvis with big retroperitoneal collection of blood approximately 600 to 700 ml. More conspicuous around the kidneys and pancreatic region were present. Lacerated tear was present at the hilum of spleen measuring 2 cms. X .5 cms along with gross haematoma around both the kidneys suggesting of crush injury against the veribral colum and was sent for histopathology.

On exploration of chest pleurae was congested and on opening left pleural cavity it was found containing 200 ml. Approximately blood (Illegible) Right lung was congested. The left lung was congested and punctured and hylum of the lung with injury to lung parenchyma tissue. Pericardium was healthy and right side was containing 25 cc of blood.”

CONCLUSIONS FROM THE POST-MORTEM REPORT

17. PW-1 also in her examination-in-chief after making an examination of the report of the Chemical Examiner, to whom the swabs of the rectum, of the child concerned, became sent, in a provenly untampered and unspoiled sealed cloth parcel, through Constable Rajinder Pal Singh No. 2320, and with echoings therein qua spermatozoa becoming detected in the contents of the sealed cloth parcel, has spoken qua hers proceeding to make an opinion, as unfolded in Ex.PW-1/A, qua the cause of demise of Dheeraj Kumar, erupting from haemorrhage and shock, as a result of the crush injury against the vertebral column of vital organs. Therefore, it appears that not only the accused sodomised the said child but also during the said course had caused crush injuries to the vertebral column of the deceased child, which ultimately resulted in the deceased child's demise.

ARGUMENTS OF THE LEARNED COUNSEL FOR THE CONVICT ON THE ECHOINGS OCCURRING IN THE CROSS EXAMINATION OF PW-1.

18. However, the medico legal register pertaining to the examination of accused, though on its reading reveals, qua echoings occurring therein, qua on an examination being made by the doctor concerned, of the private parts of the accused, the said examination resulting in an opinion qua his being capable of performing sexual intercourse. Moreover, yet a further echoing is also carried therein, about no injury on external genitalia (abrasion, frenulum tear), becoming noticed on the examined private organs of the accused.

19. The learned counsel for the convict therefore argues, that since PW-1, in her cross-examination, has made an echoing that when a carnal intercourse is made upon a child of about 5-6 years of age rather by an adult, then the possibility of injuries on the male organ/penis of the offender are to occur

qua any abrasion or injury being found on his private organ, resultantly he argues that the accused cannot be said to have sodomized the minor child.

**REASONS FOR REJECTING THE ABOVE SUBMISSIONS AND
SUMMARIZATION OF PRINCIPLES.**

20. However, the above made submission is rejected. The reason for rejecting the above submission becomes founded on the factum, that the said submission is rested, upon a medico legal report of the accused, but the said report has neither been tendered into evidence or any exhibit mark has been made thereons. Thus, it is neither readable in evidence nor the echoings (supra), as purportedly made therein hence carry any evidentiary capacity nor obviously the above echoing occurring in the cross-examination of PW-1 hence carries any exculpatory weight.

21. Be that as it may, even if the said echoings carried in the MLR prepared in respect of the accused is inadmissible in evidence, and, may be also if assumingly, the prosecution may have also not proven the factum of the accused being capable to perform sexual intercourse, upon the deceased child. However, the above *prima-facie* assumptions, do become completely smothered through:

a) The opinion made by the Chemical Examiner concerned, in his report to which Ex.PX is assigned, wherein, after his examining the contents of the untampered and unspoiled cloth parcel, inasmuch as, of the rectal swabs of the deceased child, his making an opinion that Spermatozoa being detected therein. The detection of Spermatozoa in the contents of the sealed cloth parcels, thus begets an inference, that the same belong to the accused, as even after its becoming tendered into evidence, the accused did not choose to contest the findings recorded therein. The lack of contest

to the above conclusions made in Ex.PX, does assign conclusivity to them. Moreover, the accused also did not adduce any evidence reflective that the said Spermatozoa, did not belong to him, rather through his ensuring collections, at his instance, by the doctor concerned, *qua* his Spermatozoa, for matchings thereof being done with the Spermatozoa, as became evidently found in the rectal swabs of the deceased child. The result of the above lack of adduction of evidence by the accused, to bely the report of the Chemical Examiner, rather reflecting *qua* Spermatozoa being found in the rectal swabs of the deceased, is that, it does fortifyingly marshal, an inference that the said detection of Spermatozoa, in the examined rectal swabs of the deceased child, as became sent, in an unspoiled and untampered condition, to the Chemical Examiner concerned, did obviously relate to the accused.

b) The other reason for forming the above conclusion, becomes founded, upon the factum of PW-7 in his examination-in-chief, deposing that when he saw the deceased child, at the site concerned, he noticed that blood was oozing from his anus. However, the above echoing as made by PW-7, in his examination-in-chief remained unrebutted *qua* its efficacy, through any apposite cross-examination being made upon him. The result of no cross-examination, *qua* the echoing (*supra*) being made upon PW-7 by the learned defence counsel, hence to bely the above factum, begets an inference, that the above spoken fact is truthful. Resultantly, the above inference also fortifies the hereinabove made inference by this Court, that the Spermatozoa, as became evidently detected in

the rectal swabs of the deceased, by the Chemical Examiner concerned, rather belonging to the accused. Moreover, also a firm inference is amenable for being erected by this Court, that after a complete insertion of penis by the accused in the rectum of the deceased child, it not only resulted in blood oozing therefrom, but also resulted in traces of his semen finding their existence, at the said region of the body of the deceased child.

FINAL ORDER

22. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes recorded, and, imposed, upon convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of any gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the accused is on bail, thereupon the sentence, as imposed upon him be ensured to be executed by the learned trial Judge concerned, through his forthwith drawing committal warrants *qua* him. Case property, if any be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

23. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

13.12.2022

Ithlesh

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No

(KULDEEP TIWARI)
JUDGE