

Uday Ramesh Chavan and Others Vs. the State of Maharashtra

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Court : Mumbai

Decided On : Mar-13-2000

Reported in : 2001ALLMR(Cri)324; 2000(5)BomCR594

Judge : P.S. Patankar and ; Dr. Pratibha Upasani, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 302, 342, 376(2) and 404; [Evidence Act, 1872](#) - Sections 8, 9 and 45

Appeal No. : Criminal Appeal No. 653 of 1999

Appellant : Uday Ramesh Chavan and Others

Respondent : The State of Maharashtra

Advocate for Def. : D.S. Mhaisapurkar, A.P.P.

Advocate for Pet/Ap. : K.S. Patil, Adv.

Judgement :

ORDER

Dr. Pratibha Upasani, J.

1. This criminal appeal is filed by the appellants original accused Nos. 1, 2 and 3, being aggrieved by the judgment and order dated 21st September, 1999, passed by the learned Sessions Judge, Ratnagiri. By the impugned judgment and order,

the learned Sessions Judge convicted all the three accused for the offence punishable under section 302 read with section 34 of the Indian Penal Code and sentenced each of them to suffer life imprisonment and to pay a fine of Rs. 1,000/- each, or in default, to undergo rigorous imprisonment for a period of one year.

2. The learned Sessions Judge also convicted the appellants for offence punishable under section 376(g) read with section 34 of the Indian Penal Code and sentenced each of them to suffer life imprisonment and to pay a fine of Rs. 1,000/- each, or in default, to undergo rigorous imprisonment for a period of one year.

3. The learned Sessions Judge also convicted all the three accused/appellants for offence punishable under section 201 read with section 34 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 1,000/- each, or in default, to undergo further rigorous imprisonment for a period of one year.

4. The learned Sessions Judge also convicted the appellant original accused Nos. 1, 2 and 3 for the offence punishable under section 342 read with section 34 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 200/- each, in default, to undergo further rigorous imprisonment for a period of one month.

All the substantive sentences were made concurrent.

5. The prosecution story can briefly be stated as follows :

Deceased Jyoti Gidye was a fifteen year old, young, unmarried girl. She resided with her parents and brothers at village Bhandarpule, District Ratnagiri. She was attending tailoring class at a nearby village Malgund. Some other girls were also accompanying her while she was attending the said tailoring class. Timing of that class was in between 12.15 p.m. to 4.00 p.m. Deceased Jyoti used to attend the class by making up and down trip from her village Bhandarpule by a State Transport Bus; Her friend by name Mamta Ganpat More and some other girls also used to travel by the said State Transport Bus. Jyoti used to board the Bus at

about 4.00 p.m. at Malgund for coming back to her home at village Bahndarpule. She used to get down from the bus at Apta Phata Bus Stop. Therefore, she used to go on foot to Bhandarpule by road. A hotel by name 'Abhishek Hotel' is situated by the side of Bhandarpule Road and the Apta Phata bus Stop. While going to the tailoring class, deceased Jyoti used to carry with her a purse, scissor, tape, needles, thread, pencil and new clothes, which she used to keep in a handy polyethylene bag. That was her daily routine.

The prosecution story further is that father and brother of the deceased Jyoti run a sweetmeat shop at Ganpatipule. This is a tourist place, which is on the way between Malgund and Bhandarpule. It is about two kilometers away from Malgund. Bhandarpule is a hamlet of village Nevare. There is also a place called Jangaldeo, which is on Bhandarpule road.

On the fateful day of 22nd January, 1998, the deceased Jyoti, as usual, had gone to attend her tailoring class at Malgund. Her friend Mamta More also attended the class along with her. The class was over at 4.00 p.m. The deceased Jyoti along with Mamta More and two other girls got into the S.T. Bus at 4.05 p.m. at Malgund for going back. Jyoti alighted from the bus at Apta Phata Bus Stop, and Mamta went ahead. Deceased Jyoti then started going to Bhandarpule on foot by road, towards her residence.

The prosecution story is that one Chandrakant Vithal Ranade (P.W. 3) who owns paddy land and orchard, so also, one Pradeep Purshottam Harchekar (P.W. 10), the Manager of Hotel Abhishek had seen the deceased Jyoti going by Bhandarpule Road at about 4.15 p.m. Since Jyoti did not return to her house as usual by evening, her brother Ajit (P.W. 1) and father started taking search for her. They contacted Mamta More (P.W. 8) at Morewadi, who told them that deceased Jyoti had alighted from the bus at Apta Phata Bus Stop as usual. Search for deceased Jyoti was continued by her brother and father. By that time, it was night. Therefore, Ajit and his friends took torch and petromax and continued the search of Jyoti. At about 10.00 p.m., Ajit and his friends saw the dead body of Jyoti in a pipe of Mori below Bhandarpule road in Jangaldeo. One Kulkarni Guruji went to Malgund Police Out Post and gave information about finding of dead body of Jyoti,

whereupon two police constables came to the spot. Telephonic message was given to the Police Sub-Inspector S.B. Gurav (P.W. 15) of Ratnagiri Gramin Police Station, who rushed to the spot. He saw the dead body of the deceased and inspected the spot carefully. At the place, he found one small diary with torn post card containing name and address of accused No. 1 Uday Chavan, two cigarette stubs, one cigarette, a lady's knicker and a purse, which were lying on the spot near the dead body. He realised that it was a case of rape and murder. He therefore recorded the first information report of Ajit (P.W. 1) (at Exhibit 18). Offence came to be registered under section 376 and 302 of the Indian Penal Code, and investigation was set in motion. One photographer was called to take photographs of the dead body and of the spot and the things which were near about the dead body. Scene of occurrence panchnama at Exhibit 21 was recorded on the next day i.e. on 23rd January, 1998. Inquest panchnama of the dead body at Exhibit 19 was drawn. The dead body was forwarded to the Chemical Analyser. The Medical Officer Dr. Nitin Dhepe (P.W. 7) conducted autopsy on the dead body, who noted injuries on it. Samples of public hair and vaginal swab of the dead body were collected and were forwarded to Chemical Analyser, Pune. Dr. Dhepe completed the autopsy and opined that Jyoti's death was caused due to strangulation. He received the report of the Assistant Chemical Analyser, Pune (Exhibit 36), studied the same, and opined that rape was committed on deceased Jyoti before death, and issued Death Certificate accordingly. Post mortem notes at Exhibit 35 were also issued by him. All the three accused were arrested on 23rd January, 1998, i.e. immediately on the next day of the incident. They were sent to the Medical Officer Dr. Nitin Dhepe for their Medical examinations. Dr. Dhepe noticed abrasions on the persons of accused No. 2 Chandrakant @ Shekhar Yashwant Pawar and accused No. 3 Sunil Shridhar Ghadashi. Dr. Dhepe also found that all the three accused were capable of doing sexual intercourse. Samples of their pubic hair, glans swab and blood were taken and were forwarded to the Chemical Analyser. Sample of nail clipping of accused No. 3 Sunil Ghadashi was also taken and was forwarded to the Chemical Analyser. Blood group of the deceased Jyoti was found to be belonging to 'O' group. The Assistant Chemical Analyser examined the sample sent to him and gave his opinion that human blood of 'O' group was detected in the sample of nail clipping of accused No. 3. P.S.I.

Gurav (P.W. 15) recorded the statements of the witnesses. During the course of investigation accused No. 1 Uday Ramesh Chavan was interrogated by P.S.I. Gurav and at the instance of accused No. 1, there was recovery of tailoring articles and polyethylene bag of the deceased from the bushes in the vicinity of the scene of occurrence. One stone also was discovered at the instance of accused No. 1. Articles recovered in the course of investigation, clothes on the dead body of the deceased Jyoti, clothes of all the accused were forwarded to the Chemical Analyser, Pune for analytical examination. The Assistant Chemical Analyser examined them and issued the report stating that human blood of 'O' group was detected on the clothes of the dead body, and also on pieces of cigarette stubs, Jangyas of accused Nos. 1, and 2 and Bermuda pant of accused No. 3.

The accused were hotel boys, working at Hotel Abhishek, which was close to the scene of occurrence. As per the prosecution story, these three boys, about eight to ten days back, had teased Jyoti, prior to the date of incident. And on the date of incident, while she was coming back to her residence from her tailoring class, intercepted her, took her inside the pipe of Mori below Bhandarpule road and raped her in the pipe one by one. Thereafter, they strangulated her to death with the help of a piece of cloth, a handkerchief and a thread and by hitting stone on her head. Thereafter they left the dead body of the deceased in the pipe. After completing investigation, charge-sheet came to be filed in the Court of Chief Judicial Magistrate, Ratnagiri, which was committed to the Court of Sessions, as the case was exclusively triable by the Court of Sessions. Then the charge came to be framed against the accused under sections 342, 376(g), 302, 201 and 404 read with section 34 of the Indian Penal Code. They pleaded not guilty to the charge and claimed to be tried. Their defence was of total denial, and that of false implication, merely on suspicion.

The prosecution, to prove its case, examined sixteen witnesses. All the witnesses supported the prosecution case. After recording evidence and after hearing both the sides, the learned Sessions Judge, Ratnagiri, by his judgment and order dated 21st September, 1999, came to the conclusion that prosecution had succeeded in proving all the charges framed against the accused, and sentenced them accordingly as stated above. The learned Sessions Judge, however, acquitted the

accused for offence punishable under section 404 of the Indian Penal Code.

6. It is against this judgment and Order of conviction and sentence that the present Criminal Appeal has been filed by all the three accused.

7. The prosecution has examined sixteen witnesses to bring home the charge against the appellants/accused. Obviously there are no eye-witnesses to the incident, and prosecution story is based entirely on circumstantial evidence. The prosecution has relied upon following fifteen circumstances to establish the guilt of the accused. They are as follows:

i) The deceased used to go to her house at Bhandarpule on foot through Ganpatipule Bhandarpule road which passes by the side of Abhishek Hotel where the accused are working. Thus the accused had opportunity to observe the deceased while going alone by the road.

ii) The accused had attempted to tease the deceased eight to ten days before the date of incident. This indicates that the accused had their covetous eye on the deceased.

iii) The place of occurrence was in the pipe of Mori below Ganpatipule-Bhandarpule road. The pipe was not visible from the road.

iv) The place of occurrence was near Abhishek Hotel.

v) Torn Post card containing the name and address of the accused No. 1 was found in a diary which was found near the dead body. The diary was prepared by using the receipts of Abhishek Hotel. One cigarette, two cigarette stubs and match box were found near the dead body of the deceased.

vi) Dirty piece of cloth was tied around the neck of the dead body and was used for strangulating the deceased to death.

vii) Rape was committed on the deceased.

viii) After committing the rape, murder of deceased was committed by strangulation.

ix) Human blood of 'O' group which was the blood group of deceased was detected on the clothes of the accused.

x) The accused No. 1 was seen near the place of offence after the incident.

xi) Tailoring articles of the deceased in polyethylene bag were discovered at the instance of accused No. 1.

xii) Fresh injuries were found on the persons of the accused 2 and 3 after the occurrence.

xiii) Blood of 'O' group was found in nail clipping of accused No. 3.

xiv) Blood mixed with semen of A.B.O antigens were detected on the petticoat and skirt recovered from dead body.

xv). Blood of 'O' group was detected on the petticoat and skirt of the dead body of the deceased.

8. We have heard at length Mr. Patil, the learned Advocate appearing for the appellants/accused, so also, Mr. Mhaisapurkar, the learned A.P.P. appearing for the State. We have also gone through the records and proceedings of the case. After going through the evidence of the prosecution witnesses and the various panchnamas, so also, report of the Chemical Analyser and the post-mortem report, it has to be said that the prosecution has succeeded in establishing the guilt of all the accused beyond shadow of reasonable doubt and that, chain of circumstances established, unerringly points to the guilt of the accused. Evidence of P.W. 1 Ajit who is the brother of the deceased Jyoti and that of P.W. 8 Mamta, indisputably establish that it was the routine of deceased Jyoti to attend the tailoring class every day at Malgund, that she used to leave her village Bhandarpule at a particular time, and used to come back at a particular time in the evening by a particular bus, that she used to get down at Apta Phata Bus stop, and then, used to go on foot to Bhandarpule by road. In fact, depositions of P.W. 1 Ajit and P.W. 8 Manila have gone unchallenged. Admittedly, accused Nos. 1 to 3 were working as hotel boys in Abhishek Hotel. Location of Hotel Abhishek which is by the side of Ganpatipule and Bhandarpule Road also is admitted. As per the

prosecution case, the appellants/accused Nos. 1 to 3 had teased Jyoti eight to ten days prior to the date of incident. Jyoti was a young girl of fifteen years of age. The accused set their covetous eye on this young girl, and teased her while she was going to attend her tailoring class as usual. Much is argued by Mr. Patil, learned Counsel for the appellants, about there being no complaint made by Jyoti or her brother Ajit (P.W. 1) to the Manager of Abhishek Hotel about this incident of teasing. In our opinion, however, no undue importance should be given to this. In a small village consisting of few houses, if a complaint of eye teasing would have been made by the victim girl or her brother Ajit to the employer of these boys, it was highly probable that it would have harmed the reputation of the victim girl herself, and the incident would have been a talk of the entire village. Therefore, ignoring this incident, was wiser than making it public. Victim Jyoti and her brother Ajit did exactly that, but Jyoti had to pay a very high price for this. It appears that because of this naiveness of deceased Jyoti, the accused became bold enough to intercept her while she was on her way back to home and raped her before murdering her with the help of a dirty cloth by strangulating her. They manifested their lust by teasing her and fulfilled their desire by ravishing her. The scene of occurrence was a pipe in the Mori below Bhandarpule road which was a forsaken, lonely place, away from the main road, but near Abhishek Hotel. The scene of occurrence panchnama showed that the road leading to Abhishek Hotel is just 15 feet away from the scene of offence. Evidence of P.W. 9 Sudesh Vishnu Nagvekar, P.W. 10 Pradeep Purshottam Harchekar and P.W. 3 Chandrakant Vitthal Ranade establish the presence of Accused Nos. 1 and 3 near the place of occurrence at the relevant time. Recovery of the articles which the deceased Jyoti used to carry with her, at the instance of accused No. 1 is also an important circumstance in favour of the prosecution and against the accused. It is also an important circumstance in the chain of circumstances pointing towards the guilt of the accused that when Jyoti's dead body was found in the pipe, there was a soiled cloth (which is commonly used by hotel boys) around the neck of Jyoti. It was with this cloth that Jyoti was strangulated. Small diary with torn post card containing name and address of Accused No. 1, two pieces of smoke cigarettes, one cigarette were also found along with Jyoti's nicker and purse on the spot, near about her dead body. As per the Chemical Analyser's report, human blood of 'O'

group which was the blood group of the deceased Jyoti was detected on the cigarette and pieces of smoke cigarettes.

9. The most important circumstance which clinches the issue and leaves no doubt in the mind about the guilt of the accused is the medical evidence. It won't be an exaggeration if we say that medical evidence has played the role of a star witness in this case. The post-mortem report reveals that the blood group of deceased Jyoti was 'O'. Her clothes also had blood stains, and the blood found on her clothes was of 'B' group. When accused were arrested on the very next day of the incident, their clothes were seized under panchnama. These clothes consisted of shirts, pants and jangyas of accused Nos. 1 and 2, shirt and Bermuda pant of accused Nos. 3. These clothes were forwarded to the Chemical Analyser, Pune for analytical examination, and the Chemical Analyser in his report at Exhibit 63 has given a clear finding that human blood of 'O' group was detected on jangyas of accused Nos. 1 and 2, and Bermuda pant of accused No. 3. Indisputably, blood samples of accused Nos. 1 to 3 were collected and were forwarded to the Chemical Analyser for finding out their blood group and the Chemical Analyser by his reports Exhibits 66 and 67 had reported that the blood group of accused No. 1 was 'A', that blood group of accused No. 2 was 'B' and that blood group of accused No. 3 was 'AB'. It is thus, clear that the blood found on Jangyas of accused Nos. 1 and 2 and Bermuda pant of accused No. 3 was of some third person and it was not their own blood. Indisputably, clothes, namely, blouse, petticoat and skirt on the dead body of Jyoti were recovered and they also were forwarded to the Chemical Analyser for analytical examination. The Assistant Chemical Analyser to whom these clothes were sent, by his report at Exhibit 63, had given a clear finding that human blood of 'O' group was detected on the petticoat, skirt and blouse of deceased. He also gave a report that human blood mixed with semen of the ABO antigens was also detected on the petticoat and skirt. The inquest panchnama showed that 1cm. skin of the private part of the dead body was torn. There was bleeding from the private part of Jyoti. The clothes of Jyoti were smeared because of the injury by her own blood oozing out from private parts at the time of commission of offence. The blood found on the Jangyas and Bermuda pant of accused Nos. 1, 2 and 3 respectively were smeared with human blood which was of 'O' group. This is a highly incriminating

circumstance, nay, a clinching circumstance against all the three accused, which, coupled with other above-mentioned chain of circumstances, unerringly points to the guilt of the accused, which is inconsistent with the hypothesis of their innocence and is consistent with the guilt of the accused.

10. There is another evidence, which again is a medical evidence pointing to the guilt of the accused. Accused were medically examined by Dr. Nitin Dhepe (P.W. 7). It was found that all of them were capable of having sexual intercourse. In addition, accused Nos. 2 and 3 sustained five abrasions. These abrasions were sustained by them within 12 to 24 hours before their examination on 23rd January, 1998. These injuries are not satisfactorily explained by the accused. Consequently, we have to hold that this is a very strong circumstance against accused Nos. 2 and 3, which leads to the inference that these injuries must have been sustained by them while committing rape on the deceased Jyoti and when the helpless victim was trying to resist the horrendous act of the appellants. One can irresistibly come to the conclusion, considering the evidence on record that gang rape was committed by the appellants on the deceased Jyoti by taking turns. We do not know who was the first to commit rape on Jyoti, who was the second and who was the third. But considering the injuries sustained by appellant Nos. 2 and 3, it can be safely inferred that in most probability, accused Nos. 2 and 3 were the first two to commit rape on Jyoti, because there was resistance from Jyoti with whatever strength she had to restrain them from doing what they intended to do or what they were doing, and when the turn of accused No. 1 came, in most probability, she was left with no strength at all to offer any resistance. The chain is thus complete and leads to the irresistible conclusion that the appellants and appellants alone are the perpetrators of this heinous crime.

11. A feeble attempt is made by Mr. Patil, learned Counsel for the appellants to submit that the First Information Report lodged by P.W. 1 Ajit is hit by section 162 of the Criminal Procedure Code, and the information given by one Kulkarni Guruji to Malgund Police Out Post or the telephonic message given to Police Sub-Inspector S.B. Gurav of Gramin Ratnagiri Police Station by two police constables who came on the spot, has to be regarded as First Information Report. We do not agree. A cryptic telephone message or any cryptic message which does not

indicate that some offence was committed, cannot be treated as First Information Report. A simple piece of information that a dead body was discovered in the pipe of a Mori on Bhandarpule Road, cannot be treated as a First Information Report. We therefore reject the submission of Mr. Patil, the learned Counsel appearing for the appellants, and hold that the statement of P.W. 1 Ajit was rightly treated as First Information Report.

12. This is a case where a young girl of 15 years of age was gang-raped and murdered mercilessly by the appellants. A flower before it fully bloomed, was cruelly crumpled and crushed. Considering the gravity of offence committed by the appellants, we are of the considered opinion that the trial Court was right in convicting the appellants/accused for the offence punishable under section 376(g) and 302 read with section 34 of the Indian Penal Code. The appeal is without any merit and deserves to be dismissed. Hence, the following order : Criminal Appeal No. 653 of 1999 is dismissed.

13. Criminal appeal dismissed.