

## Umesh Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** April 24, 2007

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 313  
Penal Code, 1860 (IPC) â€” Section 302, 376

**Hon'ble Judges:** Vinod Prasad, J; K.S. Rakhra, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

Vinod Prasad, J.

Urmesh, the appellant, was tried by 1st Additional Session Judge, Bareilly in S.T. No. 48 of 1996 State v. Urmesh for

offences under Sections 376/302 I.P.C. relating to Crime No. 370 of 1995 Police Station Fatehganj, District Bareilly and was convicted and

sentenced to imprisonment for life for each of the offences u/s 376 I.P.C. as well as 302 I.P.C. The aforesaid convictions and sentences has been

challenged by him through the present appeal.

2. The synopsised allegations against the appellant are that the three siblings Rinki aged about 8 years and her twins brothers Sanjeev and Rajeev

aged 6 years, all children of Suraj Pal Singh, first informant, had gone to sugar cane field for chewing of sugar and after that they started playing

there. After sometime, the twins brothers Rajeev and Sanjeev came back to house but Rinki did not return. Informant asked his sons regarding

Rinki on which he was informed that she was in the sugar cane field. When Rinki did not return till 11:00 a.m., then the informant went in search of

her .On the call for Rinki yelled out by the informant Urmesh S/o Shivram Singh the: present appellant, appeared from the sugarcane field of Shree

Pal Singh, Village Pradhan, adjusting his underwear and ran towards the west. Informant sensing something wrong took Ved Pal Singh PW 2,

Nakshatra Pal Singh and Shreepal Singh alongwith him and went inside the sugarcane field of Shree Pal Singh, Village Pradhan where he found the

dead body of his daughter Rinki. Her undergarments were untied and there was mark of injury on her neck. Her abdomen was also incised and it

seemed that her chastity was ravished and thereafter she was done to death. This incident was alleged to have taken place on 16.10.1995 at 11:00

a.m. Informant Suraj Pal Singh got the first Information Report, Ext Ka 1, scribed through Jagpal Singh Rathore " PW3, and after covering a

distance of 10 Kms South lodged his First Information Report at Police Station Fatehganj, East, as Crime No. 370. of 1995 under Sections

376/302 I.P.C. on the same date at 7.05 p.m.

3. Head Constable Yad Ram prepared the chik F.I.R. (Exhibit Ka-5) and G.D Entry (Exhibit Ka-6), and S.H.O. Harish Mehra PW-5 engineered

the investigation, recorded the statement of HC Yadav Ram and then proceeded for the spot. At the spot he recorded the statements of the

informant Suraj Pal Singh.Ved Pal. Nakshatra Pal and Shree Pal. He stayed in the village during the whole night.Next day morning (27.10.1995)

he got the inquest report(Exhibit Ka-7) and other papers Challan lash (Exhibit Ka-8), Photo lash (Exhibit Ka-9), letter to R.I. (Exhibit Ka-10),

letter to C.M.O. (Exhibit Ka-11), prepared through Sub Inspector Sant Ram Yadav and then dispatched the dead body to mortury for autopsy

through Constables Om Prakash and Charan Singh. Thereafter, he conducted the spot inspection prepared site plan (Exhibit Ka-13) and

recovered the blood stained earth from the place of the incident and prepared it's recovery memo (Exhibit Ka-12). He also-arrested the accused

from the house of Shreepal Pradhan that day and recorded his statement and at his pointing out recovered Darati the weapon of assault from his

house which is material Exhibit-1 and it's recovery memo as Exhibit Ka-2. He also prepared the map of place of recovery as (Exhibit Ka-14).

During investigation he also recovered the undergarments of the accused and sent it for chemical examination on 3.11.1995. Finding prima facie

offence being disclosed against the appellant, Investigation Officer submitted charge sheet (Exhibit Ka-16) hi the Court. Since the charge sheet

submitted by him had got some cuttings on it therefore on the instructions of Circle Officer he prepared another charge sheet on I 3.11.1995

(Exhibit Ka-17) and submitted that also in court.

4. The accused was summoned by C.J.M., Bareilly on the basis of the charge sheet and his ease was commuted for trial before the court of

Session"s as S.T. No. 48 of 1996 which was transferred to the Court of 1st Additional Session Judge, Bareilly for trial and disposal.

5. To prove the guilt of the appellant during the trial prosecution examined six witnesses of whom Suraj Pal (Informant) PW1, Ved Pal (Hye

Witness) PW2. Jagpal Singh Rathore (Rye Witness) PW3 were witnesses of fact and Dr. S.P. Varshney PW4, Harish Mehra PW5 and Dr.

Ghanshyam Singh PW 6 were formal witnesses. Trial Judge also examined A.K. Gautam C.W. 1 as a court witness.

6. Suraj Pal Informant, PW1 supported his version in the trial and stated that deceased Rinki aged about 8 years was his daughter and on the date

and time of the incident she accompanied by her twins brothers Rajeev and Sanjeev had gone to the Sugar cane field for chewing sugar cane at

8:00 a.m. After sometime the twins Rajeev and Sanjeev returned to the house leaving Rinki behind. On being enquired about Rinki they informed

the informant that the deceased stayed at the field. When Rinki did not returned till 11:00 a.m. informant went in her search, giving called to her by

name. At that time appellant Urmesh emerge from the sugarcane field of Sri Pal Singh, village Pradhan, adjusting his underwear and ran towards

west. Pie was seen adjusting his under wear and running by the witnesses Ved Pal, Nakshatra Pal and Shreepal who all joined in the search for

Rinki. When all of them entered sugar cane field of Shreepal Singh they found the dead body of Rinki with her undergarments untied and the

corpse had injuries on her neck and abdomen. Sensing that chastity of her daughter was ravished and then she was murdered that the first

informant got the F.I.R., Ext. Ka 1 scribed through Jaspal Singh Rathore and lodged it at the Police Station Fatehganj, District Bareilly which was

duly proved by him. lie further testified that he was aged about 60 years and had 8 issues. He had narrated the topography of the place of the

incident and had deposed that when the children had gone to the field he was not present at the house and the witnesses were working in their field

at the time of the incident. He has further deposed that the appellant had emerged from the sugar cane field of Sri Pal Singh adjusting his under

garment and seeing them he had sprinted towards west and only then the body of Rinki was discovered which was sent for autopsy on a tractor of

Pharnam Singh. He also evidenced that the accused appellant was arrested from the house of Shreepal Singh witness. From his cross examination

nothing material was elicited by the defence which could discredite his testimony.

7. Ved Pal, PW2 stated before the Court those very facts which were"" mentioned by PW1 and also stated that he had a field near the field of

informant and Shri Pal Village Pradhan. At the time of the incident he was working in his field from 7 or 8:00 a.m. alongwith his brother Nakshatra

Pal when the deceased in the company of his twins brothers came for chewing sugarcane and started playing. At that time appellant Urmesh was

also present on the spot. After sometime, the twins brothers Rajeev and Sanjeev were not spotted by him who had seen the appellant going inside

the sugarcane field alongwith the deceased. lie thought that they were going for sugarcane chewing. At 11:00 a.m. when the informant came

searching for. Rinki then the appellant came out from the sugarcane field of Shri Pal Singh and ran towards west alongwith a Darati in one hand



10. S.H.O. Harish Mehira PW6 who is the investigating Officer of the case proved various steps taken by him during investigation. He was also

subjected to searching cross examination but nothing material came out favourable to the accused appellant.

11. Dr. Ghanshyam Singh PW6 had examined the appellant but did not found any injury on his genitals. He was not under the influence of any

intoxication. There was no smagma on his genitals. He has proved his medical examination report as Ext. Ka 9. However, he had stated that he

did not prepared any supplementary report and the age of the accused-appellant in his estimation was round about 18 years.

12. Dr. K.K. Gautam CW1 has proved the x-ray report regarding age of the appellant which according to the x-ray report was 16 years.

13. In statement u/s 313 Cr.P.C. the accused took of defence of false implications.

14. 1st Additional Session Judge, Bareilly on such evidences found the case of prosecution proved to the hilt, and guilt of the appellant established

and therefore he convicted the appellant for both the offences u/s 376 and 302 IPC and sentenced him to life imprisonment for each of the said

offences.

15. We have heard Shri Amit Mishra learned amicus curie, in support of this appeal and Shri Sudhir Kumar, learned AGA on behalf of the State.

16. Shri Amit Mishra contended that it is a case of circumstantial evidence and prosecution has not been able to established the charge against the

appellant by cogent and reliable evidences. He submitted that there is no medical evidence to support charge of rape on the victim and from the

examination of the appellant also it could not Lie said that he had indulged into any sexual act. He further submitted that the evidences led in the

trial through the prosecution witnesses, is wholly insufficient to convict the appellant as the chain of circumstances are not complete and the trial

Judge has convicted and sentenced the appellant only on suspicion. Learned Counsel further submitted that Post Mortem Report examination does

not indicate that any homicidal attack was made on the deceased. He submitted "that the appellant was a resident of the same village and therefore

his presence on the spot is not an incriminating evidence against him. He further argued that thorn was no weapon mentioned in the F.I.R. and

subsequently to make the prosecution case consistent with the medical evidence that the prosecution alleged Darati in the hands of the appellant.

Pie further submitted that PW1 is not a reliable witness and therefore the conviction and sentence recorded by the trial Judge is wrong and this

appeal deserves to be allowed, .convictions and sentences of the appellant deserves to be set aside and he be acquitted.

17. Learned A.G.A. on the other hand submitted that in this case the evidence led in die trial court through the witnesses Suraj Pal, Ved Pal, Dr.

S.P. Varshney and S.H.O. Harish Mehra fully established a guilt of the appellant and the appeal lacks merit and deserves to be dismissed.

18. We have given our anxious considerations on the submissions raised by both the sides and have gone through the entire evidences on the

record of the appeal our selves.

19. It is not the case of direct evidence but the offences have been triad to be established on the basis of circumstantial evidence. Three

circumstances which are against the appellant are that at the time of a incident he was seen near the place of the incident in the company of the

deceased, that he was seen coming out of the sugarcane field where the deceased was found dead adjusting his under garment by the three

witnesses of fact and lastly that he was arrested soon after the incident and on his pointing out recovery of the weapon of assault was made.

20. For the first circumstance it is clearly established that appellant was seen at the place of the incident prior to the reaching of the three children at

the spot by Ved Pal PW2 who has categorically stated before the court that he had seen the appellant prior to the incident and taking the dexeased

alongwith him inside the sugarcane field and came out of the sugar cane field with darati adjusting his under garment and ran towards west. This

part of the statement of PW2 was not challenged by the defence at all but by a bald suggestion which has been denied by him. We have also

looked into the case diary to be satisfied as to whether this part of his statement is an embellishment or not but we found that said statement is

consistent with his statement given u/s 161 Cr.P.C. Ved Pal. PW2 is a resident of the same village. He had no enmity with the appellant and there

was no reason for him to falsely implicate the appellant. His cross-examination also did not bring out anything on the basis of which it can be said

that his evidence is blemished and unreliable. More over his evidence is well supported by the evidence of PW1 the first informant. There was no

reason for the first informant also " to falsely implicate the appellant but he being an interested witness and being the informant we have sought for

corroboration of his testimony through PW 2 which we found well supported. The statement of Dr. S.P. Varshney PW 5 clearly established that

the deceased was strangled to death and before she was murdered her chastity was ravished. We find no reason to discard the testimony of this

doctor which is creditworthy.

21. The F.I.R. in this case is promptly lodged without any delay at 7:05 p.m. when the distance of Police Station was 10 Kms and occurrence

occurred on 26.10.1995 at 11:00 a.m. Therefore chances of any embellishment and false implications is absent. From the totality of evidences led

in the trial we are of the opinion that the prosecution has been able to prove the guilt of the appellant successfully and has proved the charge against

him. We do not find any error in the impugned judgment of conviction and sentence.

22. On the above discussion we do not find any merit in this appeal, which is liable to be dismissed and we do dismiss it.

23. Let a copy of this order be certified to the trial court.