

**Karan Singh Vs. the State**

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**Court :** Allahabad

**Decided On :** Apr-28-1964

**Reported in :** 1966CriLJ318

**Judge :** B. Dayal and ;S.D. Khare, JJ.

**Appellant :** Karan Singh

**Respondent :** The State

**Judgement :**

**B. Dayal, J.**

1. This is an appeal by Karan Singh. He has been sentenced to death under Section 302, I. P.C. He has also been convicted under Sub-section 366, 376 and 394, I. P.C. and on each of these counts has been sentenced to five years' R. I.

2. The case for the prosecution is that on the 4th of January, 1963 in the afternoon at about 4-30 or 5 P. M. the appellant enticed away Km. Indra a minor girl of five years of age, daughter of Dalua (P. W. 1) from the sugarcane crushing machine or kolhu in village Sabdalpur, police station Siana, in the district of Bulandshahr. Dalua, father of the girl Indra, had taken a contract of feeding fuel in the bhatti on which the sugarcane juice was being heated. He was doing this work with the help of his elder daughter Smt. Barfi (P. W. 6) aged about 18 years. On the date of the incident in the evening Dalua went home to do some work there and left Smt. Bar

in charge of the bhatti along with Reoti's son aged about 8 years and the girl Km. Indra aged about 5 years. When the children were playing there, the accused Karan Singh who used to come to that place off and on, induced Reoti and Km. Indra to accompany him to the village on the pretext that he would give them groundnuts. Both the children accompanied the accused. The accused Karan Singh went to the shop of Daulat (P. W. 7). There he purchased some groundnuts and gave them to the children. Thereafter, he asked Reoti to go away home and proceeded towards the north, out of the village with the girl Km. Indra. While the accused was going out of the village, he was seen by Nanak (P. W. 8) who was returning after easing himself.

Thereafter the girl Km. Indra was not seen and the son Reoti having reached home disclosed to his father Dalua that Km. Indra had been taken away by the man who was sitting near the kolhu. This was not liked by Dalua and both he and his wife went out in search of the girl. They did not find her in the village or nearabout. Dalua went to the kolhu and asked Smt. Barfi about it. Both Smt. Barfi (P. W. 6) and Akraj Singh (P. W. 14) who was working at the kolhu informed Dalua that accused Karan Singh had taken away both Reoti and Km. Indra. He thus went back and restarted the search.

Many people from the village also joined him in the search. They reached the house of Karan Singh in village Aurangabad (nearby) at about 9 in the evening. He was not found at home. They again went to his house at about 12 in the night but could not find him there. But the next morning Mahendra Singh (P. W. 16) saw that the dead body of Km. Indra was floating in the canal and was stuck at the culvert. He at once came back and informed Dalua about it. Dalua and a number of other persons went to the spot and brought the dead body of Km. Indra at the house of Nepal Singh Sarpanch (P. W. 15). When the body of the girl was seen, it was found that her private part was injured and there were injuries on her neck also. Her hansli, which she was wearing was also missing. The first information report was there fore dictated by Dalua and it was written down by Naipal Singh, Sarpanch, It was lodged at the police station at 1 p. m. on the 5th of January, 1963, the police station being 9 miles away from the place of occurrence. The investigation of the crime was conducted by Prem Singh Pundir (P. W. 19) who

was in charge of the outpost. Bugrasi under police station Siene at that time.

3. The accused Karan Singh surrendered himself on the 8th of January, 1963 and was sent to jail. On the 16th of January, 1963, the investigating officer made an application to the Magistrate that he be permitted to take out the accused for four days and keep him under police custody for purposes of investigation as there were chances of recovery of Hansli etc. at the instance of the accused. Necessary orders were passed. The accused remained in police custody from 18th to 21st of January, 1963. On the 20th of January, 1963, the accused is said to have taken the investigation officer along with witnesses to his house where he dug out the hansli from a corner of the house and gave a blood-stained dhoti which was kept on the roof of a grain kothi. Thereafter he was again sent to jail and after investigation and enquiry the case was committed to sessions. The learned Sessions Judge after hearing the evidence came to the conclusion that the recoveries were not of much value regarding the connection of the appellant with crime. He, however, accepted the oral evidence and came to the conclusion that it was proved beyond reasonable doubt that the accused had taken the girl Km. Indra from the kolhu to the shop of Daulat where he gave groundnuts both to Reoti and the girl Km. Indra. Thereafter, he sent Reoti back to his house and took away Km. Indra to the jungle. Next morning, the dead body of Km. Indra was found in the canal. From the medical evidence it was clear that the accused had committed rape on the girl and had killed her thereafter by throwing her in the canal. Upon these findings, the learned Sessions Judge convicted the appellant, as aforesaid.

4. Learned Counsel appearing for the appellant before us has contended that the oral evidence relied upon by the learned Sessions Judge was not at all reliable. There were contradictions and unnatural statements and therefore the conviction of the appellant could not be maintained. On the other hand, it has been contended by the learned Government Advocate that the oral evidence is quite reliable, He has also contended that the recoveries of the hansli and the blood-stained dhoti are also incriminating circumstances which cannot be lost sight of and must be relied upon.

5. Before dealing with the oral evidence, we may dispose of the two recoveries made during the period the accused was in the police custody. Apart from the contention made by the counsel for the appellant that the accused was beaten and was forced to make the recoveries, there is intrinsic weakness in the recovery evidence itself. So far as the hansli is concerned the learned Magistrate, who conducted the identification parade, made a note in the identification memo itself that there were four small rings attached to the hansli which distinguished it from other hansli which were mixed up with it. Thus the identification parade was itself insufficient to lead to the conclusion that the hansli said to have been recovered was one which had been removed from the body of the girl Km. India. If there was a distinctive mark in this hansli and the witnesses could identify it by that distinctive mark it could not lead to the conclusion that the witnesses identified the article because they had seen it earlier on the body of Km. Indra and not because they had been able to identify it by that special mark. With regard to the dhoti which is said to have blood-stains, there is no evidence to indicate that this dhoti belonged to the accused or that the accused was putting on that dhoti when he had taken away the girl Km. Indra. In the absence of that evidence any dhoti lying in the house of the accused with blood-stains particularly in the house where ladies also resided, is not of any use so far as this case is concerned.

(After discussing the oral evidence regarding taking away of the girl from the kolhu in Paras 6-10, the judgment proceeded.)

11. After a consideration of the statements of these witnesses, we are satisfied that the learned Sessions Judge was fully justified in coming to the conclusion that the accused Karan Singh enticed away Km. Indra from the kolhu, took her and Reoti to the shop of Daulat (P. W. 7) and after distributing groundnuts to both the children, he made Reoti run away and took away Km. Indra with him towards the jungle. She was last seen in the company of the accused at about dusk on the 4th of January 1963 by Nanak Singh (P. W. 8) and thereafter her dead body was seen by Mahendra Singh (P. W. 16) while he was going to peel sugarcane in the morning of the 5th of January, 1963 and was passing by the canal distributory. He observed the dead body of this girl floating in the water at the culvert. He immediately informed the father of the girl. This witness, however, in cross-

examination tried to help the accused and stated that the body had a hansli in its neck at the time when he saw it and that it was also putting on a knickers. This statement of the witness is obviously false. In any case, since no reliance is being placed on the recovery of the hansli as alleged by the prosecution, no importance need be attached to the recovery evidence. The fact that the body of the girl was discovered from the canal is proved by a large number of witnesses, P. W. 1 (Dalua) and others who brought out the body from that canal. The body was sent for post-mortem examination and was examined by Dr. A. N. Dwivedi, the Medical Officer Incharge Sadar Hospital, Buland-shahr on the 6th of January, 1963 at about 3 a.m.

According to the doctor, death of the girl was due to drowning in water. She also had a contusion 2 1/2 X 1' on the left side of the neck and another contusion 2 1/2' X 1 1/2' on the right side of the neck. These injuries, according to the doctor, indicated that either an attempt has been made to kill her by throttling or that these injuries had been caused in an attempt to take out the hansli from the neck of the girl. The doctor also found the private part of the girl seriously injured. Labia major were lace rated and stained with blood. Hymen was torn and lacerated. The posterior commissure and perineum were also lacerated. Vaginal and anal openings bore -contusions due to tear and urethra was also lacerated at its orifices. These injuries clearly indicated that the girl had been raped before she died. White foam was coming out of her nose and mouth Lungs were swollen, foaming water was coming out from them on being dissected. This led the doctor to come to the conclusion that the death was due to drowning in water. If the girl had already died before she was thrown in the water, water would not have penetrated into the lungs in this foaming condition. The doctor there are opined that the girl was breathing and had not died when she had been thrown into the water. This report of the doctor clearly indicates that the girl had been raped and thereafter killed. The fact that the girl was a minor child in the custody of the accused made him responsible to return her to fear parents and his failure to do so or to give any cogent explanation as to how he parted company is highly incriminating. Moreover his act of sending the boy alone and taking the girl into the jungle at that evening time clearly proves his guilty intention. He cannot escape responsibility for the crime.

12. The last contention of the Learned Counsel for the appellant was that after raping the girl, she must have become unconscious. The injuries in her neck indicate that the accused throttled her and the chances are that after throttling the girl, the accused thought that the girl was dead and considering her to be dead, he must have thrown her in the water with the object of only disposing of the body. He, therefore, contended that the appellant cannot be convicted under Section 302, I. P.C. So far as his attempt to kill her by throttling was concerned, he failed to kill her and throwing in water was only to conceal the crime.

13. This contention of the Learned Counsel mainly depends upon the fact that causing the injuries on the neck of the girl, the accused was satisfied that the girl was dead and thereafter changed his intention while he was throwing her into the water.

From the circumstances of the case, we are unable to come to that conclusion. It may be that while being raped the girl started crying and in order to choke her voice, her neck was pressed or it may be, as suggested by the doctor that in an attempt to take out her hansli, he caused injuries to her neck. From the mere fact that the neck of the girl was injured, we cannot come to the conclusion that the appellant decided that the girl was dead. The girl was in his hands and if she was breathing, it is not possible to believe that the appellant did not know that she was breathing. We, therefore, cannot agree with the Learned Counsel and find that the appellant threw the girl into the water knowing that she was still alive, and that the object in throwing the body into the water was to kill and also to dispose of her body. We see no reason to come to the conclusion that the girl was not thrown into the water with the object of killing her and therefore cannot agree with the Learned Counsel that the act of throwing in the water must be assumed as having been done with the only object of disposing of the body. We find that the learned Sessions Judge was right in convicting the appellant under Section 302 I. P. C For such an offence, the proper penalty to be awarded is the sentence of death.

14. Learned Counsel for the appellant relied upon the case of *Queen.Empress v. Khandu* 1891 4LR 15 Bom 194, *Emperor v. Dalu Sardar* AIR 1915 Cal 221 and in *re Palani Goundan*, AIR 1920 Mad 862. In all these cases the learned Judges

came to the conclusion that the accused was not guilty of murder as they found as a fact that the last act which resulted in death had not been done with the object of killing the victim but the accused had done it simply with the object of concealing his crime and creating evidence of suicide etc, These cases are therefore based upon a finding of fact that the accused had changed his intention at the time when he thought he had already caused the death. They, are therefore, distinguishable and are of no help to the appellant.

15. In the result the appeal is dismissed. The conviction of the appellant under Sub-section 366, 376 and 394, I. P.C. and the sentence of five years under each count and under Section 302, I. P.C. and the sentence of death are hereby confirmed. The death sentence will be carried out according to law, The reference made by the learned Sessions Judge for confirmation of the sentence of death imposed upon the appellant is accepted.

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