

Shyamlal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-08-2001

Reported in : 2002CriLJ344

Judge : Deepak Verma and ;N.K. Jain, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 161, 162, 174, 366 and 374;
[Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 376

Appeal No. : Death Ref. No. 1 and Cri. A. No. 1310 of 2000

Appellant : Shyamlal

Respondent : State of M.P.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Jaisman, Adv. (Amicus Curiae)

Disposition : Appeal allowed

Judgement :

N.K. Jain, J.

1. Both these matters, the Death Reference made under Section 366 of the Code of Criminal Procedure and the Appeal preferred under Section 374 of the Code by accused Shyamlal, arise out of the judgment dated 29-11-2000, rendered by Shri

J. S. Verma, Additional Sessions Judge, Bhanpura, in Sessions Trial No. 73/2000, convicting accused Shyamlal under Sections 302, 376 and 201 of the Indian Penal Code. He is sentenced to Death for the offence under Section 302 of IPC, No separate sentences have been passed for the offences under Sections 376 and 201 of IPC.

2. It was indeed a gruesome crime which took place on 2nd February, 2000, when 8 years old female child namely; Kaushalya was raped and then throttled to death. Deceased Kaushalya lived with her maternal uncle Ramlal (PW 5) at village Dhuankhe Ji. Accused Shyamlal resided in the neighbour -hood of Ramlal. Kaushalya left home around 11-00 a.m. but did not return. Her maternal-uncles made search for her in and around the village and when her whereabouts could not be traced, a report vide Ex. P/3 was lodged by Prakash (PW 2), the son of Ramlal at Police-outpost Bhensoda in the following morning at 5-10 a.m. on 3-2-2000. The report was entered in the Register of 'Gumshudgi' at SI. No. 3/2000. Later in the day, around 9-30 a.m., dead body of the girl Kaushalya was found lying in a field on the back side of house of one Hardeo Rathore. There were injuries on her private part. Immediately the matter was reported by Kalunath (PW. 1), another uncle of the deceased at out-post Bhensoda, on the basis of which, FIR vide Ex. P/1 registering a crime Under Sections 302 and 376 of IPC, was recorded. Later on this report was sent to P.S. Bhanpura, where formal FIR (Ex. P/2) was registered and the investigation followed.

3. The police visited the spot and conducted inquest Under Section 174 of Cr. P.C. (vide Panchayatnama Ex. P/5). It was noticed that the body of the deceased was covered by a male trousers. Karulal (PW. 24), a tailor working in the village identified the said trousers as the one stitched by him for accused Shyamlal. On the same day search was conducted at the house of the accused and Anr. similar trousers was seized from inside his house vide Seizure Memo Ex. P/ 16. The accused was arrested later in the day and in the wake of disclosure made by him in police custody, a blood stained Salvar and small quantity of 'Bhusa' (straw), a lock and key were recovered from the back side of the house of the accused.

4. Autopsy of the body of the deceased was performed at District Hospital, Mandsaur, the same day at 4-30 p.m. The post-mortem report (Ex. P/18) confirmed commission of rape on the deceased girl and homicidal nature of her death. It was reported that she was throttled to death. Her clothes Frock and Chaddi were removed from her body, sealed and sent to police for analysis. The accused was also got examined medically the same evening at 9-30 p.m. and his pubic hair and wearing apparels 'Kurta and Paijama' were also taken, sealed and sent to police for analysis.

5. All the aforesaid seized articles were sent to F.S.L., Sagar, for chemical analysis. The examination report (Ex. P/23) confirmed presence of blood and human spermatozoa on the clothes of the deceased and the trousers found on her body, Presence of blood was also confirmed on the shirt seized from the accused. The two trousers i.e., the one found on the body of the deceased and the other recovered from the house of the accused were also got examined at F.S.L., Sagar, and it was reported that their cloth and style of stitching were similar, vide Report Ex. P/22.

6. On the basis of the aforesaid investigation, the accused was charge sheeted and put to trial.

7. At the trial the accused appellant pleaded not guilty and denied all the circumstances appearing against him in the prosecution evidence. He further stated to have been implicated falsely on account of party politics prevailing in the village. However, after trial he was held guilty, convicted and sentenced as aforesaid, thus giving rise to these Reference and Appeal.

8. We have heard Shri Jaisingh, a senior criminal lawyer of this Court who was appointed amicus curiae, as the appellant was unable to engage any counsel and Shri G. Desai, Dy. AG for respondent State.

9. Shri Jaisingh dealt with the prosecution evidence almost thread-bare in his endeavour to show that the learned trial Judge was altogether wrong in convicting the appellant. He submitted that virtually it was a case of no legal evidence and the appellant accused deserved clean acquittal.

As against it, Shri G. Desai, Dy. AG defendant the impugned conviction and contended that there is sufficient circumstantial evidence to hold the appellant guilty for the said crime.

10. There is no dispute that Kaushalya was raped and then murdered. The inquest panchnama (Ex. P/5) shows that her vagina was swollen and there were marks of injuries on her both cheeks and the neck. Medical evidence of Dr. Patidar (PW. 25) and the post mortem report (Ex. P/15) leaves no manner of doubt that the girl was subjected to sexual assault before being murdered.

11. The only question thus requiring determination is whether the appellant can be held guilty for either or both these offences Under Sections 376 and 302 of IPC). There is no direct evidence of an eye-witness in the case and the entire prosecution case rests on circumstantial evidence consisting of following circumstances :

- (a) That the deceased was last seen with the appellant who had taken her to his own house/'Bada' to help in collecting cow-dung cakes called 'Kandas';
- (b) That on enquiry the accused gave false explanation that the deceased had gone to School;
- (c) That the trousers belonging to the appellant was found on the body of the deceased;
- (d) That the blood stained salwar of the deceased was recovered from the field of the appellant in the wake of disclosure made by him in police custody; and,
- (e) That presence of blood and human spermatozoa was confirmed on the clothes and pubic hair of the appellant.

12. As noted in the beginning, the crime was gruesome and revolting one and, therefore, as cautioned by the Apex Court in Kashmira Singh AIR 1952 SC 159 : 1952 Cri LJ 839 it will be necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law'.

13. We have to see whether the aforesaid circumstances were fully established and constituted a complete chain so as to unerringly point towards the guilt of the appellant and ruling out every possibility of his innocence.

14. Taking the first circumstance first, regarding last seen, PWs. (1) Kalunath. (2) Prakash, (3) Sureshibai and (5) Ramlal, all family members of maternal-uncle of the deceased and with whom the latter resided at the relevant time, have deposed that earlier in the morning on that fateful day, the accused had taken the deceased for collection and stacking of 'Kandas'. Another witness Sajanbai (PW. 20) belonging to the same village, has deposed that on that morning she had seen the deceased carrying some 'Kandas' and following the appellant towards his 'Bada'. The witnesses further deposed that when the deceased did not return home till late in the evening, they searched for her and also enquired about her from the appellant. The appellant, the witnesses said, told them that she (deceased) had gone to school.

15. A Gumshudgi Report (Ex. P/3) was lodged by Prakash (PW 2) and recorded by Head-Constable Arjun Singh (PW 12) at Police-out-post Bhensoda, on 3-2-2000 at 5-10 a.m. Prakash is the cousin of the deceased and son of Ramlal (PW 5) with whom the deceased resided at the relevant time. Prakash, as deposed by him, also knew that the deceased was taken by the accused earlier in the morning to his house. However, this fact was not disclosed by Prakash in this Gumshudgi Report (Ex. P/3). Non-mention of this fact in Ex. P/3 virtually destroys the prosecution story of last seen because had it been a fact, the same should have been mentioned in this report Ex. P/3 lodged not by any stranger but by a close relation who as per his own statement knew about the deceased having gone with the appellant. It is further significant to note that majority of the aforesaid witnesses were examined by the police Under Section 161 of Cr. P.C. on 13-3-2000 i.e. after about 40 days of the occurrence. It is also noteworthy that even in the belated statements what was stated is only this that the deceased was seen going behind the accused with some 'Kandas'. There was no reference of the accused having taken the deceased from her uncle's house. The prosecution story regarding last seen thus appeared to be afterthought. There was also no question of the accused giving any explanation right or wrong about the whereabouts of the

deceased and this circumstance cannot be, therefore, taken into consideration to connect the accused appellant with the crime in question.

16. This brings us to the next circumstance relating to the presence of trousers on the body of the deceased and which according to the prosecution, belonged to the appellant. In this connection village Tailor Karulal (PW. 24) has been examined to depose that on arrival of the police, he was called on the spot and after seeing the said trousers with which the body of the deceased was covered, he told the police that this trousers was stitched by him for the appellant. He further deposed that another newly stitched trousers was brought by the police from the house of the accused and that on seeing the same he again told the police that this was also stitched by him for the accused. Both these trousers (Articles 'W and 'X') were also sent to F.S.L., Sagar and it was reported (vide Report Ex. P. 22) that their style of cutting and stitching so also the cloth and the thread used in stitching, were same.

17. At the outset it may be observed that what this witness Karulal told to police during investigation about these two trousers was not admissible in evidence and hit by Section 162 of Cr. P.C. True, his statement in the Court as to the identity of these trousers constituted substantive evidence and deserved consideration. However, a close scrutiny of his evidence particularly in the light of the details given in the FSL Report (Ex. P/22) showed that his statement was a mere conjecture or surmise. May be that both these trousers are stitched by him, but it was highly improbable rather impossible for him to say that the same were stitched by him for the accused. The details of comparison given in the report Ex. P/22, did show that both these trousers were stitched by one person but the difference in size and style clearly goes to show that they belonged to different persons. There were many dissimilarities in the matter of measurements of these two trousers and the glaring of them was the difference in length which was 5.6 CMs. The trousers found on the body of the deceased was 5.6 CMs longer than the one recovered from the house of the accused. Similar dissimilarities were also noticed in the sizes of various parts of these apparels. While the trousers recovered from the house of the accused naturally belonged to him, the one found on the body of the deceased, having regard to its size did not appears to be that of the accused.

18. Even otherwise, it was highly unnatural for the accused to have left his own trousers on the spot so as to create evidence against himself. It is interesting to note that the accused is further attributed to have thrown trousers (Salvar) of the deceased in a nearby 'Bada', while leaving his own trousers on her body, The entire prosecution story in this regard appeared highly unnatural and not consistent with the normal human conduct.

19. Recovery of 'Salvar' also leads to no conclusion inasmuch as the same was recovered from an open 'Bada' and on the basis of said recovery it cannot be said with certainty that it was the accused and he alone who knew about it. Again it appeared to be highly unnatural that the accused would leave his own trousers on the body of the deceased and take away her 'Salvar' and keep it in his own 'Bada'.

20. We may now advert to the stains of human blood on the shirt of the accused appellant and stain of semen on his pubic hair. So far as the blood stains on the shirt are concerned, it may be stated that origin of the said blood and its group could not be ascertained. Mere presence of blood leads us nowhere as the evidence of blood group alone is conclusive to connect blood stains with the accused. As held Kansa Behera AIR 1987 SC 1507 : 1987 Cri LJ 1857 no reliance can be placed on such circumstance. As regards the stains of semen on the pubic hair, we find that appellant Shyamlal is a young man of 18 years age. The semen stains on the private parts of a young man can exist because of variety of reasons and would not necessarily connect him with the offence of rape (see Rahim Beg AIR 1973 SC 343 : 1972 Cri LJ 1260).

21. The prosecution case we find is afflicted with an ex-facie infirmity which the Court below seems to have ignored or attached no due importance thereto. Dr. Patidar (PW. 25) besides performing autopsy of the body of the deceased had also examined appellant accused Shyamlal. He has clearly opined that accused appellant is a fully developed man capable of committing sexual intercourse. However, he did not find any mark of injury on his private part. Rape in question was committed on a girl aged 8 years who was virgin and whose hymen was intact. Normally, when such a girl is subjected to rape by a fully developed man, there are likely to be injuries on the male organ of the man. No such injury was,

however, detected by the Doctor on the male organ of the appellant. 'Absence of such injuries.' observed the Supreme Court in *Rahim Beg (supra)*, 'on the male organ of the accused would thus point to his innocence'.

22. According to the prosecution the crime in question was committed inside the house of the accused on the bed of Soyabean straw. Some such straw was also seized by the police from inside the house and got chemically analysed. However, the FSL report (Ex. P/23) revealed that no stains of blood or semen was found on that straw. No such stains were either found on any part of the house of the accused. This again points towards his innocence.

23. In cases depending largely on circumstantial evidence, there is always a danger that conjecture and suspicion may take place of legal proof and such suspicion howsoever strong cannot be allowed to take place of proof. (See *Jaharlal AIR 1991 SC 1388 : 1991 Cri LJ 1809*. In the instant case also the prosecution as also the the Court below seem to have mistaken the conjecture and suspicion as legal proof.

24. From the foregoing discussion it, therefore, inevitably follows that the guilt of the appellant was not established beyond a reasonable doubt. There are a number of circumstances which create considerable doubt regarding complicity of the accused. In any case he is entitled to the benefit of doubt. Accordingly, we allow the appeal, set-aside the impugned conviction and sentence and acquit the appellant of all the charges. He is in custody and he be set at liberty forthwith, if not required in any other case.

25. Before parting, we record our deep appreciation for the superb advocacy exhibited and the valuable assistance rendered by Shri G. Desai, Deputy Advocate General and Shri Jaisingh, Advocate who at our request represented the appellant in this appeal.