

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-409-DB-2018 (O&M)
Reserved on: 14.02.2023
Date of decision: 23.02.2023

GUDDU

...Appellant

Versus

STATE OF HARYANA

...Respondents

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

Present: Mr. Devinder Singh, Advocate for the appellant.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 16.02.2018, upon Sessions Case No.180, instituted on 07.10.2016, by the learned Additional Sessions Judge-cum-Special Court for the cases of heinous crime against Women, Faridabad, wherethrough, in respect of charges drawn for offences punishable under Section 302 of IPC, and, and under Section 6 of the Prevention of Children from Sexual Offences Act, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order drawn on 19.02.2018, the learned trial Judge concerned, imposed, upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

Offence under which convict has been sentenced	Period of imprisonment	Amount of fine imposed	Imprisonment in default of payment of fine
302 IPC	Life imprisonment	10,000/-	Rigorous imprisonment for three months
6 POCSO Act	Life imprisonment	10,000/-	Rigorous imprisonment for three months

2. All the above sentence(s) of imprisonment were directed to run concurrently, but the period spent in prison by the convict during investigation or trial was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is embodied in the appeal FIR to which Ex.PP is assigned. It is recorded therein, that the present case was registered on the basis of statement given by complainant Sanjay before the police on 14.07.2016 with the allegations that he is running work of P.O.P. And Guddu, accused also works with him. Accused used to visit his house. Yesterday, at 8 p.m., the accused came to his house. His mother in law was present in the house and he and his wife were away. When they returned back home, his mother in law told that Guddu had come and had taken prosecutrix/victim child, aged six years (name withheld in order to pretext her identity) with him on the pretext of giving her eatable items. She refused but the accused did not accept her request and said that he will come after purchasing eatable items, but he did not come. They made search for the victim child but in vain and her dead body was found in the tenanted room of Guddu situated in Gali No.13. The complainant alleged that the accused had committed rape upon the victim child and had murdered her. He sought action against the accused.

INVESTIGATION

5. On the basis of aforesaid complaint, formal FIR was recorded. Investigation was conducted. Statements of witnesses under Section 161 Cr.P.C. Were also recorded. Police visited the spot and prepared site plan. Accused was arrested. Post mortem on the dead body was got conducted. All other necessary formalities of investigation were completed and challan under Section 173 Cr.P.C., so as to prosecute the accused was prepared and was presented before the Sessions Court for trial.

TRIAL PROCEEDINGS

6. The prosecution examined as many as 16 witnesses and, subsequently, the public prosecutor closed 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 appearing for the convict-appellant has vigorously argued before this Court, that since it is a case based upon circumstantial evidence, thus, the reliance as made by the learned trial Judge concerned, upon the disclosure statement of the convict, besides upon the consequent thereto recoveries, is, rather a misplaced reliance. To fortify the above submission, he submits that the drawing of the disclosure statement besides the drawings of the recovery memos, both are tainted besides are concocted, and, manufactured rather through a stratagem deployed by the investigating officer concerned. Thus, he argues that on the above score, also the incriminatory disclosure statement besides the incriminatory recovery memos concerned, also lose their evidentiary vigor. He further submits that the

impugned judgment, is ridden, with grave vices of gross mis-appreciation and non-appreciation of evidence germane to the charge. Therefore, he contends that the impugned judgment be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (*supra*), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

CIRCUMSTANTIAL BASED EVIDENCE OF THEORY OF LAST SEEN PROPAGATED BY PW-3

9. The theory of last seen of the accused and the deceased together, is propagated by PW-3 Shankar. PW-3 in his examination-in-chief has echoed that he is the cousin brother of Sanjay, the father of deceased. He echoes therein that on 13.07.2016, the accused Guddu came to his house at 8 p.m., and, that at that time his mother-in-law along with other children of one Sanjay were at home, whereas, his cousin Sanjay, father of deceased was at work and the latter's wife was in the market. He continues to testify that, at that time deceased Nisha aged about 6 years was removed from her house with an intimation to the mother-in-law of one Sanjay, that he intends to purchase some eatables for the deceased. However, he states that when Sanjay returned home, he became apprised by the latter's mother-in-law that the accused had taken his daughter on the pretext of purchasing for her some eatables, but with an assurance that subsequently he would bring the deceased back to her abode. However, he testifies that since the deceased did not return home, therefore a futile search was made for discovering

the whereabouts of the deceased. However, the next morning the body of the deceased was found from the rented room of accused Guddu in gali No.13.

10. The above witness was subjected to a rigorous cross-examination. However, no successful unearthings were made therein, by the learned defence counsel suggestive, that the above testification(s), as made by him in his examination-in-chief rather were either false, contrived or concocted. Therefore, naturally immense evidentiary credit is to be assigned to the testification of PW-3. Resultantly, an inference is garnered that the accused and the deceased were last seen together. Thus, when subsequently the body of the deceased was found in the rented quarters of the accused. Therefore, the above evidence comprise cogent incriminatory material against the accused.

DISCLOSURE STATEMENT OF THE CONVICT AND CONSEQUENT THEREWITH RECOVERIES

11. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict being put to police remand, he made a signed disclosure statement, to which Ex.PL is assigned. The contents of Ex.PL are ad verbatim extracted hereinafter.

“Disclosure statement of convict Guddu

In the presence of following witnesses abovesaid accused Guddu while in police custody without any pressure and greed of his own suffered disclosure statement that Sanjay is my friend. I am drug addicted. Due to the drug addiction that I used to go on work with Sanjay. Due to that reason I developed friendship with Sanjay and used to visit his house. It is a matter of last night (13.7.16) at about 8.00 pm in the night I have to go to Sanjay's house. Sanjay and his wife not present there. I used to take sulfa and his children and his mother in law Tara met me at that house. I began to walk Nisha in the dock because I like Nisha. Sanjay's mother-in-law Tara refused to me, but I said that will be back after getting her eatable thing. I took Nisha to my rented room and took ½ frooti bottle from my landlord Karan and gave to Nisha and serve and I also drink. After that, locking the door of

the room and remove Nisha's pajami and then put oil from the mustard oil bottle and put it on the private part of Nisha and I put off my clothes and started doing wrong work with Nisha but Nisha shouted, at first I killed Nisha by pressing neck with white pajama string. After that, did wrong work with her many times and after locking the room at night and removing the string from Nisha's neck, I fled away from there through railway line Subhash Colony and threw the white string into bushes. By leading to that place I can demarcate and got it recovered and I can demarcate that room where I did wrong work with Nisha after killing her. Memos completed. Signature of accused and witnesses were taken.

LTI of accused Guddu

Witness:

1. Sd/- HC Dinesh Kumar 1488

Sd/- P/SI

2. Sd/- HC Devinder 2513

*I/C PP Adarsh Nagar
15.7.16"*

12. A reading of the above extracted signed disclosure statement as made by accused Guddu, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of string Ex.PN, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.PN, he caused the recovery of string. Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.PL or on Ex.PN, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence to suggest that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos.

MEDICAL EVIDENCE

13. The opinion of the medical expert concerned, *qua* whether the recovered cord (supra), did comprise the apposite strangulatory material, was asked for. A reading of the apposite opinion as occurs on the reverse of page

No.143, and to which Ex.PU/1 is assigned, vividly discloses, that the doctor opined that the cord as became recovered through memo Ex.PN, can possibly be the strangulatory material. The above opinion, as occurs in Ex.PU/A about the strangulatory capacity of cord, as became recovered through Ex.PN, does relate it, to the opinion, as made about the cause of demise of the deceased hence as occurs in the post mortem report Ex.PE. Therefore, when Ex.PU/A potentially corroborate(s) the opinion carried in Ex.PN, thus, the above *inter-se* corroborative opinions hence do constitute potent incriminatory evidence(s) against the accused.

POST MORTEM REPORT

14. Significantly also when it is completely corroborated by the post mortem report which becomes enclosed in Ex.PE, especially when the said exhibit became proven by Dr. Rajni Chauhan. Ex.PE carries the hereinafter extracted observations.

“A hard dark brown parchment like ligature mark present at the level of thyroid, cartilage of the neck with ligature mark going backwards, upwards, obliquely around the neck with a free space of 4 inch over the nape of neck post auricular right side. The total circumference of the neck 9 inches. The width of the ligature mark is 0.2 cm. The length of the ligature mark is 5 inches. On further dissection of the neck tight constrictiions of the neck and presence of the bruising of ecchymoses about the mark on the neck haemorrhages in the strap muscles under the skin and the sides of the tissue around the trachea and larynx.

2. Multiple abrasion over the vaginal wall.

3. Hymen torn and irregular margins.

4. Multiple laceration and abrasion with bruise discoloration around the genital parts and bleeding from the P/V with full of blood clots in vaginal region.

5. Multiple abrasions around the anal region”

FSL REPORT

15. Ex.PX and Ex.PY became sent to the FSL concerned, respectively vide R.C. No.611 dated 29.07.2016 through Constable Ct Baraham Singh1767/FBD, and, vide R.C. No.715 dated 30.08.2016 through Constable Ct. Balraj No.2856. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted conclusions.

“Laboratory Examination :

Laboratory examinations were carried out to detect the presence of semen/blood and hair comparison on the exhibits performing chemical test and microscopy. Based upon these examination, the results obtained are given below:-

- 1. Human semen was detected on exhibit-2a (Underwear) & 2b (White Baniyan). However semen could not be detected on rest of the exhibits mentioned above.*
- 2. Blood was detected on exhibit-3 (Vaginal Swabs).*
- 3. Strands of hair were found to be human in origin.”*

“Results of serological analysis of blood

<i>Sr. No.</i>	<i>Name of exhibit</i>	<i>Origin</i>
<i>1</i>	<i>Chader</i>	<i>Human</i>
<i>2</i>	<i>Pyjami</i>	<i>Material Disintergrated”</i>

16. An analysis of the above made conclusions, as became drawn by the experts concerned, working at the FSL concerned, and but after theirs examining the contents of the sealed cloth parcels as became sent there, does but naturally bring forth an inference, that the prosecution has invincibly proven, that the accused subjected the deceased to sexual intercourse, and, also that thereafter he proceeded to fatally strangulate her with user of a cord, which became recovered through Ex.PN.

FINAL ORDER

17. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of 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 appellant is on bail, he is ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. 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.

18. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

23.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No