

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1822/2011

VINOD @ MANOJ

APPELLANT(S)

VERSUS

THE STATE OF HARYANA

RESPONDENT(S)

O R D E R

MOHAN M. SHANTANAGOUDAR, J.

The judgment dated 25.08.2009 passed by the High Court of Punjab & Haryana, Chandigarh in Criminal Appeal No. 962-DB of 2006 confirming the judgment and order of conviction dated 08.12.2006 passed by the Additional Sessions Judge-cum-Special Judge, Narnaul in Sessions Case No. 6 of 2005 is called in question by the convicted accused. By the impugned judgment, the accused is convicted under Sections 364, 376, 302 and 201 IPC and sentenced to undergo rigorous imprisonment for 10 years, 10 years, imprisonment for life and two years respectively for the aforementioned offences.

The case of the prosecution in brief is that the

deceased Sushma @ Babli aged about 14½ years was living along with her mother and younger sister in the house of her uncle Rajesh Kumar in village Dewas as her father Krishan Kumar had expired; the appellant and other boys used to tease the deceased while going to school and used to go behind her. On 11.06.2005, that is, the date of the incident, the accused and other boys were roaming around the house of the deceased in the evening. At about 10.30 p.m. PW-7, the grand-mother of the deceased who was sleeping in the house woke up and found that Sushma was not present in the house. All the family members started searching for the deceased. On 13.06.2005, Rajesh Kumar the uncle of the deceased met Chhaju Ram, Ex-Sarpanch of the village and informed him about the incident and told him that he wants to lodge a complaint with the police. At that point of time, the said Chhaju Ram advised him not to report the matter to the police and that the deceased can be searched privately. Ultimately, the FIR came to be lodged on 23.06.2005. Based on the extra judicial confession of the accused, the accused came to be arrested on 22.07.2005.

As mentioned supra, the Trial Court as well as the High Court convicted the accused for the aforementioned

offences.

Heard Mr. Wasim Ashrif, learned Counsel for the appellant and Mr. Arun Kumar, AAG for the respondent/State.

There is no eye witness to the incident. The case is based on the circumstantial evidence. The circumstances born out from the record are as under:

- 1.) Extra judicial confession said to have been made by the accused to PW-1/1 & PW-4.
- 2) The accused along with other boys was roaming around the house of the deceased in the evening on the date of incident. This circumstance deposed by PW-7.
3. The recovery of 'Gudri' (Mattress) from the house of the accused wherein semen stains were found.

So far as the first circumstance extra judicial confession is concerned, PW-4 has turned hostile. According to PW-1/1 (Suresh) he met the accused on 21.07.2005 at about 10.00 a.m. and at that time the accused confessed that he had committed a mistake of raping Sushma and throwing the dead body in the well. PW-1 took the accused to the police station and produced him

before the Police Officer. In our considered opinion, we do not find any ground to disbelieve the version of PW-1/1 with regard to extra judicial confession.

So far as the second circumstance roaming around the house of the deceased is concerned, this cannot be a ground to connect the accused with the crime. Not only the accused but also the other boys of the same age were roaming around the house of the deceased. None of the other boys were suspected. Merely, because the accused was 18 years of age as on the date of the incident, roaming around the house of deceased would not lead to the conclusion that the accused has committed the crime of rape and murder. Unless the prosecution is able to connect the accused with the crime with appropriate material, the court cannot come to the aid of the prosecution merely on the basis of the surmises and conjectures.

So far as recovery of 'Gudri' (Mattress) is concerned, there is nothing on record to show that the incident of rape has occurred on 11.06.2005. On the same night itself, the villagers started searching the deceased. If really the rape has taken place in the evening of 11.06.2005 that too in the house of the accused, the

villagers could not have missed to find out the deceased from his house in the village itself. The search has taken place more than 03 days. Despite the search, the deceased was not found. Moreover, 'Gudri' (Mattress) seized from the house of the accused was having semen stains but it did not have the vaginal smear. The recovery of 'Gudri' (Mattress) may raise some sort of suspicion in the mind of the court but having regard to other material on record more so when the deceased was not found in the village for more than 03 days itself goes to show that the incident must have not occurred in the house of the accused. The Doctor(PW-20) who conducted the post mortem has categorically deposed that no opinion could be given regarding rape on the victim in view of the passage of 4 days from the date of death till the date of post mortem report.

Except the aforementioned circumstances, no other circumstance is alleged. In our considered opinion, merely because extra judicial confession is proved which is a weak type of circumstance, the accused cannot be convicted for the offence of rape and murder. The prosecution has failed to prove other circumstances relied upon by it beyond reasonable doubt. Hence, the

judgments of the Trial Court and the High Court are liable to be set aside. It is unfortunate that the appellant has remained in jail for more than 13 years.

Having regard to the totality of facts and circumstances, it is clear that the prosecution has not proved its case beyond reasonable doubt. Accordingly, the benefit should go in favour of the accused. Hence, the appellant is acquitted for the charges leveled against him. Since he is on bail, the bail bonds stand discharged. He shall not be arrested in connection of this case any more.

The appeal is, accordingly, allowed.

.....J.
[MOHAN M. SHANTANAGOUDAR]

.....J.
[AJAY RASTOGI]

NEW DELHI;
OCTOBER 23, 2019.

ITEM NO.102

COURT NO.13

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1822/2011

VINOD @ MANOJ

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

Date : 23-10-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. Praveen Swarup, AOR

For Respondent(s)

Dr. Monika Gusain, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed non-reportable judgment.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed non-reportable judgment is placed on the file)