

# SUPREME COURT OF INDIA

Bishnu Prasad Sinha

Vs.

State of Assam

(S.B.Sinha and Markandey Katju, JJ.)

16.01.2007

## JUDGMENT

### **S.B.Sinha, J.**

1. Appellants were charged with and convicted for commission of offences under Sections 376(2)(g), 302 and 201 read with Section 34 of the Indian Penal Code, 1860 for rape and murder of one Barnali Deb @ Poppy (the deceased), a 7-8 year old girl. She was travelling with her parents Bishnu Deb (father-P.W.23), Anima Deb (mother- P.W.22) and younger brother in a private transport service known as Net Work Travels from Dharmanagar (Tripura). They were on their way to Dimapur in the State of Nagaland. They reached Net Work Travels' Complex at Paltan Bazar, Guwahati at around 10.30 p.m. on 12.7.2002. There was no connecting bus to Dimapur at that time. They were advised to stay over for the night at Guwahati. Appellant No.1 was a night chawkidar of the waiting room of the said Net Work Travels. He represented that they could stay there for the night and therefore should not have any apprehension in regard to their safety. Their luggage was carried by the appellant No.1 to the waiting room.

2. The waiting room had two openings. It was covered by grills. Only the front gate was open, which was kept under lock and key, the key whereof was with the appellant No.1.

3. The family of P.W.23 went out for dinner and came back to the said waiting room. He and both his children slept. Anima Deb (P.W.22), mother of the deceased, however, kept on sitting. Appellant No.1 insisted on her repeatedly that she should go to sleep stating that as the waiting room would be locked, there was nothing for her to worry about. As she had not been sleeping, the appellant No.1, allegedly, scolded her to do so. At that time, a bus bearing No.AS-25-C-1476 arrived at the said bus stop. Putul Bora - Appellant No.2 was the 'handiman' of the said bus. While the Manager, Driver and the Conductor slept in the said bus, he did not. He was seen talking with the appellant No.1.

4. Anima Deb-P.W.22 slept for a while. As her son had cried out, she woke up at about 3 p.m. She did not find Barnali. A hue and cry was raised by her. Being attracted by her alarm, Bishnu Deb-P.W.23 also woke up.

5. They requested the appellant No.1 to open the gates of the waiting room. He showed his reluctance at the first instance. He was thereafter told about the missing of the girl. On being so informed, he opined that she might be somewhere else within the room. A search was carried out in the three buses, which were at the bus stop belonging to the travel agency. Near- about places as also the railway station were searched. The bathroom situated in the said premises was also searched.

6. Shri Kapil Kumar Paul-P.W.2, the Cashier of the Net Work Travels was informed about the missing of Barnali Deb. As the girl could not be found despite vigorous search, Bishnu Deb, the father of the girl was advised to inform the police. A missing entry was lodged before the Officer-in- Charge of Paltan Bazar Police Station. At about 8.30 a.m. on 14.7.2002, a complaint was made that the flush in the toilet was not working. P.W.7- Amar Deep Basfore (sweeper) was asked by P.W.2-Shri Kapil Kumar Paul to find out the reason therefor. He later on opened the septic tank and saw the head of a small child. He immediately reported the matter to P.W.1-Shri Bidhu Kinkar Goswami as well as P.W.2-Shri Kapil Kumar Paul.

7. A First Information Report was lodged thereafter by Shri Bidhu Kinkar Goswami, the Manager of Net Work Travels. In the said First Information Report, apart from the appellant No.1, suspicion was raised about the involvement of driver-Krishna Hazarika (P.W.26), conductor- Rama Hazarika (P.W.25) and the handiman-Putul Bora (Appellant No.2 herein) of the bus bearing No.AS-25-C-1476. The said bus had already left for its destination at about 6.30 in the morning. Even prior thereto, P.W.2 was persuaded that the said bus be permitted to leave early for Jorhat, which was declined.

8. Pursuant to the said First Information Report, a case under Sections 376(2)(g) and 302 read with Section 34 of the [Indian Penal Code, 1860](#) was registered. A Magistrate was called. An inquest of the dead body was made. The said bus was intercepted and the driver-P.W.26, conductor- P.W.25 and Appellant No.2-Putul Bora were arrested. They were brought to the police station.

9. During the course of investigation, the appellant No.1 made a confessional statement before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 ('the Code' for short). He gave a vivid description as to how the offence was committed by him and the appellant No.2.

10. On completion of investigation, a charge-sheet was filed against the appellants. They were convicted by the learned Sessions Judge, Kamrup and sentenced to death. An appeal preferred by them, by reason of the impugned judgment, has been dismissed by the High Court.

11. The appellants are, thus before us. At our request, Ms. Vibha Datta Makhija, learned counsel assisted us as Amicus Curiae in the matter.

12. Evidently, there was no eye-witness to the occurrence in this case.

13. Nobody had seen the appellants lifting the girl, committing rape and murdering her. The entire prosecution case is based on circumstantial evidences. The circumstances, which found favor with the learned Sessions Judge as also the High Court, are :-  
As against Appellant No.1 :

- i) The confession of the appellant No.1 recorded by Smt. Nirupama Rajkumari, Judicial Magistrate, 1st Class at Guwahati (P.W.8).
- ii) Appellant No.1 was the night chawkidar of the Net Work Travel Agency and the parents of the deceased girl along with their children were persuaded to stay at the waiting room in the night.
- iii) P.Ws. 22 and 23 (mother and father of the deceased) were prevailed upon by the appellant No.1 to spend the night in the waiting room. He had also carried their luggage assuring them full security and safety.
- iv) The key of the waiting room was with him. Appellant No.1 alone, thus, had the access to the waiting room. He only had access to the entire premises.
- v) P.W.22-Anima Deb saw both the appellants held discussion in suspicious circumstances.
- vi) Despite the information that Barnali was missing, the appellant No.1 showed his reluctance to open the door. On the contrary, P.Ws.22 and 23 were told that she might be somewhere else in the room.
- vii) The evidences brought on records go to show that the appellant No.1 had a nefarious plan.
- viii) A black colored half pant belonging to the appellant No.1 was seized by the police (Exhibit 3).
- ix) No explanation was offered by him as to how the said half pant could be found there. It was admitted it belonged to him. As against Appellant No.2:
  - i) He was the handiman of the bus bearing No.AS-25-C-1476.
  - ii) The evidences of P.Ws. 22, 23 and 26 clearly point out that he held some discussions with the appellant No.1.
  - iii) Although, he had made preparations to sleep in the bus, in which he was travelling, but, in fact, slept in different bus bearing No.AS-1- G-5990. No satisfactory explanation was offered by him to a question put in that behalf by P.W.4-Shri Jams Brown, conductor of said bus.

iv) P.W.3-Shri Kamal Goswami, Manager of the Travel Agency, at about 2/2.30 p.m. had suddenly felt some touch on his leg. He found the appellant No.2 climbing the upper bunker of the vehicle. He was wearing a long pant, although during his journey he was wearing only a jangia.

v) While the missing girl was searched, the appellant No.2 was found to have sustained some injuries on his face, although, no such injury/stain was noticed by P.W.3 while they were coming from Nagaon to Guwahati, which showed that the girl offered resistance before being raped.

vi) A brown coloured jangia belonging to him was recovered, which was having some white stains.

vii) He made constant pressure on P.W.2-Shri Kapil Kumar Paul to allow him to leave Paltan Bazar bus stand with his vehicle. Ms. Vibha Datta Makhija, learned Amicus Curiae, in support of the appellants would submit :

a) There are many missing links in the chain which have not been appreciated by the courts below in their proper perspective.

b) Seizure of the under garments of the appellants is not free from doubt as the seizure witnesses clearly stated that they had visited police station at different points of time and thus, they could not be witnesses to seizure;

c) The under garments, which were purported to have seized, had not been sent for chemical examination and thus, inference drawn by the courts below that white stains were semen stains, had not been established.

d) Although, urine and blood samples of the appellants were taken, the same having not been sent for chemical analysis, an adverse inference in this behalf should be drawn against the prosecution.

e) In the vaginal swap obtained by the doctor, no semen was found. The Forensic Science Laboratory Report was not brought on record and thus, deliberate withholding of material must be held to have weakened the prosecution case.