

(2005) 08 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : Murder Reference No. 4 of 2005 and Criminal Appeal No. 284-DB of 2005

State of Punjab

APPELLANT

Vs

Amrit Singh
 Amrit Singh Vs State of Punjab

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 4 RCR(Criminal) 74

Hon'ble Judges : Pritam Pal, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : A.P.S. Shergill, for Amrit Singh, for the Appellant; A.S. Virk, Addl. A.G. Punjab for State, for the Respondent

Final Decision : Dismissed

Judgement

Pritam Pal, J.—Since the above mentioned Murder Reference No. 4 of 2005 made by Shri M.S. Chauhan, learned Additional Sessions Judge, Mansa and Criminal Appeal No. 284-DB of 2005, filed by Appellant Amrit Singh, arise out of one and the same Session Case No. 3-A of 13.2.2004 decided on 19.3.2005 whereby Appellant Amrit Singh has been convicted under Sections 376 and 302 of the Indian Penal Code and awarded death sentence thereunder, subject to the confirmation by this Court, we propose to dispose of these two matters by this common judgment.

2. Facts culminating to the commencement of the aforesaid Murder Reference and the appeal may be recapitulated thus:

On 3.11.2003, in the evening time, Rajpreet Kaur alias Ruby, aged 7/8 years (since deceased), a student of 2nd standard had gone to the house of her class-mate Amanpreet Kaur daughter of Gurbax Singh son of Bant Singh, who is cousin of complainant (PW-2) Karamjit Singh for the purpose of playing with her. The house of said Gurbax Singh is situated in the fields in the revenue estate of

Village Ramgarh Shahpuria. Then at about 5.30 P.M. Rajpreet Kaur alias Ruby (hereinafter referred to as "Rajpreet Kaur-deceased") left for her house in the company of her classmate Amanpreet Kaur. When she crossed the culvert of pucca water-course, Amanpreet Kaur came back to her house. Ultimately, Rajpreet Kaur did not reach her house. Thereupon, the complainant, his brother and father rushed to the house of said Gurbax Singh and enquired about her. Thereafter the complainant, his brother Baljit Singh and father Gurmail Singh in the company of aforesaid Gurbax Singh searched for Rajpreet Kaur in the village but her whereabouts could not be known. Then, they and other respectables of the village also searched for her in the cotton crop standing in the fields, belonging to Amrit Singh and his brother Gurcharan Singh, situated in front of their house. There, in the said fields, the dead body of Rajpreet Kaur-deceased was seen lying near a Neem tree. Her pent was also lying near the dead-body. The dead-body was smeared with blood. On seeing so, PW-2 Karamjit Singh, father of Rajpreet Kaur-deceased leaving his brother Baljit Singh and Sukhdev Singh (PW-5) Ex-Sarpanch, at the spot to guard the dead-body, left for the Police Station to lodge a report. On the way, a Policy-party headed by PW-8 SI Joginder Singh, (the then SHO Police Station, Boha) met him at the bus stop of village Maghanaian in the wee hours at about 4.00 A.M. on 4.11.2003. There, the complainant made his statement Ex. PD in the above narration of facts whereupon PW-8 SI Joginder Singh, Investigating Officer of this case, made his endorsement Ex. PD/1 and ultimately, a formal FIR Ex. PD/2 was recorded in Police Station Boha by MHC Balwinder Singh at 4.30 A.M. on 4.11.2003. The distance of the said Police station, Boha is of 6 miles towards East from the place of occurrence. Special Report was received by the Illaqa Judicial Magistrate, Mansa at 12.10 P.M. on the same day i.e. on 4.11.2003.

3. After recording of the statement of the complainant, PW-8 SI Joginder Singh took the investigation of this case in his hands. He rushed to the place of occurrence. There, he also took with him PW-4 Ashok Kumar, Photographer, who took the photographers, Ex. P-4 to Ex. P-7 of the dead-body of the deceased. At the spot, it was also observed that blood was oozing out from her private part and the pent was also stained with blood. He prepared inquest report, Ex. PC in the presence of Baljit Singh and Jagjit Singh. From the spot, the Investigation Officer also took into possession human hair, which were found in the hand of the deceased, vide recovery memo Ex. PF. Thereafter the pent of the deceased, which was stained with the blood, was also taken into possession vide seizure memo Ex. PH. The dead-body of Rajpreet Kaur-deceased was despatched for post-mortem through HC Didar Singh (PW-7) and HC Mela Singh with his request Ex. PA. From the spot, blood- stained earth was also taken into possession vide recovery memo Ex. PG. He then prepared the rough site plan of the place of occurrence (Ex. PL) with correct marginal notes in his hand. On the same day i.e., on 4.11.2003, PW-8 SI Joginder Singh also recorded the statement of PW-3-Gumail Singh son of Bant Singh, a witness to the last seen, PW-5-Sukhdev Singh, Ex-Sarpanch, Gurmail Singh son of Lal Singh and Balwinder Singh son of

Balwant Singh. At the spot, from the statement of PW-3 Gurmail Singh son of Bant Singh, it was transpired that at about 5.45 P.M./6.00 P.M., Rajpreet Kaur (since deceased) was seen in the company of Appellant-Amrit Singh. In this view of the statement, made by PW-3, PW-8 SI Joginder Singh raided the house of Appellant-Amrit Singh but the same was found locked. Thereafter, he returned to the Police Station and deposited the case-property with MHC Balwinder Singh and continued to search for Appellant-Amrit Singh.

4. It was 12.11.2003 that PW-8 SI Joginder Singh was present at Bus-stop of Village Sher Khan where accused-Appellant Amrit Singh was produced before him by Karamjit Singh, Panch. Upon personal search, nothing was found from his possession. Thereafter, he was arrested. On the next day, the Appellant was produced in the Court of Illaqa Judicial Magistrate where the police moved an application Ex. PO for obtaining specimen of the hair of the Appellant but, he refused to give any such specimen of his hair. In that behalf, his statement was recorded as Ex. PO/1. On 16.11.2003, statement of Ashok Kumar, Photographer was also recorded u/s 161 of the Code of Criminal Procedure, who had produced the photographs Ex. P-4 to P-7 and negatives thereof as Ex. P-8 to Ex. P-11, which was taken into possession vide memo Ex. PE.

5. On completion of the formal investigation of the case, the Appellant was challaned for commission of offence punishable under Sections 302/376 of the Indian Penal Code by Darshan Singh, the then SI/SHO.

6. The Appellant was charge-sheeted vide order dated 13.2.2004 under Sections 302/376 of the Indian Penal Code to which he pleaded not guilty and claimed trial.

7. Prosecution, in order to substantiate its case, examined as many as eight witnesses, namely, PW-1, Dr. Resham Chand Singh, Medical Officer, PHC Budhladha, who proved the post-mortem report Ex. PB; PW-2 Karamjit Singh, complainant, who is father of the deceased; PW-3 Gurmail Singh son of Bant Singh, he is a witness who had last seen the deceased in the company of Appellant Amrit Singh before the occurrence; PW-4 Ashok Kumar, Photographer, he has proved photographs Ex. P/4 to P/7 and negatives Ex. P/8 to P/11; PW-5 Sukhdev Singh, Ex-Sarpanch, he had accompanied the complainant while searching for the deceased; PW-6 Dr. Sharad Kumar, he medically examined the accused- Appellant Amrit Singh vide MLR Ex. PJ and found him fit for performing sexual inter-course; PW-7 HC Didar Singh, he proved affidavit Ex. PK and PW-8 SI Joginder Singh, he is the Investigating Officer in this case.

8. After closure of the prosecution evidence, the Appellant was examined in terms of Section 313 Code of Criminal Procedure wherein he denied the incriminating evidence appearing against him in this case. When the Appellant was called upon to enter on his defence, he produced two defence witnesses namely DW-1 Constable Gurtej Singh, who proved the application dated 10.11.2003, Ex. DA, addressed to the Chief Justice, Supreme Court of India, New

Delhi, moved by Makhan Singh, a maternal uncle of the Appellant regarding his illegal detention. The said Makhan Singh also stepped into the witness box as DW-2 and stated that he had moved the aforesaid application Ex. DA to the High Court and the Supreme Court. In his cross-examination, he admitted that on 21.1.2004, he had also made statement before the DSP showing his satisfaction and then had withdrawn his application Ex. DA stating that the decision of the Court qua the Appellant (his nephew) would be final.

9. Learned trial Court after appraisal of the evidence and hearing learned Counsel for the parties convicted and sentenced the Appellant as indicated in the opening part of this judgment. This is how these two matters i.e. Murder Reference No. 4 of 2005 and the appeal i.e. Criminal Appeal No. 284-DB of 2005 have come up before us.

10. We have heard counsel for the parties at length and have gone through the file carefully.

11. The only points of arguments raised on behalf of the Appellant are that in fact, in this case, Appellant Amrit Singh was taken into custody by the police on 4.11.2003. When the police failed to trace out the real culprit, then the Appellant was implicated in this case falsely. In order to support his this point of contention, he also made reference to the statement of DW-1 Const. Gurtej Singh and DW-2 Makhan Singh, who proved the application Ex. DA stated to have been moved on 10.11.2003 addressed to the Chief Justice, Supreme Court of India, New Delhi by DW-2 Makhan Singh regarding the illegal detention of the Appellant. The next limb of his argument is that in this case, the alleged place of occurrence is very close to abadi of village Ramgarh Shahpuria and as such, no body could dare to commit such a heinous crime near-by the inhabited area of the said village. In support of his this contention, learned Counsel for the Appellant also made a reference to rough site-plan Ex. PL prepared by PW-8 SI Joginder Singh. He then referred to the medical evidence and argued that no fatal injury with any weapon was caused on the person of the victim by the Appellant. In the alternative, it was then also argued that in any case, the Appellant could be held guilty only for an offence punishable u/s 376 and not u/s 302 of the Indian Penal Code, inasmuch as it was never the intention of the Appellant to commit the murder of Rajpreet Kaur (deceased). At the fag-end of his arguments pertaining to passing the extreme penalty of death sentence, learned Counsel for the Appellant, Shri A.P.S. Shergill, has submitted that in this case, the Appellant is an unmarried young man of about 31 years of age, who in fact, had no intention to commit the murder of Rajpreet Kaur (deceased). Therefore, in such circumstances, a lenient view be taken in the matter of passing sentence. He further also submitted that even otherwise, the normal punishment for murder is imprisonment for life and death penalty is an exception. He also further argued that special facts and circumstances required for imposition of death penalty are lacking in this case. In support of his aforesaid points of arguments, reliance was also placed on State of Rajasthan Vs.

Kheraj Ram, and Gyasuddin Khan @ Md. Gyassudin Khan v. State of Bihar, 2004 (1) RCR (Cri) 402. In these aforesaid rulings, the Hon"ble Supreme Court has given the guidelines and special facts and circumstances under which death sentence could be passed.

12. On the other hand, learned Additional Advocate General, Shri A.S. Virk, appearing on behalf of the State of Punjab has vehemently argued that here, in the instant case, rape and death of Rajpreet Kaur, a girl of 7/8 years of age, is an admitted fact. He then also made a reference to the statement of PW-2 Karamjit Singh, complainant and PW-3 Gurmail Singh son of Bant Singh, a witness to the last seen, against whom no animus or any bias has been alleged, proved or even suggested for involving the Appellant falsely in this case. He further submitted that PW-3 Gurmail Singh is an independent witness, who had disclosed the name of the Appellant in the morning of 4.11.2003 when the Investigating Officer had reached at the spot. Immediately thereafter, the house of the Appellant was raided but the same was found locked. He further referred to the statement of the accused made before the Illaqa Judicial Magistrate (Ex. PO/1) where he refused to give specimen of his hair, as the same were required by the police for comparison of the hair, which were taken into possession by it from the right-hand of the deceased. At the last leg of his arguments, he referred to the medical evidence and report of Chemical Examiner (Ex. PD) (renumbered) wherein semen was found on swabs taken from the external genitalia and vagina of the victim. He further referred to Ex. PE, report of F.S.L., wherein, the blood and hair were proved to be that of `human". He then also made reference to the opinion of PW-1 Dr. Reshamchand Singh, Medical Officer, PHC Budladha, who had conducted the post-mortem on the dead-body of the deceased, according to which the death in this case was due to "shock and haemorrhage as a result of multiple genital tear". Further, he also submitted that as per the opinion given in the cross-examination of this doctor, in this case, more bleeding from her injury had caused the death. After putting-forth the aforesaid points of arguments, learned State counsel submitted that in the instant case, the Appellant is first proved to have committed rape upon an innocent and helpless girl of 7-8 years of age and then committed her murder. In such a situation, a murderer who was in dominating position has rightly been sentenced to death by the learned trial Court and as such in this case, death sentence passed by the trial Court deserves to be confirmed by this Court. In support of his aforesaid points of arguments, he also relied upon the judgment in the case of Sushil Murmu v. State of Jharkhand, 2004 (1) RCR (Cri) 353.

13. We have given our holistic view to the rival contentions putforth on behalf of learned Counsel for the parties and find no force in any of the contentions raised on behalf of the Appellant for the reasons given hereinafter.

14. In this case, all the independent witnesses, victim and the accused-Appellant are admittedly of one and the same village i.e. Ramgarh Shahpuria. No animus or bias is alleged, proved or even suggested against any of the witnesses

by the Appellant for implicating him falsely. PW-3 Gurmail Singh son of Bant Singh is an independent witness. His testimony to the effect that on the day of occurrence at about 5.45/6.00 P.M., he had seen Rajpreet Kaur (since deceased) in the company of the Appellant, who was holding her finger near his fields, goes unchallenged in his cross-examination. On the day of occurrence, PW-3 Gurmail Singh was going to his house, situated in the fields, from village Ramgarh Shahpuria after purchasing the house-hold articles. Then, during the whole night, he remained busy in watering his fields. In the morning, as deposed by him (PW-3), at about 8.00 A.M. on 4.11.2003, he saw people gather at the place of occurrence near the Neem tree in the fields of the Appellant. Thereupon, he reached there and after coming to know about the rape and murder of Rajpreet Kaur, he made a statement there and then at 8.00 A.M. on 4.11.2003 before PW-8 SI Joginder Singh who thereafter raided the house of the Appellant but the same was found locked. He remained absconding till 12.11.2003 on which date, he was produced by Karamjit Singh, Panch. It is also amply proved on the file that after his arrest, the Appellant was produced before the Illaqa Judicial Magistrate, Mansa for taking a specimen of his hair so as to compare the same with the hair taken from the hand of the deceased. Without assigning any reason, the Appellant refused to give the specimen of his hair. In that behalf, order Ex. PO/2 of Judicial Magistrate dated 13.11.2003 is there on the file. From this aforesaid act and conduct of the Appellant, adverse inference can safely be drawn against him. In view of our foregoing discussion, the contention of learned Counsel for the Appellant that he was not arrested in the manner as put-forth by the prosecution is devoid of any merit. Even otherwise, the defence evidence brought on the file in this regard, consisted in the statements of DW-1 Constable Gurtej Singh and DW-2 Makhan Singh, maternal uncle of the Appellant, does not inspire any confidence, inasmuch as the application Ex. DA regarding illegal detention of the Appellant w.e.f. 3.11.2003 was moved by DW-2 on 10.11.2003. Ultimately, the said Makhan Singh, DW-2 had withdrawn his that application having become satisfied, stating that the decision of the Court in that behalf would be final. In this view of the matter, it appears that Makhan Singh, DW-2 had moved the said application, Ex. DA in order to create the defence in advance in favour of the Appellant who is his Bhanja (sister's son).

15. Not only that, the reports of Chemical Examiner (Ex. PD) (re-numbered) and that of F.S.L. (Ex. PE) go a long way to prove the link evidence. In that, semen was detected on the external genitalia and vagina of the deceased. Similarly, the blood and hair taken into possession by the police from the spot were also found to be that of "human" as per report of FSL, Ex. PE. Further the version of non-official witnesses namely PW-2 Karamjit Singh, complainant, PW-3 Gurmail Singh son of Bant Singh also finds corroboration from the statement of PW-5 Sukhdev Singh, Ex-Sarpanch with regard to tracing out the deceased and witnessing the dead-body of the deceased near the Neem tree standing in the cotton crop fields of the Appellant on the night intervening 3rd and 4th November, 2003. The distance of police station from the place of occurrence is that of 6 miles. FIR in

this case was lodged in the police station at 4.30 A.M. on 4.11.2003. Admittedly, the name of the Appellant was not mentioned in the statement of the complainant (Ex. PD) which ultimately formed the basis of the FIR (Ex. PD/2). Had there been any animosity of the complainant against the Appellant, his name could have been easily got incorporated in his statement. It is only at about 8.00 A.M. on 4.11.2003 that PW-3 Gurmail Singh son of Bant Singh disclosed the name of the Appellant, who had last seen the Appellant in the company of the deceased immediately before the occurrence, which had taken place on the night intervening 3rd and 4th November, 2003.

16. Further, in this case, a perusal of the site plan Ex. PL shows that the occurrence had taken place in the cotton crops fields of the Appellant and his brother Gurcharan Singh. No doubt, the fields are situated near the abadi of village Ramgarh Shahpuria but, there is a considerable distance between the place of occurrence and the said abadi as in-between, there is a metalled road and then there are manure pits and thereafter the fields of the Appellant are situated in the west of the said village abadi. It was the month of November i.e. winter season. It is a matter of common knowledge that in the country- side, people go to their bed by 9.00/10.00 P.M. The height of the cotton crop generally goes upto 5-6 feet. It is there in the medical evidence that there were marks of injury on the mouth and lips. Admittedly, the Appellant is a young man and as such he could have easily gagged her mouth so that she may not raise her voice. All these facts and circumstances, as discussed above, go a long way to connect the Appellant-accused with the commission of crime and establish that it was the Appellant and none-else, who had committed rape and murder in this case.

17. Before advertng to the medical evidence and sentence part of this case, we would like to produce the parameters and the guidelines given in the rulings relied upon by learned Counsel for the parties, for imposing the death sentence. Their Lordships of the Apex Court in Kheraj Ram's case and Sushil Murmu's case (supra) while relying upon the case of Machhi Singh and Others Vs. State of Punjab, observed, inter alia, as under:

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evidences total depravity and meanness; e.g. Murder by hired assassin for money or reward or a cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the

course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, in or in cases of "bride burning" or "dowry death" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or an old or infirm person or person vis-a-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community.

18. Now adverting to the medical evidence and sentence part of this case before we proceed further, it would be relevant to reproduce the injuries testified by PW-1 Dr. Reshamchand Singh, Medical Officer, PHC, Budladha, who had prepared the post-mortem report, Ex. PB. The same are as under:

The length of the body was 122 cm long, dead body of 7-8 years of female child wearing yellow shirt, white Bunyan, legs stained with blood. Bleeding from vulva, dry-leaves in the hairs, mouth open and froth trickling out from left angle. Eyes closed. Body in state of rigor mortis. Multiple marks of contusions and abrasions on the anterior side of neck with a large contusion over the fold of neck transverse in direction. Face also has some abrasions. Abrasions over elbows, nuckle present. These were all antemortem in nature. Condition of subject was stout. Pubic and Axillary hair not grown. No development of breasts. Impression of teeth in the lips. Scalp, skull and vertebrae were intact and healthy. Pleurae healthy and slightly congested. Larynx and tracheae contained froth, right lung and left lung were healthy. Heart and large vessels were healthy and contained clotted blood. In abdomen-Peritonium stomach, small and large intestines, liver spleen and kidneys were healthy. Mouth and pharynx and oesophagus contained froth. It was opened and having 24 teeth. Bladder was healthy and empty. Organs of generation external and internal were that hymen was torn, complete perineal tear, multiple vaginal laceration, complete vault tear and uterus was infantile. All these were antemortem in nature and having clotted blood present.

19. A perusal of the statement of PW-1 Dr. Reshamchand Singh indicates that the autopsy was conducted on the dead-body of the deceased by a Board of Doctors consisting of Dr. Jaswinder Singh and Dr. Asha Rani and PW-1. In their opinion, death was due to shock and haemorrhage as a result of multiple genital tear. Further, PW-1 Dr. Reshamchand Singh in his cross-examination also testified that 20% loss of blood may cause shock and death. According to him, normally, in a child of 6-7 years of age, there may be about 2 litres of blood in the body. On examination of the injuries of the deceased in this case, it was found that more

bleeding from the injury had caused the death. He further deposed that in the instant case, more than half litre of blood had oozed. According to PW-6, Dr. Sharad Kumar, Medical Officer, who prepared the MLR Ex. PJ of the Appellant, found no evidence of any disease and there was nothing abnormal which could suggest that the Appellant was not fit to perform sexual intercourse. He further deposed that he was physically and medically fit. The above medical evidence consisted in the statements of PW-1 Dr. Reshamchand Singh and PW-6 Dr. Sharad Kumar and the seat of injuries again goes a long way to show that Appellant-Amrit Singh, a man of 31 years of age, was not suffering from any disease. He was found physically and medically fit. Thus, it can be safely inferred that he was in a dominating position whereas Rajpreet Kaur (deceased) was a girl of 7/8 years of age studying in 2nd standard. She was coming alone to her house after playing with her classmate Amanpreet Kaur. On the way, the Appellant caught hold of her and then went berserk for committing rape and murder of an innocent helpless female child. It is also established that there were multiple marks of contusions and abrasions on the anterior side of neck with a large contusion over the fold of neck transverse in direction. Not only that, there were also abrasions on her face, elbow and impression of teeth on her lips. All these injuries were ante mortem in nature. Her body and pent were also found to be smeared with excessive bleeding. Further a look at the photographs Ex. P/4 to P/7, proved in the statement of PW-4 Ashok Kumar, Photographer, shows that the Appellant had treated the helpless female child in a brutal and inhuman manner.

20. In this view of our foregoing discussion, we find no extenuating circumstances in favour of the Appellant for taking any lenient view in the matter of death sentence recommended by the learned trial Court. Rather there are aggravating circumstances against the Appellant wherein he is proved to have acted in a most cruel and inhuman manner. In the totality of the circumstances and the intractability of the offender to reform, we are of the considered view that in this case, death sentence imposed by the learned trial Court is most appropriate.

21. Further, in view of our foregoing discussion and the guidelines reproduced above for imposing the death sentence, we have no hesitation to hold that the case in hand falls under the category of "rarest of the rare cases" where the death sentence recommended by the learned trial Court should be confirmed. Hence, we order accordingly.

22. Before parting with the judgment, it is made clear that in this case, death sentence shall not be executed before the expiry of period prescribed for filing of Special Leave Petition/appeal or result thereof, whichever is earlier.

23. In the result, Murder Reference No. 4 of 2005 is hereby accepted. Accordingly, death sentence recommended by learned trial Court is confirmed. Consequently, the appeal (Crl. Appeal No. 284-DB of 2005) filed by Appellant Amrit Singh, is hereby dismissed.

Appeal dismissed.