

CASE NO.:
Appeal (crl.) 1327 of 2005

PETITIONER:
Amrit Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 10/11/2006

BENCH:
S.B. SINHA & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

S.B. Sinha, J :

This appeal is directed against a judgment of conviction and sentence dated 19.3.2005 passed by the Additional Sessions Judge, Mansa awarding death penalty to Appellant under Sections 376 and 302 of the Indian Penal Code and affirmed by the High Court of Punjab and Haryana at Chandigarh in Reference No. 4/2005 and Criminal Appeal No. 284 (DB) of 2005 by a judgment and order dated 3.8.2005.

The prosecution case is as under:-

On 3.11.2003 in the evening, the deceased Raj Preet Kaur @ Guddi, who is a student of IInd Standard has gone to the house of her classmate Amarpreet Kaur, daughter of Gurbax Singh, a cousin of the complainant. The house of the said Gurbax Singh was situated in the revenue estate of Ramgarh, Village Shahpuria. At about 5.00 p.m., the deceased allegedly left the house of Gurbax Singh for her own house. She was accompanied to some extent by Amanpreet. When she crossed pakka water house, Amarpreet left her on her own. When the deceased did not reach her house, search was carried on. Some persons then found her dead body in the agricultural field belonging to Appellant situated in front of his house. The dead body was found near a Neem tree and some cotton crop were found near the dead body. Some dry leaves were found in her hair. In her hand some strands of human hair were also noticed. It was fully smeared with blood. The father of the deceased on seeing the dead body called his brother Baldev Singh and leaving him at the spot, started for the police station to inform the police and to lodge a report. He met PW-8 S.I. Joginder Singh at the bus stand of Village Maghania on 4.11.2003. His statement was recorded, on the basis of which a formal First Information Report was lodged. The Investigating Officer prepared an inquest report. It was found that in the hands of the deceased some human hair was also found. A post mortem examination was conducted by PW-1 Dr. Reshamchand Singh.

PW-2 disclosed that he had seen the deceased in the company of Appellant at about 5.45 p.m. He was in his agricultural field and he came to know about the incident only at about 8.00 a.m. on the next day. Appellant was arrested on 12.11.2003 at a bus stop of Village Sher Khan before PW-8 Joginder Singh. He was produced before the Investigating Officer by Shri Karamjeet Singh, Panch. An application was filed by the Investigating Officer in the Court of Judicial Magistrate for obtaining specimen of the hair of Appellant but he refused to give any such specimen of hair. He made a statement before the Court which was recorded. It was marked as Exhibit PO/I.

The prosecution in order to prove its case examined eight witnesses. PW-1 Dr. Resham Chand Singh proved the post-mortem report Exhibit PB. In his evidence, he stated:

"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, dryleaves 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 bield of neck with a large contusion over the fold of neck transverse in direction. Face also have some abrasions. Abrasions over elbows, knuckle present. These were all ante mortem in nature. Condition of subject was stout. Public and Axillary hair not grown. No development of breasts. Impression of teeth in the lips."

Although external injuries were found on the neck which were said to be the cause of death of the deceased, according to the doctor, the death took place because of loss of blood. It was stated:-

"20% loss of blood may cause shock and death. Normally in a child of 6-7 years age there may be about 2 liters blood in body. On examination of injuries it was found that more bleeding from the injury has caused the death. In this case more than half liter blood had oozed..."

Karamjit Singh, father of the deceased examined himself as PW-2. He supported his statements made in the First Information Report. PW-3 Gurmail Singh, was a resident of the same village i.e. Village Ramgarh Shahpuria. He categorically stated that at about 5.45 \026 6.00 p.m., he found that the deceased was catching a finger of Appellant but at that point of time he did not think of anything. He remained in his agricultural field for the purpose of watering the same. He came back to the village on the next morning at about 8.00 a.m. and then came to learn that the deceased was raped and murdered after strangulation. He, therefore, having seen them together formed an opinion that Appellant must be the person who raped and murdered the deceased. In his cross-examination, he categorically stated :

"\005I told to the Thanedar that Amrit Singh accused was going by holding the finger of Rajpreet Kaur..."

It was not suggested to him that he had any enmity with Appellant. His evidence that the deceased was last seen with Appellant, therefore, remain uncontroverted.

PW-6 is Dr. Sharad Kumar, Medical Officer, Incharge Mini PHC. Beero ke kalan. He examined Appellant on 13.11.2003. He opined :

"There was nothing abnormal found which can suggest that the accused cannot perform sexual intercourse. He was physically and medically fit..."

PW-8 is the Investigating Officer. The witnesses stated that on the day on which the First Information Report was lodged, the house of Appellant was raided, but it was found locked and thus he could not be arrested. As regards the arrest of Appellant, his statements are as under :

"On 12.11.2003 in connection with investigation I along with other police officials was present at Bus stop of V. Sher Khan, where accused Amrit Singh now present in Court was produced before me by Karamjit Singh Panch.

The personal search of the accused was conducted, but nothing was recovered from him and memo in this respect Exh. PN was prepared, which was thumb marked by the accused and attested by PW Karamjit Singh and ASI Gurcharan Singh. I arrested the accused..."

The learned Trial Judge relying on or on the basis of the depositions of the prosecution witnesses came to the conclusion that Appellant was guilty of the commission of the said offences. Upon hearing Appellant on sentence, he was sentenced to death. The High Court in the Death Reference made by the learned Sessions Judge as also in the Criminal Appeal filed by Appellant herein reviewed the evidence on record, confirmed the death sentence and dismissed the appeal, inter alia, stating:-

"...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 \026 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."

Mr. H.L. Aggarwal, learned Senior Counsel appearing on behalf of Appellant submitted :

- (i) The prosecution cannot be said to have proved all the links in the chain of circumstantial evidence and in that view of the matter, the learned Sessions Judge as also the High Court wrongly arrived at a finding that Appellant was guilty of commission of the offence of rape and murder of the deceased.
- (ii) The only evidence against Appellant being last seen with the deceased, cannot be said to be a conclusive proof of commission of such an offence.
- (iii) The death having been caused by reason of excessive bleeding from the private parts of the deceased, Appellant cannot have in any event be said to have any intention to kill her and thus sentence under Section 302 of the Indian Penal Code is not warranted.
- (iv) Although Appellant was medically examined, there is nothing to show that any evidence was found linking the offence of rape of the deceased with her murder.
- (v) Having regard to the location of the houses near the scene of occurrence and in view of the time of the commission of the offence, it was improbable that the deceased did not cry out and nobody's attention was attracted thereto.

Our attention was also drawn to statements made by PWs. 2 and 3 to

the effect that Appellant was arrested on 4.11.2003 itself and as he was not produced before the Magistrate, he had sent a telegram to the Chief Justice of the High Court complaining of his illegal detention, in regard where to the learned Sessions Judge as also the High Court had not paid adequate attention.

Mr. Sanjay Jain, learned counsel appearing for Respondent, on the other hand, submitted:-

- (i) The circumstances brought on records clearly point out to the involvement of Appellant as he was last seen with the deceased as was stated by PW-3 and in view of the fact no reason has been ascribed as to why he would have been implicated falsely, the Courts below have rightly relied on evidence.
- (ii) Appellant had been absconding for a long time and his house was found to be locked by the Investigating Officer.
- (iii) An application was filed by the Investigating Officer on 13.11.2003 for obtaining sample of the hairs of Appellant but he refused to do so without assigning any reason and thus an adverse inference against him could have been drawn.
- (iv) The dead body of the deceased was found near the house of Appellant in a cotton field belonging to Appellant, which shows his complicity in the matter.
- (v) Injuries on the neck appearing on the person of the deceased clearly establishes that Appellant had made attempts to strangle her also.

The prosecution case as regards commission of a heinous offence of rape on a minor girl and her death is not seriously disputed on behalf of Appellant. Appellant and the deceased were residents of the same village. Prosecution has brought enough materials on record to show the culpability which for all practical purposes remained un rebutted. That deceased has come to see her friend (Amanpreet Kaur) who happened to be her relation also. She was last seen alive in the company of Appellant. It was not suggested that PW-3 has bore any animosity towards Appellant. PW3 was not cross-examined on vital aspects of his statement made in his examination-in-chief. He made his statement before the villagers and also before the Investigating Officer as soon as he came to know about the manner in which the deceased has met with her fate.

The evidence of last seen may be relied upon or may form the basis for a conviction which, however, would depend upon the facts and circumstances of each case. In some cases, the Court also look for corroborative evidence; in some cases the Court may rely fully thereupon.

In Prem Thakur v. State of Punjab, [AIR 1983 SC 61], whereupon Mr. Aggarwal has placed strong reliance, the links of the chain were not complete, although the prosecution case rested on circumstantial evidence. In that case, five persons were murdered, the pattern involved in the commission of the crime belied the conclusion that Appellant therein had any hand in it. This Court disagreed with the findings of the High Court that Appellant therein was present with the deceased person on the evening of November 8 and he had been missing from there from the next morning; which was the only circumstance which had led the High Court to conclude that Appellant was guilty of commission of the offence beyond any shadow of doubt. The circumstances upon which the High Court relied were considered by this Court to be hazardous to base conviction.

In State of Rajasthan v. Smt. Kamla [AIR 1991 SC 967], this Court again on the fact situation obtaining therein did not base its judgment of conviction on the circumstantial evidence laid therein. A similar question came up for consideration recently in Sunny Kapoor v. State (U.T. of Chandigarh), [JT 2006 (11) SC 298], wherein it was observed :

"19.The appellants have been convicted on the basis of circumstantial evidence. It is now well settled by a

catena of decisions of this Court that for proving the guilt of commission of an offence under Section 302 IPC, the prosecution must lead evidence to connect all links in the chain so as to clearly point the guilt of the accused alone and nobody else\005"

Post mortem examination was held at 11.00 a.m. on 4th November, 2003. The time of death was said to be within 24 hours. The deceased died of bleeding from her private parts, which indisputably was the result of rape. Exact time as to when the occurrence took place is not known and it would be hazardous to make any guess in this behalf. Deceased died a painful death which would appear from impression of teeth on her lips. She did not have even a developed body; public and axillary hairs not grown and breasts were also not developed. Organs of generation external and internal were that hymen was torn, complete pereneal tear, multiple vaginal laceration, complete vault tear and uterus was infantile. No rigor mortis was noticed. Dead body was found at or before 10.00 p.m. as her body was brought to home at that time. There exists a controversy as to whether Appellant was arrested immediately on 9.11.2003 or 12.11.2003. He was indisputably suspected of commission of the offences. He was either arrested or he fled away from his house. It was true that according to PWs. 2 and 3 he was arrested immediately whereas according to the Investigating Officer, he was found absent from his house and the house was locked. Sending of a telegram to the Chief Justice of the High Court is not in dispute but the Courts below did not lay much stress thereupon as allegations made by the grandfather of Appellant in that behalf were withdrawn at a later stage. Appellant examined two defence witnesses who proved the fact that a telegram was sent but later on an application was filed which was marked as Exhibit DA, from a perusal whereof it appears that the complaint was withdrawn by Makhan Singh, maternal grandfather of the accused. It is, however, interesting to note that it was a former Sarpanch of the village who caused the production of the body of Appellant before the Investigating Officer; if latter's statement is to be believed. The place of occurrence also plays some importance. It was on the cotton field of Appellant himself. Height of cotton crop according to the villagers goes upto 6 ft. The cotton crop was in front of the house of Appellant.

Mr. Aggarwal has also drawn our attention to a suggestion made to PW-2 that four young boys aged about 10 years were seen in the cotton field from outside areas. If an outsider had committed the crime, she would definitely cried out but Appellant, a neighbour and known to her was a person of trust. She was seen to be holding Appellant's finger. It is clear that she was allured by Appellant to accompany him to his own field which was near his house. We, however, do not agree with the contention of the learned counsel for the State that in this case, the provisions of the Identification of Prisoners' Act will have any application. The provisions of the said Act may not be ultra vires to the Constitution but it cannot be said to be applicable in a case of this nature. It cannot be said to be an area which is contemplated under the Act. Appellant had a right to give or not to give sample of his hair. He could not have been made a witness against himself against his will.

Offence of rape took place on an agricultural field. She might have suffered a lot of pain. She might have resisted also. She might have been gagged. Possibilities of some assault on her person cannot be ruled out. It would, however, be improper to hold that he killed her intentionally.

The opinion of the learned Trial Judge as also the High Court that Appellant being aged about 31 years and not suffering from any disease, was in a dominating position and might have got her mouth gagged cannot be held be irrelevant. Some marks of violence not only on the neck but also on her mouth were found. Submission of Mr. Aggarwal, however, that Appellant might not have an intention to kill the deceased, thus, may have some farce. The death occurred not as a result of strangulation but because

of excessive bleeding. Deceased had bled half a liter of blood. Dr. Reshamchand Singh, PW-1 did not state that injury on the neck could have contributed to her death. The death occurred, therefore, as a consequence of and not because of any specific overt act on the part of Appellant.

Imposition of death penalty in a case of this nature, in our opinion, was, thus, improper. Even otherwise, it cannot be said to be a rarest of rare cases. The manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of Appellant, seeing a lonely girl at a secluded place. He had no pre-meditation for commission of the offence. The offence may look a heinous, but under no circumstances, it can be said to be a rarest of rare cases.

Appellant, however, in any event, is an accused under Section 276(2)(f) of the Indian Penal Code.

In a case of this nature where the brutality with which the offence was committed leading to the death of the prosecutrix, in our opinion, maximum sentence should be imposed. Appellant, thus deserves imposition of Rigorous Imprisonment for life.

The appeal is allowed to the above extent.