

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-55-DB-2017 (O&M)

Reserved on: 20.02.2023

Date of Decision: 3.3.2023

Deepak

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. Yogesh Vashista, Advocate for
Mr. Rahul Gautam, Advocate for the appellant.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 28.10.2016, upon Sessions Case No. 20 of 2016, by the learned Additional Sessions Judge, Panipat. Through the above said verdict, the learned trial Judge concerned, convicted the accused, for the commission of offences punishable, under Sections 363, 366, and, under Section 302 of the IPC. However, the convict-appellant was acquitted of the charges framed against him under Section 376(2) of the IPC, and, under Section 6 of the POCSO Act, 2012. Moreover, through a separate sentencing order, drawn on 29.10.2016, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for a period of three years, for an offence punishable under Section 363 of the IPC, besides also imposed, upon the convict sentence of fine comprised in a sum of Rs. 2,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo simple

imprisonment for a period of ten days. Further, the learned trial Judge

concerned, also sentenced the convict to undergo rigorous imprisonment for a period of five years, for an offence punishable under Section 366 of the IPC, besides also imposed, upon the convict sentence of fine comprised in a sum of Rs. 5,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo simple imprisonment for a period of fifteen days. Moreover, the learned trial Judge concerned, also sentenced the convict to undergo rigorous imprisonment for life, for an offence punishable under Section 302 of the IPC, besides also imposed, upon the convict sentence of fine, comprised in a sum of Rs. 10,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo simple imprisonment for six months.

2. The accused-convict become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-25 is assigned. The narrations carried in Ex. P-25, are that in the complaint Ex. P-16 dated 7.9.2015 moved by PW-8, before Incharge of Police Post, Kishanpura Panipat on 10.09.2015, is that, he is resident of a Colony in Panipat. He belongs to Kohli community. The accused Deepak son of Ram Kumar, resident of a village in District of U.P. has kidnapped his daughter "A" (real name withheld) aged about 15 years.

The said fact cause to his knowledge through the husband of sister of

mother of "A" on his Mobile no.98967-48996 when "A" intimated the said fact to him on the said phone. The accused Deepak had kidnapped her from his house on 05.09.2015 at about 8.00 a.m. He has threatened that if any one follows him, he will shoot him. With the said allegations, PW8 moved complaint Ex.P16 before the said Incharge.

Investigation proceedings

4. On 25.09.2015, PW8 gave a statement before the police of the said Police Post, that he wants to get his complaint investigated from Women Police Station Panipat, and, therefore the said complaint may be sent to the said Police Station. Accordingly, on that very date, the said complaint was sent to Women Police Station, Panipat, and, remained pending there till 03.10.2015. On 03.10.2015, PW8 gave a statement before Women Police Station, Panipat that he wants to get his above stated complaint investigated from the police of Police Post Kishanpura, Panipat, and, therefore the said complaint may be sent to the said Police Post. Accordingly, on 03.10.2015, the said complaint was sent to the said Police Post with a request that a case qua commission of offences under Sections 363/366-A IPC, be registered against the accused Deepak. Resultantly, on 16.10.2015, on the basis of the complaint Ex.P16, the appeal FIR became registered in Police Station Chandni Bagh, Panipat. Its special reports were sent to the concerned authorities. On 16.10.2015 itself, an intimation was received from Police Station Partapur in District Meerut of U.P. to reach the said Police Station. Accordingly, PW8, and, PW13 reached the said Police Station. In their presence, the room in which dead body of the deceased was lying, was broken open, and therefrom, such dead body was taken out. On that very

date, a chunni lying in the said room, with the lock with which the said room had been locked, were taken in police possession vide recovery memo Ex.P19 and Ex.P20. On detection of the said dead body, the police of Police Station Partapur conducted inquest proceedings under Section 174 Cr.P.C. on the dead body. In that process, report Ex.P21 of that date was prepared. Dead body was then sent to P.L.Sharma, District Hospital, Meerut for autopsy thereon. On that very date, police of Police Station Partapur (Meerut) intimated Police of Police Station Chandni Bagh, Panipat about recovery of dead body of the deceased in its jurisdiction. Accordingly, the Police of Police Station Chandni Bagh, Panipat reached Partapur. Thereafter, PW12 Dr. Kaushalendra Singh posted in District Hospital, Meerut, conducted autopsy on the dead body of the deceased on 17.10.2015. On 17.10.2015, on inspection of the place of occurrence, SI Balbir Singh prepared rough site plan Ex.P22 thereof. The accused Deepak was arrested in the present case on 18.10.2015. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

5. Since the offences under Sections 363, 366-A, 376, and, Section 302 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through committal order made on 12.1.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

6. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the

incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for the offences punishable under Sections 363, 366, 376(2), and, Section 302 of the IPC, and, under Section 6 of the POCSO Act, 2012. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined 13 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, however, he did not lead any witness into the witness box.

8. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited,

and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

**Reasons for rejecting the submission of the learned counsel
for the appellant.**

11. Initially, as revealed by Ex. P-12, deceased Asha Rani was a minor at the time of commission of offence. Therefore, she could not wilfully except with the consent of her parents, join the company of the accused. The trite evidence in respect of the accused admitting his kidnapping deceased Asha Rani, is comprised in Ex. D1, drawn on 13.9.2015. Thereons exist the signatures of the father of the accused, and, also of the father of the complainant. Moreover, therein occur echoings that the father of the accused, and, the father of the complainant had undertaken not to give any help to the accused, who had kidnapped the deceased from the custody of her lawful guardians. Since Ex. D1 was adduced but as a piece of defence evidence, therefore, in the accused tendering the above exhibit, hence as an exculpatory piece of evidence before the learned trial Judge concerned, but is connotative of an admission, that he had assumed unlawful custody over the deceased from the date of her disappearance, and, upto 13.9.2015. Moreover, since no explanation has emanated from the accused about the circumstances, in which the deceased died. Therefore, lack of emanation of the above explanation from the accused, despite his, from the date of the disappearance of the deceased upto 13.9.2015 assuming unlawful custody over the deceased, but brings forth an invincible conclusion, that the deceased was subjected to the penal occurrence(s) as becomes encapsulated in the appeal FIR, to which

Ex. P-25, is assigned.

12. The body of the deceased was recovered from the locked room which was then held within the jurisdictional limits of the Police Station Partapur, Meerut, U.P. Though, no forthright evidence is brought on record suggestive, that accused Deepak had assumed possession of the said locked room. However, when, as stated above, the accused had assumed unlawful custody of the deceased from the date of her disappearance upto 13.9.2015. Therefore, it was but necessary for the accused to, but from the evident factum (supra), hence dispel the suspicion which became attracted to him, through his adducing cogent evidence, qua some person(s) other than him lodging the deceased inside the locked room, wherein, the body of the deceased was found. However, the said explanation has not emanated from the accused. Therefore, it has to be concluded, that the deceased had been throughout in the unlawful custody of the deceased, and, that the accused had housed her in the room wherefrom her dead body was recovered. Significantly, and, as but a natural corollary thereof, it has to be concluded, that the accused had committed the penal offence(s) inside the locked room. Resultantly, the locked room wherefrom the body of the deceased was recovered, becomes the crime site.

Signatures disclosure statement of the convict, and, pursuant thereto
recovery memo

13. During the course of investigations, being made into the appeal FIR, convict Deepak made a signed disclosure statement, to which Ex. P5 is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“That I was in love with Asha d/o Kanwarpal r/o Tyala District Hapur at present Jag Jiwan Ram Colony, Panipat and I also wanted to perform marriage with her. ON 5.9.2015, I had kidnapped the girl Asha after inducing her with the intent of marrying her. After taking a room on rent in Indrara Colony

Police Station Partapur, District Meerut, I was residing there from that very day. I continued committing wrong act upon her against her will. Asha was asking me again and again to visit her house. On 15.10.2015, I had fled away from the room by locking the same after committing murder of the girl Asha with the knife used for cutting vegetables. I can get demarcate the room which I had taken on rent in Indra Colony, P.S. Partapur, District Meerut, U.P. where I had committed wrong act upon the girl Asha against her will and committed her murder. I have kept concealed the Aadhaar Card of the girl Asha which was kept by me for performing marriage and the knife with which I had committed her murder, in the bushes in front of the playground of government school situated in Indra Colony, P.S. Partapur, District Meerut, U.P. Nobody except me, have any knowledge about the same. I can get recovered the same after accompanying you.”

14. Pursuant to the above signed disclosure statement, convict Deepak got recovered one knife, and, the Aadhar Card of deceased Asha which were taken into police possession through recovery memo Ex. P8.

15. The disclosure statement (supra), carries the signature of convict Deepak in Hindi. In his signed disclosure statement (supra), the convict confessed his guilt in committing the murder of deceased Asha, by inflicting injuries on her person, hence with the weapon of offence concerned. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, and, the Aadhar Card of the deceased, in the bushes in front of the playground of Government School at Indra Colony, P.S. Partapur, District Meerut, U.P. Moreover, it also makes speakings about his alone being aware about the location of his hiding and keeping the same, and, also unravels his evincing his readiness, and, willingness to cause the recovery of the incriminatory item(s) to the investigating officer concerned, from the place of his hiding, and, keeping the same.

16. The above disclosure statement, does acquire utmost evidentiary solemnity, as thereons exist the signatures of the convict in

Hindi, which, however, he has neither ably denied nor has efficaciously proven the said denial. Moreover, the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through a proven recovery memo, convict Deepak caused recovery of the incriminatory items, to the investigating officer concerned.

17. Since the recovery of the incriminatory items, as made through recovery memo Ex. P8, has not been proven to be a false or contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of the recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict to place them there. Thus, the above recovery(ies) are but to be concluded to be validly made recovery(ies), besides also it has to be concluded, that the recovered incriminatory weapon of offence was the very same assault weapon, which became used by the accused in committing the murder of the deceased concerned.

**Post-mortem report and cause of death linked to the recovered
weapon of offence**

18. The autopsy on the body of deceased Asha was conducted by PW-12 Dr. Kaushalendra Singh, who has proven the post-mortem report, to which Ex. P-26, is assigned. In his affidavit, to which Ex. PW-12/A, is assigned, he has proven the existence of the hereinafter extracted injuries on the person of deceased Asha.

1. *Incised wound of 2x1 cm present over upper part of neck, over anterior surface in middle part.*
2. *Incised wound of 1.5x3.0 cm below left nipple.*
3. *Incised wound of 4x3 cm over epigastric region.*
4. *Incised wound of 1x1 cm over anterior abdominal wall 8.0 cm above umbilicus.*

19. The cause of demise of the deceased concerned, has been opined by PW-12 to ensue from hemorrhage, and, shock caused by ante mortem injuries. The above made echoings by PW-12, in his examination-in-chief, became never challenged through an efficacious cross-examination, being made upon him by the learned defence counsel. Therefore, the opinion, as made by PW-12 qua the demise of the deceased acquires formidable force. Thus, the disclosure statement, as made by the convict, and, also consequent therewith recoveries, do also become fully supported by the above medical account/evidence.

Final order

20. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed. If the convict is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

21. Records be sent down forthwith.
22. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 03, 2023
Gurpreet

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