

**(2005) 08 AHC CK 0228**

**Allahabad High Court**

**Case No:** Government Appeal No. 115 of 1982

The State of U.P.

APPELLANT

Vs

Rajju and Dwarka

RESPONDENT

**Date of Decision:** Aug. 31, 2005

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 117, 161
- Penal Code, 1860 (IPC) - Section 302, 34, 376

**Hon'ble Judges:** M.C. Jain, J; B.B. Agarwal, J

**Bench:** Division Bench

**Advocate:** K.P. Shukla and A.G.A, for the Appellant; R.P.S. Chauhan, S.K. Singh, B.G. Yadav and Rajendra Kr. Yadav, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

B.B. Agarwal, J.

This appeal on behalf of State of Uttar Pradesh, has been filed against the judgment and order dated 6.10.1981 passed by Sri R.D. Mathur, IV Additional Sessions Judge, Jhansi in Session Trial No. 137 of 1979 State v. Rajju and one Anr.. The learned Sessions Judge by the said order acquitted the accused respondent Rajju and co-accused Dwarka of the charges u/s 376, 302/34 I.P.C.

2. During the pendency of the appeal, co-accused Dwarka died-hence proceedings of the appeal were abated against him vide order dated 20<sup>th</sup> April 2005. The appeal now survives only against the accused-respondent Rajju.

3. As per prosecution case, accused Rajju was charged to have committed rape on Shrimati Kapoori, deceased on 4.10.1978 in the after noon at about sun-set time in the Harr of village Nepan within the circle of police station Garotha district Jhansi. He is. said to have committed murder of Shrimati Kapoori on the aforesaid date, time and placed in furtherance of common intention with Dwarka, since deceased , the co-accused.

4. It is said that in the morning of 4.10.1978 informant Mala Deen and Lallu were ploughing the Kasela Wala field which they had taken on Batai from Amirawali. In the noontime, daughter-in-law of Mata Deen, Smt. Kapoori brought meals. He took his meals. After taking the meals he along with Lallu went to the pond to give water to the bullocks. Rajju was present there at that time and grazing his goats, when Smt. Kapoori brought the meals and Mata Deen was taking his meals. When Mata Deen and Lallu were going to the pond along with their bullocks, Shrimati Kapoori had told Mata Deen that she would return to house after collecting green fodder from the Junai field. Mata Deen and Lallu when returned from the pond they did not find Rajju there. In the evening when Mata Deen returned to his house, his wife inquired from him about Kapoori on which he told her that Kapoori had returned soon after giving him meals. On this information his son Har Das and Nephew Babu went out in search of Smt. Kapoori. After some time the complainant, Pyarelal and Master Jhundey Lai also went in search of Smt. Kapoori. When they all were going towards Harr they saw Har Das and Babu returning weeping. On inquiry Babu told that the dead body of Smt. Kapoori was lying in the corner of the Saru field. On this information, Mata Deen and others returned to village, contacted the village Chaukidar Nathu and thereafter went to the field along with Chaukidar and several other persons of the Village. At the Held they found Kapoori lying naked and her neck tied with Dhoti. After leaving some persons near the dead body, the complainant along with village Chaukidar Natthu went to Police Station to lodge the report. Ex.Ka. 1 is the chik report prepared by Constable Clerk Mijaji Lal. Ram Awtar Dixit was the Station Officer Gerotha at that time and he took up the investigation in his hands.

5. The Investigating Officer Sri Ram Awtar Dixit proceeded with the investigation recorded the statements of complainant Mata Deen, Chaukidar Nathu and I lead Moharrir at the police station and sent three constables at the place of occurrence to guard the dead body. Inquest of the dead body of Smt. Kapoori was held by A.S.I. Vardani Singh on the direction of Investigating Officer Sri Ram Awtar Dixit on 5.10.1978. Relevant papers relating to inquest Ex. Ka. 5 to Ka. 10 were also prepared by A.S.I. Vardani Singh and the dead body in sealed up condition was sent for the purposes of postmortem through constable Bir Bahadur. The Investigating Officer seized broken bangles (Ex. 5), hairs, which appeared to be of a man (Ex. 6) beneath the hand of the dead body of Smt. Kapoori and a button with thread and fibers of clothe (Hx. c) to 11) near the dead body. He also collected plain earth Ex"32 and blood stained earth Ex. 33 from the place of occurrence. He also took a pair of silver Toria, two mina, a black thread with silver Tabiz and an iron key from the person of the dead body of Smt. Kapoori and a Lota, a Bela, a pair of Chappal, a pitcher near the dead body and gave these articles in the Superdgi of liar Das, husband of Smt. Kapoori and prepared Fard Ex. Ka. 21. The spot was inspected and a site plan Ex. Ka. 24 was prepared by the Investigating Officer.

6. During investigation he is said to have arrested accused Rajju on 8.10.1978 in the presence of witnesses Sarman and Battey and on the pointing of accused Rajju recovered sickle (Ex. 23) from a bush. Recovery memo Ex. Ka. 26 was prepared. He took the clothe of Rajju in his possession vide Memo Ex. Ka. 27. He thereafter arrested accused Dwarka and took his shirt in his possession. The button of his shirt was found broken and it appeared that the said button was snatched from it. He prepared memo of the shirt of Dwarka, On 14.10.1978, he applied in the Court of Judicial Magistrate, Mau Garotha vide application Ex. Ka. 31 for taking samples of hairs of the accused and on 23.10.1978 the samples of the hairs of accused Rajju and Dwarka were taken in the court of Judicial Magistrate, Mau Garotha. On 29.10.1978 the Investigating Officer moved application Ex. Ka. 34 in the Court of Judicial Magistrate, Mau Garotha to send the blood stained clothes of Smt. Kapoori, plain and blood stained earth, clothes of Rajju and sickle for examination to the Chemical Examiner and Serologist. The Investigating Officer also moved an application Ex. Ka. 35 in the Court of Judicial Magistrate Mau Garotha to summon the pubic hairs of Smt. Kapoori which were preserved by doctor for chemical examination. Vide application Ex. 46 the samples of hairs of Dwarka and Rajju and seized hairs, button, thread fibers and the shirt taken from accused Dwarka were sent for examination to scientific Laboratory, Lucknow through Constable Mijaji Lai. After receiving the reports from Scientific Laboratory, Lucknow and the report of the Chemical Examiner and Serologist, the Investigating Officer completed the investigation and submitted the charge sheet Ex. Ka. 38 against the Accused Rajju and Dwarka.

7. The accused pleaded not guilty to the charges and claimed trial. Accused Rajju stated that Sub Inspector detained him at the police station for four days, beat him there and no sickle was recovered on his pointing. He also stated about the pendency of the proceedings u/s 107/117 Cr.P.C. between him and witness Sarnam.

8. Prosecution examined as many as 15 witnesses in this case in order to prove the prosecution version. After considering the entire evidence produced by the prosecution in this case, the learned Sessions Judge did not find the accused guilty of the charges leveled against them and acquitted them of the charge u/s 376 and 302/34 I.P.C.

9. We have heard the learned A.G.A. Sri K.P. Shukla from the side of the State and Sri B.C. Yadav, Advocate from the side of the respondent.

10. It is to be noted at this stage that Rajju accused was sent to jail in compliance of the order of this Court by the Chief Judicial Magistrate Jhansi and he is confined in jail since 20.6.2005 vide office report dated 13.7.205.

11. The judgment and order of the learned Sessions Judge has been challenged on the ground that the circumstantial evidence produced by the prosecution fully established the involvement of the respondent Rajju and deceased co-accused

Dwarka in the crime of rape and murder and their acquittal was illegal. According to the learned counsel for the appellant, the circumstantial evidence was sufficient in all respects to bring home the charges against the accused and the view of the learned Sessions Judge was erroneous that the circumstantial evidence did not connect the accused with the crime. The order of acquittal is based on surmises and conjectures and the learned trial court wrongly disbelieved the evidence of the prosecution witnesses.

12. At the very outset it may be observed that it is a case based on circumstantial evidence and there is no direct evidence of rape and murder, by " the accused respondent Rajju. The only circumstantial evidence against Rajju is the evidence of the complainant Mata Deen P.W.1, who has not seen accused Rajju going towards the field in which incident had taken place nor he had seen the accused Rajju coming out of that field at any time. He simply stated that Rajju was present and grazing his goats at the time when Smt. Kapoori deceased had brought meals for Mata Deen on the "alleged date of incident. It has also come in the evidence of Mata Deen that after coming home he came to know about the disappearance of Smt. Kapoori, deceased. He did not suspect involvement of any person in the matter. The prosecution has tried to connect the involvement of the accused by producing witness ! P.W.6 Kunj Behari, who is said to have stated u/s 161 Cr.P.C. that he had seen accused Dwarka and Rajju on the alleged date of incident along with their goats which were taken to the pond at that time and that Rajju had washed his clothes in the water of pond. But this witness turned hostile when examined in Court and has denied to have given such statement of washing his clothes in the pond by Rajju. Therefore, the evidence of this witness does not inspire any confidence. Another witness Siya Ram P.W.7 has been produced by the prosecution in order to establish intimacy between accused-respondent Rajju and co-accused Dwarka. He had stated that Rajju and Dwarka were going along with pond on the alleged date of incident at about 8 A.M.. As per witness P.W.1, Mala Deen, his daughter-in-law Smt. Kapoori deceased had brought meals at about 10 A.M.. Therefore, evidence of this witness does not provide any benefit nor could establish involvement of Rajju in this crime, as in morning at 8 A.M., accused Rajju could not have made any consultation with Dwarka to commit rape on daughter-in-law of Mata Deen, especially when it has come in evidence that Smt. Kapoori did not use to come daily for providing meals to Mata Deen in the field and she had come for the first time, on that date after a gap of about two years. Besides, the evidence of these two witnesses, there is no evidence of any witness who had seen accused Rajju coming on the date of incident going towards the field of incident. There is no evidence that he was seen in the company of Smt. Kapoori on that date at any time.

13. The hair, button, thread and fiber alleged to be seized by I.O. from the spot near deadbody were sent for examination to the Forensic Scientific Laboratory, Lucknow, along with sample of the hair of both the accused and shirt of accused Dwarka, in which one button was found missing and the report of the Scientific Officer is on

record which has been proved by P.W.13 Dr. Gopal Dutt Mishra, Scientific Officer, Forensic Laboratory. As per report, the hairs seized from the spot tally with the hairs of Dwarka and button and fibers were also identical with button found on the shirt of Dwarka and its fiber. Therefore, evidence of P.W.13 is also not relevant so far as accused Rajju is concerned. Since Dwarka has already died, therefore, we do not consider it necessary to discuss evidence of the Scientific Officer, P.W.13, in detail, Dwarka has already died and the appeal against Dwarka has already been abated.

14. Besides the evidence of presence of Rajju accused on that date in the field, when Smt. Kapoori deceased had brought meals for his father-in-law, the other relevant evidence against the accused is the evidence of recovery of sickle (Ex-1) at the instance of accused Rajju. In this connection one P.W. 14 Sarman has been produced to establish recovery but the statement of Sarman does not inspire confidence, as his statement is contradictory with the statement of P.W. 15 Ram Awtar Dixit, on material points. He stated that Rajju was sitting out side his house when he was arrested by the I.O. but the I.O. Ram Awtar Dixit stated that he had gone to the house of Rajju and knocked his door, Rajju came out from his house and he arrested him. This contradiction has become material in this case, firstly, because P.W.14, Sarman is relation of Mata Deen, complainant and secondly because no other witness of recovery, namely Buttey has been produced by prosecution in the trial court. Moreover, this sickle was not produced in the court at the time of statement of Mata Deen, who could identify the sickle to be of deceased Smt. Kapoori. It is said that Smt. Kapoori told to Mata Deen that she would return back to the house after collecting fodder. Therefore, this sickle could be easily identified be Mata Deen and P.W. 2 Lallu, had it been shown to them at the time of their statements in the court. Therefore, evidence of recovery of sickle which has been produced in this case by the prosecution is not at all convincing. Lallo deposed specifically that he had seen the sickle in the hand of Kapoori when she had come to provide meals to Mata Deen on that date. If it is not accepted that recovery of the sickle was made from the Haar of Rajju, then the recovery of the bloodstain on sickle was not sufficient evidence to connect Rajju with the crime.

15. There is no other evidence against Rajju and, therefore, we are of the opinion, that the circumstantial evidence against Rajju is not such which could lead to a conclusion beyond all reasonable shadow of doubt that the Rajju and Rajju only had committed offence of rape and murder. The prosecution, in our opinion, fails to prove by satisfactory evidence to connect the sickle with the crime. It is well established law in the criminal jurisprudence that circumstantial evidence should make complete chain of facts, which may lead to only conclusion that it is the accused and the accused alone who has committed crime. But in this case circumstantial evidence produced against Rajju is not sufficient to arrive at conclusion that the accused Rajju has committed the offence. Thus the evidence produced against Rajju is, in our opinion, not sufficient to connect him with this crime.

16. It may be observed that I.O. has taken much pains and made sincere efforts to solve this case of murder to connect accused persons with the crime and he appears to have been successful in collecting cogent and reliable evidence against Dwardka, but so far as Rajju is concerned, he has failed to collect sufficient evidence to connect Rajju with the crime.

17. We appreciate the efforts made by I.O. in this case to solve the matter, but since we are hearing this appeal only against Rajju and circumstantial evidence produced against Rajju is not sufficient to connect him with this crime, therefore, we do not feel any need to interfere with the order of acquittal of Rajju passed by learned trial court and the judgment of the trial court deserves to be affirmed.

18. In the result the appeal fails and is dismissed. Rajju is in jail as observed above. He shall be released forthwith, if not wanted in any other case. C.J.M. Jhansi shall comply with the order of this Court and shall send compliance report within a week of the receipt of the copy of this order.

19. Certify the judgment to the C.J.M. Jhansi immediately.