

**(2007) 04 AHC CK 0273**

**Allahabad High Court**

**Case No:** None

Umesh

APPELLANT

Vs

State of U.P.

RESPONDENT

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

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 302, 376

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

**Bench:** Division Bench

**Final Decision:** Dismissed

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**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 synopsisd 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 and adjusting his undergarment from the another. When he in the company of the informant and other went inside the field they found the deceased lying dead and her chastity was ravished as was stated by PW1. In his cross examination he had clearly stated that he was in the field when he had seen the appellant, the deceased and his twins brothers at about 7.00

or 8:00 a.m. in the morning. He had further deposed that he had seen the deceased going along with accused-appellant and first the accused came out of the field and ran towards the west and subsequently they discovered the corpse of the deceased. He had denied the "suggestion that he had not seen any incident and is deposing falsehood. He had also accompanied the informant to the police station for lodging of F.I.R. He also denied the Suggestion that he has not seen the deceased in the company of the appellant accused and he had testified with ulterior motives.

8. Jagpal Singh Rathore PW 3 who has scribed the F.I.R. proved the F.I.R. as (Exhibit Ka-1) and the recovery memo (Exhibit Ka-2). He was thoroughly cross examined but nothing material had come out from his evidence which can discredite his testimony.

9. Dr. S.P. Varshney. PW4 conducted an autopsy of the dead boy of the deceased on 27.10.1995 at about 3:30 p.m. and found that she was aged about eight years and 1 1/2 days had lapsed since her death. Rigour Mortis had passed off from the upper limbs and was passing off from the lower limbs and putriscensing had commenced. Following ante-mortem injuries were present on die body:

1. Two linear abrasion vertical 12 cm each at 1 cm distance.
2. One linear abrasion cum abrasion 6 cm left extents into the leg 7 cm ♦ 2.5 cm. ♦ muscle deep.
3. Multiple figure nail abrasion in area of 5 cm ♦ 4 cm back chin.
4. Contusion in front of neck 10 cm ♦ 1 cm.
5. Contusion right cheek 1 cm ♦ 1 cm.
6. Laceration vaginal orifice clotted blood present over inner thigh cum external genitals linear laceration present at 6 o'clock position 1.05 cm. long cum muscle deep visible under neath.

Two slides prepared and vaginal smear sent for pathological examination.

10. The physical examination of the corpse disclosed that there were contusion on the neck of the deceased, her larynx and lungs were congested and cause of her death was asphyxia as result of throttelling. Doctor also testified that injury No. 6 to the deceased could be because of partial penetration of male organ and she could have died at or about the time of the incident and weapon injuries could be caused by Darati. lie has proved the post mortem report as Fxt. Ka 18.

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 find 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 prepare 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 establish 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 be 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. He 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 the 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 ourselves.

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 strangulated 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.