

SUPREME COURT OF INDIA

Akhtar

Vs.

State of U.P.

CrI.A.No.1180 of 1998

(G.B. Pattanaik and S. Rajendra Babu, JJ.)

02.02.1999

ORDER

G.B. Pattanaik

1. The appellant who has been convicted under Section 302 IPC for having caused the murder of a young girl after committing rape on her has been sentenced to death by the learned Sessions Judge and the said sentence of death has been confirmed in Capital Reference Case No. 3 of 1997 by the High Court. The prosecution case briefly stated is that the deceased accompanied by her grandmother (PW 2) had gone to a pond, east of the village. While the grandmother was digging out soil, the deceased quietly left the place. When the grandmother could not find the deceased near her, she came out and on the way she met PW 1 and questioned him as to whether he had seen the deceased to which PW 1 replied in the negative. At that point of time both of them, namely, PW 1 and PW 2 heard the cry of the deceased and, therefore, they rushed to the place of occurrence. Reaching the spot of occurrence they found the accused in the act of committing rape on the deceased. It attracted the attention of other witnesses including PW 3 who also had reached the place of occurrence. The accused-appellant then left the victim and tried to escape but he was chased and caught red-handed by PWs 1 and 3. Thereafter on information being given the police arrested the accused-appellant and started investigation and on conclusion of the investigation submitted the charge-sheet of committing rape on the deceased and after that causing murder of the deceased. The prosecution examined many witnesses in support of its case but the three material witnesses are PW 1, PW 2 and PW 3. Relying upon their evidence the learned Sessions Judge as well as the High Court came to the conclusion that the prosecution case of committing rape on the deceased and causing murder of the deceased by the accused-appellant has been proved beyond reasonable doubt. So far as the question of sentence is concerned the courts have taken into consideration the fact that a young girl was killed by committing the brutal act of rape on her and, therefore, the case is one of the rarest of rare cases and the decisions of this Court relied upon by both the courts below *are (1) Laxman Naik v. State of Orissa and (2) Kamta Tiwari v. State of M.P.*

(1999) 6 SCC 60

2. Mr A.N. Bardaiyar, learned counsel appearing for the appellant strenuously urged before us that the evidence of the three witnesses is wholly unreliable and, therefore, this Court must come to the conclusion that the prosecution has not been able to establish its case beyond reasonable doubt. In his endeavour to point out on reliability of the witnesses the learned counsel placed before us the evidence of the aforesaid three witnesses. Since the accused-appellant has been sentenced to death we have also carefully scrutinised the evidence of these three witnesses but we do not find anything brought out in their cross-examination. In our considered opinion the courts below have rightly held the witnesses to be reliable and on the basis of the evidence of the aforesaid three witnesses the conclusion is irresistible that the accused committed rape on the victim girl and also caused death of the victim girl. The conviction of the appellant upheld under Section 302 remains unassailable.

3. The question however remains to be considered is whether the case in hand can be held to be one of the rarest of rare cases for which punishment of death can be awarded. The two decisions of this Court on which reliance has been placed by the courts below are placed before us i.e. the case of Laxman Naik v. State of Orissa¹ and Kamta Tiwari v. State of M.P.² We have carefully examined the aforesaid two cases and it is difficult for us to hold that the present case can be held to be covered by the ratio of the aforesaid two cases because of the special features which were available in the aforesaid cases, this Court has come to the conclusion that punishment of death is the appropriate punishment in the circumstances in which the dastardly act was committed. But in the case in hand on examining the evidence of the three witnesses it appears to us that the accused-appellant has committed the murder of the deceased girl not intentionally and with any premeditation. On the other hand the accused-appellant found a young girl alone in a lonely place, picked her up for committing rape; while committing rape and in the process by way of gagging the girl has died. The medical evidence also indicates that the death is on account of asphyxia. In the circumstances we are of the considered opinion that the case in hand cannot a be held to be one of the rarest of rare cases justifying the punishment of death. We, therefore, uphold the conviction of the appellant under Section 302 IPC but looking to other mitigating circumstances, we commute the sentence of death to imprisonment of life. Subject to the aforesaid modification of sentence, this appeal is dismissed.