

**Mohd. Chaman Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-24-1998

**Reported in :** 1998CriLJ3739

**Judge :** Y.K. Sabharwal and; A.K. Srivastava, JJ.

**Acts :** [Indian Penal Code, 1860](#) - Sections 302 and 376

**Appeal No. :** Mur. Ref. No. 5/97 and Cri. A. No. 305/97

**Appellant :** Mohd. Chaman

**Respondent :** The State

**Advocate for Def. :** Mr. S.S. Gandhi, Adv.

**Advocate for Pet/Ap. :** Ms. Kamna Vohra, amices Curia

**Judgement :**

**A.K. Srivastava, J.**

1. In Sessions case No. 134/96, State v. Mohd. Chaman, the Additional Session Judge, Shahdara, Delhi Shri S.L. Bhayana, has convicted Mohd. Chaman (hereinafter called 'the accused'), under sections 376 and 302 of the Indian Penal Code. The sentence awarded are death penalty and fine of rupees five hundred under Section 302 and life imprisonment and fine of rupees one hundred under

Section 376.

2. Since death penalty was awarded, a reference has been made by the concerned Sessions Judge for confirmation thereof. It has been registered as Murder Ref. No. 5/97. On the other hand, the accused has filed Criminal Appeal No. 305/97 against the aforesaid conviction and sentence. The murder reference and the criminal appeal are being decided by this common judgment and order.

3. The charge against the accused was that on 10.4.1995 around 7.45 P.M. at House No. 5416/6 Gali No. 4, Shakti Gali, Amar Mohalla, Raghupura, Gandhi Nagar within the jurisdiction of police station Gandhi Nagar, he committed rape on the person of Kumari Ritu, aged one and half years and also committed her murder.

4. The accused pleaded not guilty to the charges leveled against him and his defense was that he had been falsely implicated. He did not give any evidence in defense.

5. According to the prosecution version Bindu Shah, P.W. 4 along with his wife Smt. Lalita, P.W. 2 and two daughters Soni and Ritu used to reside in house No. 5416/6, Gali No. 4, Shakti Gali, Amar Mohalla, Raghupura, Gandhi Nagar. Bindu Shah was running his tailoring factory near his house. Kumari Ritu was younger and her age at the time of her death was one and half years. The accused was also residing in the same house in a different room but adjacent to the room of Bindu Shah. On the date of occurrence at about 7.30 p.m. Smt. Lalita (mother of the deceased) left her house for making some purchases after leaving her daughters Soni and Ritu with her neighbour as her husband was in his factory. When Smt. Lalita returned to her house from the market she did not find Ritu there and accordingly she started making a search for her and sent her elder daughter Soni to fetch Vidya Nand Sagar (brother of Smt. Lalita), P.W. 7 who on such call along with one Shankar, P.W. 15 came there. Thereafter Smt. Lalita and Vidya Nand Sagar made search of Ritu but could not find her whereabouts for about twenty minutes. However, Smt. Lalita found the room of the accused half opened and on peeping therein she saw Ritu lying on the floor and the accused present in the room. On seeing Smt. Lalita, the accused picked up Ritu from the floor as she

was unconscious and handed over her to Smt. Lalita. At that time Ritu was without a Kachha and was only wearing a frock. Smt. Lalita observed several bleeding teeth bite marks on the cheek and other parts of the body of Ritu. When she made queries about the condition of Ritu, the accused told her to go away silently otherwise she would also meet the same fate as the Police could do nothing against him. Thereupon she took Ritu to the factory of her husband, who in turn took Ritu to a neighboring Doctor. The Doctor advised Bindu Shah to take Ritu to some hospital and thus Ritu was taken to Surya Hospital where she was declared brought dead by the attending Doctor and thereafter Bindu Shah and Smt. Lalita along with dead body of Ritu came back to the place of occurrence.

6. It is the case of the prosecution that the accused was kept in custody by the crowd collected at the place of occurrence till the police arrived and was handed over to it.

7. According to the Police records two informations were recorded by the PCR at the police station on the basis of messages received. One was recorded at 9.22 P.M. wherein it was reported that one drunkard had beaten a girl in house No. 5411 Raghupura No. 2 near Gurdwara, Nanak Basti Chowk and the said drunkard was present at the spot. The other information was recorded at 9.25 P.M., according to which some unknown person informed through telephone that a man had murdered a three years old girl after committing rape on her at Nanak Basti, Old Seelampur, Gali No. 4, Raghupura No. 2. On receipt of such information the case was entrusted to SI Magan Singh, who was present at the police station. He left for the spot along with one Constable. The concerned SHO was also intimated about the incident.

8. SI Magan Singh, P.W. 16 reached the place of occurrence where he found the accused in custody of the public outside the house in the Gali. According to him, public persons were shouting that the accused had raped Ritu inside his room and had killed her and that the public was very much enraged and had beaten the accused. SI Magan Singh controlled the public and took the accused in his custody. He also found the dead body of Ritu there. In the meanwhile, SHO N.S. Khan, P.W. 20 arrived at the scene of occurrence after having received the secret

information. He found a large crowd at the place of occurrence shouting that the accused had raped and killed Ritu. For security reasons the accused was sent to the police station with the police escort for safe custody.

9. SHO, Inspector N.S. Khan then started the investigation. He took in custody the dead body which was found to have human teeth bite mark on the breast, neck, abdomen and thighs. He observed that the private parts of the dead body were swollen. He requisitioned the photographer of crime team and dog squad. He took in possession the blood stained frock which the deceased was wearing at the time of occurrence, the bed sheet and one cloth piece of red colour lying in the room of the accused on which semen was suspected. He sealed all these three articles and thereafter prepared the site plan (Ex.P.W. 16/C) and inquest report (Ex.P.W. 16/D). He recorded statement of Smt. Lalita Devi, mother of the deceased. That statement is rukka of this case. It is Ex. P.W. 2/A). It contains the prosecution story. He sent the rukka to the police station for registration of the case. He then prepared brief facts Ex. P.W. 16/H) and the written request (Ex. P.W. 16/E) to the Doctor for post-mortem examination. The dead body was sent for post mortem examination.

10. The Post mortem report Ex.P.W. 3/A, prepared by Doctor K. Goel, P.W. 3 is reproduced as below :-

'External :

1. Teeth bite marks in the form of two linear, semi linear marks with intermittently placed abrasions. These marks are 3.5 c.m. long, placed 2.5 c.m. apart with their concavity facing each other over Rt cheek near Rt angle of mouth.

2. Abrasion 1.7 x 0.6 c.m.s. over chin.

3. One oval bruise having width of about 6 mm with central pale area with dimensions 4.5 x 4 c.m. & an another same bruise of same width overlapping lower point of previous one having dimensions about 5 x 4 c.m. Both are present over Rt side of abdomen at upper part.

4. Oval bruise about 6.5 m.m. diameter c central pale area c dimensions 5.5 c.m. x 4.5 c.m. c two small abrasion marks at periphery each about 3 m.m. size at 4 & 5 O'Clock Position.

5. Small abrasions with bruising in the vaginal well at 4.5 and 6 O'clock position. Hymen is partially turned admitting two finger tips. Small tear present over posterior fornix. Small blood cloth, present over injured parts in the vagina.

Internal :

Head. Scalp tissues, bones intact, meninges and brain matter-intact and NAD and pale.

Neck - All structures are intact. No extra vacation of blood.

Chest - Rib cage-intact. Heart and Lungs-intact and NAD.

Abdomen - Rt lobe of liver is badly lacerated with vertical deep laceration. Large amount of blood and clots present in peritoneal cavity and around liver.

Spleen and kidneys-intact and pale.

Stomach contains small amount of semi-digested food having no abnormal smell and NAD.

Bowles - intact. Bladder and Rectum empty.

Pelvis-intact. Uterus-empty and NAD.

Blood sample, vaginal swab, rectal swab, swab from surrounding area of genitalia and swab from injury sides are preserved sealed and handed over to the police.

OPINION :

All injuries were antemortem in nature. Injury No. 1 is love bite marks. Injury No. 3 and 4 (pattern bruises) are probably as a result of impact of some object of the shapes described in the injuries. Injuries to genitalia are caused during sexual assault. Injury to the liver is caused by application of blunt force and is sufficient to

course death in ordinary cause of nature.

Cause of death is haemorrhagic shock consequent to liver injury.

Time since death is about 19 hours.

11. Out of the twenty witnesses examined by the prosecution, the material witnesses are P.W. 2, Smt. Lalita, mother of the deceased. P.W. 4 Bindu Shah, father of the deceased. P.W.7 vidya Nand Sagar, brother of Smt. Lalita, P.W. 10 Mahesh and P.W. 15 shankar Tewari. The material police personnel witnesses who connect the chain are P.W. 16 SI Magan Singh and P.W. 20 N.S. Khan. The material witnesses for medical evidence are P.W. 3 Dr. K.Goel, who performed the post-mortem examination and P.W. 19 Dr. A.K. Saxena, who proved the Surya Hospital report about baby Ritu having been brought dead by her father at 8.15 P.M. on 10.4.1995.

12. It is a case of circumstantial evidence as no one saw the accused raping or killing Ritu. The circumstances and the chain of evidence given by the prosecution to establish the charges leveled against the deceased as per the statements on oath of P.W.2, P.W. 3, P.W. 4, P.W. 7, P.W. 10, P.W. 15, P.W. 19 and P.W. 20 are as follows :

1. On 10.4.1995 at 7.30 P.M. Smt. Lalita, P.W. 2 left her two daughters, namely, Soni and Ritu in the care of a neighbor and went for marketing.
2. P.W. 10 and P.W. 15 saw the accused taking Ritu to his room.
3. When at 7.45 P.M. on that very date Smt. Lalita returned, she found her daughter Ritu missing.
4. Smt. Lalita sent her elder daughter Soni to fetch her brother Vidya Nand Sagar, P.W. 7.
5. A search of Ritu was made by Smt. Lalita and Vidya Nand Sagar in the vicinity.
6. Smt. Lalita peeped in the room of the accused and found Ritu lying on the floor and the accused present there.

7. On query made by Smt. Lalita, the accused handed over the body of Ritu to her and when she made inquiry about the conditions of the girl, the accused told her to go away otherwise she would also meet the same fate and that police could not do anything against him.

8. Smt.Lalita took Ritu to her husband Bindu Shah, who was working in his tailoring factory.

9. Vidya Nand Sagar, P.W. 7 remained standing near the door of the room of the accused, who remained in his room.

10. Several persons from the public collected at the place of occurrence and held the accused.

11. Bindu Shah, took Ritu to a neighbouring Doctor, who told him to take her to a hospital.

12. Bindu Shah took Ritu to Surya Hospital where she was declared brought dead at 8.15 P.M.

13. Bindu Shah along with his wife returned to the place of occurrence with the dead body of Ritu.

14. P.W. 16 SI Magan Singh arrived at the place of occurrence and found the accused in the custody of the public outside the room in the Gali and that the public persons were shouting that the accused had raped Ritu inside his own room and had killed her. He controlled the scene and took the accused in his custody.

15. P.W. 20, N.S. Khan, SHO of the concerned police station and the IO of this case, on receiving information about this case, reached the place of occurrence at 9.35 P.M. on that very day and found a large crowd having gathered there and shouting that the accused present there had committed rape and murder of Ritu. He took the accused in custody and sent him to the police station with police escort for safety.

16. P.W. 13, Dr. K. Goel, who performed the post-mortem examination opined that the incident took place on 10.4.1995 around 7.45 P.M.

13. The learned Additional Sessions Judge has detailed and discussed at length the evidence of all the witnesses, who were examined by the prosecution to prove the circumstances against the accused and on the basis of the evidence on record held that though there was no eye witness of rape and murder but the chain of circumstances given by the prosecution led to the irresistible conclusion that the deceased had committed the rape and murder.

14. Ms. Kamna Vohar, Advocate, who was appointed amicus curiae by this Court argued at length to defend the accused. In nutshell, the arguments advanced by her can be summarised as follows :

1. The impugned judgment is bad in law and on facts being based on conjectures and surmises and overwhelming contradictions.

2. There have been undue delay in recording of FIR and sending of the special report.

3. Conduct of P.W. 2 Lalita and P.W. 7 Vidya Nand Sagar, the mother and material uncle of the deceased respectively was unnatural.

4. The prosecution did not examine any neighbour of the accused and the complainant to testify that the accused had been taken in custody by the crowd collected soon after Ritu was allegedly collected by her mother from the room of the accused.

5. P.W. 2 Smt. Lalita did not give the name of the neighbour under whose care Ritu was entrusted by her while going to market to made purchases soon before the occurrence of this case.

6. CFSL report does not say that any semen was found on the clothes of the accused and the bed sheet and piece of cloth taken from the room of the accused. The argument advanced was that in the absence of semen being found, it cannot be said that rape was committed.

7. P.Ws. 10 and 15 are concocted witnesses for the prosecution to falsely say that they saw the accused taking Ritu in her lap to his room prior to the alleged rape

and murder.

8. Though the accused is said to have been beaten by the crowd but the medical evidence does not suggest any injury on his person. The argument was that the accused was neither taken in custody by the crowd nor was beaten and that the accused had been apprehended purely on suspicion.

15. On the other hand learned counsel for the State urged before us that the evidence of the prosecution fully established the guilt of the accused and that the accused deserved death sentence as the case is one of the 'rarest of rare' cases where sentence of death is eminently desirable.

16. Admittedly, the case against the accused is based on circumstantial evidence. The standard of proof required to connect a person on circumstantial evidence has been laid down by the Supreme Court in its various decisions, some of which are reported in : 1984 CriLJ1738 Shared Budhi Chand Sharda Vs . State of Maharashtra , : [1994]1SCR37 State of Maharashtra and Dhanajoy Chatterjee v. State of West Bengal and (1994) 2 SCC 381 Laxman Naik v. State of Orissa. According to that standard the circumstances given by the prosecution to establish the charge must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. Further, the circumstances from which the conclusion of the guilt is to be drawn has not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused.

17. We have carefully scrutinized the evidence of the prosecution. We are of the view that it fully satisfies the aforesaid standard of proof. All the circumstances given and proved by the prosecution, on being cumulatively taken together, lead to the only irresistible conclusion that the accused alone was the perpetrator of the crime. The chain of evidence furnished by the circumstances given by the prosecution is complete and does not leave any ground to believe that the accused is innocent. No part of chain is missing.

18. We find that the following facts have not been challenged and are fully established. :-

1. deceased Ritu was daughter of Smt. Lalita and Bindu Shah ;
2. Bindu Shah and the accused were living in the same house in different rooms adjacent to each other;
3. the accused at the time of occurrence was residing in his room all alone;
4. deceased Ritu received the following ante-mortem injuries.

(1) Teeth bite marks in the form of two linear, semi linear marks with intermittently placed abrasions. These marks are 3.5. c.m. long placed 2.5 c.m. apart with their can cavity facing each other over right cheek near right angel of mouth.

(2) Abrasion 1.7 x 0.6 c.m.s. over chin.

(3) one oval bruise having width of about 6 mm with central pale area with dimensions 4.5 x 4 c.m. and an another same bruise of same width overlapping lower point of previous one having dimensions about 5 x 4 c.m. Both are present over right side of abdomen at upper part.

(4) oval bruise about 6.5 mm diameter central pale are dimensions 5.5 c.m. x 4.5 c.m. with two small abrasion marks at periphery each about 3. m.m. size at 4 & 5 O'clock Position.

(5) Small abrasions with bruising in the vaginal wall at 4.5 and 6 O'clock positions. Hymen is partially torned admitting two finger tips. Small tear present over posterior fornix. Small blood clots present over injured parts in the vagina;

(6) right lobe of liver badly lacerated with vertical deep laceration. Large amount of blood and clots present in peritoneal cavity and around liver.

5. the injury caused to liver was by application of blunt force and was sufficient to cause death in ordinary course of nature;

6. the cause of death was haemorrhage shock consequent to liver injury ;

7. the time of death was around 7.45 P.M. on 10.4.1995.

19. Regarding the alleged place of occurrence i.e. the room of the accused, there is corroboration from the CFSL reports Ex. PA and Ex. PB. Blood group of the deceased was group B. The blood stains on the frock of the deceased were of group B and the blood stains on the chadar seized from the place of occurrence were found to be of group B. There is nothing on record to disbelieve the statement of Investigating Officer, P.W. 20 N.S. Khan that he seized that chadar from the room of the accused.

20. To us the statement of P.W. 2 Lalita appears to be true, natural and believable. There is nothing in her cross-examination to discredit her testimony. There does not appear any ground to believe that she falsely implicated the accused or she took his name merely on suspicion. We believe that she stated what she saw and heard. Her statement about the time of the occurrence is fully corroborated by the post-mortem report. She has given the complete chain of evidence to prove guilt of the accused. Similarly the statements of P.W. 4 Bindu Shah (father of the deceased) and P.W. 7 Vidya Nand Sagar (maternal uncle of the deceased) and P.W. 10 Mahesh Chand are worthy of credence. There are no material contradictions in their statements. They are the witnesses to complete the chain of evidence against the accused. Recovery of the deceased Ritu by her mother Smt. Lalita, P.W. 2 from the room of the accused is proved beyond doubt. It is also proved that the accused was in his room when Ritu was recovered from there.

21. There is no ground to disbelieve the statements of SI Magan Singh, P.W. 16 and Investigating Officer N.S. Khan, P.W. 20 that when they reached the place of occurrence they found that the men collected there had held the accused and were shouting that the accused had raped and murdered Ritu. They are police personnel and there is nothing on record to suggest that they had any motive to falsely implicate the accused.

22. We are also of the view that there has been no delay either in lodging the FIR or in sending the special report. The evidence led by the prosecution proves beyond doubt that the incident took place around 7.45 P.M.; that it was detected soon thereafter; that the deceased was taken to a neighbouring doctor and then to

Surya Hospital where she was declared brought dead at 8.15 P.M.; that by P.C.R. two reports of the incident were given to the concerned police station at 9.22 P.M. and 9.25 P.M.; that SI Magan Singh, P.W. 16 reached the place of occurrence soon thereafter and SHO N.S. Khan, P.W. 20 reached that place at about 9.35 P.M.; that preliminary investigation of the case was conducted such as taking in custody of the deceased, seizing of articles, sending the accused to police station etc. and thereafter the statement of Lalita, P.W. 2 was recorded on the spot at 11 P.M. and Rukka of the case was sent to the Police Station for registration of case and the FIR was registered at 12.05 in the night of 10/11.4.95. It is also proved on record that the Special Report was sent on 11.4.195 at 1 A.M. and the messenger reported back at 3.35 A.M. about the delivery thereof. Ex.P.W.1/D is the true copy of the relevant DD showing that the messenger had so reported back. No doubt the Area Magistrate made endorsement on the Special Report on 11.4.95 at 11 A.M. but there is no suggestion from the side of the accused in the cross-examination of prosecution witnesses that the Special Report was not delivered prior to 3.35 A.M. on 11.4.95. In fact P.W. 1 who proved Ex. P.W.1/D was not cross-examined. therefore, possibility cannot be ruled out that the staff of the Area Magistrate placed the special report before him at 11 A.M. only and hence the endorsement was made by him at that time.

23. Learned amices curiae, Ms. Kamna Vohra, strongly urged before us that the accused could not be held guilty for rape as no semen was found either on the clothes of the deceased or on the chadar and piece of cloth recovered from the room of the accused. We, in the face of the already discussed other overwhelming evidence on record, do not agree with the contention. For the offence of rape complete sexual intercourse is not necessary. Mere penetration is sufficient. However, here the vagina of the deceased received injuries and the hymen was partially torn and blood clots were found present over injured parts in the vagina. Teeth bite marks were also found on the mouth of deceased. The opinion of Dr. K.Goel, P.W. 3, who performed post-mortem examination, is that injuries to genitalia were caused during sexual assault and that injury to liver was caused by application of blunt force. Thus it is proved beyond doubt that rape was committed and in order to commit rape blunt force was applied causing injury to liver which became fatal.

24. Though we find that none of the public persons who collected at the place of occurrence soon after the occurrence was examined by the prosecution but in our view this circumstance would not demolish the prosecution case and the statements on oath of P.W. 2, Smt. Lalita, P.W. 7, Vidya Nand Sagar, P.W. 16. Sub-Inspector Magan Singh and P.W. 20, N.S. Khan, SHO. Their statements have completed the chain of evidence against the accused. We have already held that their testimony is true and is to be believed.

25. Regarding the contention of Ms. Kamna Vohra that the accused did not receive any injury though in the evidence it has come that the persons collected at the place of incident had beaten him, learned counsel for State Shri S.S. Gandhi contended that it was not necessary that the accused must have received injuries in such beating. His contention was that the persons collected might have only slapped the accused and it was not impossible that slaps did not cause such injuries which could be reported in the MLC. We are inclined to accept this Explanation.

26. Smt. Lalita, P.W. 2, in her statement before the trial court could not name the neighbour in whose care she had left her daughters when she went for making purchases, as in her cross-examination she stated that she did not remember his name. Ms. Kamna Vohra vehemently argued that such a lacuna in the statement of Smt. Lalita P.W. 2, adversely affected the prosecution story. The Explanation offered by the State counsel to meet the argument was that it was not unlikely that by passage of time the witness forgot the person in whose care she had so left her children and that merely because the witness could not remember the name of that person would not be fatal to the prosecution case. He contended that in the facts and circumstances of the case it was not very material to know the name of the person under whose care the two daughters were, for a very short time, left. According to him what was material in the case was the chain of circumstances from the state of Ritu being taken by the accused to his room till her body was recovered from there. We agree with the contention of the learned counsel for the State.

27. In view of the above discussion, we are of the view that the learned trial court has rightly convicted the accused for having raped and murdered Kumari Ritu. Thus the contention of Ms. Kamna Vohra that the impugned judgment is bad in law and on facts being based on conjectures and surmises is not accepted. The judgment does not suffer from any infirmity. We agree with the reasoning and the findings given by the trial Court.

28. Now comes the point of sentence. Should death penalty be confirmed

29. The learned trial court, in view of the guide-lines laid down by Supreme Court in the case of Bachan Singh Vs . State of Punjab : 1980 CriLJ636 came to a conclusion that this case fell in the category of rarest cases and extreme culpability being a rarest of the rare cases where the sentence of death should be awarded. He found support from the observations made by the Supreme Court in the case of Kamma Tewari v. State of M.P. reported in (1996) 3 CCR SC 141 and in the case of Laxman Naik v. State of Orissa (1994) 3 S C S C 381. In these two cases the Supreme Court confirmed death penalty where seven years old girl was raped and murdered.

30. We have given our careful consideration to this issue. The Supreme Court in a number of decisions has laid down the guide-lines when extreme penalty of death sentence is to be awarded. (Reference may be made to Bachan Singh v. State of Punjab and Machhi Singh & others v. State of Punjab (1983) (3) SCC 476. In these cases it was pointed out that death penalty could be awarded in a rarest of the rare cases and the circumstances, when the murder is committed in an extremely brutal grotesque, diabolical, revulsion or dastardly manner, so as to arouse intense and extreme indignation of the community would fall within the category of rarest of rare cases.

31. In the case before us a baby girl aged about one and half years. like a growing bud of a flower, had been a prey to the lust of a thirty years old man and had been killed in a most revolting manner arousing intense and extreme indignation of the community. It is an act of extreme depravity and arouses a sense of revulsion in the mind of the common man, Such a person is menace to the society. The facts of the case persuade us to hold that this is a rarest of the rare cases where the

sentence of death is eminently desirable. Besides giving emphatic expression of society's abhorrence of such crimes we wish to give a clear signal that one who commits such crimes would meet the same fate as the accused is to face.

32. Resultantly we uphold the conviction and sentence. Death penalty is confirmed. Criminal Appeal No. 305/97 is dismissed and the murder reference No. 5/97 is disposed of accordingly.

33. The appellant, if on bail, shall surrender forthwith.

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