

**Ramesh Chandra Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jan-13-1998

**Reported in :** 1998CriLJ1994; 1998(2)WLC73

**Judge :** P.C. Jain and; Mohd. Yamin, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; Code of Criminal Procedure (CrPC) - Sections 293 and 313

**Appeal No. :** Criminal Jail Appeal No. 482 of 1994

**Appellant :** Ramesh Chandra

**Respondent :** State of Rajasthan

**Advocate for Def. :** U.C.S. Singhvi, Public Prosecutor

**Advocate for Pet/Ap. :** A.K. Acharya, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Mohd. Yamin, J.**

1. This appeal is directed against the judgment of conviction passed by learned Special Judge, SC/ST Court, Jodhpur, Miss Chandra Kanta Gupta, for offences under Sections 302 and 201, IPC. She sentenced the accused appellant to life

imprisonment with a fine of Rs. 1,000/- for offence under Section 302, IPC and in default to undergo 5 months simple imprisonment and for offence under Section 201, IPC she sentenced him to 7 years simple imprisonment with a fine of Rs. 1,000/- and in default to further undergo simple imprisonment for five months.

2. Succinctly stated facts are that Ramnihor, who was the senior cashier in the office of D.R.M., Jodhpur and resident of quarter No, 21/91, New Medical Colony, Jodhpur, reported to Station House Officer, Sardarpura on 11-3-1994 that he went to his office at 9-45 a.m. and when he returned at 5-45 p.m. his wife told that their daughter Malti was missing since 1 p.m. Malti was aged about 8 years and at the relevant time she was wearing a printed and spotted kamiz and salwar. She was of whitish colour and had bob cut hair. She was also wearing small silver pendal bearing photo of Hanumanji. This pendal also mentioned the name of the girl. She was wearing red colour hawai chappal. A photograph of Malti was also handed over to the police by Ramnihor. Police searched out the girl but could not find her. It was on 13-3-1994 that Ramnihor reported to the Station House Officer, Udai Mandir that he had reported about missing of girl at police station, Sardarpura on 11-3-94 that he went on searching out the girl and it was in the morning of 13-3-1994 that he came to know that a dead body of a girl was laying in 'ganda nala' adjacent to Sansi Colony. He went there at about 9 a.m. and identified the dead body as of his missing daughter Malti. According to report Ex. P72 somebody had committed murder and threw the dead body in 'ganda nala'. Thereupon a case under Sections 302 and 201, IPC was registered. During the investigation site plan Ex. P/3, memo of dead body Ex. P/4 were prepared and the dead body was handed over to Ramnihor after postmortem was conducted. Clothes of Malti were seized vide Ex. P/8. Accused appellant was arrested vide Ex. P/1 on 14-3-94. On his disclosure statement the silver pendal of Malti was recovered vide Ex. P/6. The accused appellant led the police to the nala and Ex. P/10 was prepared. He also led to his residence wherefrom hawai chappal and broken bangles of Malti were recovered. According to the prosecution it was the place where Malti was murdered. Then the house of accused appellant was searched on 14-3-1994 wherefrom freshly washed P.T.-shoes and a pair of socks of the accused appellant were recovered. His pant and bushirt were recovered and a magazine 'Star Dust' and a Hindi nowel 'Arthi Mere Pyar Ki' were recovered. Foot prints were lifted from

the 'ganda nala' and moulds were prepared. They were compared with the foot prints of the accused appellant. After usual investigation challan was submitted before the learned Judicial Magistrate No. 3 who committed the case to the Court of Sessions. Learned Sessions Judge, Jodhpur transferred the case to Miss Chandra Kanta Gupta who being Additional Sessions Judge of Jodhpur was also working as Special Judge, SC/ST Cases, Jodhpur. Charges under Sections 302 and 201, IPC were framed and read over to the accused appellant on 1-6-94. He denied his indictment and claimed trial. Thereupon prosecution examined as many as 20 witnesses. Accused appellant was examined under Section 313, Cr.P.C. He did not examine any witness in defence and after hearing both the parties, the learned trial Judge convicted and sentenced the accused appellant as stated above.

3. It may be stated that the learned trial Judge did not attempt to obtain the report of F.S.L. with regard to the examination of viscera and vaginal swab of Kumari Malti though there are authorities to the effect that it is the duty of the learned trial Judge as well to obtain the reports of the F.S.L. The reports from the F.S.L. were obtained by us. We have gone through the reports submitted by the FSL to this Court and we find from them that there was no evidence of administration of any poison to Malli and that semen was not detected from vaginal swab or vaginal smear. Thus possibilities of death by poisonings or rape are ruled out.

4. We have heard the learned counsel for the accused appellant as well as learned Public Prosecutor at length .

5. Learned counsel for the accused appellant submitted that from the circumstantial evidence no offence is proved against the appellant. He also submitted that there was no motive of the accused appellant to commit murder of Malti. He also submitted that the evidence regarding the foot prints was very weak and it does not connect the accused with the crime. He also submitted that the two FSL reports negated the administration of poison or tranquillizers and insecticides as well as the possibility of any sexual intercourse with the deceased. He, therefore, submitted that the accused appellant deserves acquittal.

6. On the other hand learned Public Prosecutor has tried to support the judgment of trial Court.

7. The settled law about circumstantial evidence as envisaged in Padala Veera Reddy v. State of Andhra Pradesh AIR 1990 SC 79 is that the following tests should be satisfied :-

(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;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

8. Learned counsel for the accused appellant cited Sharad Birdhichand Sarda v. State of Maharashtra 1984 Cr. LR (SC) 296, wherein it has been observed that when the case is based on circumstantial evidence the following essential conditions must be satisfied :-

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance point to the guilt of the accused with reasonable definiteness, and

(3) The circumstance is in proximity to the time and situation.

9. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the Court and not

otherwise. He also cited State of Haryana v. Ved Prakash AIR 1994 SC 468, wherein it has been observed that the Court should adopt cautious approach for basing conviction on circumstantial evidence. In this citation deceased persons and accused were seen going towards the direction of field at the relevant lime. Accused had a spade. Bodies of deceased persons were recovered from the field. Such circumstance was not held sufficient to connect the accused with murder of deceased when medical evidence was not able to determine cause of death. It was further observed that the marks of shoes of accused found on murder spot were not a sufficient evidence to establish the offence,

10. We will first take up the post mortem examination of Kumari Malti. PW-7 Dr. Sumer Kumar has stated that he was a member of the board constituted to perform the postmortem of Kumari Malti. The condition of the body is mentioned in Ex. P/1 3 as follows:- 'The whole body was swollen with foul smelling. Frothy blood stained fluid was coining from mouth. Tongue was protruded out from lips. There was cyanosis of lips. Postmortem blisters were found all over body except legs and foot. Faecal matter was coming out from anus and anus was dilated. Cynosis of finger nails was prepared and scaled.' No opinion could be given regarding the cause of death by the medical board. However, visceras were preserved for chemical analysis for evidence of common poisons and vaginal swab/smear for semen for evidence of rape. The FSL reports are negative for poison or semen. But on 7-4-94 it was opined by the board that possibility of death due to smothering could not be excluded. It was so opined when the Investigating Officer sent letter Ex. P/14 to the Mahatma Gandhi Hospital, Jodhpur in order to get the matter clarified. In the letter Ex. P/14 it was mentioned that from the investigation it was found that the death of Malti was caused by smothering and by strangulation. Investigating Officer PW-20 Manohar Singh has staled that a letter was written by his subordinate ASI Dcshraj to the doctors which is Ex. P/14 but this Deshraj was not produced during the trial to lot the Court know as to how he came to the conclusion that death of Malli was caused by smothering and by strangulation. PW-7 Dr. Sumer Kumar and PW-IO Dr. N.S. Kothari who were members of the board have not deposed even a single line if Malti had any sign of smothering or strangulation on her body. Instead both of them have stated that when they received Ex. P/14 they reported back that possibility of death by smothering could

not be ruled out. The prosecution has to prove every fact beyond doubt and it was to prove that the death was caused in the way it was alleging. Ex. P/14 alleges that the death of Malti was caused by smothering and strangulation but we find that there is no basis. So the opinion of the medical board that no opinion could be given regarding cause of death would prevail. The possibility of death by administering poison or pesticide is ruled out from the FSL report and possibility of sexual assault is ruled out from another FSL report which are admissible in evidence under Section 293, Cr.P.C.

11. The prosecution has to connect the accused appellant with the crime. From the medical and scientific evidence it is not proved as to what was the cause of death of Kumari Malti. Howsoever suspicious the death may be, the prosecution has to prove that it was the accused and accused alone who caused the death of Malti.

12. In such cases motive is very material. The case of the prosecution is that the accused appellant owed Rs. 500/- to the father of deceased. PW-1 Ramnihor has stated that Chhotelal, uncle of appellant, gave him soiled notes of Rs. 500/- for exchange. He got them exchanged and handed over the notes to Ramesh. Ramesh did not return the notes to Chhotelal. Ramnihor was a tenant of Chhotelal and told him that if the appellant would not pay the money the same would be adjusted towards the rent. Thereafter Ramnihor asked appellant on 11 -3-1994 to pay the amount but the appellant replied that the amount would be given on 16-3-1994. That is all what the motive is said by the prosecution. To us this docs not appear to be a motive for which the accused appellant would kill the daughter of Ramnihor. We are of the view that this trivial transaction could not be the motive to murder the daughter of Ramnihor i.e. Malti specially when the accused appellant had promised to pay it back.

13. The next circumstances relied by the learned Additional Sessions Judge is regarding the fact that deceased was last seen together with the accused. The undisputed fact is that the accused appellant was living with PW-6 Chhotelal. PW-3 Darshna Devi has stated that she went up stairs on 11-3-94, the date on which Malti disappeared. She found accused appellant standing all alone. Then at about

1 p.m. she saw Malti with the accused appellant near the staircase. Its strange that Darshna Devi who is the next door neighbor of Ramnihor though first enquired from the appellant when he was all alone but would not enquire from him or Malti as to how they were present near the staircase. She has stated that on enquiry by Ramnihor she told that Malti did not come to her house and that she had seen her some time before but she did not tell that Malti was seen with Ramesh. However, according to her, Ramesh was not present at the time when Ramnihor had made an inquiry. When the case of the prosecution is that there was suspicion on Ramesh, there is no reason as to why Ramesh was not searched out then and there. Then Ramesh, according to his witness, returned and stayed with Darshna Devi to see a film on T.V. But even then no enquiry was made from him. Therefore, the statement of this witness cannot be relied.

14. PW-11 Smt. Marjadi is the mother of deceased Malti. She has stated that Malti disappeared on 11-3-1994 and on that date the witness suffered from fever and, therefore, she was taking rest in her room. When she woke up, she enquired from her neighbour. According to her it was Ramesh who took her on a cycle to search Malti. Malti was so searched upto 5 p.m. when her husband returned from his office. She has also stated that she had seen Malti with the accused appellant but is not in a position to tell as to what was the time. Definitely it could not be between 3 p.m. to 5 p.m. She has stated that when she woke up she went straight to the roof top at 3 p.m. and found bangles and chappals of Malti. So when she is not in a position to say as to when she had seen the accused with Malti, it cannot be believed that she had seen both of them together. Apart from it, it was the accused appellant who took the witness on his bicycle to search out Malti at different places. There is no evidence as to where did accused appellant commit the murder of Kumari Malti. It is alleged that she was done to death on the roof top, but there was no sign. This missing link is very material in the circumstances of this case. True, the dead body of Malti was found in a nala but there is no connecting evidence to prove that it was the accused appellant who had thrown the dead body in the riala.

15. The prosecution has tried to establish the presence of accused appellant at nala by lifting chance foot impression and preparing the mould on 13-3-1994. PW-

16 Pratap Singh has stated that on 13-3-1994 he along with other police officials went to 'gandanala' where dead Body of Malti was found. According to him the foot impression was found on the sand on left side of nala. Its impression was lifted and a mould was prepared. Then on 22-3-1994 a boot was put on by the accused appellant and then he was asked to run on the sand. Impression was lifted.

16. It is PW-20 Manohar Singh who sent the mould for comparison to Director of Finger Print Bureau, Rajasthan, Jaipur. It was compared by him and his report is available on record. In State of Haryana v. Ved Prakash (supra) such a circumstance of matching of shoes was considered insufficient to establish the offence. In the case in hand there is no evidence that the print of shoe found at the sand on the bank of nala does not establish the presence of accused appellant at the site.

17. Now we turn to the recoveries. We may first take up the recovery of broken bangles and chappals. PW-20 Manohar Singh has stated that the accused appellant gave information which was recorded as Ex. P/19 and on the basis of this information broken plastic bangles and a pair of chappal of Malti were recovered. This recovery is of no help to the prosecution because PW-11 Smt Marjadi has stated that she woke up at 3 p.m. and went up stairs when she found that the bangles and pair of chappal of her daughter lying at the place. Therefore, to say that recoveries of chappals and bangles were made on the basis of disclosure statement of the accused appellant is of no help to the prosecution. It was not the accused appellant who had hidden them at the place but they were lying in open.

18. Recovery of cycle from the accused appellant is also of no help to the prosecution because no tire mark of cycle was found near, the foot print on the sand of 'ganda nala'. Therefore, the story of taking the dead body of Maiti in a box to 'ganda nala' appears to be a cock and bull story. The box is not recovered.

19. Now remains the recovery of a silver ornament. According to PW-20 Manohar Singh the accused appellant made a disclosure statement regarding silver flower belonging to Malti which he had stolen and, which he had kept in a suit case in his room. It was recovered vide Ex. P/6. Recovery of this ornament at the instance of

the accused appellant does not prove that the crime of murder was committed by him. According to the Investigating Officer the accused had committed the theft of this ornament. It is a very small article made of silver weighing only 1 anna. It was not identified during the investigation before a magistrate either by Marjadi P.W. 11 or Ramnihor PW-1 who were the material witnesses and could have identified the same. Then it was never put before them when they were examined before the trial Court. Therefore, it is not proved that the ornament belonged to Malti. Thus the evidence of recoveries of different articles do not connect the accused with the crime.

20. Learned PP relied upon a decision reported in Baiju v. State of Madhya Pradesh AIR 1978 SC 522 and contended that unexplained possession of stolen property leads to the presumption that the accused committed offence of murder. In this decision it has been held that since the murders and robbery form a part of one transaction the recent and unexplained possession of the stolen property by the accused appellant justifies the presumption that it was the accused and none else who had committed murder and the robbery. But in the case in hand no such presumption can be drawn because theft was not the integral part of murder. In Nagappa Dondiba v. State of Karnataka AIR 1980 SC 1753 : 1980 Cri LJ 1270 it was held that from mere recovery of ornaments of deceased at the instance of accused it cannot be inferred that the accused must have murdered deceased in absence of any evidence to connect him with murder. In the light of these decisions the principle of law comes out that the murder should be the integral part of theft or robbery. It is missing in this case. Therefore, we are unable to hold that the accused can be connected with the crime of murder on the basis of recovery of this small article made of silver weighing only one anna. Prosecution has to prove that it was the accused and accused alone who committed the crime. It is not so proved in this case. The result is that the accused is entitled to acquittal.

21. The appeal is allowed. The accused is acquitted from the charges under Sections 302 and 201 IPC. He is in custody and will be set free forthwith if not required in any other case.