NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1558-1559 OF 2018
(Arising out of SLP (Criminal) Nos. 5416-5417/2015)

Viran Gyanlal Rajput ...Appellant

Versus

The State of Maharashtra ...Respondent

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted in SLP (Crl.) Nos. 5416-17/2015.

2. The instant appeals have been filed against the final common judgment and order dated 16.02.2015 of the High Court of Bombay in Confirmation Case No. 3 of 2014 with Criminal Appeal No. 760 of 2014 whereby the learned High Court confirmed the death sentence awarded to the appellant herein.

By the impugned judgment, the High Court dismissed the aforementioned confirmation case and criminal appeal arising out of the judgment and order of conviction and sentence dated 25.06.2014 of the Additional Sessions Judge, Mangaon, Raigad, in Sessions Case No. 8 of 2013. The Sessions Court had convicted the appellant Viran Gyanlal Rajput for the offences punishable under Sections 302 and 201 of the Indian Penal Code, and under Sections 10 and 4 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") for the kidnapping, rape and murder of a 13-year-old girl, and causing disappearance of evidence. The appellant was sentenced to death for the offence under S. 302, IPC; R.I. for 10 years and a fine of Rs. 200 (1 year's R.I. in default) under S. 366, IPC; R.I. for 7 years and a fine of Rs. 200 (1 year's R.I. in default) under S. 10, POCSO Act; imprisonment for life and a fine of Rs. 500 (2 years' R.I. in default) under S. 4, POCSO Act; and R.I. for 7 years and a fine of Rs. 200 (1 year's R.I. in default) under S. 201, IPC. Except for overturning the appellant's conviction under Section 10, POCSO Act, lacking a specific charge for the same, the judgment and order of conviction and sentence rendered by the Sessions Court was maintained by the High Court.

3. The case for the prosecution in brief is that on 17.10.2012, when the victim did not return home from school at the usual time in the evening, a search was undertaken. The next day, some of her belongings were found in the jungle area adjoining the village. A complaint (Exh. 14) regarding missing of the girl was lodged around 8.30 a.m. by PW3, Samir Parab, the victim's cousin. In the meantime, PW4, Vijay Parab, the victim's uncle, who had seen the victim being followed the last evening on the way back from school by an unknown person wearing a red T-shirt, and PW5 Abhijit Chavan (a resident of the neighbouring Toranpada village), who had later seen the same person running towards Toranpada village, went to the adjoining settlement of *Paradhis* (a nomadic community) along with some other villagers, suspecting him to be there. The person, none other than the appellant herein, was apprehended by the villagers and was being brought to Avandhe village (a neighbouring area). At that time, they were accosted by the police who were proceeding to undertake investigation with respect to the missing person's complaint. The police thereupon took custody of the appellant. Around this time, the first information pertaining to the offence of murder was given to the police by PW3. The dead body of the

victim was recovered in a naked condition, at the instance of the appellant, from a field near Kamthekarwadi village (the village where the victim resided) and subsequently her clothes were recovered at his instance as well.

As per the post mortem report (Exh. 35) and the evidence of the doctor who conducted it (PW13), the probable cause of death was opined as asphyxia with cardio-respiratory arrest due to strangulation. It was also found that the deceased had been forcibly subjected to sexual intercourse.

4. The Trial Court as well as the High Court found the following incriminating circumstances against the appellant, namely, the deceased was last seen with him while she was walking home from school; the appellant was seen running alone towards Toranpada later in the evening; the recovery of the dead body and incriminating articles (importantly, the clothes of the victim) at the instance of the appellant; mud stains on the pants of the appellant which matched with the mud seized from the spot of recovery of the victim's body; failure of the appellant to explain injuries found on him; medical evidence showing that the victim had been forcibly raped and killed; motive to gratify lust, and to kill the victim and hide her body to suppress evidence of

his crime; and the failure of the appellant to offer a plausible explanation for the incriminating circumstances against him. Importantly, both the Courts relied on the testimony of PW Nos. 4 and 5 as last seen witnesses.

5. Heard the counsel on either side.

6. Shri V. Giri, learned Senior Counsel appearing for the appellant, duly assisted by Shri Amartiya Kanjilal, Advocate, submitted that the chain of circumstantial evidence had not been established satisfactorily by the prosecution. He argued that the recoveries made at the instance of the appellant were inadmissible. According to him, the 'last seen' principle was incorrectly applied, as none out of PWs 3-5 had actually seen the deceased in the company of the appellant—rather, PW4 had only seen him following the deceased at a distance, and PW5 had seen him in the morning in the vicinity and shown him the way to Pedali (a nearby village, where the victim went to school) and later seen him running towards Toranpada, alone. Furthermore, the identification of the appellant was based on the precarious grounds of wearing a red T-shirt and having mud stains on his pants, instead of through a Test Identification Parade. It was also

submitted that the injuries in the form of scratch marks found on the appellant could not be interpreted as having been inflicted by the deceased in her defence: *firstly*, because as per the evidence of the doctor who examined the appellant (PW12), the injuries had taken place within 24 hours preceding the examination, well after the alleged time of the incident (i.e. the evening/night of 17.10.2012), which fact also suggested that they probably took place during the manhandling of the appellant by the villagers upon apprehending him (as also evident from PW12's admission that the injuries were possible in a scuffle if the injured fell on a rough object), and *secondly*, because as per the FSL Report being Exh. 38, there was no blood detected on the fingernail clippings of the deceased, which would not have been the case if she had indeed inflicted the scratches. Learned counsel for the appellant also submitted that the non-naming of the appellant and non-mentioning of the Crime Number in the inquest report (Exh. 40) and the non-explanation of the discovery and ownership of a second watch recovered from near the spot of the body was suspicious. At the same time, as the vaginal swabs of the victim did not indicate the presence of semen even after 3 samples were taken (as per the FSL Report being Exh. 38, read with the

evidence of the doctor PW13), nothing remained to tie the appellant to the commission of the crime.

On the issue of sentencing, learned counsel argued that the appellant was only 22 years old at the time of the offence, had dependents in the form of his wife and two young children, lacked criminal antecedents, and had shown good behaviour post his incarceration, and therefore the death penalty was not warranted.

7. *Per contra*, Shri Nishant Ramakantrao Katneshwarkar, learned counsel for the respondent-State of Maharashtra, stressed that the chain of circumstance had been established beyond reasonable doubt. The body of the victim as well as her articles had been recovered only at the behest of the accused, and he had been seen following the girl by PW4 and later running towards Toranpada by PW5. He submitted that the identification of the appellant could not be assailed, since the village merely consisted of 25 houses, and thus the witnesses had immediately identified that the person was an outsider, and went to search among the nomadic *Paradhi* community as their settlement was located only 3 km outside the village, since they felt that it was probable that

the unidentified person belonged thereto. Furthermore, the mud stains on the pants of the appellant were highly incriminating, because as per the FSL Report being Exh. 62, they matched in composition and characteristics with the mud seized from the spot of recovery of the deceased's body. Lastly, he submitted that the non-explanation regarding the second watch could not be considered fatal to the case of the prosecution at all.

On the issue of sentencing, learned counsel for the State submitted that the Court keep in mind the plight and helplessness of the victim and her parents.

8. We have perused the evidence on record carefully, as well as the judgments of the Trial Court and the High Court.

To begin with, we find that the Trial Court and the High Court were correct in relying upon the testimony of PWs 4 and 5, which is natural and reliable. PW4 Vijay Parab was the victim's uncle, and PW5 Abhijit Chavan was a resident of the neighbouring Toranpada village. PW4 testified that he saw the victim being followed by a person in a red T-shirt, being the appellant, while she was on the way home from school on the

evening of the incident. He also stated that he had asked the victim if she was going home alone, to which she had answered in the affirmative. PW5 testified that a person in a red T-shirt, being the accused before the trial Court, had asked him the way to Pedali village on the morning of the incident, at Toranpada village, and he had seen the same person running alone, with his pants muddied, towards Toranpada in the evening around 6-6.30 p.m., at a spot which was later found to be around 300m from the spot of recovery of the victim's body.

The presence of these witnesses at the relevant points of time is also natural. PW4 was proceeding on a tractor from Kamthekarwadi to Pedali when he met the victim on her way back from school proceeding in the opposite direction. PW5, on the other hand, had been asked the way to Pedali by the appellant on the morning of the incident, while he was at his house in Toranpada, and had seen the same person again in the evening, running towards Toranpada, while he was grazing his cattle near Awandhe.

PWs 4 and 5 also testified to being part of the party of villagers that undertook to search the *Paradhi* settlement for the

person in the red T-shirt when it was discovered that the victim had gone missing, and apprehended the appellant therefrom, handing him over to the police, who they met on the way to Avandhe village. We are of the opinion that the conduct of these witnesses appears natural, as it would have been reasonable for them to search the nearest settlement, when it was realised that the victim was last seen being followed by an outsider. As rightly contended by counsel for the prosecution, in a village of merely 25 houses, where everyone is well-acquainted with one another, an outsider would stand out starkly, and attract attention. In such a situation, his identification through clothes, if supported by the testimony of multiple witnesses whose testimony has been found to inspire confidence, cannot be found fault with only because a Test Identification Parade was not conducted subsequently.

The testimony of the witnesses as referred to above is corroborated by PW3, Samir Parab, who is a cousin of the victim and also the informant in this case. He testified that when the search for the victim was undertaken, PW 4 told him about seeing a person in a red T-shirt with the victim. The adjacent

jungle area was searched, and around 3 am in the morning her sandal was recovered around 200m to the east of Kamthekarwadi village, and in the morning her schoolbag as well as a wristwatch given to her by PW3 himself, were discovered, after which he proceeded to lodge a missing person's report. Subsequently, on his way to Avandhe with the police, he met PWs 4 and 5 in a group of villagers with the appellant, who was handed over to the police.

Furthermore, the testimony of PWs 3, 4 and 5 is also consistent on the point that after the appellant was handed over to the custody of the police, he gave a statement to them and led them to the spot where the body of the victim was hidden, i.e. a field owned by one Raghunath Deshmukh, around 300m away from Kamthekarwadi village. This field was overgrown with grass, and the appellant revealed the body by keeping aside grass and mud. The body was buried about 2 feet under the ground. The body was in a naked condition with a red *odhani* (*dupatta*) tied around the neck. This is also corroborated by the evidence of PW8, one of the panchas, and PW14, the I.O., who also testified that articles such as the earrings of the deceased, her schoolbag

containing her ID card, books and notebooks, as well as two wristwatches were also found on the spot.

In this situation, we also find that the minor discrepancies in the recorded timings and sequence of events pertaining to the recovery of the body, and articles including the victim's schoolbag, as evident through the First Information Statement (Exh. 63), the testimony of the I.O., PW14, and the spot panchanama (Ex. 23), are not fatal to the prosecution version and may be explained due to all the events happening in quick succession, viz. the apprehending of the appellant, the recovery of the dead body, the lodging of the FIR pertaining to murder and the preparation of the spot panchanama. Moreover, the argument that the recovery of the dead body at the instance of the appellant is highly suspicious cannot be sustained either, since it is clear from the testimony of the witnesses that the body was recovered from a spot which could only have been within the knowledge of the person who hid the body to begin with. This is also fortified by the lack of any explanation by the appellant regarding the recovery of the body and the circumstance of the victim being last seen around him. To add to this, even the

clothes of the deceased were recovered at the instance of the appellant, from a spot around 200m from Kamthekarwadi, from a pit which had been covered with a stone. This again is a location of which only the perpetrator of the offence could have had knowledge. Although it is true that the recovery of articles is to be made based on the statement of the accused immediately after the arrest of the accused and recording his statement, the recovery should be based on the voluntary action relating to showing of the place by the accused. Therefore, unless the accused volunteers to show the place of hiding certain things/facts, the recovery cannot be made by the investigating officers. In this view of the matter, if the accused volunteered to show the place where he had hidden the deceased's clothes at a particular place only after 5 days, the investigating officer cannot be blamed for the same. In a given case, the accused may confess ten or fifteen days after his arrest and as such the recovery cannot be suspected on this ground alone. Together, these circumstances establish that the appellant had hidden the body of the deceased, as well as her clothes, in a bid to suppress the evidence of his crime.

The matching of the mud recovered from the spot of recovery of the victim's body with the mud stains on the pants of the appellant is also highly incriminating, as rightly held by the Trial Court and the High Court.

As regards the scratch marks found on the face and neck of the accused, we have considered the argument of the appellant that it was possible for the injuries to have been inflicted during the scuffle that would have ensued at the time that the party of villagers apprehended the appellant, even though the medical evidence given by PW13 also shows that they could have been inflicted by a woman resisting sexual assault. It is the defence of the appellant that 10 to 15 villagers who went to the *Paradhi* settlement in search of the accused wearing a red T-shirt must have caught hold of the accused and assaulted him mercilessly, consequent to which the accused sustained scratch marks on his body. Such explanation on behalf of the accused cannot be accepted, inasmuch as a total of 8 injuries have been sustained by the accused, out of which 7 are scratch marks and only 1 is a contusion. If really the accused was assaulted mercilessly by 10 to 15 villagers, at least 10 to 15 contusions or abrasions etc.

should have been found on the body of the accused. On the other hand, the scratch marks suffered by the appellant are of such a nature as would generally occur while a victim resists any illegal action by such person such as rape etc. Such scratch marks are generally inflicted by nails. Since the victim was unarmed, she must have resisted the assault on her by the accused, leading to scratches on the accused. Thus, the scratch marks found on his face and neck clearly show the resistance of the victim.

The medical evidence also clearly establishes the occurrence of rape. As per the evidence of PW13 and the post mortem report (Exh. 35), there was swelling in the victim's labia majora along with multiple tears in the hymen. Additionally, there were several scratch marks all over her body. As regards the murder of the victim, the evidence of PW13 indicates that she was killed by strangulation by the red *odhani* which was found tied tightly around the victim's neck when her body was recovered.

The motive for the crime, i.e. lust, is also apparent, which is an important consideration in cases based on circumstantial evidence, as pointed out by the High Court. No doubt, the semen

of the appellant has not been detected in the vaginal swabs of the deceased (as per the FSL Report being Exh. 38), having been found only on the knickers of the appellant himself (as per the FSL Report being Exh. 61). However, this, too, cannot be a ground to exonerate the appellant, given the totality of circumstances of the case, and also considering that the swabs were mixed with mud, as stated by the doctor PW13.

Additionally, in light of the incriminating circumstances enumerated above, we find ourselves unable to agree with the contention of the learned Senior counsel for the appellant that the non-investigation into the ownership of the second wristwatch recovered vitiates the case against the accused. Moreover, as noted by the High Court, the non-seizure of the sandal of the victim and the stone used to hide the victim's clothes, also does not strike at the root of the matter.

9. Thus, we are of the opinion that each link in the chain of circumstantial evidence has been adequately established by the prosecution, and the conviction of the appellant is affirmed.

10. We now turn our attention to the issue of quantum of sentence, particularly the sentence of death awarded to the appellant. Before proceeding further, it would be pertinent to recall that life imprisonment is the rule and the death penalty is the exception, and the death penalty is to be imposed only when the alternative of life imprisonment is totally inadequate, and therefore unquestionably foreclosed, i.e. if it is the only inevitable conclusion, as per the well-settled legal proposition first enunciated in ***Bachan Singh v. State of Punjab***, (1980) 2 SCC 684. While determining the sentence, it is equally important for the Court to consider the aggravating circumstances of the crime and the mitigating circumstances of the criminal. Moreover, since the decision in ***Machhi Singh v. State of Punjab***, (1983) 3 SCC 470, a balancing approach of such aggravating and mitigating circumstances has been adopted, to see if the crime is among the rarest of rare cases.

The Trial Court and the High Court, on an evaluation of the aggravating and mitigating circumstances of the case, have arrived at the conclusion that the death sentence is warranted in this case. Undoubtedly, the Courts were correct in giving weight

to the dastardly nature and manner of the crime, i.e. kidnapping a girl of the tender age of 13 years, taking her to a secluded area and committing the act of rape and subsequently murdering her by strangulation and burying her body in a field, having disrobed her completely, and also in giving weight to the youth and helplessness of the victim, and to the fact that the appellant proceeded to target her to satisfy his lust.

Though we agree that the crime committed is of an abominable nature, it cannot be said to be of such a brutal, depraved, heinous or diabolical nature so as to fall into the category of the rarest of rare cases and invite punishment with death. We also find ourselves unable to agree with the view of the Courts that the appellant is such a menace to society that he cannot be allowed to stay alive.

On the other hand, we are of the view that the prosecution did not establish that the appellant was beyond reform, especially given his young age. We are also mindful of the appellant's lack of criminal antecedents prior to the commission of this crime, and of his post incarceration conduct, which in no way suggests the impossibility of his reform. It would be pertinent to observe at

this point that although the Trial Court noted his lack of remorse during the hearing, and the High Court noted his lack of remorse after committing the crime, as he was found calmly wandering around the locality, this does not in any way indicate that there is no scope of reform for the appellant.

11. Thus, neither the circumstances of the crime nor the circumstances of the criminal, i.e. the appellant, would go to show that the instant matter falls into the category of the rarest of rare cases, or that the sentence of life imprisonment is unquestionably foreclosed and grossly disproportionate. Therefore, in the totality of the facts and circumstances of this case, we find it fit to commute the death sentence of the appellant to life imprisonment.

At the same time, we are of the opinion that a sentence of life imprisonment simpliciter would not be proportionate to the gravity of the offence committed, and would not meet the need to respond to crimes against women and children in the most stringent manner possible. Moreover, though we have noticed above that the possibility of reform of the accused is not completely precluded, we nevertheless share the concerns of the

Trial Court and the High Court regarding the lack of remorse on behalf of the appellant and the possibility of reoffending. In such a situation, we deem it fit to restrict the right of the appellant to claim remission in his sentence of life imprisonment for a period of 20 years.

12. At this juncture, we would like to acknowledge and appreciate the diligence and painstaking attention to detail in preparing for this matter on the part of Shri Amartiya Kanjilal, learned counsel for the appellant, as also commended by Shri V. Giri, learned Senior counsel appearing on behalf of the appellant.

13. Thus, the Criminal Appeals arising from Special Leave Petition (Criminal) Nos. 5416-17 of 2015 are disposed of by commuting the sentence of death awarded to the appellant to life imprisonment, out of which the appellant shall mandatorily serve out a minimum of 20 years without claiming remission.

.....J.
[N.V. RAMANA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI; .....J.
DECEMBER 05, 2018. [HEMANT GUPTA]