

State Vs. S/O Pritam

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Court : Delhi

Decided On : Aug-28-2000

Reported in : 2001CriLJ61

Judge : Usha Mehra and; S.N. Kapoor, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 364

Appeal No. : Murder Ref. No. 3 of 1999 and Crl. A.No.518 of 1999

Appellant : State;janesh S/O Pritam

Respondent : Janesh S/O Pritam;state

Advocate for Pet/Ap. : Mr. HJS Ahluwalia and; Mr. Abhishek Sharma, Advs

Judgement :

ORDER

Usha Mehra. J.

1. Criminal appeal bearing No. 518/99 has been preferred by Janesh, son of Shri Pritam thereby assailing the death sentence imposed upon him by the Additional Sessions Judge, Delhi vide his judgment and order dated 10th August, 1999 and 13th August, 1999 respectively in Sessions Case No.14/98. By the impugned judgment and order Janesh has been held guilty of murdering his daughter Sonu. Whereas vide Murder Reference No. 3/99 State is seeking confirmation of the

sentence of death imposed upon Janesh. Since the Murder Reference and the appeal have arisen from the same judgment and sentence. These are taken up and disposed of together by this judgment.

2. The facts in nut shell which have come on record are that appellant Janesh was married to Smt. Lajjo (PW-9). From this wedlock they were blessed with two daughters. The name of elder daughter was Sonu. Janesh had strained relation with Lajjo. There had been frequent quarrels between husband and wife. Smt. Lajjo had been complaining against Janesh for not behaving well with her and of not providing with ration and other necessities of life. According to her, he was not earning anything, thus not giving her money to buy the provision. Because of his ill-treatment, she had been going off and on to her parents house. Whereas her daughters used to stay with their father Janesh.

3. On 4th October, 1997 Lajjo and Janesh had a tiff because Janesh refused to bring ration so long as Lajjo was there. Lajjo after the fight left her matrimonial home. She went to her parent's house leaving her daughters.

4. On 10th October, 1997 it was reported by Janesh that his daughter Sonu was missing. Sonu had gone to his place of work. Janesh sent her back in a Rickshaw. But Sonu did not reach home. He, therefore, lodged a missing report vide DD. No. 8A followed by FIR No. 411/97 dated 11th October, 1997. Wireless messages were flashed by police all over India but Sonu could not be traced. On search by Janesh and his brother on 13th October, 1997 at about 5.00 P.M. Janesh discovered a girl in half burnt condition in the pahari area behind Hindu Rao Hospital. He in order to be sure about the identity of that girl called his brother. Mukesh (PW-1) accompanying Janesh reached the spot. He identified that dead body Janesh informed this fact to SI Hukam Chand. On receipt of this information police party reached the spot. The body of Sonu was in naked condition. On the side of the body there lay one pair of chappal, one plastic bottle containing some yellowish liquid, one 'chunni' with both ends burnt, one carefree napkin. Janesh suspected that somebody abducted his daughter and thereafter killed her. Items recovered from the side were sealed and sent to the Laboratory for examination. Post-mortem on the dead body was conducted.

5. On 14th October, 1997 Smt. Lajjo (PW-9) with her brother Ravinder Kumar and sister-in-law Madhu reached the police station. Lajjo told the police that her husband Janesh was having illicit relations with his daughter Sonu and she had seen Janesh and Sonu sleeping together. On this count she had been quarreling with Janesh. She could not disclose this fact because of threat given by Janesh that he would kill everybody if this fact was disclosed. She was forced to go to her parents house because of these acts of Janesh. Lajjo (PW-9) suspected that Janesh because of his illicit relations with his daughter in order to get rid of her killed her. On the basis of this statement of Smt. Lajjo, Janesh was arrested and a case under Sections 364/302/201 IPC was registered against him.

6. Exhibits of the case were sent to the CFSL. The exhibits and blood samples of Janesh were also sent to CFSL. After analysis, report was received which showed that the blood stained cloth, gauze cloth, semen stains lifted from the pubic hair of the deceased and semen stained cloth piece and carefree napkin found near the body had human blood of 'AB' group. Janesh's blood group was also found to be of 'AB' group and so was the blood group of the deceased. Prosecution, therefore, found this circumstance strong enough to connect Janesh with the crime.

7. Prosecution examined as many as 19 witnesses. However, for our purpose the material witnesses whose testimony has any bearing on the case are Mukesh (PW-1) i.e. brother of Janesh, Pritam (PW-2) father of Janesh, Madhu (PW-7) sister-in-law of Lajjo, Lajjo (PW-9) wife of Janesh and mother of deceased Kumari Sonu, Dr. K. L. Sharma (PW-11) who conducted post-mortem of the deceased and Ravinder Kumar (PW-13) brother of Lajjo, beside the testimony of the Investigating Officer (in short the I.O.).

8. Prosecution relied on three circumstances in order to bring home the guilt of the appellant. Those are namely; (1) deceased Sonu as per accused own showing was last seen with the accused; (2) the semen lifted from her pubic hair had 'AB' blood group, which is the blood group of the accused; and (3) wife of the accused Smt. Lajjo has implicated him of having illicit relations with deceased Sonu.

9. Admittedly when a case is based on circumstantial evidence, as in the present case then such evidence has to satisfy three tests namely; (1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; and thirdly (3) circumstances taken cumulatively should form a complete chain leaving no scope of human probabilities and conclusions that the crime had not been committed by the accused.

10. Taking the above principles in view and the circumstances pointed out by the prosecution, we have to see whether the circumstances as brought out in this case fulfill the above three conditions.

11. The first circumstance pointed out by the prosecution is that deceased had gone to the office of the accused and thereafter she disappeared. It was only after three days her dead body was found that too at the instance of the accused. Accused in order to mis guide and divert the attention of the police, lodged a false missing report. He cause the death of Sonu in order to save himself because of his misdeeds with Sonu. He falsely in- formed the police that Sonu was missing since 10th October, 1997 though he knew that after raping Sonu he killed her and left the body in Pahari area. In order to prove that Sonu was with accused the prosecution relied on the admission of the accused made in DD 8-A i.e. missing report. In this report he stated that he sent back Sonu at about 5.45 P.M., however, she never reached back home. Mr. Ahluwalia, counsel for the State says that this admission of the accused can be used against him because the missing report was lodged prior to discovery of dead body and registration of murder case. Hence the admission made in DD 8-A can be used against the accused. As per his own admission the deceased was with him till about 5.45 P.M. in his office on 10th October, 1997. It was only her dead body which was found subsequently on 13th October, 1997 by him. therefore, Mr. Ahluwalia con- tended that this fact is a clear pointer to the guilt of the accused. In DD 8-A he no where mentioned that Sonu was sent back in a rickshaw nor gave the name of the rickshaw driver. Accused in order to cover his guilt gave a twist to the case by saying in Court that Sonu was sent in rickshaw and the name of the rickshaw driver was one Mangal.

12. On the other hand, Mr. Abhishek Sharma appearing for the appellant contended that prosecution has miserably failed to establish that the deceased was last seen with the accused. As per prosecution witnesses, namely, Mukesh (PW-1) and Pritam (PW-2) Sonu went to the office of the accused but left for home at 5.45 P.M. in a rickshaw. This is prosecution's own case that Sonu was sent back by the accused in rickshaw at 4.45. P.M. So it cannot be said that she was lastly with the accused. The prosecution has failed to trace out that rickshaw driver nor any Explanation given as to why efforts were not made to produce him nor recorded his statement. Moreover, this by itself is not such a clinching circumstance which would connect the accused with the crime.

13. Sonu was missing since 10th October, 1997 whereas her dead body was found on 13th October, 1997. As per post-mortem report as proved by Dr. K. L. Sharma (PW-11) she died 3-4 days from before the date of post-mortem. The dead body was recovered on 13th October, 1997 and post-mortem was conducted on 14th October, 1997. Three-four days before would mean either 10th October, 1997 or morning of 11th October, 1997. Mr. Sharma, counsel for the appellant contended that of Sonu's death had taken place on 10th October, 1997 then Janesh would also had been missing from home. It is not prosecution's case that on 10th October, 1997 Janesh, after office hours had not come home or that he was found missing or came late. Nor it is the case of the prosecution that Janesh was not available in the intervening night of 10th October, 1997 and 11th October, 1997. therefore, the mere fact that accused stated that his daughter came to his office and went back home at about 5.45 P.M. does not prove that she was murdered by the accused. Prosecution ought to have searched out rickshawala with whom Sonu was sent back home which police failed to do so. The circumstance as narrated by the accused in the missing report appears to be very normal. A daughter can go to the place of work of her father and after achieving the purpose come back home. That is exactly what happened in this case. Sonu in order to get medical check-up went to the office of her father, thereafter she was sent back home, for that no finger of suspicion can be raised towards accused. Neither this can be said to be a circumstance holding the accused guilty of the crime nor this is such a clinching circumstance which leaves no scope for any finding exception to hold the accused guilty. We find force in this

submission of Mr. Abhishek Sharma. In order to hold the accused guilty we have to take cumulatively all the circumstances into consideration which formed a complete chain and leave no escape from the conclusion that the crime was committed by the accused and none else. The chain is not complete in this case. The visit of Sonu to the office of the accused and then leaving for house, to our mind, was not such a circumstance which could clinch the guilt of the accused nor on the basis of this circumstance finger of suspicion can be raised towards the accused.

14. Now turning to the question of lifting of semen from the pubic hair of the deceased which was of 'AB' group and the analyst report that from the cloth piece and carefree napkin i.e. the article recovered from near the dead body, those were having human blood of 'AB' group. Before dealing with this aspect, we cannot lose sight of the fact that the blood group of the deceased and that of the accused was the same i.e. 'AB' group. Recovery of Carefree napkin near the dead body of Sonu shows that she was having menstruation, therefore, using Carefree napkin. This napkin, on being examined by the analyst found having 'AB' blood group. Merely because the semen lifted from the pubic hair of the deceased having 'AB' group by no means points that rape was committed by the accused or that he murdered Sonu. In fact Dr. Sharma (PW-1) nowhere opined that Sonu was raped before her death. Possibility cannot be ruled out that on the gauze piece, cloth etc. the blood found was that of the deceased herself. therefore, this circumstance also does not complete the chain nor proves the case of the prosecution nor establishes that deceased was raped before being murdered.

15. Mr. Ahluwalia lastly placed reliance on the circumstance of sex abuse of Sonu by the accused. To support his arguments, he relied on the statement of Smt. Lajjo (PW-9). This circumstance, to our mind, remained unsubstantiated on the record. In fact prior to 14th October, 1997 Mrs. Lajjo (PW-9) never ever whispered regarding sex abuse by the accused nor she ever leveled any such allegation against the accused. She for the first time after the death of Sonu charged the accused of his having illicit relations with Sonu. Her allegations have in fact not been supported either by her brother or sister-in-law nor by her father-in-law and brother-in-law. Not even a suggestion was given to PW-1 and PW-2 Mukesh and

Pritam respectively that accused abused Sonu sexually. Admittedly accused and his wife Lajjo had strained relations. This stood fortified from the testimony of Mukesh (PW-1), Madhu (PW-7), Ravinder Kumar (PW-13). Their strained relation continued even after the death of Sonu. Lajjo after hearing the death of her daughter went straight to police station instead of going to her matrimonial home. From police station she went to mortuary as per the statement of Madhu wherein she stated that Lajjo went back to her parents house instead of going with the dead body to her husband's house. Lajjo left her matrimonial home on 4th October, 1997 after fight with the accused over his non-providing of ration. Lajjo had been complaining that accused was not providing ration nor gave money. She did not complaint about the sexual harassment or acts of the accused vis-a-vis his daughter. This becomes clear from the reading of the testimony of Lajjo's brother Ravinder Kumar (PW-13) and from the testimony of her sister-in-law Madhu (PW-7) as well as from the testimony of her father-in-law Pritam (PW-7) and brother-in-law Mukesh (PW-1). Even from her statement it cannot be inferred that she suspected illicit relation between the father and the daughter.

16. Madhu (PW-7) testified that accused had two daughters, namely, Sonu 17 years old as on October, 1997 and Sheetal about 14 years old. And that Lajjo's only complaint against the accused was non-providing of ration and ill-treatment towards Lajjo. In the words of Madhu (PW-7) :-

'Lajjo used to complaint against Janesh that he does not provide her basic amenities and keeps on beating her and harassed like anything. She was in miserable condition.'

17. Madhu (PW-7) expressed her observation about the matrimonial life of Lajjo in the following words :-

'From the very beginning of my marriage I have been noticing that Lajjo used to live for two months together at our house and only about 15-20 days with her husband.'

18. From the tanner of Madhu's statement it can be seen that Lajjo had been ill-treated by the accused. Nowhere Madhu even remotely stated that accused was

sexually involved with his daughter or was having physical relation with Sonu. While referring to the treatment meted out to Lajjo by the accused, Madhu said:-

'She used to tell me that her husband did not give any money to her. I do not know if there was any other reason between husband and wife.'

19. This part of Madhu's statement is a clear pointer that Lajjo's complaints against her husband was of non-providing of amenities. As regards incidence of 4th October, 1997 what Lajjo told Madhu, Madhu stated in the following words :-

'On 4th October, 1997 Lajjo came to my house and informed that she has been turned out of the house by her husband after beating. There was no ration in the house and she was told that Janesh will bring the ration when she will leave the house. She also said that she suspected character of her husband but details were not given by Lajjo to me.'

And further stated'

'Lajjo never informed me as to what was the relation of accused with his children nor accused ever came to my house Along with wife and children.'

20. Madhu was subjected to cross-examination by the Additional Public Prosecution (in short APP) and while answering the suggestion put by the APP with regard to the character of the accused, she stated as under:-

'It is wrong to suggest that Lajjo had told me that she had seen Janesh sleeping with her daughter in unnatural way and having relation and had seen committing immoral act with her daughter and then when she objected to the same then her husband had threatened her that in case she tells this fact to anyone then he will kill all of them or that Lajjo told me not to tell this fact to anybody.'

21. This reply by Madhu, in fact belies the accusation of Lajjo and creates a serious doubt in the story of the prosecution. By saying that Lajjo never ever told Madhu that accused was having unnatural relations with his daughter goes to show that Lajjo's accusation are afterthought. It had no takers. It has further come in the evidence of Madhu (PW-7) that Lajjo normally used to leave her children

with the accused. This circumstance rather proves the story of Lajjo to be wrong. If what Lajjo stated had been a fact and she suspected or had seen accused indulging in immoral acts with his daughter Sonu then being a mother she could not have left her daughters with the accused and gone to her parents house for months. The fact of the matter is Lajjo used to leave them with the accused. This conduct of Lajjo belies her story of sexual relation between accused and Sonu. If that be so then the conduct of Lajjo appears to be abnormal. A mother who knows about the evil eyes or design of her husband would normally not leave her daughters with him. In such circumstances she would raise hue and cry, even fight with him. She would not permit or leave her daughters to be alone with such a father. But Lajjo did nothing of this kind. On the contrary she used to leave her grown up daughters with the accused alone at home. As late as on 4th October, 1997 i.e. about six days before the unfortunate incident she left Sonu and Sheetal in the company of the accused. Had she suspected or seen any immoral gesture on the part of the accused towards Sonu, she would not have left her with accused. Her only complaint through out had been and which she told to her brother and sister-in-law was non-providing of rather at home and of money. So much so Kumari Sheetal, younger daughter has also not been produced by the prosecution to corroborate the testimony of Lajjo.

22. Lajjo appearing as (PW-9) contradicted her own version when she said :-

'Sonu used to remain silent and secretly she used to weep. I tried to enquire from her as to what was the reason. She always used to tell me that she will die. I used to tell her that she should not worry and I will not allow them to remain without food. Despite my persistent asking she did not tell me anything.'

23. This part of her testimony shows that she never witnessed unnatural or immoral act of the accused towards his daughter. Had she witnessed any such illicit relation between accused and Sonu she would not have made such inquiries from Sonu nor asked the cause of her weeping or remaining silent. Post-mortem report shows Sonu was used to sex, but with whom has not been proved on record. Sonu was studying in 10th class in Government school. As per PW-1 Sonu used to come and go to school of her own. Mr. Abhishek Sharma, counsel for the

appellant contended that if Sonu was used to sex then it could have been anywhere and that may be one of the reason Sonu used to remain silent or secretly weeping or expressing her desire to die. Lajjo found that her daughter Sonu was getting weak. She told this fact to the accused. What accused told her she narrated in the following words :-

'I had quarreled with the accused as to why Sonu was getting weaker day by day and he should get her treated. Thereupon, accused used to tell me as to from where he can get her treated as I should realise his difficulty and sometimes in anger he used to tell that he will finish everybody.'

24. This version of Lajjo about what accused said contradicts her accusation towards the accused. Had she witnessed accused's sexual advances towards Sonu she would not have asked accused as to why Sonu was getting weak and that Sonu should be medically treated. Her Statement made in Court shows that sonu was getting weak. She wanted Sonu to be treated for that. And for this purpose asked the accused being a father to get Sonu medically treated. He being financially hard-up could not afford treatment, and therefore, in anger threatened to kill the whole family. His saying so by no stretch of imagination indicates that accused was having illicit relationship with his daughter. The only complaint she had against the accused was non providing of the ration and of money. This can be seen from her testimony when she stated:-

'After few days, my husband and father-in-law came to take me and my father-in-law took the responsibility of keeping me well and, therefore, I came with them. for 2-3 months my father-in-law provided ration, thereafter my husband got a job and he started bringing ration etc. He worked for 2-3 months and then left the job. In between he was doing some daily wages work and used to handover Rs.250/- or Rs.300/-. This continued for one year. During this period whenever accused used to be in good mood, then he used to give money. This continued 4-5 years. Then he got a job and used to give money.'

25. This shows that whole emphasis of her grievance was that accused did not give her money. She went to the extent of saying:-

'Sometimes my children used to sleep without food and sometimes accused used to sleep without food but he did not bring ration.'

26. This statement shows that because of non providing of food she was depressed. Because of financial hardship the accused in anger threatened to finish the whole family. It was not because of any shame or immoral activity that he gave such a threat. Had the accused been having illicit relations with Sonu she would have confided the same with her brother, because appearing as PW-9 she in no uncertain words stated that she used to confide everything to her brother Ravinder Kumar including the treatment meted out to her and her children at the hands of the accused. Nothing prevented her from confining the sexual acts of the accused towards his daughter. Having not done so, it shows that accusations leveled by Lajjo are after-thought. It may have emanated from vengeance because accused had been ill-treating her physically as well as mentally. Even her brother Ravinder Kumar advised her that she should live with her children in accused's house. How long he could support her. Had accused been indulging in immoral acts, Ravinder Kumar, a Delhi Police Officer would not have advised Lajjo to live with the accused Along with her daughters.

27. Lajjo in fact took Sonu to a doctor for medical check-up. Doctor in turn told her that Sonu was suffering from general weakness. He did not tell that Sonu was suffering from any depression. Even on 4.10.97 quarrel which took place between the accused and Lajjo revolved around non providing of ration and money. This fact is so stated by Lajjo when she stated:

'In the month when Dussehra comes on 4th October, I had gone to my parents house. I was very much teased at that time because of household expenses. Quarrel used to take place because of this issue which went to the extent of beating.'

She further stated:-

'When I was very much teased because of financial problem accused as well as my daughter Sonu asked me to go to my parents house and Janesh further told me that he will borrow Rs. 5,000/- from father and will get ration etc. I told my

father-in-law also who told me to go to my parents house.'

28. After having left the matrimonial home she told her brother to inquire whether ration was brought by the accused. Pursuance to her desire her brother Ravinder Kumar (PW-13) rang up and talked to Sonu. Sonu in turn told Ravinder Kumar not to interfere in their family affairs. The statement of Lajjo read with the testimony of her sister-in-law Madhu (PW-7) and Ravinder Kumar show that relation of Sonu with accused was not the issue of Lajjo's leaving accused's house. Lajjo's statement does not indicate that she suspected the character of the accused or witnessed any immoral or illicit relations between him and Sonu.

29. Ravinder Kumar (PW-13) brother of Lajjo has not supported her version. This conclusion can be reached from the following statement of Ravinder Kumar (PW-13):-

'When my sister delivered second daughter, my sister was beaten and turned out of her matrimonial house. ...After death of his mother, accused along with his father came to our house and asked us to send our sister in order to look after the minor children and that she will not face any problem.'

30. She lived nicely for two years but again informed him that her husband was maltreating her and that there was no ration. He along with his brother used to give her Rs.250/- to rs.300/- whenever she would come to their house. On 4.10.97 she told PW-13 that behavior of accused remained the same. He talked to Sonu on 10.10.97 as to whether ration was brought by the accused. Sonu affirmed that ration was brought and when he tried to inquire why Lajjo was ill-treated, Sonu told him not to interfere as it was their family matter. His statement falsify the case of the prosecution that accused had illicit relations with Sonu.

31. Dr. K. L. Sharma (PW-13) conducted the post-mortem and after analysing the whole position opined that there were ligature mark as pressure groove over back of the neck and throat. The cause of death was opined to be asphyxia consequent to ligature strangulation. Findings were consistent of mechanical obstruction of throat by ligature. Genital organs showed old tear of hymen. Nowhere it was opined that before murder any rape was committed on Sonu. The death as

mentioned above was due to strangulation. In the absence of medical opinion no inference can be drawn that rape was committed before Sonu was strangled. She was used to sex as opined by the doctor but with whom not established nor proved. In the absence of any evidence having been brought on record to prove that on the night of 10.10.97 or morning of 11.10.97 accused committed rape and then caused her death by strangulation, he cannot be held guilty.

32. Thus neither the medical opinion nor the oral evidence adduced by the prosecution bring home and guilt of the accused beyond reasonable doubt. The only testimony which is against accused is that of his wife Lajjo. But her testimony does not inspire confidence. It is full of material contradictions which creates serious doubt in the story of the prosecution. The accusation leveled by her appears to be after-thought, made with the object to teach the accused a lesson for the ill-treatment meted out to her.

33. Contention of Mr. Ahluwalia that missing report was lodged by the accused with the sole object to divert the attention of the police, and therefore, no reliance should be placed on the same. Admittedly, if the report was lodged with the intention to divert the attention from the crime committed by the accused then of course no reliance can be placed on such a report. But as discussed above from the evidence which has been produced, to our mind, prosecution has miserably failed to establish that accused was involved in the crime. The theory propounded by the prosecution that the accused had been indulging in sexual relation with his daughter and, therefore, killed her on the fateful day in order to hide his guilt does not appeal to reason. Even otherwise for such an accusation no clinching evidence has been produced. Rather prosecution's own witnesses have not supported its case.

34. Prosecution thus miserably failed to prove that Sonu was raped before death or that rape was committed by the accused. The rape theory has remained unsubstantiated. Prosecution failed to prove the commission of rape. According to Dr.K.L. Sharma (PW-11) 'genital organs showed old tear of hymen'. It is not pointed out by him that before strangulation she was raped. Hence the theory of her being subjected to rape before death has not been proved by the prosecution.

35. In view of our above discussion and taking note of the entire evidence and the circumstances of the case, we are of the view that conviction and sentence passed on the appellant cannot be confirmed. Hence the reference No.3/99 referred by the learned Additional Sessions Judge cannot be confirmed.

36. The appeal is allowed because prosecution has failed to bring home the guilt of the appellant beyond reasonable doubt. The chain which is required to prove the hypothesis is incomplete. therefore, by giving benefit of doubt we acquit him of the charges. He be released if not required in any other case.

S.N. Kapoor J.

I have had the advantage of reading the draft judgment written by Hon'ble Ms. Justice Usha Mehra. I agree with the conclusions. In view of the conclusions drawn in Murder Reference No.3/99 made by learned Additional District and Sessions Judge for confirmation of death sentence, the reference is answered in negative; and conviction of the accused for offense under Section 302 IPC has to be annulled and the accused has to be acquitted of the charge of offense under Section 302 IPC. The reference No.3/99 is answered accordingly. The appeal is allowed. In case the accused is not wanted in any other case, he may be released forthwith.

A copy of this order be sent to the Court of Sessions in terms of Section 371 Cr. P.C.

The appeal is allowed. Reference is answered in the negative. The appellant be released, if not required in any other case. Order be communicated to the appellant through Superintendent, Central Jail, Tihar.

A copy of this order be sent to the Court of Sessions in terms of Section 371 Cr.P.C.