(2011) 08 P&H CK 0270

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No.308-DB of 2005

Tarsem Singh @ Gandu		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Aug. 18, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 201, 302, 376

Hon'ble Judges: Vijender Singh Malik, J; Hemant Gupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

Tarsem Singh @ Gandu is in appeal before us against the judgment of his conviction dated 17.5.2004 passed by learned Additional Sessions Judge (Ad hoc), Amritsar in a case registered by way of F.I.R. No.16 dated 2.2.2002 at Police Station, Beas for an offence punishable under sections 302, 376, 201 of the I.P.C. vide which he has been held guilty for the said offence and the order of sentence of the same date vide which he has been sentenced as under:

1. For the offence punishable u/s 302 of the I.P.C.	To undergo imprisonment life and to pay a fine of Rs.5000/-. In default of payment of fine, to undergo further rigorous imprisonment for six months.

2. For the offence punishable u/s 376 of the I.P.C.	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.2000/-. In default of payment of fine, to undergo further rigorous imprisonment for two months.
3. For the offence punishable u/s 201 of the I.P.C.	To undergo rigorous imprisonment for four years and to pay a fine of Rs.1000/-. In default of payment of fine, to undergo further rigorous imprisonment for one month.

2. All the sentences were ordered to run concurrently. The case set up against the appellant by Police Station, Beas is as under:

On 1.7.2002, at about 2.30 P.M., Tarsem Singh, appellant came to the house of Ranjit Kaur, complainant at village Madhepur. He was on visiting terms with her family. He took with him Sukhpreet Kaur @ Anju, a four year old daughter of Ranjit Kaur, for bicycle ride. When the appellant did not return after some time, Ranjit Kaur and others went out in search of Sukhpreet Kaur as well as Tarsem Singh, appellant. They could not trace them out.

3. On the next day, Ranjit Kaur and her family members continued the search for Sukhpreet kaur. When Ranjit Kaur, her father-in-law Gura Singh and some other persons were heading towards the fields of Naranjan Singh, they spotted Tarsem Singh, appellant who was running away from the wheat field of Naranjan Singh. Ranjit Kaur and others went to the place wherefrom they saw Tarsem Singh, appellant running and saw the dead body of Sukhpreet Kaur lying near the boundary of the field. They suspected Tarsem Singh, appellant to have murdered Sukhpreet Kaur. Leaving Tarsem Singh, another person by the name of the appellant, who happens to be the brother-in-law of the complainant and others, Ranjit Kaur and Gura Singh started for Police Station, Beas to lodge a report. They came across Jarnail Singh, S.I. at Bus Stand, Khalchian. The statement of Ranjit Kaur was recorded by Jarnail Singh, S.I. there, which was signed by her. Jarnail Singh, S.I. made his endorsement thereon and had sent the same to the police station on which formal F.I.R. was recorded. Jarnail Singh, S.I. then proceeded with the investigation. Accompanied by Ranjit Kaur and Gura Singh, he went to the place of occurrence and conducted inquest proceedings on the dead body. The dead body was

sent to Civil Hospital, Amritsar for post mortem examination through Joginder Singh, constable and others. He prepared a rough site plan of the place of occurrence.

4. The investigation was thereafter transferred to Kashmir Singh, Inspector by the Senior Superintendent of Police, Amrtisar. Kashmir Singh, Inspector then went to village Madhepur where he recorded statements of witnesses. He inspected the place of occurrence and took into possession one trouser of a female child from the spot which was identified by Ranjit Kaur to be of Sukhpreet Kaur. The same was given the shape of a parcel and was sealed with the seal `KS'' and was taken into possession by way of a recovery memo. Dr.Guriqbal Singh along with Dr. Rajiv Joshi conducted post mortem examination on the dead body of Sukhpreet Kaur @ Anju daughter of Ranjit Kaur. They noticed various injuries on her person including her private parts. According to them, the death in this case was due to asphyxia due to smothering which was sufficient to cause death in the ordinary course of nature. The doctors took vaginal swabs and sealed them and gave the same to the police along with the clothes of the deceased which were taken into possession by Kashmir Singh, Inspector by way of a recovery memo. On 4.2.2002, in the area of village Madhepur, Gurdeep Kaur, member panchayat produced Tarsem Singh, appellant before Kashmir Singh, Inspector. He was accordingly arrested. On completion of other formalities of investigation, challan against the appellant was prepared and presented Charge was framed against the appellant for an offence punishable under sections 376, 302, 201 of the I.P.C. vide order dated 16.8.2002 by learned Sessions Judge, Amritsar to which he pleaded not guilty and claimed trial.

5. In order to establish its case against the appellant, the prosecution examined thirteen witnesses. With the prosecution evidence coming to a close with tender of report of the Chemical Examiner, the appellant was examined in terms of section 313 of the Cr.P.C. He has denied the truth of all the pieces of incriminating prosecution evidence coming on record against him. He has claimed that the case against him is false. He has also pleaded innocence. According to him, there was a dispute between him and Gura Singh, sarpanch, father-in-law of the complainant, regarding closing of the street. He has added that a civil litigation remained pending regarding the same which was disposed of on 12.9.2000. He has also claimed that he belonged to Congress Party while Gura Singh, sarpanch and Gurpdeep Kaur, member panchayat belonged to Akali Dal. He has further stated that he was picked up on the same night from his residence and was falsely implicated in the case on account of party rivalry. A copy of the order dated 12.9.2000 passed by Additional Civil Judge, Baba Bakala in a suit filed against Balwant Singh and others alone was tendered in defence evidence.

6. Hearing learned Additional Public Prosecutor for the State and learned counsel for the defence, learned trial court found the appellant guilty for the offence punishable under sections 376, 302 and 201 of the I.P.C. vide the judgment dated 17.5.2004. Hearing the parties on quantum of sentence, the above mentioned sentences have been awarded to the appellant vide the order of the same date.

7. Aggrieved by the aforesaid judgment and the order of sentence, Tarsem Singh, appellant has brought this appeal.

8. We have heard Shri Sanjiv Sharma, learned counsel for the appellant and Shri S.S.Dhaliwal, learned Additional Advocate General, Punjab for the respondent-State.

9. Learned counsel for the appellant has submitted that this is a case based on circumstantial evidence for its proof. According to him, the circumstances should not only have to be firmly established by leading cogent evidence by the prosecution, but the same should also unerringly point to the guilt of an accused and they should also form a complete chain and should be incompatible with any hypothesis of innocence of the accused. He has contended that in the present case, there are some circumstances which make the entire prosecution case doubtful. According to him, the first is that Dr.Gurikbal Singh, PW4 has stated that bluish discolouration was present over the nails, lips and ear lobules of the deceased. Learned counsel for the appellant has argued that this circumstance does not go side by side with the case of the prosecution. According to learned counsel for the appellant, the second circumstance is available in the statement of Jhanda Singh, PW13, who has stated that when they spotted the appellant in the field of Naranjan Singh, he was digging Anju, deceased. He has contended that according to the statements of other prosecution witnesses, the dead body of the deceased was seen lying by the side of the boundary of the field of Naranjan Singh and there is nothing in those statements to show that the deceased was being dug out by the appellant.

10. If according to learned counsel for the appellant, the circumstance of bluish discolouration of the nails, lips and ear lobules was a circumstance to make the prosecution case doubtful, this aspect should have been further got clarified from the medical witness. Nothing has been asked from the doctor in his cross-examination except for the time frame in which rigor mortis sets in and disappears. There may be a number of reasons on account of which bluish discolouration may appear over the nails,lips and ear lobules of the deceased. In our opinion, this circumstance does not seem to be connected in any manner with the offence of rape or murder with which the appellant has been charged.

11. Digging of Anju, deceased by the appellant appears to be something strange because it is Jhanda Singh, PW13, who alone makes a statement in this regard. The other witnesses do not speak about it. The body of the deceased was apparent in the field as is stated by Ranjit Kaur, complainant, who appeared as PW7. There might have been a gap of a minute or so in arrival of Jhanda Singh and Ranjit Kaur at the spot. The statement of Dr.Guriqbal Singh, PW4 is necessary to be seen in this regard. He has stated that the dead body was of a moderately built and nourished female child wearing maroon sweater and pink T-shirt. He has further stated that both these garments were mud stained and the face including mouth and nose of the deceased were also covered with mud stains. This witness has also deposed that inside the mouth, mud was visible on teeth, tongue as well as inside both the upper and lower lips. This shows that the appellant must have tried

unsuccessfully to cover the dead body with mud which might have been taken by Jhanda Singh, PW13 as digging of the dead body. In the meanwhile, the witnesses would have arrived and the appellant would have to abandon his effort at concealing the dead body and make good his escape.

12. It is a case where Ranjit Kaur, PW7 has categorically stated that on 1.2.2002, at about 2.30 P.M., Tarsem Singh, appellant took her daughter Sukhpreet Kaur @ Anju for a bicycle ride and that Sukhpreet Kaur did not return thereafter. It is her statement that on 2.2.2002, she and others saw Tarsem Singh, appellant in the field of Naranjan Singh from where he escaped on seeing them and when they went to the place wherefrom Tarsem Singh was seen fleeing, they noticed the dead body of Sukhpreet Kaur lying there. The evidence of Ranjit Kaur goes unshaken in her cross-examination. Besides suggesting that she had made a false statement before the police and that it was a case of blind murder in which the appellant was named due to the dispute between the complainant side and the accused over closing of the street which were denied by her, it has come in her cross-examination that she did not state to the police that Pajami (trouser) of Sukhpreet Kaur was found removed and she was found naked. She could forget about this aspect which was self evident to the investigating officer when he visited the spot.

13. To the statement of Ranjit Kaur, PW7, corroboration is available from the statement of Charanjit Singh, PW10. He had seen Tarsem Singh, appellant with a four years old child at 5.30 P.M. between the land of Naranjan Singh and that of the panchayat. The appellant told Charanjit Singh that the kid was his grand son. He was left by Charanjit Singh and when on 2.2.2002, at about 5.30 P.M., he came to know about the rape and murder of the daughter of Ranjit Kaur, he made a statement to the police. Besides the statement of Charanjit Singh, PW10, there is statement of Jhanda Singh, PW13, who also appears to have no motive against the appellant.

14. Further corroboration to the evidence of the complainant and others comes from the statement of Gurdeep Kaur, PW8 to whom Tarsem Singh, appellant made extra judicial confession on 3.2.2002. It is true that Gurdeep Kaur is a member of the panchayat headed by Gura Singh, grand-father of the deceased, yet this cannot be said to be a good reason for Gurdeep Kaur to have concocted a version about the extra judicial confession. It was Gurdeep Kaur, PW8, who had produced the appellant before the police. With this evidence, there is medical evidence coming in the statement of Dr.Guriqbal Singh, PW4 who has clearly found the evidence of rape of the deceased before smothering her to death.

15. The circumstances pointed by learned counsel for the appellant, thus, appear to be of no significance. The prosecution has been able to lead sufficient evidence to establish the circumstances projected by it to prove the guilt of the appellant. The circumstances proved on record form a complete chain which point to the appellant and appellant only as the person who has committed this offence. The circumstances are totally incompatible with any hypothesis of innocence of the appellant.

16. In view of the aforementioned discussion we find no ground to interfere with the judgment of conviction and the order of sentence passed by learned trial court against the appellant. The appeal is, consequently, held to have no merit and is dismissed.