

SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs

Desh Raj

Criminal Appeal No. 84 of 2000

(H. K. Sema and C. K. Thakker, JJ)

09.03.2006

JUDGMENT

H. K. SEMA, J.

This appeal is preferred by the State of U.P against the acquittal recorded by the High Court.

2. The respondent was put to trial under Section 302/376 IPC. The trial court after conclusion of the trial convicted the respondent and sentenced him to RI for life under Section 302 IPC. The respondent was also sentenced to 7 years RI under Section 376 IPC. Aggrieved thereby, the respondent preferred the appeal before the High Court. The High Court by the impugned order acquitted the accused. Hence, the present appeal.

3. The story as unfolded by the prosecution is as follows:

On 21-2-1979 the prosecutrix, aged about 10 years, stated to be disappeared and was missing. Since the victim girl did not return P.W.I, Braj Lai the father of the complainant made an abortive search for her and thereafter filed an FIR on 22-2-1979 at 8.15 p.m. The case was registered under Section 302/376 IPC. In the course of the investigation the prosecution examined as many as eight

witnesses. The prosecution mainly relied on the evidence of P.Ws. 2, 5, 6 and 7 who are the witnesses with regard to the last seen of the accused with the victim. Prosecution also examined P.W. 3, Dr. A.N. Saxena who conducted the postmortem examination of the deceased. The prosecution also examined PW.1, Braj Lai who is an author of the FIR.

4.The case of the prosecution rests entirely on circumstantial evidence. The trial court after examining evidence of P.Ws.2, 5, 6 and 7 has come to the conclusion that the chain of circumstantial evidence appearing against the accused was completely established and recorded order of conviction. The trial court was of the opinion that the statement of P.W.2, Sakuntla, P.W.5 Ram Bahadur, P.W.6 Kamta Prasad, who is a teacher, and P.W.7 Virendra Singh has credence and there is no reason to discredit their creditworthy evidence with regard to the last seen of the accused with the victim.

5.Before we advert to the evidence of the witnesses we may take notice of the evidence of P.W.3, Dr. A.N. Saxena who conducted the postmortem examination of the victim. P.W.3, Dr.Saxena stated that the postmortem examination of the deceased Nanhi was performed on 23-2-1979 at 3.30 p.m. and on physical examination he found that the victim girl was aged about 10 years old with an average built. P.W.3 opined that the death had occurred two days earlier. Rigor mortis has passed off. On examination of vaginal parts, P.W.3 found that there was vaginal bleeding. Hymen was lacerated with red edges. Edges of labia minora were bruised.

6.On examining the physical body of the deceased, P.W.3 found the following injuries:

(1)Multiple intempted abraded contusions in an area of 6 cm x 2 cm on right side neck, 2 cms. Below angle of mandible.

(2)Multiple intempted abraded contusions on right side face in an area of 7 cm. x 3 cm., 3 cms. In from of right ear.

(3)Multiple intempted abraded contusions on left side neck in area of 5 cm. X 2 cm. 6 cm. below left ear.

(4)Abraded contusion 3 cm. x 1 cm. on left side cheek. 2 cm. in front of lest ear.

(5)Abrasion 1 cm. X V2 cm. on right side front of chest. 4 cm. below started end of right clavicle.

7.P.W.3 opined that the deceased was raped before her murder which took place on 21-2-1979 at about 6.30 or 7 p.m. He further opined that the death was occurred due to asphyxia on account of strangulation.

8.This doctor was subjected to lengthy cross-examination nothing could be elicited from the cross-examination to discredit otherwise the creditworthy of his testimony.

9.At this stage since the conviction was entirely rests on circumstantial evidence we may also point out that the clinching evidence appearing against the accused and which was not explained by him. From the testimony of P.W.3 it appears that the victim girl apart from other injuries suffered many lacerated multiple intempted contusions on the face and on the right ear. Multiple abraded contusions on the left ear and on the left cheek and in front of the left ear. Abrasion 1 cm. x V2 cm. on right side from of chest and 4 cm. below start end of right clavicle. The injuries described on the body of the deceased by the P.W.3 clearly suggest that the victim girl struggled and resisted the attempt of rape.

10.It is in the evidence of P.W.I. Braj Lai that when he went to the accused to inquire about the whereabouts of his daughter he saw scratch marks on the face of the accused. This question was put to the accused but he simply denied as wrong. No explanation whatsoever has been given by the deceased (?). We are, therefore, of the view that this clinching evidence against the accused remains unchallenged.

11.P.W.2, Shakuntala was stated to be aged about 12 or 13 years old at the time of occurrence. She deposed that at about 5 or 5.30 p.m. she had seen the accused with the victim girl eating "BERS". She further deposed that the accused climbed the tree. She further deposed that she saw the accused and victim girl when she had gone to field to fetch fodder. This witness was subject to cross-examination but she withstood the lengthy cross-examination.

12.P.W.5, Ram Bahadur is also a resident of the same village. He deposed that he had seen the accused with the deceased at about 5 or 5.30 p.m. on the date of occurrence. In cross-examination he deposed that complainant Braj Lai, the accused and this witness all belong to the brotherhood. There is no reason to doubt the veracity of the witness as because this witness, complainant and accused were belonged to the same brotherhood and there is no reason to doubt as to why this witness would depose falsely against the accused.

13.P.W.6, Kamta Prasad is a school teacher. He was teaching in Jiwanpur School on the date of occurrence. He stated that when he went to meet master Devi Singh he was not available so he was returning at about 6 p.m. About 7 p.m. he saw the accused and the deceased going towards the orchard filed of Jai Ram. At this stage we may point out that the last seen before the murder was seen by P.W.6 who saw the accused along with the deceased going towards orchard field of Jai Ram. It will be pertinent to pint out here that the dead body of the deceased was found at orchard field of Jai Ram. This witness also stated that he had told P.W. 1 that he has seen Brajh Lai's daughter with the accused at that time. The trial court has accepted his evidence as creditworthy because he is a responsible witness being a teacher, an independent and disinterested witness. We have nothing to doubt the creditworthy of this evidence.

14. Next last seen together witness is Virendra Singh, P.W.7. He deposed that at about 7.30 p.m. he had seen the accused Desh Raj emerging from his field. He further deposed that the accused was in

a nervous state of mind. On enquiring by the witness from the accused why so nervous the accused gave no reply and went a way to his house. In cross-examination this witness stated that he had seen the accused after coming back from the marriage party. Counsel for the respondent contended that the testimony of this witness is not reliable as in cross-examination this witness stated that he had witnessed the accused and the deceased only on return from the marriage party. According to the counsel for the respondent this witness had gone to the marriage party on the date of incident he could not have seen the accused and the victim girl together as deposed by him. This has been clarified to a question put by the Court by P.W.7 and he categorically admitted that he saw the accused emerging from the field after his return from the marriage party. This does not mean that he went to the marriage party on the same day.

15. The High Court, in our view, erroneously held that the evidence of P. Ws. 2, 5, 6 and 7 could not establish the chain of circumstantial evidence only pointing to the guilt of the accused.

16. By now, it is well settled principle that in order to sustain a conviction of circumstantial evidence, the prosecution must establish that the chain of circumstances only consistently point to the guilt of the accused and inconsistency with his innocence. A cumulative reading of the evidence of P.Ws. 2, 5, 6 and 7 together with the medical evidence and non-explanation of the accused scratch marks on his face we are of the view that the prosecution has consistently established the guilt of the accused and inconsistent with his innocence. The High Court, therefore, was not justified in recording the acquittal of the accused. The impugned order of the High Court acquitting the accused respondent is accordingly quashed and set aside.

17. The accused is on bail, his bail bonds and sureties stand cancelled. He is directed to be taken back to custody forthwith. Compliance within one month.

The appeal is allowed accordingly.