

CASE NO.:  
Appeal (crl.) 581 of 2000

PETITIONER:  
RAJU

Vs.

RESPONDENT:  
STATE OF HARYANA

DATE OF JUDGMENT: 02/05/2001

BENCH:  
M.B. Shah & Brijesh Kumar

JUDGMENT:

Shah, J.  
L...I...T.....T.....T.....T.....T.....T.....T..J

In Sessions Case No. 7 of 1997 after appreciating the evidence, the Sessions Judge, Gurgaon by order dated 7.9.1999 convicted the appellant for the offence punishable under Section 302, 376 and 363 I.P.C. and sentenced him to death under Section 302, to 7 years rigorous imprisonment under Section 376 and 3 years rigorous imprisonment. under Section 363. The High Court of Punjab and Haryana at Chandigarh by order dated 26th April, 2000 in Murder Reference No. 3 of 1999 and Criminal Appeal No. 463-DB of 1999 confirmed the conviction and sentence. That judgment and order is under challenge in this appeal.

It is the prosecution case that Rinku aged about 11 years was missing from the evening of January 5, 1997. Her body was found on the next day at about 6.30 a.m. The prosecution story as revealed by PW 1 Ram Kewal was that he lodged the FIR at 7.30 a.m. on finding the dead body of Rinku near the bushes at Medical College ground. It is his say that on 5.1.1997, she had gone out of the house at about 6.00 p.m. to bring milk. After she brought milk, he saw Raju (accused) offering toffees to Rinku and other children. PW2 Makhan Lal a neighbour had also seen Rinku and Raju going towards Chandan Nagar. As Rinku had not returned till 9.00 p.m., they looked for her as well as Raju throughout the night. In the morning, they found the dead body of Rinku. Blood stained brick and blood was also found lying on the spot. Immediately, after asking PW2 to wait at the scene of offence, PW1 Ram Kewal reached at the Gurgaon Police Station and lodged the FIR at about 7.30 a.m. Further prosecution version is that on 6.1.1997 accused contacted PW3 Subhash Sharma and made confessional statement to him that he committed rape and murder of Rinku near the boundary wall of college building. He stated that he caused injury to the deceased by the brick on her head and mouth as the deceased stated that she would report at the house with regard to the rape committed by him. Accused sought his help to save him. It is the say of the witness that when he was taking the accused towards the police station, the uncle

of the girl and the police met him and he handed over the accused to the police. After completing the necessary investigation, the accused was charged and convicted as stated above.

Mr. Tara Chand Sharma, learned counsel for the appellant submitted that the High Court committed error in convicting the appellant as there is no evidence on record to connect the accused with the crime. The circumstantial evidence upon which reliance is placed by the High Court is not sufficient so as to convict the appellant for the offence for which he is charged and in any case, it is not a case for imposing the punishment of death. It is his contention that if Ram Kewal PW1 and Makhan Lal PW2 were knowing that the deceased child had accompanied the accused by evening time, and she did not return till midnight, they would have immediately lodged the FIR for kidnapping. As they have not done so, it would mean that they were not knowing that the deceased had gone in the company of the accused who was the tenant of PW1 for few months and thereafter residing in neighbourhood.

As against this, learned counsel for the State submitted that the crime committed by the accused is heinous. There is sufficient circumstantial evidence on record to connect the accused with the crime and the courts below have rightly convicted the accused and imposed the death sentence.

We have gone through the entire evidence on record, particularly, the evidence of PW1 Ram Kewal and PW2 Makhan Lal which clearly establishes that accused enticed deceased

Rinku young girl aged about 11 years to accompany him on 5.1.1997 at about 6 p.m. PW1 has stated that he saw Raju taking Rinku towards Rajinder Nagar. It has come in evidence of PW1 that when she did not return to the house up to 8 or 9 p.m., the whole night they searched for Rinku and accused Raju, but could not locate them. On the next morning, Ram Kewal PW1 along with Makhan Lal PW2 reached near the bushes at Government College compound and found the dead body of Rinku lying there. Immediately PW1 went to the police station City Gurgaon and lodged the FIR Ex. PA. The I.O. prepared the necessary panchnama and blood stained earth, blood stained brick on which hair were also stuck, shawl and pair of chappal were taken into possession vide recovery Memo Ex.PB. Dr. Suresh Bakshi PW5 along with Dr. Vandana Narula PW 13 conducted the post mortem examination and noticed three injuries on her person. The cause of death in their opinion was due to shock and haemorrhage as a result of injuries which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The evidence of PW1 is also corroborated by the evidence of PW2 Makhan Lal who is resident of the same locality and is not related to the deceased or the accused. He was ironing the clothes in front of house of PW1 in the same locality. He saw accused distributing toffees to the children at about 6.00 p.m. and noticed that Raju was talking with the deceased Rinku while going towards Chandan Nagar. He accompanied PW1 for search of Rinku. In view of the aforesaid evidence, in our view, the prosecution has established beyond any doubt that accused enticed minor Rinku on 5.1.1997 at evening time and took her towards Chander Nagar at Gurgaon. The accused and deceased were last seen together going towards Chandan Nagar by PW2.

Secondly, accused along with the deceased was not traceable on the night of the incident. The dead body of Rinku was traced in the morning in the Government College compound near bushes. Search continued for the whole night. Therefore, not lodging of FIR during the night time would not at all be a ground for doubting the evidence of PW1 and PW2. Apart from the aforesaid evidence, in our view, there is no reason to discard the extra judicial confession made by the accused before PW3 Subhash Sharma. PW3 is also resident of the same locality and was working on a lathe machine in Patel Nagar, Gurgaon. After making confession, accused sought his help to save him. It has come on record that father of the accused was plying rickshaw and PW3 was sending his goods in his Rickshaw and that the accused was coming to his work-shop quite often. The witness has also stated that the father of the accused was meeting him on number of occasions. On 8.1.1997, the father of the accused asked PW3 to inquire about the case and, therefore, he had gone to the police station. At the police station, he accompanied the police with Raju at the scene of offence. The accused pointed out the place where he committed rape and where he had thrown the dead body. He had denied the suggestion that as he was having good relations with PW1, he was making false statement. In our view, there is no reason to discard the confessional statement made before an independent witness who was known to the accused and his father.

Further, FSL report establishes that the pant put on by the accused was stained with numerous small dark brown stains/streaks especially on the front. Similarly, the multi coloured printed terrycot shirt of the accused was also stained with numerous darkish stains specially on his sleeves and contained human blood as per the FSL report. On the underwear worn by the accused, blood and semen was found. There is no explanation given by the accused how the blood was there on the shirt put on by him and that how there were blood stains on the pant and underwear. We would add at this stage that in his statement under Section 313 Cr. P.C. the accused abjured his guilt and denied all the allegations made against him. According to him he had paid advance rent of one year to Ram Kewal PW1 but he was turned out of the house after six months and that he had been falsely implicated in the case as there was quarrel between him and Ram Kewal PW1. In our view, this defence is totally baseless. If the accused was turned out of the house after taking one years rent in advance, there was no reason for PW1 to implicate the accused in the crime.

In this view of the matter, in our view, the High Court after appreciating the entire evidence has rightly confirmed the conviction order passed by the Sessions Court. However, the next question is whether this would be a rarest of rare cases where extreme punishment of death is required to be imposed. In the present case, from the confessional statement made by the accused, it would appear that there was no intention on the part of the accused to commit the murder of the deceased child. He caused injury to the deceased by giving two brick blows as she stated that she would disclose the incident at her house. It is true that learned Sessions Judge committed error in recording the evidence of SI Shakuntala, PW 15 with regard to the confessional statement made to her, but in any set of circumstances, evidence on record discloses that accused was not having intention to commit the murder of the girl who

accompanied him. On the spur of the moment without there being any premeditation, he gave two brick blows which caused her death. There is nothing on record to indicate that the appellant was having any criminal record nor he can be said to be a grave danger to the society at large. In these circumstances, it would be difficult to hold that the case of the appellant would be rarest of rare case justifying imposition of death penalty.

We, therefore, uphold the conviction of the appellant under Section 302, but commute the sentence of death to imprisonment of life. Subject to the aforesaid modification of sentence, this appeal is dismissed.

JUDIS