

KAMTA TIWARI

A

v.

STATE OF M.P.

SEPTEMBER 4, 1996

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

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Indian Penal Code, 1860 : Sections 302, 363, 376 and 201—Death Sentence—Rarest of rare case—Kidnapping, Rape and murder of the minor girl—Conviction based on circumstantial evidence—Held, in the facts and circumstances death sentence awarded by Courts below is upheld.

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A minor girl, aged about 7 year, was raped and murdered by the appellant, a neighbour who was close to the family of the deceased and her dead body was thrown into a well.

The Prosecution relied upon the circumstantial evidence, since there was no eye-witness. The defence of the appellant was that he had been falsely implicated.

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Both the trial Court and the High Court, after discussing the evidence of all the witnesses at length held that each of the circumstances stood conclusively proved and that those circumstances unerringly pointed to the guilt of the appellant. He was convicted for the offences of rape and murder and sentenced to death.

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Hence this appeal.

Dismissing the appeal, this court

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HELD : 1. The concurrent findings entered by the courts below are unexceptionable. Both the Trial Court and the High Court detailed and discussed at length the evidence of all the witnesses who were examined by the prosecution to prove the above circumstances and held that each of the above circumstances stood conclusively proved and that those circumstances unerringly pointed to the guilt of the appellant. It is of course true that the entire case is based on circumstantial evidence but the tell-tale circumstances all of which stand firmly established are not compatible with any other reasonable hypothesis except that the appellant kidnapped the deceased, committed rape on her, then strangulated her to

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A death and to cause disappearance of evidence of the murder threw her dead body in a well. The conviction of the appellant for the offences under Sections 363, 376, 302 and 201 IPC is upheld. [512-E-G]

B 2. The sentence of death should be maintained, as this Court has found aggravating circumstances aplenty. The evidence on record clearly establishes that the appellant was close to the family of the deceased and the children used to call him Uncle. Obviously the closeness of the deceased with the appellant encouraged her to go to his shop, which was near the saloon where she had gone for a hair cut with her father and brother, and ask for some biscuits. The appellant readily responded to the request by taking her to the nearby grocery shop and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal rape and gruesome murder - as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. This is a 'rarest of rare' cases where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crimes. [513-F-H; 514-A-C]

E *Bachan Singh v. State of Punjab*, AIR (1980) SC 898 and *Machhi Singh v. State of Punjab*, AIR (1983) SC 957, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 267 of 1996.

F From the Judgment and Order dated 5.2.96 of the Madhya Pradesh High Court in CrI.A. No. 1524 of 1995.

Anil Kumar Gupta (A.C.) for the Appellant.

G Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

H **M.K. MUKHERJEE, J.** The appellant was tried for and convicted of offences punishable under Sections 363, 376, 302 and 201 I.P.C. by the Additional Sessions Judge, Shahdol. For his conviction under Section 302

I.P.C. he was sentenced to death and for the other convictions to different terms of rigorous imprisonment. As the appeal preferred by him in the High Court was dismissed, he has filed the instant appeal after obtaining special leave. A

2. Briefly stated the case of the prosecution is as follows : B

(a) Parmeshwar Lal Sharma (PW 1) along with his wife and three children used to reside as Bhutari Tolla in the township of Budhar. Of the three children, Pinky (the deceased) was the youngest and her age at the time of her death was about seven years. That appellant who was also a resident of the same locality used to occasionally visit the family of Parmeshwar and his children used to address him as 'Tiwari Uncle'. C

(b) On April 30, 1995 at or about 6 P.M. Parmeshwar had gone to a hair cutting saloon in the local market along with his son Santosh (P.W. 4) and daughter Pinky. After Santosh and Pinky had their hair cut they went out of the saloon to play outside while Parmeshwar stayed back for his turn. After sometime Pinky went to the television repairing shop of the appellant which was by the side of the saloon. The appellant was then playing ludo with Suresh Gupta (PW 8) in his shop. Pinky requested the appellant to give her some toffees and biscuits whereupon he took her to the nearby grocery shop of Budhsen Gupta (PW 3), purchased a packet of biscuits and gave it to her. Thereafter both of them left the shop of Budhsen. D E

(c) After his hair-cut when Parmeshwar came out of the saloon and enquired of his daughter, Santosh told him that Pinky had gone to the shop of the appellant and that he had given biscuits to her. On getting that information Parmeshwar along with Santosh went to the shop of the appellant but found it closed. They then went back to their house only to find that Pinky had not returned. Parmeshwar then went to the house of the appellant but he was not available there. Accompanied by his wife and other two children Parmeshwar then went in search of Pinky and in course of the search they met Hari Krishna Soni (PW 10) and Subhash Chander Soni (PW 2) at or about 10.30 P.M. on a cross road near the shop of the appellant. As advised by them he sent back his wife and children home and again went to the house of the appellant accompanied by them. While they were waiting there they saw the appellant coming towards his house completely drenched. He was then wearing only an underwear with some clothes pressed under his armpit. When they enquired about Pinky he told H

A them that after he had given the packet of biscuits to her she left. All three of them then went to Budhar Police Station at or about 1 A.M. and reported that Pinky was missing.

(d) After recording the report in the Station diary book (Ext. P.15/C) H.C. Munna Prasad went in search of Pinky but could not trace her out. B However, on the basis of the enquiry conducted by him Station House Office Shri V.D. Tripathi (PW 11) registered a case under Sections 363, 364 and 366 IPC (Ex. P.16) and took up investigation. On the following day, i.e., May 2, 1995 in the afternoon the appellant was arrested by Shri C Tripathi and then interrogated in presence of Hari Krishna and Din Dayal. On such interrogation the appellant disclosed that he had thrown the dead D body of Pinky in a well and concealed her frock near a mahua tree. Shri Tripathi recorded the disclosure statement of the appellant (Ex. P.8) and then, led by the appellant and accompanied by the above two witnesses went to the well of one Ramjiyawan Lodhi and found the dead body of E Pinky floating in the water. After Shri Tripathi took the photograph of the floating dead body (Ex. P.3) it was brought out of the well. He then prepared a recovery memo of the dead body (Ex. P.9) which was signed by the appellant as also the witnesses present there. Shri Tripathi held inquest thereupon, prepared a report in respect thereof (Ex. P.14), and then sent it for post-mortem examination. Pursuant to the statement made by the appellant, Shri Tripathi recovered a blood stained frock (Article A) and seized it under a seizure memo (Ex. P.10).

(e) On the same day Dr. K.K. Gautam (PW 13) held autopsy on the dead body of Pinky and found a lacerated wound on the right side of the F mouth, abrasions on both arms, contusion on the left knee, laceration on the labia majora with clotted blood, laceration on the posterior vaginal wall, hymen ruptured, labia majora and labia minors swollen and blood around the orifice of the vagina. Dr. Gautam also found three contusions on the left side of the neck below the level of the thyroid with abrasions all around, brain and its membrane congested, hyoid bone and thyroid cartilage fractured with haemorrhage on the tissues around the fractures, the fourth rib G on both the side fractured and uterus deeply congested and swollen. He opined that the deceased was raped and that the cause of her death was asphyxia owing to throttling. According to him all the injuries were ante mortem in nature. Dr. Gautam prepared a slide from the vaginal discharge H of the deceased and arranged to send it for chemical analysis by the

Forensic Science Laboratory (F.S.L.) through the Investigation Officer. A

(f) On the following day (May 3, 1995) the appellant was sent to the Primary Health Centre for his medical examination. Dr. B.N. Sharma (FW 7), who examined him found one abrasion on his right knee and another on the glans penis but there was no smegma. In his opinion the appellant was competent to commit sexual intercourse and that the injury found on the glans penis could have been caused while committing rape on the girl of tender age. According to him the injury found on the knee of the appellant could have been caused while committing sexual intercourse with the victim lying on the bare floor of a room. Dr. Sharma prepared a slide of semen of the appellant and along with his underwear sent the same for chemical analysis through Const. Kamla Prasad. The frock which was recovered in pursuance of the statement of the appellant and was identified by Parmeshwar as that of Pinky was also sent for such examination. On receipt of the reports of the F.S.L. and completion of investigation Shri Tripathi submitted a charge-sheet against the appellant. B C D

3. The appellant pleaded not guilty to the charges levelled against him and his defence was that he had been falsely implicated. D

4. In the absence of any eye witness the prosecution relied upon the following circumstances to establish the charges levelled against the appellant : E

(i) In the evening of April 30, 1995 the deceased went to the T.V. repairing shop of the appellant when he was playing ludo with Suresh Gupta (PW 8) and asked him to give him some biscuits; F

(ii) Accompanied by the deceased the appellant went to the grocery shop of Budhsen (PW 3), purchased a packet of biscuits and gave it to her; F

(iii) At or about 8.30 P.M. Purshottam Lal (PW 5) saw the appellant along with a girl aged about 6/7 years going towards the bus stand; G

(iv) Around mid night the appellant was found by Parmeshwar Lal (PW 1), Subhas Chander Soni (PW 2) and Hari Krishna Soni (PW 10) returning to his house completely drenched (which indicated that he had taken a bath) and wearing only an underwear with some clothes under his armpit; H

A (v) Pursuant to the statement made by the appellant on May 2, 1995 to Inspector V.D. Tripathi (PW 11) in the presence of Hari Krishna Soni (PW 10) and others, the dead body of Pinky was recovered from a well and her frock from a place which was not accessible to all;

B (vi) While conducting autopsy Dr. Gautam (PW 13) found a large number of injuries on the person of the deceased, nature of which indicated that she had been raped and strangled to death;

C (vii) On examining the appellant on May 3, 1995 Dr. Sharma (PW 7) found some injuries on his person which were about 72 hours old and likely to have been caused while having sexual intercourse with a girl of tender age; and

(viii) Blood was found on the frock of the deceased and her vaginal smear and on the underwear of the appellant.

D 4. Both the trial Court and the High Court detailed and discussed at length the evidence of all the witnesses who were examined by the prosecution to prove the above circumstances and held that each of the above circumstances stood conclusively proved and that those circumstances unerringly pointed to the guilt of the appellant.

E 5. We have also closely scrutinised the evidence and our such exercise persuades us to unhesitatingly hold that the concurrent findings entered by the learned Courts below are unexceptionable. It is unnecessary therefore for us to burden this judgment with a repetition of the details of the evidence. It is of course true that the entire case is based on circumstantial evidence but the tell-tale circumstances all of which stand firmly established are not compatible with any other reasonable hypothesis except that the appellant kidnapped Pinky, committed rape on her, then strangled her to death and to cause disappearance of evidence of the murder threw her dead body in a well. The convictions of the appellant for the offences under Sections 363, 376, 302 and 201 IPC must, therefore, be upheld;

H 6. That brings us to the question whether the sentence of death imposed upon the appellant by the trial Court for his conviction under 302 IPC and confirmed by the High Court should be maintained or not. In *Bachan Singh v. State of Punjab*, AIR (1980) SC 898 this Court indicated,

while discussing the sentencing policy, the guidelines to be followed for imposing the extreme penalty of death. From the guidelines so indicated this Court in its later judgment in *Machhi Singh v. State of Punjab*, AIR (1983) SC 957 formulated the following propositions, which are to be applied when the question of awarding death sentence arises :

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime;

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment or life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised."

7. Taking an overall view of all the facts and circumstances of the instant case in the light of the above propositions we are of the firm opinion that the sentence of death should be maintained. In vain we have searched for mitigating circumstances - but found aggravating circumstances aplenty. The evidence on record clearly establishes that the appellant was close to the family of Parmeshwar and the deceased and her siblings used to call him 'Tiwari uncle'. Obviously her closeness with the appellant encouraged her to go to his shop, which was near the saloon where she had gone for a haircut with her father and brother, and ask for some biscuits. The appellant readily responded to the request by taking her to the nearby grocery shop of Budhsen and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal

- A rape and gruesome murder - as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a 'rarest of rare' cases where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crime.

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The appeal is therefore dismissed.

K.H.N.S.

Appeal dismissed.