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

**CRA-D-825-DB-2012 (O&M)**
**Reserved on: 22.09.2022**
**Date of pronouncement:26.09.2022**

Manoj Kumar … Appellant

Vs.

State of Haryana …Respondent

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

**HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Mr. Rahul Vats, Advocate
for the appellant.

Mr. Anmol Malik, Deputy Advocate General, Haryana.

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***N.S.SHEKHAWAT, J.***

The present appeal arises out of the judgment dated 09.08.2012 and the order dated 13.08.2012 passed by the Court of learned Additional Sessions Judge, Palwal, whereby the present appellant was held guilty and convicted for the commission of offence under Sections 363, 376(2)(f), 302 and 365 of the Indian Penal Code (for short 'IPC') and was sentenced in the following manner:-

| Offence under Section | Sentence |
|---|---|
| 363 IPC | Rigorous imprisonment for a period of seven years along with fine of R.500/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for one month. |
| 376(2)(f) IPC | Imprisonment for life along with fine of Rs.1,000/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for three months. |

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|---|---|
| 302 IPC | Imprisonment for life along with fine of Rs.1,000/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for three months. |
| 365 IPC | Rigorous imprisonment for a period of seven years along with fine of Rs.500/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for one month. |

The factual matrix in which the appellant came to be prosecuted and convicted has been set out in detail in the judgment passed by the learned trial Court. We need not, therefore, recapitulate the same all over again except to the extent it is required for the disposal of the instant appeal by us.

Briefly stated, the FIR in the instant case was lodged on the basis of the statement of PW-2 Sunil Kumar, father of the victim, who met SI/SHO Ravinder Singh PW-12 and submitted one application Ex.P-2. As per the said application, he was a labourer by occupation. The appellant/accused used to work with him about 2-3 years ago. At about 6.00 p.m. on 30.04.2009, the appellant came to his house and kidnapped his minor daughter 'A' (name withheld in view of the provisions contained in Section 228-A of the IPC and in view of the law laid down in the judgment of Hon'ble the Supreme Court in **State of Karnatka Vs. Puttaraja, 2004(1) R.C.R. (Crl.) 113)**, aged about 9 years. The accused took her away on his bicycle and his son Manish PW-3 had seen the appellant, while taking away his daughter 'A'. Thereafter, he and his son Manish made their endeavour to trace out his daughter, but could not succeed. In the early morning on 01.05.2009, the complainant came to know that the dead body of his daughter 'A' was lying in the fields of *Narbir* resident of Kithwari. He

reached the spot and found the dead body of his daughter in nude condition lying there. He raised the suspicion that she had been raped and then murdered by way of strangulation. Her clothes and slippers (*chappal*) were lying nearby and he prayed for action against the accused. On the basis of his statement, the FIR Ex.PW6/B was registered at Police Station Camp, Palwal under Sections 363, 376(2), 302 of IPC against the present appellant and the police machinery was set into motion.

SI/SHO Ravinder Singh PW-12 reached the place of occurrence and prepared the rough site plan Ex.PW-12/B. He recorded the statements of the witnesses under Section 161 Cr.P.C. He also got prepared scaled site plan from the draughtsman and also prepared the Inquest Report Ex.PW8/C. Thereafter, the dead body was sent to General Hospital, Palwal, for conducting the postmortem examination. The appellant was apprehended by the police in the instant case on 08.05.2009, who suffered his disclosure statement Ex.PW11/A, in which, he disclosed that he had kept concealed a bag in the corner of the fields of *maize* and parked his bicycle on the Railway Station, Palwal, which was used in the commission of offence. After completion of the investigation, PW-12 Ravinder Singh SI/SHO prepared the report under Section 173 Cr.P.C. and forwarded the same for trial.

At this stage, it requires to be mentioned that the postmortem examination on the dead body of the victim 'A' aged 9 years, was conducted by PW-8 Dr. Sachin and the other Members of Medical Board on 01.05.2009. The postmortem report was exhibited as Ex.PW8/B and the Inquest Report was exhibited as Ex.PW8/C. The Medical Board noticed several injuries on the person of the deceased and the same have been

reproduced below:-

- *0.5x 0.5 cm. Lacerated wound, Reddish Brown colour present over just below right lower eyelid. On dissetion extravasation of blood present, L.W. 0.5 x 0.5 cm. Present over Lt. Upper eyelid. Reddish blush swelling present over left lower eyelid.*
- *Blush swelling present over right cheek.*
- *Reddish brown abrasion present 4.0 x 2.0 cm over right side of neck antrolaterally.*
- *Multiple reddish abrasion 1.0 x 0.3 cm. Present superiorly and laterally rightside of to the abovesaid injury.*
- *Reddish brown abrasion 5.0 x 2.0 cm. Over anterior surface of neck going obliquely upword to the left side of neck with tapering at left side.*
- *Two reddish abrasion 1.0 x 1.0 cm. Present just below Rt. Nipple.*
- *Multiple abrasion present over anterio internal aspect of both upper limbs.*
- *Reddish blue contusion present over B/L medical aspect of knee.*
- *Multiple abrasion present over inner surface of B/L labia majora. Hymen found ruptured. Clotted blood present along with margin of hymen. Blood clot present inside the vagina along with hemorrhagic fluid blood stained forth coming.*
- *On cutting trachea fracture of thyroid and hyoid seen."*

As per report of the Medical Board, the cause of death in the instant case was asphyxia due owing to throttling. However, the viscera and blood from the heart and vaginal swabs were sent to the laboratory for chemical examination. As per the FSL report, EX.P-4, no common poison could be detected in the viscera sent to FSL, Madhuban. However, as per the report Ex.P-5 of FSL Madhuban, human semen was detected on the underwear of the victim 'A'.

During the course of trial, the prosecution examined 12 witnesses to support its case. The appellant was examined by the trial Court

under Section 313 of Cr.P.C. and he had taken a stand that he was not present on the date of occurrence and had gone to attend the marriage of his cousin at village Siyarol in Uttar Pradesh. He had not kidnapped the deceased/victim and the case had been falsely registered against him in collusion with the police. To prove his innocence, the appellant examined two witnesses, namely, DW-1 Suresh and DW-2 Pappu. After due appreciation of the evidence, the trial Court convicted and sentenced the appellant as stated above.

We have heard learned counsel for the parties at length and have marshalled the evidence placed on record by the prosecution as well as the defence.

The learned counsel for the appellant had vehemently contested the case of the prosecution by stating that the case of the prosecution is based on hearsay evidence. Still further, the child witness PW-3 Manish had been falsely introduced by the prosecution and no weightage could be given to his statement. There was only one independent witness i.e. PW-4 Sham Sunder, who had not supported the case of the prosecution. Further, the case of the prosecution is based on circumstantial evidence and the prosecution had utterly failed to complete the chain of link evidence against the appellant on the basis of theory of last seen evidence. Furthermore, the appellant had been successful in proving the plea of alibi through the examination of two witnesses i.e. DW-1 Suresh and DW-2 Pappu and he was attending the marriage of his cousin in Uttar Pradesh. In support of the same, the marriage card EX.DA was also produced. The learned counsel for the appellant also contended that the appellant was entitled for benefit of doubt also in view of the fact that the prosecution had failed to prove the

motive also and prayed for acceptance of appeal.

The submissions made by learned counsel for the appellant have been vehemently opposed by learned State counsel and while referring to the testimonies of various prosecution witnesses, he prayed for dismissal of the appeal.

Having heard the rival contentions of learned counsel for both the parties, we are unable to differ from the findings recorded by the learned trial Court.

Learned counsel for the appellant had vehemently contended that the entire prosecution case is based on hearsay evidence and was liable to be rejected outrightly. Even PW-2 Sunil was the father of the victim/deceased 'A', whereas, PW-3 Manish (child witness) was the brother of the victim and their testimonies are liable to be rejected also on the ground that both of them were interested witnesses.

We have considered the said submissions in the light of the evidence led by the prosecution in the shape of the testimonies of PW-2 Sunil and PW-3 Manish. The criminal prosecution was initiated at the instance of PW-2 Sunil. He clearly stated that he reached home at about 6.00 p.m. on 30.04.2009 and after reaching, his son Manish had informed that the appellant had taken away the victim 'A' on his bicycle, while his son was playing near a road. The complainant presumed that the appellant had taken his daughter 'A' for some work or for making some purchases from the market and she would return. However, when she did not return, he went to the house of the appellant to enquire about his daughter 'A'. On this, the family members of the appellant told him that even he had not returned home as well. He informed them that his daughter had been taken

away by the appellant. The family members of the appellant gave him an assurance that they would send his daughter to his home as and he returned with his daughter. However, neither Manoj nor his daughter 'A' returned in night and at about 8.30 a.m. on 01.05.2009 i.e. on the next day itself, the matter was reported to the police by the complainant. Thus, it is apparent that the FIR was registered by the complainant with promptitude, by levelling specific allegations against the present appellant. The complainant was examined as PW-2 before the trial Court and was subjected to incisive cross-examination and he withstood the same. It is apparent that PW-2 Sunil, complainant had no reason to depose falsely against the appellant or to falsely name him as a culprit in the instant case. Late in the evening on 30.04.2009, he was informed about the taking away of his daughter by the appellant and he reported the matter in the early morning on 01.05.2009, without any delay. Even we have gone through the testimony of PW-2 Sunil and found his testimony to be truthful and the same inspires confidence of the Court. Similarly, the prosecution examined PW-3 Manish, aged about 11 years, who had seen the appellant taking away his sister/ victim 'A' on his bicycle in the evening on 30.04.2009. Even the appellant was known to him, because the appellant had been coming to their home in connection with his work. Even the said witness had deposed the facts consistently and his sole testimony was sufficient to prove the guilt of the appellant. Even during his cross-examination, nothing material could be taken out by the defence and his statement was found worthy of credence by us.

Learned counsel for the appellant earnestly contended that both the witnesses i.e. PW-2 Sunil and PW-3 Manish were interested witnesses

and were closely related to the victim 'A' being father and brother respectively.

We have considered the said submission and found that the testimonies of the said two witnesses could never be rejected on the ground that they were closely related to the victim 'A'. In fact, PW-3 Manish was the most natural witness and the appellant was known to him. Even he was the brother of the victim and his presence near the place of occurrence was natural. Still further, even he was subjected to cross-examination and his testimony was found worthy of placing reliance and was consistent. Still further, no reason for falsely implicating the appellant or any ill-will on the part of the said witnesses has been suggested to both the prosecution witnesses i.e. PW-2 Sunil and PW-3 Manish. Even in his statement under Section 313 Cr.P.C., the appellant has not offered any explanation with regard to his alleged false implication in the instant case. In fact, PW-3 Manish had seen the appellant taking away the victim 'A' on his bicycle, immediately prior to the commission of offence. When PW-2 Sunil went to their house to complain against the appellant, he was also found missing from there and did not return home that night.

It has been held by the Hon'ble Supreme Court in the matter of "***Ganpat Singh Vs. The State of Madhya Pradesh, 2017 (4) R.C.R. (Criminal), 149***", as under:-

> *"9 There are no eye-witnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a two-fold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.*

*Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus:*

> *"The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence".* See **Sharad Birdhichand Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 Sarda v. State of Maharashtra, (1984) 4 SCC 116; Ramreddy Rajeshkhanna Reddy v. State of Andhra Ramreddy Rajeshkhanna Reddy v. State of Andhra Pradesh, 2006(2) RCR (Criminal) 462 : (2006) 10 SCC 172 Pradesh, 2006(2) RCR (Criminal) 462 : (2006) 10 SCC 172; Trimukh Maroti Kirkan v. State of Maharashtra, (2006) Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 10 SCC 681; Venkatesan v. State of Tamil Nadu, 2008(3) Venkatesan v. State of Tamil Nadu, 2008(3) RCR (Criminal) 563 : (2008) 8 SCC 456 RCR (Criminal) 563 : (2008) 8 SCC 456; Sanjay Kumar Jain Sanjay Kumar Jain v. State of Delhi, 2011(1) RCR (Criminal) 270 : (2011) 11 v. State of Delhi, 2011(1) RCR (Criminal) 270 : (2011) 11 SCC 733 SCC 733; Madhu v. State of Kerala, 2012(5) RCR Madhu v. State of Kerala, 2012(5) RCR (Criminal) 520 : (2012)**

**2 SCC 399 (Criminal) 520 : (2012) 2 SCC 399; Munna Kumar Munna Kumar Upadhyaya @ Munna Upadhyaya v. State of Andhra Upadhyaya @ Munna Upadhyaya v. State of Andhra Pradesh, (2012) 6 SCC 174 Pradesh, (2012) 6 SCC 174; Vivek Kalra v. State of Vivek Kalra v. State of Rajasthan, 2013(2) RCR (Criminal) 190 : 2013(2) Recent Rajasthan, 2013(2) RCR (Criminal) 190 : 2013(2) Recent Apex Judgments (R.A.J.) 40 : (2014) 12 SCC 439 Apex Judgments (R.A.J.) 40 : (2014) 12 SCC 439."**

*10. Evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The settled formulation of law is as follows:*

> *"The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases".* **See Bodh Raj @ Bodha v. State of Jammu and Kashmir, (2002) 8 SCC 45 Bodha v. State of Jammu and Kashmir, (2002) 8 SCC 45; Jaswant**

**Gir v. State of Punjab, 2006(2) RCR (Criminal) Jaswant Gir v. State of Punjab, 2006(2) RCR (Criminal) 202 : (2005) 12 SCC 438 202 : (2005) 12 SCC 438; Tipparam Prabhakar v. State of Tipparam Prabhakar v. State of Andhra Pradesh, 2010(5) RCR (Criminal) 574 : (2009) 13 Andhra Pradesh, 2010(5) RCR (Criminal) 574 : (2009) 13 SCC 534 SCC 534; Rishi Pal v. State of Uttarakhand, (2013) 12 SCC Rishi Pal v. State of Uttarakhand, (2013) 12 SCC 551; Krishnan v. State of Tamil Nadu, 2014(4) Recent Krishnan v. State of Tamil Nadu, 2014(4) Recent Apex Judgments (R.A.J.) 454 : (2014) 12 SCC 279 Apex Judgments (R.A.J.) 454 : (2014) 12 SCC 279; Kiriti Pal v. State of West Bengal, 2016(1) RCR (Criminal) 617 : Pal v. State of West Bengal, 2016(1) RCR (Criminal) 617 : 2016(1) Recent Apex Judgments (R.A.J.) 124 : (2015) 11 2016(1) Recent Apex Judgments (R.A.J.) 124 : (2015) 11 SCC 178 SCC 178; State of Karnataka v. Chand Basha, 2015 (4) RCR State of Karnataka v. Chand Basha, 2015(4) RCR (Criminal) 718 : 2015(5) Recent Apex Judgments (R.A.J.) (Criminal) 718 : 2015(5) Recent Apex Judgments (R.A.J.) 236 : (2016) 1 SCC 501 236 : (2016) 1 SCC 501; Rambraksh v. State of Rambraksh v. State of Chhattisgarh, 2016(3) RCR (Criminal) 330 : 2016(3) Chhattisgarh, 2016(3) RCR (Criminal) 330 : 2016(3) Recent Apex Judgments (R.A.J.) 652 : (2016) 12 SCC 251 Recent Apex Judgments (R.A.J.) 652 : (2016) 12 SCC 251; Anjan Kumar Sharma v. State of Assam, 2017(3) RCR Anjan Kumar Sharma v. State of Assam, 2017(3) RCR (Criminal) 386 : 2017(3) Recent Apex Judgments (R.A.J.) (Criminal) 386 : 2017(3) Recent Apex Judgments (R.A.J.) 555 : 2017 (6) SCALE 556. 555 : 2017 (6) SCALE 556."**

Tested on the touch-stone of above said principles of law, we find that the testimonies of above said two witnesses do not suffer from any infirmity and the trial Court had rightly correctly placed reliance on the said two testimonies, which were duly corroborated by the other prosecution evidence. In the instant case, the deceased/victim 'A', who was aged about 9 years, was not only brutally killed, but was also subjected to forceful rape in the most barbaric manner, which is evident from the injuries suffered by her on her person (which have been reproduced above). Even the prosecution examined PW-8 Dr. Sachin, who had clearly opined that the cause of death in the instant case was asphyxia due to throttling. Even as per the FSL report prepared by FSL, Madhuban, Ex.P5, human semen was detected on the underwear of the victim 'A', who was a minor aged about 9 years only.

In the instant case, the investigation was conducted by PW-12 SI/SHO Ravinder Singh, in whose presence, the appellant suffered his disclosure statement and stated that he had kept concealed a bag in the corner of the fields of *maize* and had parked his bicycle on Railway Station, which was used in the commission of crime. In pursuance of his disclosure statement, the appellant led the police party at the place pointed by him and the recoveries were effected.

In the instant case, the learned counsel for the appellant vehemently contended that the appellant was not present at the place of occurrence and had gone to attend the marriage of his cousin in Uttar Pradesh. To buttress his argument, he examined DW-1 Suresh and DW-2 Pappu. As per the said witnesses, a dinner party was held on 30.04.2009 on the occasion of marriage of his nephew, Harkesh and the appellant allegedly

remained in village Sahrol, District Aligarh (U.P.) from 30.04.2009 to 03.05.2009 and the marriage card was exhibited as Ex.DA. However, in cross-examination, the DW-1 Suresh admitted that in the marriage card, there was no mention of the name of the present appellant. He admitted that Harkesh, the bridegroom was his cousin in relation and he was present in the marriage, but he did not go in *baarat*, which is unbelievable. He admitted that the photographs were clicked at the lagan ceremony in the village, but he had not seen the photographs as well as the video film which was taken in the *lagan* ceremony. Even DW-2 Pappu also deposed on similar lines and apparently a false defence was projected by the appellant before the trial Court. The defence had miserably failed in proving the plea of alibi and the testimonies of the said two witnesses are liable to be rejected outrightly. At this stage, it is observed that taking of a false defence by the appellant would also serve as an additional link in the chain of circumstances, which unerringly established the guilt of the appellant beyond any doubt.

The child rape cases are the cases of worst form of lust for sex, where children of tender age are not even spared in the pursuit of sexual pleasure. There cannot be anything more obscene, diabolical and barbaric than this. It is a crime not only against the society, but against the entire humanity. Many of such cases are not brought to the light because of the fact that the social stigma is attached thereto. According to some surveys, there has been a steep rise in the child rape cases. The children need more care and protection not only by the parents and guardians, but also by the Courts and society at large. In such cases, the responsibility is equally there on the shoulders of the Court so as to provide proper legal protection to

these minor victims. The children are natural resource of our country and are also country's future. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape beside other modes of sexual, emotional and financial abuse. These factors require a different approach to be adopted towards such victims. The overturning of a well considered and well analysed judgment of the trial Court on the grounds of minor inconsistencies in the statements of the witnesses, when the case against the appellant otherwise stood established beyond reasonable doubt, was not called for. Minor improvements or inconsistencies in the statements of truthful witnesses, who have been examined after a long lapse of time, are wholly insignificant. Having played with the life of a minor child aged about 9 years, which has been proved by the prosecution by leading unimpeachable and cogent evidence, we find no ground to interfere with the impugned judgment and order passed by the Court of learned Additional Sessions Judge, Palwal and uphold and affirm the same.

The appeal is accordingly dismissed.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

**(SURESHWAR THAKUR)**
**JUDGE**

**(N.S.SHEKHAWAT)**
**JUDGE**

**26.09.2022**
hemlata

Whether speaking/reasoned : Yes
Whether reportable : Yes