

R-17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision :17th March, 2010

+ **CRL.APPEAL NO.96/2008**

RAJEEV KUMAR @SONU Appellant
Through: Mr.Bhupesh Narula, Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 10.10.2007, while convicting the appellant for the offence of having raped and murdered Baby 'S', in para 21 of the impugned decision the learned Trial Judge has crystallized the incriminating evidence against the appellant as under:-

"21. I have considered facts and circumstances of the case and submissions of Ld.Defence Counsel. I am of the opinion that although no person has seen the deceased being raped and killed by the accused. However the prosecution has led following

circumstantial evidence to nail the accused:

1. The postmortem report Ex.PW-4/A shows that the autopsy was started at 11:30 am and concluded at 1:00 pm on 17.1.2004. The time since death is opined to be about 19 hours. This shows that the death of the child could have taken place between 6 to 7:00 pm on 16.1.2004. This tallies with the testimonies of the witnesses (PW-1, PW-9, PW-10, PW-11) that the deceased child was missing from her house in the evening of 16.1.2004 and they started searching for the child at about 6:30 pm on that date.
2. Soon after the death of the child, accused was found by the above stated witnesses in his house and at that time he was pushing the child under the sofa of his room.
3. As per the testimony of PW-4 Dr.Arvind Theragaonkar, the examination of vagina showed hymen torn freshly and vaginal tear and recent bleeding was seen.
4. As per postmortem report Ex.PW-4/A the cause of death was opined to asphyxia due to strangulation caused by soft ligature material possibly with a chunni Ex.P2 which was recovered by PW-19 Inspector K.P.Kukrety at the instance of the accused.
5. The blood group of the deceased, as per FSL report Ex.PW-19/F was found to be of B group and the blood of the accused was to be of A group.
6. The pajami of the deceased was also sent to FSL and as per FSL report Ex.PW-19/F, it was having mixed stain of blood and semen. Sh.A.K.Srivastava, Senior Scientific Officer (called under Section 311 Cr.P.C.) testified that if semen of A group and blood of B group are mixed, the same would give AB group on analysis."

2. Learned counsel for the appellant does not dispute that the FSL report Ex.PW-19/F concludes the issue that the blood group of the deceased was 'B' and that of the accused was 'A' and that the testimony of Shri A.K.Srivastava, the Senior Scientific Officer establishes that if semen of group 'A' and blood of group 'B' was mixed up, the same would give results of 'AB' group. This was the blood group detected on the underwear and the pajami of Baby 'S'.

3. Learned Trial Judge has referred to the testimony of PW-1, PW-3, PW-9, PW-10 and PW-11 to hold that their testimony establishes that the appellant was seen by them push Baby 'S' behind a sofa in his house. The girl was critical and was unconscious at that point of time. She was rushed to the hospital where unfortunately she died.

4. Criticizing the testimony of PW-1 and PW-3, learned counsel for the appellant draws our attention to the admission made by PW-1 during cross-examination to the effect that he stated that when they were searching for Baby 'S' the accused met them in the park of the colony. PW-3 has stated that when they were searching for Baby 'S' the accused met them.

5. It is urged that if the accused had met PW-1 and PW-3 outside his house, where was the occasion for the witnesses to be seeing the accused try and hide Baby 'S' by

pushing her body behind a sofa in his house.

6. Arjan Dass Khurana PW-1 is the maternal grandfather of the victim and he deposed that his daughter Kavita came to his shop and informed that his grand-daughter Baby 'S' aged 6 years is missing. He along with Gurumukh Dass and Santosh Kumar started searching for Baby 'S'. She could not be found till 8:00 PM. He informed PCR over number 100 and got announced in the colony Gurudwara about his grand-daughter being missing. People in the locality joined them to search Baby 'S' and that when they were moving in the colony they saw the chappal of Baby 'S' outside the house of the appellant and on peeping inside he saw the appellant pushing Baby 'S' under the sofa. They entered the house and lifted the sofa. Baby 'S' was unconscious. Appellant was apprehended. He took the appellant to the police post. His neighbour Nandlal Sachdeva removed Baby 'S' to the hospital. Later on he learnt that Baby 'S' had died.

7. As noted above, on being cross-examined, he stated that when they were searching for Baby 'S' the accused met them in the park of the colony.

8. Santosh Kumar PW-3 deposed that he joined the mohallawallas to search Baby 'S' and when they saw chappal of Baby 'S' outside the house of the appellant they entered the

house and saw the appellant pushing Baby 'S' under the sofa. Appellant was apprehended. Baby 'S' was unconscious. His uncle Nandlal Sachdeva took Baby 'S' to the hospital. The accused was taken to the police post.

9. As noted above, on being cross-examined he stated that when they were searching for Baby 'S' the accused met them.

10. Nandlal Sachdeva PW-9 has deposed facts in harmony with the earlier two witnesses. He, during cross-examination, did not state that the accused met them when they were searching for Baby 'S'.

11. Prem Chand PW-11 has also deposed in sync with the earlier witnesses. Akin to Nandlal Sachdeva, even Prem Chand has not stated that when they were searching for Baby 'S' the accused met them outside his house.

12. What actually happened has been disclosed with graphic details by Shyam Lal PW-10. His testimony explains the admissions of PW-1 and PW-3 when they were cross-examined.

13. Shyam Lal has deposed as under:-

"On 16.1.2004 at about 8 pm we went to the house of Baby 'S' as I had already an information that Baby 'S' was missing from 6:30 pm. Relative of Baby 'S' were searching her. I also started searching along with Arjun Dass, Santosh Kumar and others. At about 8:05 pm when we were crossing near the house of accused

Rajiv, we found the chappal of Baby 'S' outside the house of accused. Santosh identified the chappal of Baby 'S'. At that time accused was standing outside his house. We asked him about the chappal and on our inquiry he got perplexed. We started going towards and when we covered four or five steps I saw towards the accused and found that he had entered in his house. I started running behind him and entered in his house. Arjun Dass, Prem and Santosh Kumar also entered in his house. We found that he was pushing the sofa set in his house. We found the leg of Baby 'S' outside the sofa and the accused was trying to hide Baby 'S' inside sofa. We raised a noise. Many people gathered there. We apprehended the accused. Baby 'S' was unconscious. She was taken to hospital by Santosh and other people. We took the accused to the police post and handed over him to police. Later on I came to know that Baby 'S' had died."

14. It is apparent that what actually happened was that when the colony people were searching for Baby 'S', their search took them to the crossing near the house of the appellant. They saw chappal of Baby 'S' outside the house of the appellant who at that point of time was standing outside his house. He was questioned about the chappal outside his house. Appellant got perplexed. The crowd moved towards him. He ran inside and to hide his crime started pushing the sofa inside the house to push it to the wall and at that point of time Baby 'S' was seen behind the sofa.

15. It is apparent that PW-1 and PW-3 have somewhat blurred while deposing in Court. Graphic details have come through the testimony of Shyam Lal PW-10.

16. Save and except the sole aberration herein above

noted in the testimony of PW-1 and PW-3, all eye-witnesses have fully corroborated each other.

17. It is next urged that there is some conflicting evidence as to whether chappal of Baby 'S' was picked up by the investigating officer from outside the house of the appellant or whether somebody else picked up the chappal and handed over to the investigating officer.

18. From the testimony of the various eye-witnesses noted herein above it is apparent that a large number of mohalla people had joined in the search to find Baby 'S' and under the circumstances there is bound to be some confusion whether the chappal was allowed to remain at the spot, to be lifted by the police or somebody picked up the chappal and voluntarily handed over the same to the police.

19. What nails the guilt of the appellant is the eye-witness account and the FSL report herein above noted.

20. We eschew reference to another controversy pertaining to the recovery of a chunni at the instance of the appellant, stated to be the ligature material used to strangle Baby 'S'. Our reason is that with so many people participating there is bound to be confusion on trivial aspects of the crime.

21. That the appellant was capable of performing sex

stands established with reference to the MLC Ex.PW-5/A of the appellant. That Baby 'S' was raped is not only established from her MLC Ex.PW-16/A but even the post-mortem report Ex.PW-4/A prepared by Dr.Arvind Thergaonkar PW-4 who conducted the post-mortem. The same establishes the vagina hymen freshly torn. There was a vaginal tear and bleeding was seen. Abrasions were present on the right maxilla as also below left eye, chin and left elbow. Contusion wounds were found on the chin and the chest. Strangulation marks were found around the middle of the neck. Internal examination revealed that the thyroid, hyoid and cricoid cartilages were congested. It was opined by him that a chunni could be a ligature material used for the reason the injuries on the neck suggested a soft ligature material being used.

22. We find no merit in the appeal which is dismissed.

23. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

March 17, 2010
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