

AND

ON'BLE SRI JUSTICE D.V.S.S.SOMASHEKHAR

Criminal Appeal No.1271 of 2012

Date: 17.02.2018

Criminal Appeal No.1271 of 2012

Between:

And

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This case involves gruesome murder, preceded by rape of an innocent five year old girl. The sole accused in Sessions Case No.128 of 2012 on the file of the VI Additional District and Sessions Judge, at Siddipet, filed this appeal, aggrieved by judgment dt.28.08.2012, in convicting the sentencing the accused for the offences under Sections 302, 376(2)(f) and 364 of the Indian Penal Code (IPC).

2. The case of the prosecution as reflected from the charge sheet is as follows. On 12.07.2011 at around 06.00 Hours P.W.14 – Sub-Inspector of Police, Toopran Police Station received telephonic information from P.W.7 – Ryakala Narsingh Rao, Upa Sarpanch of Manoharabad Village, that the daughter of P.W.1 - Vadiyaram Dasu, was missing from 11.07.2011 night and his family members were manhandling the appellant in the morning at about 3.00 a.m. suspecting his role in her disappearance. P.W.14 deputed P.W.6 – Head Constable and one Madusudhan Rao (L.W.10) – Police Constable of Toopran Police Station, who have produced the appellant before P.W.14.

3. On interrogation by P.W.14, the appellant revealed that he is a resident of Manoharabad village of Toopran Mandal,

and working as mason, that he had three brothers, that the last one died, that his two elder brothers were living separately, and that he had been living with his parents. That in October, 2003, he along with his cousin - Endrelli Ravi, killed one Gandhi Nagaiah as he obstructed them in committing the theft of rice at Government School, Dandupally, that in that connection the villagers of Manoharabad boycotted his family from the village, that the appellant and his cousin were remanded to jail, that to meet the court expenses his father Bheemaiah sold his Acs.2.00 assigned land in Sy.No.394 in Dandupally, hamlet of Manoharabad Village to Golla Pentaiah and Nagula Nagabushanam, one acre each, that thereafter the family members of the appellant moved to Kallakal village and later to Dundigal village, that after his release from the jail he worked as mason in the said village, that later, his parents requested the elders of Manoharabad village and returned to the said village and that in the year 2005, the appellant and his cousin were acquitted from the said murder case. That in the year 2007, the appellant married one Renuka, D/o. Sangaiah, of Rudraram Village of Chinna Shankarampet Mandal, and they were blessed with a female child – Akhila, and that about one year back, due to family disputes the wife of the appellant left him. That in

the year 2010, the appellant was arrested and sent to jail by Toopran Police for practicing black magic in the house of Smt. Maknoori Shyamala of Manoharabad and after his release from the jail, he had been living with his parents at Manoharabad village.

4. That subsequently, he cajoled a girl - Kum. Shirisha, D/o. Vadiyaram Dasu, R/o. Manoharabad, aged five years, (hereinafter referred to as "the deceased") by giving her chocolates and biscuits, that as the land rates soared high recently, the appellant asked one of the land purchasers of their land - Golla Pentaiah, to give some more amount as the land was sold to him at a very cheap rate, but the said Pentaiah refused the said request, due to which the appellant bore grudge against Pentaiah and was waiting to harm him. That accordingly the appellant made a plan to kill the deceased and lay her body in the fields of Golla Pentaiah so as to involve him in the murder case. That in pursuance of the said plan, on 11.07.2011 evening, the appellant purchased a quarter liquor bottle in Manoharabad wine shop, that after consuming the same he went to the house of Vadiyaram Swamy, the paternal uncle of the deceased, and spent some time, that while returning to the shop, he has asked the deceased to come along

with him for biscuits and chocolates and she followed him, that he took her to the Kirana shop of Ryakala Kistaiah and purchased two small biscuit packets for her by paying Rs.4/-, that later he purchased a quarter liquor bottle in the Manoharabad wine shop, consumed the liquor, went to Dandupally along with the deceased in a passenger auto, where again he purchased a quarter liquor bottle in a cool drink shop, boarded a passenger auto which was going to Konaipally and Chetla Gowraram, and got down near the fields of Golla Pentaiah, with the deceased, that thereafter, he went a little distance off the road, consumed the liquor, raped the deceased and killed her by pressing her neck with his hands, that he has removed her clothes and threw them away and that later, he has shifted the dead body of the deceased and laid the same in the wet field (Narumadi) of Golla Pentaiah. That in the midnight, he went back to his village by walk and slept in the banana garden belonging to Panthulu, that at about 3.00 a.m., the father of the deceased - Vadiyaram Dasu and the appellant's brother came to the appellant and enquired about the deceased, but he feigned ignorance, that in the meanwhile, some more villagers gathered and started beating the appellant, that Police also arrived at around 06.00 Hours and taken him to the Police

Station and that he told the Police that he can show the dead body if they follow him.

5. On the basis of the confessional statement of the appellant, recorded by P.W.14 in the presence of P.Ws.10 and 11 - mediators, he registered a case in Crime No.163/2011 under Sections 302 and 374(f) of IPC, issued express FIRs to all the concerned. Soon after issuance of the FIR, P.W.15 – Circle Inspector of Police, Toopran Circle, took up the further investigation of the case from P.W.14. In pursuance of the confession, the appellant led the panchas to the scene of offence in Dandupally Village limits and shown the dead body of the deceased. P.W.15 prepared Ex.P.3 - scene of offence observation-cum-seizure report and seized the clothes of the deceased as well as the appellant and drafted Ex.P.4 - rough sketch of the scene of offence. Later, P.W.15 examined P.Ws.1 to 4, recorded their statements in detail and conducted the inquest from 11.00 Hours to 13.00 Hours on 12.07.2011 in the presence of P.Ws.10 and 11 and one Anepu Manemma (LW.15). The dead body was shifted to Gandhi Hospital, Secunderabad, for autopsy and thereafter it was handed over to her blood relatives. P.W.15 later visited Dandupally and Monoharabad villages, examined the other witnesses - P.Ws.5,

7, 8 and one Palle Ramesh (L.W.7), recorded their statements in detail and effected the arrest of the appellant by issuing the arrest Memo at 15.30 Hours. P.W.15 also examined P.W.6 and L.W.10 and recorded their statements in detail. The appellant was produced before the jurisdictional Magistrate's Court for judicial remand. During the further investigation, Paithari Swamy – uncle of the deceased (L.W.11) and Durgam Raju – photographer (L.W.12), were also examined and their statements were recorded in detail on 14.07.2011.

6. P.W.12 – Assistant Professor, Forensic Medicine, Gandhi Medical College, Secunderabad, conducted the autopsy on the dead body of the deceased and also preserved the vaginal smears and swabs. On filing a letter before the Court, the appellant was produced before P.W.13 – Civil Assistant Surgeon, District Hospital, Sangareddy, who conducted the medical examination on the appellant regarding his capability to perform the act of sex and also collected the blood samples, semen etc. The blood and semen stained clothes of the deceased and the appellant, vaginal swabs of the deceased, blood samples and semen of the appellant were forwarded to the Forensic Science Laboratory (FSL), Hyderabad, through a letter of advice for analysis and report. After conducting the

required tests, Ms. K. Arun Jyothi – Assistant Director, FSL, Hyderabad (L.W.18) reported that human semen and human blood were identified on the aforesaid items, but their blood group could not be detected. P.W.12, who conducted the autopsy on the body of the deceased, opined that the cause of the death of the deceased was ‘Due to throttling associated with perineal injury’. P.W.13, who conducted the medical examination on the appellant, opined that there was nothing suggestive of his ‘impotency’. The Additional Judicial Magistrate of First Class, Siddipet (L.W.19) has recorded the statements of P.Ws.1 to 5, 7 and 8 and Palle Ramesh (L.W.7) under Section 164 CrPC. The Police thus concluded that the appellant has committed the offences punishable under Sections 364, 376(f), 302 and 201 of IPC and filed the charge sheet.

7. Based on the charge sheet, the Court below has framed the following charges against the appellant.

“Firstly: That you on or before 11.07.2011 at about 9 p.m. at Dandupally village you kidnapped Kum.Shirisha, aged five years for committing murder and thereby committed an offence punishable U/s. 364 IPC and within my cognizance.

Secondly: That on the above said date, time and place mentioned supra committed raped on Kum.Shirisha, aged five years and thereby committed an offence punishable under section 376(2)(F) IPC and within my cognizance.

Thirdly: That you on the above said date, time and place mentioned supra committed murder intentionally causing the death of Kum.Shirisha, aged five years by throttling with hands and thereby committed an offence punishable u/s. 302 IPC and within my cognizance.

Fourthly: That on the above said date, time and place mentioned supra knowing to believe that the offences, namely you committed offences u/s. 302 and 376(2)(F) IPC i.e. committed rape and murder of deceased Kum.Shirisha aged five years by throttling with hand, caused certain evidence committed with the said offences 376 (2) (F) and 302 IPC to disappear knowingly i.e. you dumped the dead body in the wet fields of Golla Pentaiah after removing her clothes, with intention to screen the offender from legal punishment and thereby committed an offence punishable u/s. 201 IPC and within my cognizance.”

8. As the plea of the appellant being one of denial, he was made to stand trial. In order to prove its case, the prosecution has examined PWs.1 to 15 and marked exhibits P1 to P11. On behalf of the accused, no evidence was adduced. On appreciation of oral and documentary evidence, the Court below has convicted the appellant u/s. 235(2) Cr.P.C. for the offences under Section 302, 376(2)(f) and 365 IPC and sentenced him to imprisonment for life and to pay a fine of Rs.1000/- and in default, to suffer simple imprisonment for three months for the offence under Section 302 IPC. The appellant was also sentenced to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.1000/- and in default, to suffer three months simple imprisonment for the offence under Section 376 (2) (f) IPC. The appellant was also sentenced to undergo rigorous imprisonment for seven years and also to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for one month for the offence under Section 364 IPC. All the sentences were directed to run concurrently and

the period of detention undergone by the appellant was directed to be given set off as per Section 428 Cr.P.C.

8. Heard the learned counsel for the appellant and the learned Public Prosecutor (TS).

9. PW-1 is the father of the victim/deceased. He deposed that he has two children and the deceased was aged 5 years at the time of her murder. That, he knows the accused whose house is situated at a distance of 200 yards from his house; that the appellant was residing with his brother and parents and he used to come to PW-1's house often. PW-1 further deposed that about one year back, on 'Tholi Ekadasi' day, the appellant came to his house in the morning and again in the evening and that, after some time, the appellant went to the house of PW-1's brother. His deceased daughter was also at her uncle's house and that after some time, the appellant went out along with his daughter. PW-1 further deposed that PW-4 his brother, asked the appellant as to where he was taking the deceased and that the appellant had replied that he was going to purchase biscuits for the deceased. That, as his daughter did not return home, they searched for her and the appellant was found in the banana fields in the early morning and when he was brought home and enquired, the appellant did not reveal anything, even

though PW-1 had offered Rs.500/- to the appellant, in the hope that on receiving money, he will give the information about the whereabouts of the deceased. That when they were in the process of enquiring about the whereabouts of the deceased, the police of Toopran came and took away the appellant and later they came to know that the appellant has committed rape on the deceased and killed her in the wet fields of PW-3. Thereupon, they went to the said place and found the dead body of the deceased.

10. That the appellant was frequently visiting his house and on the date of the incident also, the appellant came in the morning, afternoon and also in the evening. That, in the evening, the appellant came to PW-1's house and went to the house of his brother i.e. PW-4, that about two or three times, they searched for the appellant in the field and at last, they found him in the banana fields. PW-1 has further admitted that Kirana shop is run by one Raju i.e. PW-9 and earlier to the incident also, the appellant used to take the deceased and get her biscuits and that, as the appellant has not disclosed the whereabouts of his deceased daughter, the police came at about 5 or 6 a.m. and took away the appellant.

11. Except, eliciting information that the appellant was in cordial terms with the family of PW-1, visiting their home often and giving money to the deceased and that there is no enmity between him and the appellant, nothing else could be elicited from PW-1, to falsify his testimony. The suggestion to PW-1 that the appellant has not committed rape on the deceased and has not killed her and that he is deposing falsehood at the instance of PW-3, was denied.

12. PW-2, wife of PW-1 also deposed on the same lines as PW-1 has deposed.

13. PW-3 is the owner of the agricultural land at which the body of the deceased was found. He has deposed that he knows the appellant and PWs-1 and 2. That, in the year 2003, he purchased one acre of land in Survey No.394 for Rs.1,40,000/- situated at Manoharabad from Gaddameedi Bheemaiah S/o.Pochaiah (father of the appellant) and that, one Nagula Nagabushanam, also purchased one acre of land from the said vendor along with the witness; that, he purchased the land to provide water facility to his existing three acres of land situated abutting the said land and since then, he has been cultivating the same. That, at the time of purchase of the land, the appellant was in jail and that about 3 years ago, the

appellant came to him (PW-3) and demanded money stating that he purchased the land from his father at a cheap price, for which he did not agree. That, the appellant also tried to threaten his wife and thereupon, the witness has gone to the police station, Toopran, and made a complaint to the police, who called the appellant and questioned him and since then, he was not coming to PW-3. That on 12.07.2011 at about 6 a.m., the police came to PW-3 and asked him to come to the police station and that on being asked, the police informed PW-3 that the appellant was apprehended for killing a girl and that he was referring the name of PW-3; that his son saw the dead body of the girl and informed the Sarpanch of the village and later he came to know that the appellant committed the murder of the girl. The suggestions put to PW-3 in his cross-examination, reveal that the defence has admitted the fact that the witness has purchased one acre of land from the father of the appellant and that he allegedly owed Rs.40,000/- representing the alleged part consideration under the transaction between him and the appellant's father. It was elicited from PW-3 that police told him that the appellant has informed them that he has killed the daughter of PW-1. Significantly, the suggestion put to PWs-1 and 2 that it is PW-3 who killed the daughter of PWs-1 and 2,

was not put to PW-3 himself. It was only suggested to PW-3 that a false case is filed against the appellant as there was enmity between PW-3 and the appellant.

14. PWs-4, 5 and 8 are the last seen witnesses. PW-4 is none other than the brother of PW-1. He has deposed that he knows the appellant who is residing at a distance of 200 yards from his house in the village, that the appellant used to visit this witness's house often and that about one year back, the appellant came to his house at 7 p.m. and secured toddy and both of them consumed the same at his house and after one hour, the appellant took away PW-1's daughter along with him, informing the witness that he is taking her in order to get her biscuits and, thereafter, the appellant did not return. That they have searched for the appellant in the night till 3 a.m. and the appellant was found in banana field and was brought to the village for enquiry. He repeated the same version as that of PWs-1 and 2 in this regard about police arresting the appellant at around 6 a.m. and dead body being seen in the agricultural land of PW-3. Except the suggestion that the appellant did not commit rape and kill the deceased and that the witness was deposing false, the defence could not elicit anything, so as to expose the falsity of claim of PW-4 regarding the appellant

meeting and spending time with him, consuming toddy on the previous night and also his taking the deceased girl along with him on the pretext of buying her biscuits.

15. PW-5 is a Kirana shop owner in the village located near Hanuman temple. He deposed that on 11.07.2011 at about 7.30 to 8 p.m., the appellant came to his shop along with the deceased and purchased biscuits and went away and that on the next day, he came to know that the appellant committed rape and killed the deceased girl and that he went to the place where the dead body of the girl was lying and could identify that it is the same girl who came to his shop along with the appellant. Even from this witness, the defence could not extract anything which would discredit his version.

16. PW-8, a worker in a liquor shop located in the village concerned, deposed that about 5 p.m., the appellant came to the liquor shop along with a girl of 5 years and purchased a quarter of liquor bottle of Officers choice make, crossed the road along with the girl and boarded an auto and that on the next day at about 7.30 a.m., he went to the field situated at about 4 kms. from the village and saw the dead body of the deceased and he then came to know that the appellant has killed the girl. A suggestion was put to PW-8 that the appellant

along with the girl did not come to his shop and did not purchase a quarter bottle and that he was deposing false.

17. PW-10, the Revenue Inspector of Toopran mandal, who was examined, spoke about the confession made by the appellant about his committing rape and killing the deceased and also about the seizure of blue colour white lines full shirt (MO1), coffee colour pant (MO2), white colour baniyan (MO3), one Meroon colour underwear (MO4), Baby skirt (MO5) and top (MO6). Ex-P-2 - confessional statement of the appellant (admissible portion), Ex.P-3 – scene of offence panchanama, Ex.P-4 – rough sketch and Ex.P-5 – Inquest panchanama, were marked through this witness. In the cross-examination, the witness deposed that all the panchanamas were prepared in the police station and himself and other panchayathdar signed in the police station. He denied the suggestion that he did not accompany the police and did not visit the scene of offence, that no panchanama was prepared and that the accused has not confessed anything about the commission of offence. It was not suggested to this witness that either the MOs 1 to 4 were not seized or that they did not belong to the appellant.

18. PW-11 – another Revenue Inspector of Toopran mandal, deposed on the same lines as PW-10 has deposed and similar questions were put to this witness also, as were put to PW-10.

19. PW-12, Assistant Professor, Forensic Medicine Gandhi Medical College, Secunderabad, who has conducted autopsy on the dead body of the deceased, deposed that he has found following injuries in the body of the deceased:

“1. Perineal laceration extending upto anal regiona with tearing of vaginal layers muscle and hymen is seen. Blood clots seen in vagina.

2. Two Crasentric abrasion each about 0.25 x .25 cms. seen over right side of front of neck.

3. Multiple pressure abration each about 3 x 2 cm. seen over front of neck. On cut section multiple bruises seen over neck structure. Inward fracture of grater horn of hyoid bone with body of hyoid bone on both sides. Fracture throid and cricoid cartilages seen”.

Based on the injuries, he has opined that the deceased has died due to throttling assault with perineal injury. He has further deposed that the approximate death of the deceased was between 12 to 24 hours prior to his examination. Ex.P-6 - post mortem examination report, was marked through him. PW-12 further deposed that Ex.P-4 - FSL report shows that human semen and spermatozoa are detected on items 1, 2 and 6 i.e. (MOs - 5, 6 and 4) and item No.7 (whitish turbid liquid) and that blood group could not be detected. He has further stated

that human blood was detected on item No.1 (MO5) and item No. 8 (reddish turbid liquid) but their blood group could not be determined and that semen and spermatozoa were not detected on items 3, 4 and 5 i.e. MOs.1, 2 and 3 and 9 (vaginal swab) and blood was not detected on items No. 2 to 7. The witness further deposed that he cannot say whether the girl was subjected to rape, for the reason that item No.9 in FSL report, does not reveal the presence of semen. He further stated that injury No.1 caused on the vagina may be caused in case of rape and forcible penetration. In the cross-examination, the doctor has deposed that he has not noticed injury on legs and back side of the body and that it is not necessary that when a girl aged 5 years resists rape, she would sustain abrasions on legs and back. He has denied the suggestion that he has not given proper opinion.

20. PW-13, the doctor who conducted potency test on the appellant referred to Ex.P-8 - potency report, wherein he has opined that the clinical and physical examination of the appellant did not suggest anything to his impotency. The witness has admitted in the cross examination that he did not notice any external injury on the genital organs of the appellant and that he was not sure whether there are chances of such

injuries being sustained in case of forcible penetration against the child of 5 years old.

21. PW-14, the then Sub-Inspector of Police, Toopran, deposed about his receiving information at about 5 a.m. on 12.07.2011 about the missing of a girl, apprehension of the appellant and his production before him at about 6 a.m. on the same day, confession made by the appellant and recorded in the presence of PWs-10 and 11, his registering Crime No.163 of 2011 for offence u/s 302, 376 (f) of IPC and issuing express FIRs. The admissible portion of the confession was marked as Ex.P-2 and FIR was marked as Ex.P-9 through this witness. The suggestions put to this witness that the appellant has not confessed the commission of offence and that a false case was registered at the instance of PW-3, were denied by the witness.

22. PW-15, the Investigating Officer, referred to recording of statement of the prosecution witnesses, the recovery of the body of the deceased, examination of the prosecution witnesses during investigation, autopsy on the dead body of the deceased, sending of MOs 1 to 6 to Forensic Science Laboratory and Ex.P-7 - FSL report. He has also deposed that on 20.07.2011, he has filed a requisition before the Chief Judicial Magistrate, Sanga Reddy, Medak, to nominate JMFC to record Section 164

Cr.P.C. statements of PWs 1 to 5, 7 and 8 and LW-7 and, accordingly, Ex.P-11 – statements, were recorded by the Chief Judicial Magistrate. In his cross-examination, the witness admitted that PW-8 - potency report, did not contain anything to show that semen and blood samples of the appellant were collected. He denied suggestion that there was any enmity between the appellant and PW-3 and a false case was foisted against the appellant at the instance of PW-3.

23. In his statement given during his examination under Section 313 Cr.P.C., the appellant did not come out with any specific stand, except giving a mono syllable answer of 'false' or 'nothing' to every question and incriminating circumstances put to him.

24. This is a case based on circumstantial evidence. As has been well settled, in a case of circumstantial evidence, the prosecution has to establish every link in the chain of circumstances. The links such as motive and all other circumstances, which connect the accused with the offence, must be established beyond all reasonable doubts. As regards the motive, it has come out on record that the wife of the appellant has abandoned him and he was staying alone with his parents. He developed acquaintance with the deceased girl and

he used to frequently visit the house of her father and take her and buy eatables such as biscuits for her. The evidence of PWs - 4, 5 and 8 to the effect that on the fateful night, the appellant was in the company of the deceased, has not even been disputed by making appropriate suggestions to these witnesses. In every case, it is not possible for the prosecution to prove the motive by adducing direct evidence, as motive reflects the mind set of a person and his thought process.

25. In **Shivaji Genu Mohite v. State of Maharashtra**¹, the Supreme Court held that evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence, that such evidence would form one of the links in the chain of circumstantial evidence in such a case, but, that would not be so in cases where there are eye-witnesses of credibility, though even in such case if motive is properly proved such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion, but that does not mean that if motive is not established the evidence of an eye-witness is rendered untrustworthy.

26. In a catena of decisions, the Supreme Court held that even if the absence of motive as alleged is accepted, that is of no consequence and it pales into insignificance when direct

¹ AIR 1973 SC 55

evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to the commission of an offence, the motive part loses its significance and if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance (**Hari Shanker v. State of U.P.**², **Bikau Pandey and others v. State of Bihar**³, and **Abu Thakir and others v. State of Tamil Nadu**⁴).

27. In **Suresh Chandra Bahri v. State of Bihar**⁵ the Supreme Court held that a motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention, that in a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with, but it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what

² (1996) 9 SCC 40

³ (2003) 12 SCC 616

⁴ (2010) 5 SCC 91

⁵ 1999 SCC (1) Supp. 80

circumstances prompted him to adopt a certain course of action leading to the commission of the crime. In **Ujagar Singh v. State of Punjab**⁶ the Supreme Court reiterated its view that motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

28. In **Subedar Tewari v. State of Uttar Pradesh**⁷ the Supreme Court observed that the evidence regarding existence of motive which operates in the mind of an assassin is more often than not within the reach of others and that the motive may not even be known to the victim of the crime.

29. In the light of the settled legal position as above, if the prosecution has let in the evidence of eyewitnesses which is found trustworthy, the accused is liable to be convicted even if motive is not fully established.

30. The prosecution was able to bring out the circumstances which would clinchingly establish that the appellant has developed evil desires against the deceased girl and obviously, he befriended her with a view to sexually exploit her. Therefore, this Court with reasonable certainty, could conclude that the appellant had ill motive against the deceased girl and with a view to satiate his sexual desire, he has taken her to the fields of

⁶ (2007) 13 SCC 90

⁷ 1989 Supp (1) SCC 91

PW-3. Though the defence made an attempt to suggest that PW-3 is the real culprit, it miserably failed to substantiate the same. Indeed, except a plea that there is enmity between the appellant and PW-3, no suggestion was put to the latter that he was the culprit. Therefore, it is not possible to believe the faint version of the defence that PW-3 might have committed the offence. It is also not possible to accept the plea of the defence that because of the enmity of the appellant with PW-3, on whose fields the body of the deceased was found, has falsely implicated the appellant. Such a plea on the facts of the case, is far-fetched.

31. In a case based on circumstantial evidence, the evidence of last seen witnesses assumes much significance, more so, when the time gap between the accused being seen with the deceased and time of death was not long. It has clearly come out on record from the evidence of PWs 4 and 5 - even if we ignore the evidence of PW-8 because of variation in time spoken to, by him - the deceased was last seen in the company of the appellant at around 7.30 or 8 p.m. In Ex.P-6 – post-mortem report, PW-12 opined that death might have occurred 12 to 24 hours before post-mortem. Post-mortem was conducted at 12 noon on 12.07.2011. Therefore, it was quite

possible that the appellant might have killed the deceased any time at 8.30 p.m. on 11.07.2011 and the body was found at around 06.00 a.m. on 12.11.2011 in the fields of PW-3. It is thus proved beyond doubt, that the appellant had exclusive knowledge of the whereabouts of the deceased and the burden lies on him under Section 106 of the Indian Evidence Act, to explain as to how the deceased might have been killed. The appellant failed to discharge this burden. Added to this, the recoveries, amply proved by the evidence of PWs 11 and 14 and PW-15, the investigating officer, also connected the appellant with the offence. Ex.P-7 - FSL report, clearly referred to existence of human semen and spermatozoa on MOs 5, 6 and 4, which are maroon colour underwear of the appellant and baby skirt and top of the deceased. This evidence which remained uncontroverted, would clearly show that the appellant has sexually assaulted the deceased.

32. The learned counsel for the appellant submitted that in the light of the admission of PW-12 that he cannot say whether the girl was subjected to rape, as item No.9 (vaginal snab) did not reveal the presence of semen, the prosecution failed to prove rape. We do not find any merit in this submission. In every case of rape, semen need not be found on the genital

organ of the victim. Mere penetration even without discharge of semen on the female genitals, would constitute rape. PW-12 has clearly stated that injury No.1 on the vagina suggests forcible penetration. Mere penetration without ejaculation in the genital organ of the deceased, may have been possible. Presence of semen on MO-4, underwear of the appellant, coupled with the nature of injury No.1, as opined by PW-12 - doctor, would clinchingly establish commission of rape.

33. The above discussed evidence, without any iota of doubt, establishes the vital links in the chain of circumstances, proving the guilt of the appellant beyond all reasonable doubts. Therefore, the trial Court has rightly convicted and imposed appropriate sentence.

34. Hence, we do not find any reason to interfere with the judgment of the Court below. Appeal is, accordingly, dismissed.

35. Before closing the case, we would be failing in our duty if we do not articulate our concern at the prevailing situation. During the hearing of this case, we honestly felt that the lower Court ought to have imposed capital punishment on the appellant for the barbaric manner in which he committed the offence against an innocent child who could not sense the beast in disguise and fell prey to the façade of affection displayed by

the appellant. We refrained from issuing notice for enhancement of the sentence due to the long lapse of time after the incident and the conviction of the appellant. We are extremely concerned for and our conscience disturbed at the brazen manner in which crimes are being perpetrated on helpless women and innocent children. It is unthinkable that a man would develop sexual desire towards a tender aged child, considered as a Gift of the Almighty. The sexual assaults even on infants, leave us to wonder as to how the moral standards of men are falling to the depths of degradation. One thought and hoped that at least the Nirbhaya Act, 2013 would have a punitive effect on the male monsters in the human form. To our disappointment, we noticed that there is a marked rise in sexual assaults against women and even infants in recent times. We are conscious of the fact that the courts have in the past expressed anguish and deep concern for the crimes against the women and children and imposed capital punishment in appropriate cases.

36. In **Jugendra Singh v. State of U.P.**⁸ the Supreme Court held that rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere and that the consequential death is more

⁸ (2012) 6 SCC 297

horrendous. That it should be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. That it is said that one's physical frame is his or her temple and no one has any right of encroachment. That an attempt for the momentary pleasure of the accused causing the death of a child will have a devastating effect on her family and, in the ultimate eventuate, on the collective at large and when a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu.

37. Dealing with the case relating to rape of an eight year old girl, the Supreme Court in **Shyam Narain v. State (NCT of Delhi)**⁹ observed as under:

“27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. “physical morality”. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which

⁹ (2013) 7 SCC 77

it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of “Spring of Life” and might be psychologically compelled to remain in the “Torment of Winter”. When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court.”

38. In **Rajendra Pralhadrao Wasnik v. State of Maharashtra**¹⁰ the Supreme Court has confirmed the death penalty imposed by the Sessions Court and confirmed by the High Court, on the accused, aged thirty-one years old, for committing heinous crimes of rape and murder of a three year old girl child. The pain and suffering the innocent child must have undergone was visualised by the Court as under:

“35. It can hardly be even imagined that what torture and brutality the minor child must have faced during the course of commission of this crime. All her private parts were swollen and bleeding. She was bleeding through her nose and mouth. The injuries, as described in Ext. P-17 (the post-mortem report) shows the extent of brutal sexual urge of the accused, which targeted a minor child, who still had to see the world. He went to the extent of giving bites on her chest. The pain and agony that he must have caused to the deceased minor girl is beyond imagination and is the limit of viciousness.”

39. In **State of U.P. v. Munesh**¹¹ the Supreme Court left a note of caution to the Courts dealing with the crimes against women and children, which is apt to be reproduced hereunder:

“25. The primary concern both at national and international level is about the devastating increase in rape

¹⁰ (2012) 4 SCC 37

¹¹ (2012) 9 SCC 742

cases and cases relating to crime against women in the world. India is no exception to it. Although the statutory provisions provide strict penal action against such offenders, it is for the courts to ultimately decide whether such incident has occurred or not. The courts should be more cautious in appreciating the evidence and the accused should not be left scot-free merely on flimsy grounds. In the instant case, the accused had committed rape, which repels against the moral conscience as he chose a girl of 11 years to satisfy his lust and subsequently murdered her.”

40. Cases of this nature must be an eye-opener to the investigating and prosecuting agencies. Unless stringent measures are taken to prevent recurrence of the offences against the women and children; efficient investigating and prosecuting agencies are established for securing convictions and appropriate sentences by the Courts, which would act as a deterrence on the rogues in the society are imposed, no woman or child would be safe and secure in this country. The executive Governments of the States must introspect and take all such measures which would effectively curb the menace against the weak and the meek in the society.

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

Date: 17th February, 2018

msb/bnr

Note: LR copies to be marked.
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