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HIGH COURT OF DELHI : NEW DELHI

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Crl.A.313/2004

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**Judgment reserved on : 15.05.2008
Judgment delivered on: 22.07.2008**

RAMESH @ BAJRANGI

**..... Appellant
Through : Ms. Purnima Sethi,
Advocate
versus**

STATE

**..... Respondent
Through : Ms.Richa Kapoor, APP**

CORAM :

Hon'ble Mr. Justice B N Chaturvedi

Hon'ble Mr. Justice Rajiv Shakdher

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Rajiv Shakdher, J.

1. This is an Appeal under Section 374 (2) of Cr.PC against judgment dated 4.2.2004 and sentence dated 7.2.2004 passed by the Additional Sessions Judge, Smt. Asha Menon in Case No. 5/2000. By virtue of the aforesaid judgment the Appellant has been convicted of offences under Section 363/376/302/201 of the Indian Penal Code (hereinafter referred to in short as 'IPC'). As regards conviction under Section 201 IPC, the Appellant has been sentenced to five (5) years rigorous imprisonment with fine of Rs.1000/-, in default of which, the Appellant has been sentenced to undergo a further rigorous imprisonment for two (2)

months. In so far as offence under Section 363 of IPC is concerned, the Appellant has been sentenced to undergo seven (7) years rigorous imprisonment with fine of Rs. 3,000/-, in default of which, the Appellant has been sentenced to undergo a further rigorous imprisonment of four (4) months. As regards conviction under Section 302 IPC is concerned, the Appellant has been sentenced to imprisonment for life with fine of Rs.5,000/- failing which he is to undergo a further rigorous imprisonment for six (6) months. Lastly, for the offence under Section 376 of IPC, the Appellant has been sentenced to life imprisonment with fine of Rs.5,000/- failing which he is to undergo a further rigorous imprisonment for a period of six (6) months.

2. The Appellant being aggrieved by the impugned judgment has preferred the present Appeal before this Court.

3. For the purpose of disposal of the Appeal, it would be necessary to detail out the case set up by the prosecution.

4. The prosecution's case is that in the night intervening 5/6th June, 1999 a child aged four (4) years named Komal was kidnapped from her house bearing No. 461, JJ Colony, Shakarpur, Delhi. On 6th June, 1999 itself at about 6.45 a.m the Police Station at Saraswati Vihar, New Delhi (hereinafter referred to in short as the 'Police Station') was informed telephonically that a girl named Komal D/o Shri Rajesh Kumar @ Sanjay was missing. A report to the said effect was entered into the

roznamcha. A copy of the same was prepared and issued to S.I Anil Kumar for necessary action. The requisite information was entered in the Daily Diary as Entry No. 41A (Ex.PW17/A).

5. Two hours later on the same day i.e 6.6.1999, at about 8.45 am, the dead body of the girl Komal was found lying in the drain near J Block, Shakarpur. The information was entered in the Daily Diary as Entry No. 2A (Ex.PW 17/B). A copy of the report was prepared and marked to sub-Inspector (SI) Dinesh Pal who alongwith Constable Jasraj left for the site indicated hereinabove. At about 8.50 am on the same day (i.e 6.6.1999) another entry being Daily Diary No. 3A (Ex PW 17/C) was made wherein it was recorded that Assistant sub-Inspector Dharam Singh and operator Constable Devender had also left the Police Station to assist in conduct of investigations at the spot indicated in the information received by the Police. The said team was also accompanied by Inspector Suraj Prakash Yadav. By 10.30 am the Duty Officer at the Police Station through Constable Jasraj received requisite information from investigating team at the site to register an FIR under Sections 363/302/201 IPC. The said information was recorded in Daily Diary Entry No. 5A (Ex PW 17/D). By about 11.10 am on 6.6.1999 information with regard to the crime was sent to senior officers. This information was recorded as DD Entry No. 6A (Ex PW17/E) in the records of the Police Station.

6. In the interregnum while the investigating team was collecting details with regard to the commission of the crime and requisite material a secret information was received at about 3.00 pm by Inspector R.N.Sharma (PW27) through an informer that the Appellant who had recently been released from jail for commission of a similar crime could perhaps be a possible suspect in respect of the commission of crime in the instant case. This information received from the informer was reduced to writing vide Ex PW23/B, which was, identified by sub-Inspector Dinesh Pal and also bears the signatures of Inspector R.N.Sharma (PW27) on receipt of abovesaid information, the police record was checked whereupon it was discovered that an FIR No. 384/1991 (Ex PW 27/C) under Section 363 of IPC in the same Police Station had been registered, and the prosecution of the Appellant had already taken place under Sections 302/384/201/120B/34 of the IPC. It transpires that the Appellant has since been acquitted in that case.

7. Accordingly, the police surrounded the house of the Appellant/accused being the House No. J-501/512 JJ Colony, Shakarpur, Delhi. The Appellant/accused was then taken to the Police Station where he was interrogated. The Appellant/accused Ramesh @ Bajrangi made a disclosure statement (Ex PW1/E), which was, counter signed by Inspector R.N.sharma (PW27). It is the prosecution's case that the disclosure statement led to the recovery of the clothes worn by the

Appellant/accused at the time of the incident, in particular, the underwear that he wore at the time when he was apprehended. His disclosure statement also led to the discovery of the location where the clothes of the deceased child had been burnt by the Appellant/accused. The prosecution placed reliance on seizure memo Ex PW14/A and pointed out memo Ex PW23/C. The said exhibits were proved by SI Dinesh Pal (PW23). The Inspector Shri R.N.Sharma (PW27) arrested the Appellant/accused and prepared a personal search vide memo Ex PW1/D. The underwear which the appellant/accused was wearing was taken into possession and was put in a parcel and sealed vide memo Ex.PW14/C. At this point in time sub-Inspector Dinesh Pal (PW23), Constable Devender, father of the deceased child Shri Rajesh @ Sanjay (PW1) alongwith the grand mother Smt Ramwati (PW2) were also present.

8. According to the prosecution, the Appellant/accused thereupon accompanied the police to the DDA Park, Near Subhash Palace and pointed out the place from where the dead body was recovered. The Appellant/accused is also said to have guided the police team to a nearby Peepal tree where the clothes of the deceased child were burnt by him. As stated above, the police took the burnt clothes into possession and prepared a parcel which was sealed and marked "RN" in the presence of the grandmother Smt Ramwati (PW2) and the father

Shri Rajesh (PW1). It is the prosecution's case that both Smt Ramwati, the grandmother (PW2) and Rajesh (PW1) identified what remained of the burnt clothes of the deceased child, Komal. The remnants of the clothes were put into a parcel. A memo was prepared being Ex PW14/A. The said memo bears the signatures of both Rajesh (PW1) and Ramwati (PW2). The said memo was also signed by Police personnel sub-Inspector Dinesh Pal and sub-Inspector Devender. The police thereafter lifted a small piece of the earth from the area and seized it vide memo Ex PW2/A. An unscaled site plan was also prepared being Ex PW27/D which bears the signatures of Inspector R.N.Sharma (PW 27).

9. Based on the disclosure statement; the clothes worn by the Appellant at the time of commission of the crime being a trouser and a T-shirt were also recovered from his house situated at J-501, Shakarpur, Delhi. The clothes which were stained were again sealed and marked "RN" and taken into possession vide memo Ex PW 14/B. The said memo was counter signed by Inspector R.N.Sharma (PW27). Thereafter the exhibits were deposited in the Malkhana and the body was sent for post-mortem. However, the post-mortem could not take place till 12.00 pm on 7.6.1999. The post-mortem was conducted by Dr.K.Goyal (PW3), who deposed that on external examination he found the following injuries:-

“1. There was sticky substance present over left inguinal region, dry and adhered consistency was like Semen. The Swab was taken from the substance for chemical analysis.
2. There was defuse bruising over front and left side of neck with few crescentric irregular scratches of size varying between .72 to 1 cm resembling nail marks over left side of neck. Bruising and scratches were scattered irregularly.”

10. Dr.K.Goyal (PW3) has also proved the post-mortem report (PW3/A). Dr.K.Goyal (PW3) was of the opinion that the cause of death was asphyxia due to manual strangulation. He also opined that the neck injuries and the vaginal injuries were ante mortem in nature. He specifically opined that the vaginal injuries were consistent with forcible attempt of sexual intercourse. In his opinion, the time of death was about thirty five (35) hours prior to the date and time of conduct of the post-mortem.

11. In the meanwhile on 7.6.1999 the police had also got a medical examination conducted of the Appellant, at the Deen Dayal Upadhyay Hospital. The Appellant at that time was accompanied by Head Constable Baljeet. The medical examination revealed that there were no external injuries on the person of the Appellant and also that he was not incapable of sexual intercourse. Based on the aforesaid material and evidences collected by the Police a challan was filed in the trial court, and by an order dated 24.8.2000 the following charges were framed against the Appellant:

“That in the night intervening 5/6-6-1999 you kidnapped Komal (minor) girl aged about 4 years from JJ Colony, Shakarpur, Delhi from the lawful guardianship of Rajesh Kumar @ Sanjay, her father and thereby committed offence punishable under Section 363 IPC and within the cognizance of this Court.

Secondly that on the aforesaid date, time and place after kidnapping minor girl Komal you committed rape on her and thereby committed an offence punishable under Section 376 IPC and within the cognizance of this court.

Thirdly that on the aforesaid date, time and place after committing aforesaid offences, you committed murder of Komal and thereby committed an offence punishable under Section 302 IPC and within the cognizance of this court.

Fourthly that on the aforesaid date, time and place after committing murder of Komal, you threw the dead body of Komal in the Nala near J-Block DD Park in order to cause the evidence of said murder to disappear with the intention of screening yourself from legal punishment of the aforesaid offences and thereby committed offence U/S 201 IPC and within the cognizance of this court.

And I hereby direct that you be tried for the said charges by this court.”

12. The trial court upon perusal of the evidence placed before it, as stated above, came to the conclusion based on circumstantial evidence that the Appellant had committed the offences in respect of which he was charged and accordingly convicted the Appellant under Sections 363, 376, 302 and 201 of the IPC. The Appellant being aggrieved preferred the present Appeal.

13. The prosecution in order to establish its case against the Appellant examined twenty nine (29) witnesses. The Appellant's statement under Section 313 of the Cr.PC was also recorded. The

Appellant, however, in defence has not led any evidence. The learned counsel for the Appellant has impugned judgment of the trial court on the following grounds:-

- (i) the testimony of Smt Ramwati (PW2) is inconsistent and is full of improvements and embellishments when read alongwith the statement of the said witness made under Section 161 of Cr.PC;
- (ii) while the father of the deceased child Rajesh @ Sanjay (PW1) submitted that it was his brother Rakesh Kumar (PW5) who had gone to the spot i.e the drain where the body of the deceased child was discovered; the brother (PW5) in his cross-examination has stated that no proceedings had taken place in his presence;
- (iii) the testimony of the father of the deceased child Rajesh @ Sanjay (PW1) was full of contradictions, in as much as, in the cross-examination when confronted with the statement made under Section 161 Cr.PC he denied that the Appellant/accused was arrested in his presence. PW1 also denied that the underwear of the Appellant was taken possession of and put into a parcel and sealed in his presence. PW1 had also denied in his cross-examination, when confronted with the statement made under Section 161 Cr.PC that the Appellant was the one who had taken the police party to the spot where the body of the deceased child was recovered or also at the spot where the burnt clothes of the deceased child were found. PW1 also denied in his cross-

examination that he had identified the burnt pieces of clothes of the deceased child which the police claim to have taken into their possession and sealed in his presence;

(iv) The CFSL report based on which the prosecution has attempted to connect the Appellant with the crime could not have fixed the culpability on to the Appellant since the blood group of the Appellant/accused was not mentioned in the report;

(v) the reliance by the prosecution on the testimony of Shri Virender Singh (PW10) as a witness who had last seen the Appellant with the deceased child ought not to be believed as he was not an uninterested and an independent witness and;

(vi) Lastly, it was also contended that the grandmother (PW2) has in her testimony stated that the police had apprehended some other persons also on suspicion who have been let off, while the Appellant has been falsely implicated in the present case.

14. As against this the learned APP has contended that the prosecution has been able to prove the guilt of the Appellant/accused beyond reasonable doubt. For this purpose, the learned APP seeks to rely upon the testimony of the grandmother of the deceased child (PW2), the father, Shri Rajesh (PW1), and the mother of the deceased child (PW7), as also the testimony of Virender Kumar (PW10) who had

seen the Appellant carry away a child of the same age at approximately the same time. The learned APP relies upon recoveries of articles made based on the disclosure statement of the Appellant/accused, in particular, the underwear worn by him at the time of commission of crime. The scientific evidence in the form of CFSL report (Ex PW4/A) and the post mortem report (Ex PW3/A) to connect the Appellant to the crime.

15. Having heard learned counsel for the Appellant and the State and perused the evidence on record, we are of the view that the prosecution has been able to establish the guilt of the Appellant/accused beyond reasonable doubt. Our conclusion is based on the following material evidence brought on record:-

16. It has been established by virtue of the testimonies of the father Shri Rajesh Kumar (PW1), the grandmother (PW2) Smt Ramwati and the mother of the deceased child (PW7); that the child was sleeping on a cot in the house which was partly protruding outside the house and at that point of time the grandmother who was inside the house was preparing her evening meal after she had returned from the vegetable market; the deceased child Ms.Komal was found missing when the father Rajesh (PW1) alongwith his wife returned to their house between 12.00 pm-1.00 am after finishing his business of lending on hire T.Vs and VCRs and lastly, that Smt Ramwati the grandmother (PW2) had

found the Appellant loitering in the vicinity of the house, in particular, proximate to the location where the deceased child Komal was sleeping on the cot in the doorway of the house. On this point the testimony of PW2 is firm and that in the cross-examination there is no suggestion to the contrary made to Smt Ramwati (PW2) by the defence.

17. The fact that the Appellant had picked up the deceased child while the other family members were not around is established by virtue of the testimony of Shri Virender Singh (PW10) who is a witness who last saw the Appellant carrying a child in his arms when the said witness Virender Singh (PW10) was returning from his brother's house at Shakarpur and proceeding to his house which is J-461, JJ Colony, Shakarpur, Delhi i.e the house of the deceased child. Shri Virender Singh (PW10) has deposed that when he was returning home he ran into the Appellant who was evidently carrying a child of about four (4) years in his arms; the child was rested on his chest across the shoulders of the Appellant, and when he asked the Appellant where he was going at that odd hour he is stated to have said that he was coming back after getting some medicine for his niece. It is noted that Shri Virender Kumar (PW10) has specifically stated in his cross-examination that since the Appellant was a resident and a neighbour of the locality he was aware of his previous antecedent and that he had

no difficulty in recognizing the Appellant due to the fact that even though it was a late hour of the night he was able to recognize the Appellant due to the street light in the vicinity. Shri Virender Singh (PW10) has denied the suggestion made to him in his cross-examination that he was falsely deposing as he was a friend of the father of the deceased child. Based on the testimonies of PW1, PW2 and PW10 there is no difficulty in coming to the conclusion that the deceased child was sleeping on a cot which was protruding outside the doorway of the house when the Appellant, proximate in time and space was not only found in the vicinity but was also seen with a child of approximately the same age.

18. The remaining facts with respect to the discovery of the body of the deceased child are borne out from the testimonies of Smt Ramwati (PW2), Shri Rakesh Kumar (PW5) and two youngmen i.e Sonu Nagar (PW6) and Ajay (PW8). The testimonies of the said witnesses established that Sonu (PW6) and Ajay (PW8) discovered the body of the deceased child in the drain at Subhash Palace, DDA Park and that they gave the said piece of information to the family. Upon receipt of information, necessary communication was sent to the Police Station. Upon receipt of information the duty officer recorded the said information in DD Entry No. 2A at around 8.45am (Ex PW17/B). A copy of the report was prepared and entrusted to sub-Inspector Dinesh Pal

who alongwith Constable Jasraj left for the site. This was followed by other police officers i.e Assistant sub-Inspector Dharam Pal and operator Constable Devender also proceeding to the spot where the dead body was found. The said information was entered into vide DD Entry No. 3A (Ex PW17/C).

19. In the meanwhile, the police was informed by an informer that the Appellant had earlier being apprehended in an another case being FIR No. 384/91 with regard to commission of similar offence under Section 363 of the IPC read with Section 302 of the IPC. The said information which was received by the police on 7.6.1999 at about 3.00 pm was recorded vide Ex PW23/B. The said information which was reduced to writing bears the signatures of Inspector R.N.Sharma PW27, sub-Inspector Dinesh Pal PW 23.

20. Based on the aforesaid information, the police apprehended the Appellant. The Appellant made a disclosure statement (Ex PW1/E). The said disclosure statement led to the recovery of the remanant's of the clothes of the deceased child from under a Peepal tree, and the clothes worn by the Appellant/accused i.e the trouser and T-shirt, as well as, the underwear that he wore at the time of commission of the crime. The remanant's of the clothes of the deceased child were identified by the father (PW1). It is well settled that the recoveries made pursuant to the disclosure statement made by the Appellant/accused are

admissible to the extent it leads to the discovery of the said fact. See observations of the Supreme Court in the case of **Delhi Administration vs. Bal Kishan AIR 1972 SC 3; Mohd. Inayatullah vs. State reported in AIR 1976 SC 483.** The aforesaid, when linked with the testimony of Dr.A.K.Srivastava (PW4) who deposed that blood and semen was found both on the underwear (Ex 1) of the appellant/accused and on the vaginal swab (Ex-7) and further went on to state that because blood and semen had got mixed, that is, there was an overlapping and hence, the forensic analysis revealed AB blood group; coupled with the observations in the post-mortem report (EX PW3/A) wherein it has been observed that a sticky substance was present in the left inguinal region which was dry and had consistency like semen, and given the fact that in the medical examination (Ex P 21/A) of the accused on 7.6.1999 revealed that there were no external injuries on the person of the Appellant, and also the opinion of the doctor issuing the said report that the appellant was capable of sexual intercourse; the only conclusion that could be drawn is that upon the appellant having forceful sexual intercourse with the deceased child the blood of the child got mixed with the semen of the Appellant which was smeared on to his underwear.

21. A careful perusal of the post-mortem report injury shows that there were injuries on the vagina which were ante-mortem. In our

view, the underwear of the appellant/accused was stained with the blood of the child when the appellant had forceful sexual intercourse with the child. This resulted in the underwear of the appellant/accused being stained with not only the blood of the child which obviously oozed out due to vaginal injury but also his own semen. There were, as stated above, no fresh external injuries found on the person of the appellant/accused as found in this medical examination. Thus, the Appellant's semen, the traces of which were found both on the body of deceased child as is evident from the vaginal swab and that on the underwear of the Appellant got mixed up as noted above. The very fact that the Appellant had no injuries on his person the blood in this case could only be that of the deceased child which as noted above got mixed up with the semen of the Appellant in the instant case.

22. The opinion of Dr. K. Goyal (PW3) who conducted the autopsy clearly opines that the deceased child had been subjected to a forceful sexual intercourse and that the death of the child, Komal had taken place on account of asphyxia due to manual strangulation of the deceased. Dr.K.Goyal has proved the said post-mortem report Ex PW3/A.

23. In view of the aforesaid facts and circumstances, we have no difficulty in coming to the conclusion that the prosecution has been able to prove beyond a reasonable doubt that the Appellant was guilty

of the offences charged. The Appeal has no merit and is thus accordingly, dismissed.

RAJIV SHAKDHER, J

B N CHATURVEDI, J

July , 2008
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