
(2012) 07 P&H CK 0202
In the Punjab And Haryana At Chandigarh
Case No : CRA-D-341-DB of 2009

Jitender Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 07 P&H CK 0202

Hon'ble Judges : Rakesh Kumar Jain, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Sharmila Sharma in CRA-D-341-DB-2009 and Mr. Ramesh Hooda in CRA-D-385-DB-2009, for the Appellant; Pardeep Singh Poonia, Addl. A.G., Haryana and Mr. D.S. Malik, Advocate, for the complainant, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Two appeals bearing CRA-D-341-DB of 2009 and CRA-D-385-DB of 2009 are being disposed of together as the appellants in both the appeals are aggrieved against the order of conviction and sentence dated 24.02.2009, vide which they were convicted for commission of offence punishable u/s 302 read with Section 34 IPC and sentenced to undergo RI for life with fine of Rs. 3,000/- each u/s 302 IPC and in default of payment of fine, to undergo RI for a period of six months. However, the period of detention during trial of the case was ordered to be set off while calculating the total period of sentence. Hardip Singh, brother of deceased Smt. Ramesh @ Suresh wife of Jitender Kumar (appellant) lodged the formal FIR Ex. PA/1 alleging that he is an agriculturist by profession. They are five brothers and sisters, who are all married. His sister Suresh (deceased) was married in the year 2000 with Jitender Kumar (appellant) who was later on recruited as a Constable in Haryana Police and was posted at Police Station, Bilaspur, District Yamuna Nagar, but was away to Madhuban for some police course and his sister was at home with her 5 years" old son Safal, living in quarter No. 14 in Police Colony, Pansara. On 22.11.2006,

at about 8.00 a.m., he received information on telephone that his sister has died. His elder brother Johar Singh and cousins, namely, Mohinder Singh and Ram Kumar, both sons of Rati Ram and his father Dharam Singh came to her house in a private vehicle and found Suresh lying straight in bed covered with a blanket. After lifting the blanket, marks of blood stained scratches on the face, nose and neck were found, which suggested that she was killed by pressing her nose and neck. Inquiry was made from Safal, who disclosed that yesterday night, his father Jitender Kumar along with a young boy and a girl came to the house and all three of them took his mother Suresh to T.V. Room where they gave her beatings. At that time, his mother cried and her shrieks were heard by him. Thereafter he slept in the bed but after sometime his mother was brought, laid besides him on the bed and was covered with a blanket. His father covered him also with the blanket, after which he went to sleep. When he got up in the morning for going to school, he called his mother but she did not respond. At that time, the boy and girl, who came along with his father at night, were not at home. Then he inquired from men and women living in the police colony but they did not disclose anything about the occurrence. However, one or two ladies whispered in a low voice that they had seen Jitender Kumar going from his house at about 4/5.00 a.m. accompanying a young boy and a young girl. He alleged that he already knew the girl, namely, Sarita, employed in Police Department, resident of Yamuna Nagar and having illicit relations with his brother-in-law Jitender Kumar for the last 2-3 years. He came to know about Sarita who had also gone for some course to Madhuban but his brother-in-law Jitender Kumar wanted to marry Sarita which was opposed by his sister, on which Jitender Kumar used to beat her and his parents as well as his brother Joginder used to take his side. His sister was quite upset due to this matter and disclosed to him and his family members about it many a times. His family members visited village Kudlan regarding this matter and also convened Panchayats but the family members of Jitender used to be on his side and wanted that Jitender should be married with Sarita as she is in service. He alleged that he had belief that his sister had been murdered by his brother-in-law Jitender in connivance with Sarita and the other boy, by pressing her neck, nose and face.

2. Dr. Sunil Kumar (PW17) conducted post mortem examination along with Dr. S.K. Rathi on 22.11.2006 and found the following injuries on the person of deceased Suresh:

1. 3.5 x.5 cms abrasions were present obliquely on neck on left side of midline above cartilage.
2. Three small abrasions of size.5 to 3 cms each on sub-mental region.
3. An abrasion 1.5 cms x.4cm present obliquely 1 cm lateral and below right angle of mouth.
4. Another abrasion of same size above and lateral 2 cms. Above the right angle of mouth.

5. 1 x.3 cm abrasion on right upper lip near right angle of mouth.
6. Three small abrasions.2 x.2 c.m. present on chin.
7. Three irregular abrasions of size.5 to 1 cm. x.3 cm. Each present on left cheek in middle part.
8. Red contusion of size 1 x.3cm. on the mucocutaneous junction of lower lip 2 cms. from right angle of mouth.
9. Another contusion of size.5 x.3 cm. At mucocutaneous junction of lower lip in midline.
10. Diffused red contusion on both ala and hip of nose.
11. Red contusion of size 3.5 x 1 cm. Present on mucus membrane of lower lip left side of midline interrupted at places.
12. 1/2 cm. Abrasion on abdomen above umbilical on right side.
13. An abrasion of 1 x.5 cm. At mucocutaneous junction of upper lip 1 cm. from midline of left side.

3. The cause of death was asphyxia caused by smothering. Injuries were ante mortem in nature. It was also stated that possibility of causing injuries by using a pillow cannot be ruled out.

4. Master Safal (PW16) was produced before the Magistrate on 22.11.2006 and his statement was recorded u/s 164 Cr.P.C. in which he had stated that "I was sleeping in the other room. I had seen my mummy in the night. My papa Jitender brought a doctor and aunty. Papa got my mummy injected by a doctor. Mummy was raising cries. Mummy was not ill. Papa went away to his duty leaving the doctor. Myself and mummy both slept. Mummy remained sleeping and she did not get up. Aunty came to see mummy. There was lipstick on the face of mummy. I can identify the aunty. Mummy is with the doctor."

5. While appearing as PW16, the court certified that he is a competent witness and can narrate what he has perceived through his senses. In his deposition, he testified that his father Jitender, Sarita, to whom he was addressing as aunty and one more person, to whom he was addressing as Doctor, were in his house in the night on the fateful day. He had heard the shrieks of his mother from the adjoining room. He was made to understand that his mother was not well so that Doctor had given her injection and, thereafter, she was laid near him on the bed and covered with a blanket. He had also stated that Doctor came to his house for the first time, whereas aunty used to visit his house on the earlier occasions also. He also identified all the three persons in the Court.

6. Counsel for the appellant Jitender Kumar has argued that there is no independent witness of the disclosure statement; the evidence of child witness cannot be believed as he was tutored by his maternal uncles and that the appellant was not at home as he was attending his course at Police Academy,

Madhuban from 01.11.2006 to 22.11.2006.

7. Counsel for appellant Sarita has argued that in case of child witness, heavy corroboration is required. Moreover, there was no test identification parade and the appellant was identified in the Court by PW16. It is also submitted that in the FSL report (Ex.PQ/2), only hairs of the deceased have been identified and not of the appellant and except for photographs (Ex.P22 to Ex. P30), no other evidence has been brought to connect the appellant with Jitender.

8. Both the Learned Counsel for the appellants have argued that it is a case where they have been falsely roped in without there being any eye-witness.

9. On the other hand, learned State counsel has argued that testimony of the child witness (PW16) recorded u/s 164 Cr.P.C. and on oath in the Court, is more or less same from which it is proved that both the appellants were present at the place of occurrence at the relevant time, though they should have been present in the Police Academy, Madhuban, as stated by them. It is further submitted that the intimate relations between both the appellants are amply proved from the photographs Ex. P22 to Ex. P30 in which even appellant Sarita is wearing Chura (customary bangles of a newly wedded woman). It is also submitted that the medical evidence arising from the post mortem report, in which various abrasions and injuries have been found on the face of deceased Suresh, co-relate with the statement of PW16 that she was given beatings due to which she was done to death.

10. We have heard counsel for the parties and perused the record.

11. The appellants, except for pleading innocence, have not led any evidence in their defence, but they have tried to project that they both were on police training at Madhuban on the fateful day. However, they did not lead any evidence, that their presence in the Police Academy was even marked at the night time, in order to prove the plea of alibi. On the other hand, PW16, who had been examined by the Magistrate u/s 164 Cr.P.C. on the same day when the dead body was recovered, i.e. 22.11.2006, had categorically proved the presence of his father Jitender, Sarita, whom he was addressing as aunty and another person, whom he had addressed as doctor, at the relevant time and place of the occurrence. Although it has been argued by both counsel for the appellants that Test Identification Parade should have been conducted but in identifying his own father, the said parade was not required and the appellant Sarita, to whom PW16 was addressing as aunty, was a regular visitor to his house.

12. The photographs (Ex.P22 to Ex. P30) are sufficient to suggest the intimate relations of both the appellants who appear to have spent a holiday at a hill station together. It has come in evidence that appellant Jitender joined the police service after his marriage and came into contact with Sarita thereafter. It means the photographs Ex. P22 to Ex. P30 are taken after marriage of Jitender, who appears to have spent time with appellant Sarita at some hill station. According to Hardeep Singh (PW19), the intimate relations of Jitender with Sarita, even

after his marriage, was a cause of concern for the entire family about which Panchayats were also convened but he did not mend his ways, as a result of which there used to be tension in the matrimonial life of deceased Suresh. It is no wonder that it was the motive for both the appellants to eliminate Suresh. Insofar as the minor discrepancies in investigation are concerned, we are of the opinion that in view of the aforesaid glaring facts and circumstances, minor discrepancies in the investigation are of no consequence and the learned Trial Court has rightly relied upon the evidence of PW16, even though he was a child witness. There is no explanation brought on record by the appellants about their intimate relations and as to why PW16 has deposed against them, except for pleading their innocence in their statements recorded u/s 313 Cr.P.C. In view of the aforesaid discussion, we do not find any merit in both the appeals and as such, the same are hereby dismissed.