

SUPREME COURT OF INDIA

Bantu

Vs.

State of M.P.

Crl.A.No.655 of 2001

(M. B. Shah and Doraiswamy Raju JJ.)

17.10.2001

JUDGEMENT

Shah, J.:-

1. Being aggrieved and dissatisfied by the order passed by the High Court of Judicature at Jabalpur, M.P., the accused has filed this appeal. By the impugned judgment and order dated 19-3-2001, the High Court confirmed the judgment and order passed by the Additional Sessions Judge, Umariya in Sessions Case No. 117/99 convicting the appellant for the offence punishable under Sections 302 and 376 of Indian Penal Code and sentencing him to death.

2. It is the prosecution case that PW-1 Mohan Lal Sahu when returned at his home at about 6.00 p.m. on 25th January, 1999, he found that his grand-daughter (daughter of his late daughter) Jyoti aged about 6 years was not present in the house. He enquired about her from his daughter-in-law and other persons. He was informed that she had gone to visit cinema along with the accused. After some time when accused Bantu alias Naresh visited his residence, he enquired about whereabouts of Jyoti and accused stated that he did not know anything about Jyoti and that he had not taken her along with him for going to cinema. Thereafter, he and other family members and residents of the locality started searching Jyoti. During the search, few people in the mohalla told his wife that deceased Jyoti was seen accompanying the accused at about 4.00 p.m. and his wife informed him accordingly. Thereafter he along with his wife went at the house of accused to know the facts correctly but as the accused became angry on such enquiry they came back. On being advised by the people from the neighbourhood, he lodged the report at the police station. Subsequently, dead body of the deceased girl was noticed by PW-13 Sanjay Dube who was also neighbour of PW-1. The dead body was found lying in the bushes standing across the railway line. He noticed that underwear of the deceased was lying near the dead body and that there were blood stains and tooth mark on her cheek. He thereafter informed the police station. On the basis of the said information, investigating officer carried out necessary investigation. Thereafter, accused-appellant was charge-sheeted along with Balu alias Balram Goswami. The Additional Sessions Judge convicted the appellant but acquitted the other accused.

3. From the evidence on record, the Sessions Court as well as High Court arrived at the conclusion that the accused Bantu was neighbour of complainant Mohan Lal Sahu and was on visiting terms with him. After considering the other evidence, the Court held that on the evening of the day of occurrence the accused visited the house of PW-1 and he took the deceased Jyoti for visiting cinema. As Jyoti was not found at evening time and accused informed PW-1 that Jyoti had not accompanied him, the report was lodged at the police station. During the course of investigation by the police, accused absconded and was not found in his house from 9.30 p.m. to 3.30 a.m. He was arrested on the next day evening by the police.

4. The Sessions Court and the High Court relied on the evidence of PW-6 Vimla, daughter-in-law of PW-1, PW-4 Ravi nephew of PW-1 and PW-5 child witness, and held that deceased had gone with the accused after coming from the school.

5. PW-4 Ravi Kumar Lalla is nephew of PW-1 Mohanlal Sahu. He stated that he is resident of Ratheli, District Umaria and PW-1 resides at Khalesar. He further stated that on the day of incident, he was present at the house of his uncle. When he was taking tea, accused Bantu, whom he was knowing, also reached there. Accused asked him that he wanted to take Jyoti to show her cinema and he forbid the accused. After a shortwhile, he left for his home but he returned as he had forgotten his bag there. On the way, he noticed accused going towards the bazaar holding the hand of deceased-Jyoti. PW-5 Vivek Kumar Sahu 8 years old son of Vijay Kumar and grandson of PW-1. He identified the accused in the Court and stated that at about 4.00 p.m. he and deceased-Jyoti had come to home from school. After keeping school bag in the house, Jyoti went away to play. He was attending to his natural call on the drain near his house. He saw accused Bantu along with Jyoti. He enquired from Jyoti as where she was going and she told him that she was going with accused-Bantu to see picture. He forbid Jyoti and told that mother would beat her on which Jyoti replied that she had taken permission from her grand-mother. He informed the same to his mother and grand-mother. In cross-examination, he denied the suggestion that he was giving his statement at the instance of his mother and grand-mother. PW-10 Manju stated that on the day of incident at about 3.00 to 4.00 p.m. he was sitting on the steps of the ghat of river, which is also called Rajrang ghat of Khalesar. He saw accused Bantu catching of a girl and carrying her, who was wearing school uniform. On enquiry, accused informed him that he was going at his brother's residence. He disclosed the fact to the people in the mohalla and neighbourhood. He came to know about the dead body of a girl lying near the railway line on 26th January at about 12.00-1.00 p.m. In the cross-examination, to the question that why he did not tell the police about the place where the dead body was lying, he replied that everybody remains afraid of police and why should one invite trouble, but when the police called him and made enquiry from him he told them the truth.

6. PW-8 Dr. (Smt.) S. Thakur who carried out post-mortem examination noticed that deceased was in a school uniform and she stated that three doctors who had examined the dead body arrived at the conclusion that rape had been committed and the murder of deceased was committed by pressing her nose and mouth and obstructing breath of the

deceased . PW-9 Dr. A.P. Dwivedi had examined the accused and noticed that there was thin mark of scratch on the upper portion of penis.

7. The learned counsel (amicus curiae) appearing on behalf of accused-appellant, appointed by us to assist the Court has taken has through the entire evidence. After going through the same, we do not find that the High Court or the Sessions Court committed any error in appreciating the evidence led by the prosecution. Hence, we confirm the conviction of the appellant for the offence punishable under Sections 302 and 376, IPC.

8. However, the learned counsel for the appellant submitted that in any set of circumstances, this is not the rarest of the rare case where accused is to be sentenced to death. He submitted that age of the accused on the relevant day was less than 22 years. It is his submission that even though the act is heinous, considering the fact that no injuries were found on the deceased, it is probable that death might have occurred because of gagging her mouth and nostrils by the accused at the time of incident so that she may not raise hue and cry. The death, according to him, was accidental and unintentional one. In the present case, there is nothing on record to indicate that the appellant was having any criminal record not it can be said that he will be a grave danger to the society at large. It is true that his act is a heinous and requires to be condemned but at the same time it cannot be said that it is rarest of the rare case where accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence.

9. In the result, we confirm the conviction of the appellant under Section 302, IPC but modify the sentence by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376, IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. The appeal is partly allowed accordingly.

10. Lastly, we mention and appreciate the proper assistance rendered by the learned amicus curiae.

Appeal partly allowed.