

(2019) 03 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 382-DB Of 2010

Sukhvir Singh alias Sukha And Another

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 177, 201, 302, 363, 376
Code Of Criminal Procedure, 1973 — Section 311, 313

Citation : (2019) 03 P&H CK 0132

Hon'ble Judges : Rajiv Sharma, J;Anil Kshetarpal, J

Bench : Division Bench

Advocate : Ritesh Pandey, S.P.S. Tinna

Final Decision : Dismissed

Judgement

1. This appeal is instituted against judgment and order dated 25. 02.2010, rendered by learned Additional Sessions Judge, Fatehgarh Sahib, in Sessions Case No. 49/19.12.2008, whereby appellants Sukhvir Singh alias Sukha and Surinder Patel, who were charged with and tried for the offences punishable under Section 302, 363, 376, 201, 177 of the Indian Penal Code, were convicted and sentenced as under :-

Name of appellant

Sentence

Sukhvir Singh alias Sukha

Under Section 302 IPC To undergo imprisonment for life and to pay a fine of Rs. 20,000/-.

-Do-

Under Section 363 IPC To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-. In default of payment of fine, to further undergo

rigorous imprisonment for six months.

-Do-

Under Section 376 IPC To undergo imprisonment for life and to pay a fine of Rs. 10,000/-.

-Do-

Under Section 201 IPC To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.

-Do-

Under Section 177 IPC To undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-. In default of payment of fine, to further undergo rigorous imprisonment for one month.

Surinder Patel

Under Section 302 IPC To undergo imprisonment for life and to pay a fine of Rs. 20,000/-.

-Do-

Under Section 363 IPC To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.

-Do-

Under Section 376 IPC To undergo imprisonment for life and to pay a fine of Rs. 10,000/-.

-Do-

Under Section 201 IPC To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.

All the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that on 09.09.2008, ASI Harjinder Singh, Incharge Police Post Kheri Naudh Singh along with ASI Gurbachan Singh and other police officials was going from village Hargana to village Suhavi in connection with patrol duty. When they reached near Bus Stand of village Hargana, Ajmer Singh complainant son of Gobind Singh along with his brother Ajaib Singh met them. Statement of Ajmer Singh was recorded. According to the contents of the complaint, the complainant's daughter was 17 years old. She had passed Middle standard. She was working in the house. In the intervening night of 06/07.09.2008, she went away through backside passage of

the house. The complainant searched for his daughter. He came to know that his daughter was called by Sukhvir Singh alias Sukha son of Bhag Singh resident of village Suhavi after alluring her, whose cattle shed was situated on the back side of his house. On 07.09.2008, he went in search of his daughter to the cattle shed of Sukhvir Singh alias Sukha. His brother Ajaib Singh told him that his daughter was taken away by Sukhvir Singh alias Sukha and his servant Surinder Patel in a Ford car. Ajaib Singh had seen them going towards Kheri Naudh Singh. The complainant along with his brother Ajaib Singh went to the house of Sukhvir Singh alias Sukha and requested him to hand over his daughter. However, the family members of Sukhvir Singh alias Sukha told that they did not know the whereabouts of his daughter. On 08.09.2008, the complainant and his brother Ajaib Singh also searched for his daughter. However, they did not find her. According to the complainant, his daughter was raped and thereafter murdered. On the basis of the statement, FIR was registered. ASI Harjinder Singh went to the spot. He prepared rough site plan. Thereafter, investigation of the case was taken over by ASI Gurbachan Singh. The accused were arrested on 11.09.2008. The recoveries, including one ear ring, two mobile phones and one chappal, were effected. The body was recovered from Bhakhra canal, near Sehzadpur. Photographs of the dead body were taken. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. The case of appellant Sukhvir Singh alias Sukha was that he was falsely implicated due to political rivalry. Appellant Surinder Patel took the plea that he was falsely implicated.

4. The appellants were convicted and sentenced, as noticed above.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.2 Ajaib Singh testified that on 06.09.2008, he came to his village Suhavi. On the intervening night of 06/07.09.2008, he got up. He noticed that door of the house was lying open. He went towards village side. When he reached near the park, a car of white colour was seen parked there. On the driver seat, Sukhvir Singh alias Sukha was sitting and on the rear seat, his servant Surinder Patel was sitting. His minor niece, aged about 17 years, was also in the car. When he went towards the car, Sukhvir Singh alias Sukha started the car and drove it towards Kheri Naudh Singh. In the meanwhile, his brother Ajmer Singh also came on the spot. He told that his daughter was taken away by Sukhvir Singh alias Sukha with the help of his servant Surinder Patel. On the next day, he

and his brother Ajmer Singh went to the house of Sukhvir Singh alias Sukha and enquired from the ladies in the house. He was confident that his niece was taken away by Sukhvir Singh alias Sukha, as she was taken away in his presence. They searched for the prosecutrix. In his cross-examination, he deposed that village Suhavi is at a distance of 22/23 kilometers from Chamkaur Sahib. They were four brothers, namely himself, Ajmer Singh, Jarnail Singh and Nachhatar Singh. He gave a call to the accused to stop but they did not stop and ran away from the spot.

8. PW.3 Ajmer Singh was re-called for examination in chief after application under Section 311 Cr.P.C. was allowed. He had not earlier supported the case of the prosecution, but when he was re-called, he had supported the prosecution case. According to him, the prosecutrix was his daughter. She was 16/17 years old. On the intervening night of 06/07.09.2008, his daughter had left the house from the back side. They searched for her on the next day. His daughter was allured by Sukhvir Singh alias Sukha, whose cattle house was situated on the back side of his house. They went to the cattle house of Sukhvir Singh alias Sukha on the next day. They searched for her on 07.09.2008. He was informed by his brother Ajaib Singh that his daughter was taken away by Sukhvir Singh alias Sukha with the assistance of his servant Surinder Patel in their Ford car towards Kheri Naudh Singh. He was of the firm belief that his daughter was killed and her body was disposed of in the canal. He proved his statement Ex.PE. The contents of his statement were read over to him. When he was coming from the canal, leaving his relative, to inform the police, a Ford car of white colour was seen coming from the side of Bassi towards Lohar Majra. It was being driven by Sukhvir Singh alias Sukha. Surinder Patel was sitting in the car. In his presence, the car was searched. A mobile was recovered from Surinder Patel and another mobile was recovered from Sukhvir Singh alias Sukha. Currency notes of Rs. 500/- and a report regarding missing of mobile were also recovered. Registration Certificate of the car was also recovered. From the back seat of the driver side, one ear ring was recovered. It belonged to his daughter. He identified the same. It was taken into possession by the police vide memo Ex.PF. A chappal of his daughter, which was found by him lying adjoining the bank of the canal, was taken into possession vide recovery memo Ex.PH. Earlier, he had appeared as a witness in this case but at that time, he did not support the prosecution version due to the threats advanced by the relatives of the accused to him.

From the day of occurrence till the recording of his statement, the relatives and some other unknown persons had given threats to him and his family. Due to this fear and threats advanced by the relatives and well wishers of the accused, he did not make the correct statement. Today, he made the statement without any fear, pressure or coercion. He had informed the police about the advancement of threats to him. In his cross-examination, he deposed that when his daughter had gone from the house, they informed the police on 09.09.2008 at about 6.30 PM. The police had reached at the spot at 9.00 PM. His brother had supported the prosecution case, but he did not support the version due to threats advanced to

him. His wife was also threatened and she initially did not support the case of the prosecution on 01.05.2009.

9. PW.4 Daljit Kaur initially did not support the case of the prosecution. She was re-called for examination-in-chief on the basis of application preferred under Section 311 Cr.P.C. She deposed that she was married to Ajmer Singh about 20 years back. On 6th of the month, after taking dinner, they slept in the courtyard. In the night, she noticed that her daughter was not on her bed. She came out from the gate. Ajaib Singh, elder brother of her husband along with Ajmer Singh was seen coming from the side of the village. She enquired from Ajaib Singh about the whereabouts of her daughter. They told her that her daughter had been taken away by Sukhvir Singh alias Sukha and Surinder Patel. Earlier, she had appeared as a witness in this case but at that time, she did not speak the truth because threats were advanced to her and her family. The earlier statement was not correct since it was given by her under threat.

10. PW.6 B.K. Pathak had prepared the scaled site plan Ex.PW6/A.

11. PW.8 Raj Kumar had taken the photographs of the dead body.

12. PW.14 SI Sukhjit Singh deposed that he was posted as SHO, Police Station Khamano on 09.09.2008. On 11.09.2008, ASI Gurbachan Singh had produced before him accused Sukhvir Singh alias Sukha and his servant Surinder Patel along with Ford car.

13. PW.15 Manjit Kaur deposed that she was teacher in Government High School, Lohar Majra Khurd. The prosecutrix was daughter of Ajmer Singh. Her date of birth was 12.12.1991.

14. PW.16 ASI Harjinder Singh deposed that Ajmer Singh along with his brother Ajaib Singh met him. He recorded the statement of Ajmer Singh. Thereafter, ruqa Ex.PW.16/A was prepared. FIR Ex.PW.14/A was registered.

15. PW.17 ASI Gurbachan Singh deposed that ASI Harjinder Singh recorded the statement of Ajmer Singh. The raid was conducted at the house of the accused. They were not present. On 11.09.2008, investigation of the case was entrusted to him. He along with other police personnel went in connection with investigation of the case and Nakabandi was laid. Complainant Ajmer Singh also met them there. He was joined in the police party. After some time, a Ford Fiesta car bearing registration No. PB-65F-7867 was seen coming from the side of Bassi. The driver was asked to stop. The accused were identified by complainant Ajmer Singh. From the personal search of Sukhvir Singh alias Sukha, currency notes of Rs. 500/- and DDR regarding missing of mobile were recovered. A mobile Nokia was recovered from Surinder Patel. On 12.09.2008, accused Sukhvir Singh alias Sukha made disclosure statement Ex.PW.17/H. Sukhvir Singh alias Sukha disclosed that he along with other accused had thrown the dead body of the prosecutrix in the canal in the area of village Sehzadpur. Then they went to the place disclosed by the accused along with the complainant. Spot was

inspected. A Chappal was recovered and identified by the complainant to be of his daughter. Photograph of the said Chappal was taken. Rough site plan was prepared. He came to know on 12.09.2008 that dead body of the prosecutrix was recovered in the area of Jansui. He got the post-mortem conducted. In his cross-examination, he deposed that the prosecutrix was having illicit relations with many boys of village Suhavi.

16. The post-mortem was conducted by PW.1 Dr. Gayitri along with Dr. Shashi Kant and Dr. Bhupinder Singh. They opined that the prosecutrix died due to asphyxia caused by drowning which was sufficient to cause death in ordinary course of nature. The probable duration between injury and death was immediate and between death and post-mortem was about seven days. She proved the post-mortem report Ex.PA. Swabs were taken from introitus and vagina.

17. PW.5 Dr. Bhupinder Singh also corroborated the statement of PW.1 Dr. Gayitri.

18. According to the Forensic Science Laboratory report Ex.PD, spermatozoa were detected in the contents of exhibits A and B.

19. PW.2 Ajaib Singh had seen the prosecutrix in the car of the appellants. He had tried to stop the car. However, they sped away. PW.3 Ajmer Singh had also gone to the house of the appellants at village Suhavi in search of his daughter. The dead body of his daughter was found in the canal in the State of Haryana. The post-mortem was conducted. The cause of death was asphyxia caused by drowning. Swabs were taken from introitus and vagina. According to the Forensic Science Laboratory report Ex.PX, the exhibits contained in parcels A and B were carefully and thoroughly examined with the help of scientific aids. It was concluded that the exhibit A-1 contained in parcel A and exhibit B-1 contained in parcel B were similar in design. Parcel B contained an ear ring with its lock stated to be ear ring taken by the doctor during post-mortem. Parcel A contained an ear ring without its lock stated to be artificial ear ring recovered from inside the vehicle. The recoveries were also made at the instance of the appellants. Initially, PW.3 Ajmer Singh and PW.4 Daljit Kaur did not support the prosecution case. However, when they were re-called for examination-in-chief on an application preferred under Section 311 Cr.P.C., they supported the case regarding the manner, in which their daughter was allured by Sukhvir Singh alias Sukha in connivance with Surinder Patel. PW.15 Manjit Kaur has proved the date of birth of the prosecutrix to be 12.12.1991. The prosecutrix was raped and murdered. Her dead body was thrown in the canal. The defence taken by appellant Sukhvir Singh alias Sukha that he was falsely implicated due to political rivalry is not believable. Why a person would implicate another person for rape and murder of his daughter only due to political rivalry. One ear ring of the deceased was recovered from the car of the appellants. PW.2 Ajaib Singh had seen appellants Sukhvir Singh alias Sukha and Surinder Patel taking away his niece in a car. There is some delay in lodging the FIR, but it has been explained. The first reaction of the family was to search for their daughter. PW.2 Ajaib Singh had

Rs.last seen' the deceased in the company of the accused. There was no enmity between the complainant and the appellants. The dead body of the prosecutrix was duly identified by her parents, namely PW.3 Ajmer Singh and PW.4 Daljit Kaur, from the clothes she was wearing.

20. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no reason for us to interfere with the well reasoned judgment and order of the learned trial court. The appeal is, accordingly, dismissed.