SUPREME COURT OF INDIA

State of Gujarat

Vs.

Ratansingh @ Chinubhai Anopsinh Chauhan

Crl.A.No.403 of 2007

(K.S.Radhakrishnan and A.K.Sikri JJ.)

10.01.2014

JUDGMENT

A.K.SIKRI, J.

1. The present appeal is directed against the final judgment and order dated 14th September 2006 passed by the Hon'ble High Court of Gujarat in Criminal Confirmation Case No.9 of 2004 with Criminal Appeal No.1915/2004, setting aside the judgment and order passed by the Ld. Additional Sessions Judge and second Fast Track Court in Sessions Case No.4/2004 convicting the respondent under Section 376,302 and 201 IPC for the offence of rape and murder of a seven year old girl and punishing him with sentence of death. The High Court found severe loopholes and shortcomings in the prosecution story, rendering it unbelievable and thereby acquitted the respondent in the aforesaid case.

2. The prosecution case, in nutshell, was that the respondent/accused was the neighbour of the deceased girl Komal aged 7 years r/o village Bhammiya. On the day of incident i.e. 16.8.2003 the victim was playing with her two friends viz. Parul and Saroj in the courtyard of the respondent. The respondent/accused came to his house between 15.00 to 15.30 hrs. and scolded the girls for playing there. Parul and Saroj ran away whereas, however, the deceased girl was forcibly caught by the respondent and pushed her into his house and he shut the door. Shakriben Chandrasinh, a neighbour who was washing clothes, heard the cries of victim which got silent after sometimes. Thereafter Savitaben mother of the deceased girl, who returned from work at about 16.00 hrs. and not finding her daughter started searching for the victim along with Shakriben. A day after the incident, dead body

of the victim was recovered from a nearby field wearing a white frock with undergarment missing, which was later found from the hedge falling between the house of the respondent and Shakriben Chandrasinh. A complaint was lodged and FIR registered by Arvindbhai Khatubhai, the father of the victim. The police started investigation and recorded the statements of witnesses. Necessary samples were also collected during the investigation and sent to FSL. The dead body of the deceased was sent for the post mortem which was conducted by Dr. Shashikant Nagori between 16.45 hrs. & 17.45 hrs. on 17.8.2003. The post mortem report mentioned following injuries:-

> * Abrasion on both thighs, both knees and bruises over the legs.
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> * The injuries found on labia majora had a swelling of 3 x 2 cms. on right majora and abrasion on left majora, such injuries were possible in an attempted rape. There was penetration on the private parts of the victim girl.
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> * The presence of injuries on left mastoid region, which was bone deep and brain matter had come out of the wound.
> * There was haematoma over whole skull on both parietal and frontal region and blood was oozing out of the left ear.
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> * There was a depressed fracture of skull on frontal and left parietal region.
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> The doctor opined that the injuries were sufficient in ordinary course of nature to cause death and it was homicidal death.

3. The respondent was arrested after two days i.e. on 19.8.2003 from a nearby village, who had allegedly fled after committing the offence. On search, a suicide note purportedly written by the respondent was recovered from his pocket. Besides, blood stained clothes and blood group of the deceased was noticed on other articles. He was found to have sustained injuries on his person, which was recorded in the arrest panchnama. Upon disclosure of the accused, the grinding stone used in inflicting injuries on head of the deceased was recovered from his house. After the recovery of the stone, a panchnama of recovery of the stone was drawn in the presence of panch witnesses on 20.8.2003. Thereafter discovery panchnama of the articles was drawn which were concealed beneath the steel cupboard. After the completion of investigation, the charge sheet was filed before the Ld. Chief Judicial Magistrate, Godhra on 22.8.2003. After committal, the case was registered as Sessions Case No.4 of 2004 and charge against the respondent

accused was framed under Sections 376,302 and 201 of the IPC. The respondent denied the charge and claimed to be tried. The prosecution examined 23 witnesses in support of its case. None was examined by the accused in his defence. The statement of the respondent was recorded under Section 313 of the Cr.P.C. On 7.10.2004 the learned Sessions Judge after examining the oral and documentary evidence, returned the finding of guilt and convicted the respondent for the offence of rape and murder. The learned Sessions Judge awarded capital punishment for the offence of murder u/s 302 and imprisonment for life and fine of Rs.1000/- for the offence of rape u/s 376 and in default to undergo SI for 3 months. The record of the case was forwarded to the High Court u/s 366 of the Cr.P.C. for approval of the death sentence awarded by the Sessions Court. The accused also preferred Criminal Appeal No.1915/2004 before the High Court of Gujarat against the judgment and order dated 7.10.2004.
The Impugned Judgment:

4. As is clear from the above, the precise charge against the respondent was of raping the minor girl Komal and thereafter murdering her. The High Court, on the basis of medical evidence namely the post-mortem report of the deceased found that it was case of homicidal death. There is no quarrel about the same and this aspect is not disputed by the respondent before us as well.

5. As far as charge of rape is concerned, the High Court observed that there was no direct evidence and medical evidence was the only circumstantial evidence which could be relied upon. It discussed the evidence of Dr. Nagori to this effect, who had conducted the post mortem on the dead body. It was found that there was swelling of 3x2 cms on right labia majora and abrasion over left labia majora. It is also recorded in the postmortem notes that as per vagina examination, it was found that little finger passed with difficulty and there was no internal injury. The post mortem notes also indicated abrasions on both thighs, both knees and bruises over legs. In his deposition, the doctor has deposed, after describing the injuries, that the injuries found on labia majora were possible in an attempted rape. During cross-examination he deposed that, if there was penetration of penis in the vagina, there was possibility of internal injuries. He stated, in terms, that from the post mortem examination, in the instant case, there was no penetration of penis in the vagina.

6. On the basis of aforesaid, the High Court acquitted that offence of rape was not proved by the prosecution beyond reasonable doubt and it could, at the most, be considered an attempted rape. The finding of the trial court recording the conviction for offence of rape under section 376 of the IPC has, accordingly, been

set aside. It is primarily on the ground that even if it is to be accepted that in a case of rape of a minor, complete penetration of penis with emission of semen and rupture of hymen is not necessarily to be established, in the instant case, the medical evidence clearly suggests that there was no penetration at all i.e. the factor which influenced the High Court to set aside the conviction based on section 376, IPC.

7. The High Court, thus, proceeded on the basis that the deceased was murdered and there was an attempted rape on her. It then addressed the central issue viz. whether the respondent could be connected with the said murder and attempted rape. It was a case of circumstantial evidence, in the absence of any eye witness. After discussing the evidence, the High Court found that prosecution had failed to establish the chain of circumstances could connect the accused with the crime. There were material contradictions and inconsistencies in the depositions of various witnesses etc. which did not form a complete chain. The High Court has, accordingly, set aside the order of conviction of the trial court as unsustainable and acquitted the accused of the charges. It is, inter-alia, held that the evidence led by the prosecution on last seen together cannot be accepted. It is not only contradictory, inconsistent and improbable, but also suffers from vice of improvements and therefore, it sounds unreliable. As regards injuries found on chest and back of the person of accused are concerned, which the prosecution tried to show as injuries caused with nail, possibly by the deceased, the High Court has discounted this prosecution version on the ground that the Post Mortem note does not indicate presence of any traces of skin of the accused in the nail of the deceased. As per the High Court the investigation is not found to be independent, trustworthy or reliable, the evidence does not establish a complete chain of circumstances to connect the accused with the crime. There are major defects in the investigations which render it doubtful when the case is founded on circumstantial evidence. It, thus, set aside the judgment of the Trial Court on the ground that the conviction cannot be recorded on such scanty, weak and incomplete evidence.

The Arguments:

8. The learned counsel for the State argued that High Court committed grave error in holding that there was no complete chain of the circumstances connecting the respondent to the incident. He pointed out that certain samples of blood, clay etc. were collected from the spot and FSM report (Ex.54) was obtained therefrom which was duly proved in the trial court through witness No.20-Chandubhai

Nagjibhai Pargi who had stated in his deposition that on receiving the message from control room on 17.8.2003 he along with FSL Mobile Van had gone to the place of incident and collected the following samples:

- Clay with blood from the place of incident.

Clay bearing doubtful spot recovered from the place in between two legs.

- Control clay recovered from the place at the distance of 5 feet from the dead body.

- Clay bearing pan padiki spittle recovered from the place at the distance of 7 feet from the dead body.

- One red colour knickers bearing spots from the vada behind the house of Chandrasinh Laxmansinh Chauhan, situated in the south direction from the dead body.

9. He further drew the attention of this Court to post mortem report (Ex.7) containing external examination of the deceased. As per the said post mortem report, the following aspects were established:

|1. |Condition of the clothes whether | | | |wet with water, stained with |Stained with blood | | |blood, soiled with vomit or | | | |foecal matter. | |

|2. |Injuries to external genitals, |Swelling (hemetomal) 3x2 cm | | |indication of purging. |over Rt.Labia mejora abrasion| | | |over lt.labia mejora. |

|3. |Surface wounds and injuries their|a.Abrasions over medical | | |natural position, dimensions |upper of both thighs. | | |(measured) and directions to be |b.Abrasions over both knee. | | |accurately stated: their probable|c.Bruises over both legs. | | |ages and cause to be noted. | |

10. He also pointed out that opinion as to the cause or probable cause of death recorded by the Medical Officer was "cause of death is shocked due to head injury leading to skull injury over brain". He also pointed out that cloth of the deceased was stained with blood and there were abrasions over medial upper both thighs, over both knees and bruises over both legs. According to the learned counsel, this shows that the deceased was subjected to sexual assault and murdered.

11. In order to connect the accused with the said incident, the learned counsel referred to the testimony of PW12, Saroj who was playing along with Parul and deceased on the fateful day, on the courtyard of the residence of the accused when the accused reached there and scolded these girls. His submission was that there was no cross-examination by the defence on this aspect and from this testimony it stood proved that the deceased was last seen with the accused, as PW12 had categorically stated that she and Parul left the place but the deceased remained there. He further submitted that this was corroborated by the neighbour Shakriben Chandrasinh (PW16) as well.

12. In nutshell, the submission of the learned counsel for the State was that the circumstances formed a complete chain of events connecting the crime to the accused inasmuch as: (1) the victim was last seen in the company of the accused; (2) certain samples were collected from the residence of the accused including plaster bearing blood, blood taken on thread by rubbing from ground floor of western wall, support (datto) of wooden plate bearing blood spots, pieces of paper affixed on the metal barrel, bearing blood spots etc.; the blood on the aforesaid as found was of "B" Group which is the blood group of the deceased; (3)clay from thighs with semen from the deceased was collected and semen was found to be of "O" Group which is that of the accused; (4) the medical evidence, which clearly nails the respondent and there could be no other person who would have committed this crime.

Our Analysis:

13. Since it is a case of circumstantial evidence and the prosecution case starts with the theory of last seen, the first place is as to whether the prosecution has been able to conclusively and beyond reasonable doubt prove that the deceased was last seen in the company of the respondent. For this purpose, as already noted above, the prosecution has relied upon the testimonies of PW12,PW16,PW17 and PW18. The paramount question is as to whether testimonies of these witnesses is reliable. The High Court has found certain inherent contradictions in the depositions of the aforesaid witnesses on the basis of which it has come to the conclusion that it is difficult to accept their version, which is even contrary to each other about the details of the events. No doubt PW12, Sarojben was playing with the deceased and Parul on the grounds of the residence of the accused and when respondent reached the spot, he asked them to left. However, thereafter whether the deceased remained there and was not seen at all thereafter till her dead body was found , is a pertinent

question. As per the prosecution version itself the deceased had left that place; elbeit at the asking of the respondent who had sent her to the market to purchase Vimal Gutka and she returned back to the respondent after purchasing the said Gutka, to hand it over to the deceased. Whether it is conclusively proved that she returned back to the respondent? Here, according to the High Court, there are various contradictions in the depositions of the witnesses. As per PW7, the shopkeeper from where the deceased had gone to purchase Gutka, the deceased had come to his shop on that date at about 3 p.m. She purchased eatable (and not Gutka) for Rupee one and then she went away. During cross-examination, he stated that it had not happened that the victim had come to his shop to purchase Vimal Gutka. So according to him deceased had come to his shop to purchase some eatable. He also admitted that in his statement before the police on 19th August 2003, he had not stated that the deceased had come to his shop to purchase eatable. On specific question put to him in the cross-examination as to why he did not tell the police about the victim's visit to his shop to purchase eatable, he did not give any specific reply.

14. As per PW16(Shakriben),who is the neighbour of the respondent, she had seen the three girls playing in the courtyard of the respondent. She further stated that the respondent drove away Parul and Saroj and then caught the victim and pushed her into his house. Thereafter she heard cries of the victim and then she heard sound of beating. She has further stated that she went into the house thereafter but was threatened by the respondent that if she talked to anyone in the town, he would kill her and her son. She has further stated that the accused had arrived at about 2.30 p.m. on the day of the incident and he was drunk. He tried to push open the rear door of the house. The witness said that mother of the accused, Divaliben had given the key of the house to her and, therefore, she gave the key to the accused. The witness has further stated that on the next day when mother of the victim was searching the victim, she told her that she had not seen the victim and she joined the search. During cross- examination, the witness has admitted that she had not stated in her statement before police that the accused had intimidated her. She says that she does not know whether the victim had gone to purchase Gutka packet. The distance between her house and the house of the accused is 25 to 30 feet. She says that she did not tell her husband or her son about the incident. She admits that she did not state before police that, at the time of the incident, she went into the house after washing clothes and sat in the house and, at that time, accused had intimidated her that, if she tells anyone in the village, he would kill her and her son. She admits that, on the day of incident as well as on the next day, when people were searching for the girl, she did not tell anyone about the incident.

15. Apart from the aforesaid omissions on the part of PW16 and PW17 in not mentioning to the police when they gave their statements, immediately after the incident, the High Court has also analyzed their statements along with deposition of PW12 and found them to be inconsistent and self- contradictory in the following manner:

> "From depositions of these three witnesses, the prosecution has tried to establish the circumstances of the accused having been seen in company of the deceased last. But scrutiny of this evidence leads us to negative this aspect. According to PW12- Saroj, she was playing with the victim and Parul. Accused arrived around 3O' clock and shouted "Ladidiyo" (meaning young girls). Therefore, she and Parul ran away and the victim was left behind. She says that accused sent the victim to purchase a packet of Vimal. She also says that, thereafter, she went home and was doing lesson. She saw the victim going with a packet of Vimal to give it to the accused. Therefore, necessarily, if her say is taken at face value, then also the victim was seen going to the house of accused with a packet of Vimal and if she did factually reach there, at that point of time, neither Saroj nor Parul was present.
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> Against the above situation emerging from deposition of Saroj, if deposition of Shakariben (Ex.49) is seen, she says that when Saroj, the victim and Parul were playing in the courtyard of the accused, the accused arrived and drove away Parul and Saroj and caught hold of the victim and pushed her into the house, whereafter she heard cry of the victim and then sound of beating, meaning thereby that when the deceased was taken into the house, that was the last point of time when she was seen in company of the accused and, at that point of time, both Saroj and Parul were present, which is just contrary to what Saroj says. Viewed from another angle, Shakariben does not speak of any even taking place before the victim was pushed into the house and thereafter the incident has occurred, as against the say of Saroj that the accused sent the victim to get a packet of Vimal. Necessarily, therefore, what Shakariben saw was not the last point of time when the victim and the accused were together. The victim was seen by Saroj at a later point of time and also by witness-Himatbhai. Parul has not been examined by the prosecution as a witness. Therefore, the evidence regarding the accused seen last in company of the deceased, as led by the prosecution, is inconsistent and self-contradictory.

That apart, the conduct of PW16 seems to be unnatural and thus unworthy of reliance. The High Court has rightly observed that it does not inspire confidence for several reasons, namely: (1) though she claims to have the witness the accused pushing the victim into the house and then hearing her cry followed by sound of beating, she did not take any steps to rescue her. (2) She did not even tell about this incident to anyone, including her husband and son till 19th August 2003 when her statement was recorded. (3) Even in her statement to the police she has omitted to state the aforesaid purported facts.(4) On the next day of the incident, when the search for the victim was on, she still kept quite and did not disclose the incident to anybody. Strangely, she joins the group searching for the victim.(5) There is no explanation as to when and why the respondent could have intimidated her. As per the sequence of events narrated by her, the respondent came; she gave him the key of his house; the respondent went to his house and shouted at girls; the two other girls went away and respondent pushed the victim into house; and thereafter she (the witness went to her house). If these sequences are to be seen, there was no occasion for the accused to intimidate her.

As far as evidence of PW12,Saroj is concerned, she stated that she had lastly seen the deceased going with packet of Vimal. She simply presumed that the victim was going to give the said packet to the accused. However, she did not see the deceased going with packet of Vimal Gutka to the respondent as she specifically stated that after seeing the deceased carrying the packet of Vimal she went home and started doing her lesson. There is no evidence to show that the deceased reached the house of the accused and met him. In fact, there is some contradiction even on the purchase of the item inasmuch as as per PW17 the deceased had purchased eatable whereas PW-12 says that she was carrying Vimal Gutka. PW17 has specifically said that the deceased had not purchased Vimal Gutka from him. From the aforesaid testimonies of Saroj Shakariben the High Court has also observed that from both the evidence taken together, prosecution story cannot be believed inasmuch as if the situation is examined from a different angle, if what Saroj says had happened, then what Shakariben says could not have happened, because according to Shakariben, on arrival, the accused shouted at the girls and drove away Parul and Saroj and pushed the deceased into the house and, if what Shakariben says is correct, what Saroj says could not have happened. The doubt assumes greater strength because of certain circumstances which would be discussed in the paragraphs to follow.

> Examined from any angle, the evidence led by the prosecution on last seen together aspect cannot be accepted. It is not only contradictory, inconsistent and improbable, but it also suffers from vice of improvements and, therefore, to us, it sounds unreliable. The case is founded on circumstantial evidence. This is one of the major circumstances pressed by the prosecution. We also find that the investigation is not carried out properly and does not inspire confidence. The evidence on last seen together aspect, therefore, cannot be accepted as a link in the chain of circumstances leading to exclusive hypothesis of guilt of the accused."

16. We are in agreement with the aforesaid analysis of the evidence by the High Court and, therefore, hold that prosecution has not been able to establish, with clinching evidence that the deceased was seen lastly in the company of the accused.

17. Even the medical evidence on which strong reliance was placed by the learned counsel for the State, is of no help to arrive at the conclusion that guilt of the respondent stands proved beyond reasonable doubt. When the respondent was arrested on 19th August 2003 a Panchnama (Ex.14) was drawn. In that it is recorded that the accused had abrasions on chest, back and shoulder caused by nail and also that there was swelling on his penis and swelling on skin with abrasion. Immediately after his arrest, the respondent was sent for medical check up. As per the medical report (Ex.17) there were injuries on chest and back which is described by the doctor as linear abrasions. There were no foreign particles in his nails. The doctor also admitted in his cross-examination that he did not notice any injury on the penis of the accused. Therefore, this shows contradiction between the recording of medical condition in the Panchnama and the medical examination conducted by the doctor, in so far as they relate to the injury on the penis of the respondent. High Court has rightly observed that the Panchnama has recorded abrasions and therefore it could not have disappeared within such a short time. It reflects adversely on the prosecution case. As regards injuries found on chest and back of the respondent, they are tried to be shown as injuries caused with nail of the deceased. However, the post mortem note does not indicate presence of any traces of skin of the accused in nail of the deceased. Further, comments of the High Court in the impugned judgment about the medical evidence, pertinent for our purposes, are reproduced below as we entirely agree with the said analysis:

> "From the above discussion of evidence, it is clear that even according to doctor, there was no bleeding injury on penis of the accused. There was no

bleeding injury to the deceased either. There were no internal injuries in the vagina of the deceased. Against this, if the results of vaginal swab are seen, presence of blood and semen is found. How this could have been found is a question which has remained unexplained and unanswered. This would cast heavy doubt about the reliability of investigation. That apart, the group has remained unidentified so far as vaginal swab is concerned.

If evidence of Shakariben is seen and, even as per prosecution case, the incident occurred in the house of the accused and this is tried to be proved through deposition of Shakariben, who says that accused pushed the deceased into his house and, thereafter, she heard cry of the deceased and then sound of beating. As per the prosecution case, blood stains of the group of the deceased were found in the house of the accused at various places. No trace of semen was found in the house of the accused. But, surprisingly, at the place where the dead body was found, semen was found on the ground. That was of the group of the accused. If the incident occurred in the house, the traces of semen ought to have been found in the house and not at the place where the dead body was found. No motive is indicated for the accused to murder the deceased immediately after pushing her into the house and, if the rape or attempted rape was committed in the house followed by alleged murder, there would have been traces of semen in the house. These factors have remained unexplained and seem to have gone unnoticed by the trial court."

18. The High Court has also expressed its doubts on recovery of grinding stone from the house of the respondent which was allegedly used for committing murder of the deceased. It is pointed out by the High Court that evidence suggests that the officer of the FSL was summoned on 19th August 2003 who inspected the place of incident and instructed the Inquiry Officer to recover the stone which was, accordingly, recovered. It is so stated in his report as well as in his deposition. Thus, as per the deposition of the officer of FSL, stone was recovered on 19th August 2003. As against this, as per discovery Panchnama drawn on 23rd August 2003 the said grinding stone was recovered from beneath steel cupboard at the instance of the respondent. How this recovery could have taken place if the stone had already been recovered on 19th August 2003. This casts doubt about the aforesaid documents and the discovery of stone itself.

19. There is another aspect highlighted by the High Court which is very pertinent and cannot be ignored. After the incident when sniffer dog was brought to the site.

The said dog had tracked to the house of PW16 and not the respondent. In fact, on this basis the son of PW 16 was even taken into custody by the police and was detained for 2 days. Thereafter, he was allowed to go inasmuch, as per the police he had not committed any offence. This version has come from the testimony of PW16 herself. On the other hand, I.O. has totally denied that son of PW16 was ever detained for 2 days. There is no such entry in the daily diary as well. From this evidence appearing on record, the High Court has concluded that investigation cannot be considered as honest inasmuch as it would indicate to two possibilities, namely:

> (1) The investigating officer did not detain or interrogate the son of PW16 for 2 days. If that is so he failed in his duty when the sniffer dog tracked to the house of PW16.
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> (2) If I.O. had detained the son of PW16, then case diary does not record the events correctly and he is not telling the truth before the Court.
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> That apart, it also speaks volumes about the reliability of the investigation and evidence collected, more so when no explanation is coming forward as to why the son of PW16 was released by the police and the respondent arrested.

20. We, thus, agree with the findings of the High Court that the evidence led by the prosecution does not establish a complete chain of circumstances to connect the accused with the murder of Komal, the deceased. There are significant defects and shortcomings in the investigation; witnesses have come out with contradictory version; and have made significant improvements in their versions in their depositions in the Court. In a case of circumstantial evidence, it would be unwise to record conviction on the basis of such a scanty, weak and incomplete evidence. As the prosecution has not been able to prove the charges beyond reasonable doubt, agreeing with the conclusions of the High Court we dismiss the present appeal.