

(2015) 01 RAJ CK 0177
In the Rajasthan High Court
Case No : Criminal Appeal No. 143/2006

Rajan Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 120(B), 120B, 201, 302, 363

Citation : (2015) 1 WLN 374

Hon'ble Judges : V.K. Mathur, J.; Kanwaljit Singh Ahluwalia, J.

Bench : Division Bench

Advocate : G.S. Fauzdar, for the Appellant; N.S. Dhakad, Public Prosecutor, Advocates for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—Rajan Singh Son of Hari Singh alongwith his two brothers Hakim Singh, Sunder Singh and, Bhuri Singh and Suresh both sons of Prasadi residents of Village Buravai was tried by the Court of Additional Sessions Judge (Fast Track) No. 3, Bharatpur in a case arising out of FIR No. 228/2003 registered at Police Station, Chiksana Distt. Bharatpur for offences under Sections 363, 364, 302, 201, 376 and 120(B) IPC. Trial Court vide its impugned judgment dated 12th November, 2005 acquitted Hakim Singh, Sunder Singh, Bhuri Singh and Suresh of all offences i.e. under Sections 363, 364, 302, 302/120(B), 376, 376/120B, 201 and 120B IPC. The trial Court also acquitted appellant Rajan Singh of offences under Sections 376 and 120B IPC but convicted him of offences under Sections 363, 364, 302 and 201 IPC. Vide a separate order of even date, the appellant was sentenced as under:--

"For offence under Section 363 IPC : Five Years rigorous imprisonment and a fine of Rs. 1000/-, in default thereof, to further undergo one year simple imprisonment.

For offence under Section 364 IPC : Seven Years rigorous imprisonment and a fine of Rs. 1000/-, in default thereof, to further undergo one year simple

imprisonment.

For offence under Section 302 IPC : Life imprisonment and a fine of Rs. 2000/-, in default thereof, to further undergone two years simple imprisonment.

For offence under Section 201 IPC : Three years simple imprisonment and a fine of Rs. 500/-, in default thereof to further undergo six months simple imprisonment."

2. All the above sentences were ordered to run concurrently.

3. Aggrieved against his conviction and sentence, Rajan Singh has instituted the present appeal.

4. Criminal proceedings were set into motion by Karuha (P.W.1). He on 06th September, 2003 at 9.15 A.M., presented written complaint (Ex. P/1) before SHO Police Station, Chiksana Distt. Bharatpur. On the basis thereof, the formal FIR (Ex. P/2) was registered for offences under Sections 363 and 364 IPC.

5. Written complaint (Ex/P/1) when translated into English reads as under:--

"To

SHO, Police Station, Chiksana (Bharatpur). Subject: Kidnapping of daughter.

Sir,

It is humbly submitted that today night at about 11.00 P.M., Rajan Singh son of Hari Singh was found sitting on the ground near the cot of my daughter. I told him to go away. He left the spot while giving abuses. At that time, I was suffering from fever, therefore, I slept. At about 4.00 A.M., there was a drizzle (rain). I woke up and found that my daughter (name withheld to protect her identity) aged 5 years was not on the cot. She was taken away by Rajan Singh Son of Hari Singh. I started wailing, then my uncle and brother also woke up. Jagjeet, Fatehsingh and Jaipal reached at my house. We all reached to the house of Rajan Singh. He was not found there, as his cot was vacant. Accused may kill my daughter or may sell her. Rajan Singh has kidnapped my daughter aged 5 years. I hereby request you that necessary action be taken.

Dated 06th September, 2003.

Report submitted by Karuha Son of Sahabsingh, R/o Village Buravahi Post Rarha, Police Station Chiksana Distt. Bharatpur."

6. On presentation of above complaint, as stated earlier, formal FIR was registered.

7. The above said FIR was investigated. A report under Section 173 Cr.P.C. was submitted in the Court of the concerned Magistrate. The present appellant and acquitted co-accused alongwith report of investigation after commitment were sent for trial to the Court of Session. The trial of the case was entrusted to the

Court of Additional Sessions Judge, (Fast Track), No. 3 Bharatpur. The appellant was charged for abduction, rape of daughter of the complainant and her murder.

8. During investigation, complainant and his witnesses improved their case and introduced following two facts:--

"(a) That a day before occurrence, present appellant Rajan Singh alongwith acquitted co-accused was having liquor and meat and hatched a conspiracy to abduct, commit rape and murder of the daughter of the complainant.

(b) That complainant at 4.A.M. on the intervening night of 5th and 6th September, 2003 when woke up from sleep due to drizzling, found that his daughter was missing. He alongwith others had gone to the house of the accused Rajan Singh. They saw accused Rajan Singh was carrying his daughter in the lap and was running towards the bajra fields. Accused could not be apprehended by the complainant and the witnesses."

9. The trial Court had not relied upon the evidence to the effect that the appellant alongwith other co-accused while taking liquor and meat had hatched the conspiracy to commit crime and thus, had acquitted the co-accused of the appellants namely Hakim Singh, Sunder Singh, Bhuri Singh and Suresh.

10. The case of the prosecution to secure conviction of appellant from the trial Court for offence of kidnapping, disappearance/destruction of evidence and murder, rests upon circumstantial evidence as there is no direct evidence available with prosecution qua the appellant having committed the murder. Nobody had seen appellant committing the murder, though there is evidence to the effect that appellant was seen carrying the daughter of the complainant to the fields.

11. Hence, prosecution case rests upon following circumstances:--

"(i) That on the intervening night of 5th and 6th of September, 2003, appellant at 11.00 P.M. was seen near the cot of the daughter of the complainant. He was rebuked by the complainant and turned out of the house.

(ii) That at 4.00 A.M. daughter of the complainant was found missing.

(iii) That on the intervening night of 5th and 6th September, 2003 at about 4.00 A.M. when complainant and his witnesses had gone to the house of the appellant, accused alongwith daughter of the complainant ran towards bajra field and was not found later.

(iv) That on 16th September, 2003 appellant got identified the place where bones of an unidentified human being were lying.

(v) That near the bones/skeleton of a human being Kurta and Payjama of accused Rajan Singh with blood stains was found and from the pocket of the kurta, driving licence of the accused was also found."

12. Shri G.S. Fauzdar, counsel for the appellant has assailed the above

circumstances to submit that the witnesses have improved the case of prosecution, at a highly belated stage to introduce the fact that accused was seen running with the daughter of the complainant towards the bajra field. It is contended that recovery of kurta and payjama and a driving licence is a padding and disclosure and identification leading to recovery of bones is inadmissible as recovery of bones had already taken place from an open and accessible place.

13. Per contra, the learned Public Prosecutor has submitted that prosecution has proved its case to the hilt and chain of circumstances lead to inescapable conclusion that it is only the appellant who has committed the offence.

14. To dissect the case of the prosecution, first we shall notice the examination-in-chief of the witnesses and thereafter, while analyzing evidence led by the prosecution, we will take note of the cross-examination of the witnesses to appreciate the rival contentions raised before us.

15. Karuha (P.W.1) stated that on the intervening night of 5 and 6th September, 2003 he was sleeping in the courtyard of the house. His father was sleeping on the chabutara alongwith his brother Megh Singh (P.W.3). On a separate cot, his daughter (name withheld to protect her identity) and son Loket were also sleeping. His wife was sleeping inside the room. At about 11.00 P.M., he saw accused sitting near the cot of the daughter and fondling with her body parts. The witness was suffering from fever. At that time, accused was under the influence of liquor. The witness questioned, the accused and asked him to leave his house. The accused went away while giving abuses. At about 3-4 A.M. drops of rain started falling, the witness moved his cot and found that his daughter was missing and was not present on her cot. He raised noise which attracted Fateh Singh, Jaipal (P.W.5), Jaggu @ Jagdish (P.W.4) etc. They went to the house of the accused Rajan Singh and found that he was not at his house. Other people had also accompanied the witness to the house of the accused. Rajan Singh accused appellant was seen taking daughter of the complainant towards the fields adjoining to the house of the accused. The witness also gave particulars regarding the clothes worn by the deceased and bangles etc. The witness proved presentation of written complaint (Ex. P/1), registration of formal FIR (Ex. P/2), preparation of the site plan of the spot (Ex. P/3) etc. The witness further stated that 11 days after the occurrence, the dead body of his daughter was found in a bajra field. Both the hands of his daughter were lying separately. There was a skeleton in a frock. At some distance bones were lying. The skull was separated and near the dead body, Kurta and Payjama of the accused Rajan Singh were also found. This witness proved Panchnama/inquest (P/4). Recovery memo of the bones as (P/5) and site plan of the spot as Ex. P/6. It was further stated by the witness that the night Rajan Singh was found near the cot of his daughter, on the same evening, present appellant Rajan Singh alongwith Hakim, Sunder, Suresh and Bhuri had taken the liquor and cooked meat in the courtyard of the accused.

16. Vimlesh (P.W.2) wife of the complainant and mother of the deceased reiterated and corroborated the statement of her husband complainant Karuha

(P.W.1). She further stated that when at 4 A.M. her daughter was found missing, they raised noise, same attracted Fateh Singh, brother of his father-in-law, Jagjit (P.W.4) and Jaipal (P.W.5). Then they all went to the house of the accused, they saw at a distance of 5-6 steps that the accused having her daughter in his lap was running into the fields. They searched for the accused and daughter but they were not found. Meghsingh (P.W.3) brother of complainant Karuha (P.W.1) also stated that after the noise was raised Jagjit, Fatehsingh, Jaipal and number of villagers came to their house, thereafter they all went towards the house of the accused and saw that accused carried his niece towards the bajra field and thereafter, accused was not found. They left the village at about 6-7 A.M. to report the matter to the police. 11 days after the report was made, dead body was found.

17. Jagjit Singh @ Jango (P.W.4) a neighbour stated that his house is at a distance of 10-12 steps from the house of the complainant. On hearing the noise, he had gone to the house of the complainant. Thereafter, they went to the house of the accused and saw him running away with daughter of complainant towards the fields. After the dead body was recovered, this witness had attested recovery memo (Ex. P/7) whereby blue colour frock and red colour panty of the daughter of the deceased was recovered. Vide recovery memo (Ex. P/8) eight bangles, two bracelets of the deceased and vide (Ex. P/9) Kurta and Payjama of accused Rajan Singh were recovered from the spot. From the pocket of Kurta, lying near the dead body, a driving licence of the accused was also found. This witness further stated that dead body of the daughter of the complainant was found in the fields of Dulichand and Forren falling within the revenue estate of Village Rarah. Dulichand and Foren are uncle and nephew, who were in possession over their common field.

18. Almost on similar lines is the testimony of another neighbour Jaypal Singh (P.W.5). P.W.6 Harish Chand who had attested Panchnama/inquest (P/4), memo of recovery of bones (Ex. P/5) has not supported the prosecution case and was declared hostile. Rajveer (P.W.7) had attested the inquest/Panchayatnama (Ex. P/4).

19. Komal Singh (P.W.8) stated that accused made a disclosure and led the police party to a field in the Village Rarah and got recovered the skeleton of the deceased.

20. Dr. Harendra Singh (P.W.9) at relevant time was posted as Medical jurist at RVM Hospital, Bharatpur. He was a member of the Board which had conducted autopsy and had sent the following bones to the Forensic Science Laboratory in a wooden box:--

- "1. Skull intact - one
2. Mandible- one
3. Scapula -two Bones

4. One Broken Ileum- Two Bones

5. Humeres- two Bones

6. Ulna- two Bones

7. Radius- two Bones,

8. Vertebrae- 22 Bones

9. Clavicle- two Bones

10. Ribs- 20 Ribs

11. Short Bones- three Bones"

21. The Medical Board in order to formulate their opinion regarding cause of death had sought answer to following questions:--

"1. Whether Bones and Hairs are of human origin or not?

2. If human, whether they are of male or female?

3. Whether they belong to one individual or more individuals?

4. If to one person, then what is the stature of the individual?

5. What is the Age?

6. Whether the Bones have been cut sawn, gnawed by animals?

7. Probable cause of death?

8. Time of death?"

22. Jogendra Singh (P.W.10) had handed over the sealed packet (containing bones to the Forensic Science Laboratory). Rajendra Sharma (P.W.11) being the Investigating Officer proved the various facets of the investigation leading to registration of the case, recovery of bones, recovery of clothes of the accused alongwith his driving licence and other features of the prosecution case. Vimal Kumar (P.W.12) SHO, Police Station, Chiksana proved report of investigation.

23. Thereafter, prosecution had closed its evidence and statement of the accused was also recorded under Section 313 Cr.P.C. All incriminating evidence was put to the accused, he denied all incriminating circumstances and pleaded innocence and false implication.

24. Accused examined four witnesses in defence. Laxmi (D.W.1), Raghuveer (D.W.2) and Rajendra Singh (D.W.3) were examined to prove alibi of acquitted co-accused Bhuri Singh and Suresh whereas present appellant Rajan Singh had examined Kartar Singh (P.W.4) to state that on the day of occurrence, he being driver of the truck had gone to Mizoram and was not present in the Village.

25. Conviction of the present appellant primarily is based on the circumstance

that immediately few minutes after 4 A.M., he was seen carrying the daughter of the complainant Karuha (P.W.1) towards bajra fields and even though, complainant and witnesses chased, accused Rajan Singh was not apprehended and for about eleven days search made by the witnesses and the Investigating agency had proved futile and had yielded no result. As stated earlier, above fact is not mentioned in the written complaint (Ex. P/1) which was presented on the same day at about 9.15 A.M., we find no cogent reason as to why this material fact was not stated in the FIR.

26. Karuha (P.W.1) complainant, father-of the deceased, Vimlesh (P.W.2), mother of the deceased, Meghsingh (P.W.3) uncle (chacha) of the deceased, Jagjit (P.W.4) and Jaipal (P.W.5) all have stated that immediately when complainant Karuha (P.W.1) had raised noise at around 4.00 A.M. that his daughter is missing, they went to the house of the accused and saw him running towards his field adjoining to his house carrying deceased daughter of the complainant in his lap.

27. Silence on the part of the witnesses and not to disclose this fact to the police make us circumspect to doubt credential of the witnesses. Non-mentioning of this material fact in the written complaint put us on guard to inquire whether this fact was introduced later as a result of consultations and deliberations or not. We shall notice the explanation of the witnesses on this score as witnesses have been thoroughly cross-examined qua this aspect.

28. Karuha (P.W.1) complainant stated in Court that he had signed on report (Ex. P/1) after reading the same and at the time of making report, he was fully conscious. The vernacular portion of the statement of the witness in Court reads as under:--

29. Later, when the witness was subjected to cross-examine by the counsel for the appellant, this witness stated as under:--

30. It is to be noted that earlier, witness made the statement that he was fully conscious and later, gave an explanation that due to running of fever, he had missed to state material fact in written complaint (Ex. P/1). As to why this material fact was omitted, we find explanation given by the witness as absurd. It is to be noted that when witness went to police station to report the matter, he was accompanied by other witnesses.

31. Megh Singh (P.W.3) brother of the complainant Karuha (P.W.1) in his examination-in-chief stated that he alongwith other had seen Rajan taking his niece towards bajra fields. They searched for him extensively but he was not found and at around 6-7 A.M. they went for making report to the police. In cross-examination extended by counsel for co-accused Hakim Singh and Sunder Singh, this witness stated that for making report to police, complainant Karuha (P.W.1), Jagjit (P.W.4), Jaipal (P.W.5), Fateh Singh, Jagdish and many other persons had gone but he had not gone to lodge the report. His father and other people had also gone to lodge the report. This witness further stated that before lodging the

report, they learnt that accused had taken his niece towards the fields. This witness further stated that when his bhabhi, Vimlesh (P.W.2) made statement to the police, she already knew that Rajan had taken her daughter towards the bajra field. It will be apposite here to reproduce the following portion of the statement made by the witness in the Court:--

At later stage, this witness stated as under: -

32. Vimlesh (P.W.2) when confronted stated that since statement of the family members had already been recorded and she had not stated this fact to the police that when his family members reached at the house of the Rajan, Rajan was seen taking her daughter to the bajra field.

33. Jagjit Singh @ Jango (P.W.4) stated in his examination-in-chief that when they were at 10-12 steps from accused Rajan, they had seen accused taking the daughter of the complainant to the fields. In cross-examination by counsel for Suresh and Bhuri Singh, co-accused, this witness stated that he had seen the accused entering the fields and they had reached at the house of the accused Rajan at about 4.10 A.M. They had seen Rajan coming out of his house with the daughter of the complainant at 4.10 A.M. This witness in the opening lines of the cross-examination by counsel for the Rajan, present accused-appellant stated that they had reached at Police Station, Chiksana at about 7.00 A.M. Report was written by Jagdish on the diction of complainant Karuha (P.W.1). After the report was written, he had read the same and found the facts stated therein to be correct. This witness stated in his cross-examination as under:--

34. Jaipal Singh (P.W.5) stated that when Karuha (P.W.1) had raised noise, they stayed at his house for 4-5 minutes, meaning thereby immediately after 4.00 A.M., they had reached at the house of present appellant. This witness stated that he had accompanied Karuha (P.W.1) to lodge report at the police Station, Chiksana, who had narrated everything in the report. Later, this witness stated that as to what was stated by Karuha (P.W.1) is not in his knowledge. However, this witness stated that before lodging the report Karuha (P.W.1) knew that Rajan had carried his daughter in his lap to javar/bajra field. However, this witness stated that Karuha (P.W.1) is son of his uncle (chacha).

35. Considering the conduct of the witnesses that the material fact that they had seen the accused carrying a child towards fields is not stated in the FIR and their police statements, even they knew about this fact, we are of the considered opinion that it is not safe to rely upon this circumstance. Even otherwise, also we find it improbable that accused was carrying a child of five years and was seen by the witnesses at a distance of 10/12 steps and yet they were not able to apprehend the accused. Thus, to us it is not safe to rely upon this part of the statement of the witnesses.

36. Once we ignore that accused was last seen with the deceased or he had carried deceased, a five years girls child to the fields, we have to ponder and consider as to what is the cause of death of the deceased. It is to be noted that

only a skeleton and bones were recovered from the fields of another Village Rahar. Complainant, witnesses and accused are resident of Village Buravai. We have already reproduced the questions formulated by the Board of Doctors and referred to the Forensic Science Laboratory. Forensic Science Laboratory in his report (Ex/18) stated that bone belong to human origin and they belong to a person of six years of age. The Forensic Science Laboratory has stated that no definite opinion could be drawn regarding sex, stature, cause and time of death.

37. Dr. Harendra Singh (P.W.9) who is a Member of Medical Board stated that being member of the Medical Board, he is unable to give any definite opinion regarding sex and cause of death of the deceased and the time of death before the postmortem examination.

38. Thus, there is no evidence with the prosecution, whether child had died due to asphyxia as a result of strangulation or as a result of violence. The prosecution has miserably failed to prove as to how deceased had died. We cannot assume unnatural death, for lack of evidence and opinion on this vital aspect. It was a bounden duty of the prosecution to prove cause of death and stand on its own legs to say as to how a girl aged five years had died. It was incumbent for prosecution to prove unnatural death and we cannot assume the same from the circumstances.

39. For the sake of argument, even if we assume that daughter of the complainant had died an unnatural death, the question which again stare at us is, whether chain of circumstance is complete to arrive at the conclusion that it is the appellant alone who has committed the offence and none-else. We have already ignored the circumstance that the accused had carried the child towards the field. It is to be noted that accused was arrested on 16th September, 2003 and he had allegedly made a disclosure statement that the dead body of the deceased was lying in the fields situated at Village Rahar. Field is an open and accessible place. The case of the prosecution is that in pursuance of the disclosure statement, accused went to the spot and got the dead body recovered.

40. Harish chand (P.W.6) stated in the opening line of the cross-examination by the counsel for the appellant that it is correct that when police recovered the skull and the bones accused Rajan was not present. Police had shown to the witness bones and skull from a distance. He further stated that police had obtained his signatures on the blank paper. This witness further stated that from the spot, no licence, kurta and payjama of the accused were recovered.

41. Rajvir (P.W.7) who had attested the inquest also in his cross-examination also stated that it is correct that when the skeleton was recovered, at that time, accused was not present.

42. We also cannot ignore the fact that Dr. Harendra Singh (P.W.9) being a member of the Medical Board which had conducted autopsy had noticed in the postmortem report that the dead body was emitting foul smell. Foul smell would attract the villagers and the presence of the bones would have been detected by

them. Hence, it is highly unsafe to rely upon the disclosure statement and the fact that in pursuance thereof, accused got the dead body recovered. Similarly, we find it improbable that accused would leave kurta, payjama and the driving licence at the spot. Furthermore, on the clothes of the accused, even though Forensic Science Laboratory opined that there was presence of human blood on the clothes of accused, group of the same has not been determined. Blood on clothes may be of accused. Hon''ble Apex Court in Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, has held in para 28 of judgment as under. The said para reads as under:--

"28. The discovery of a blood stain of the B Group measuring 0.5. cm. in diameter on the appellant's pant and of a dried stain of semen on his under-pant are circumstances far too feeble to establish that the appellant raped or murdered Sunita. "B" Group is not an uncommon group of blood and no effort was made to exclude the possibility that the blood of the appellant belonged to the same group. As regards the dried stain of semen on the appellant's under-pant, he was a grown up man of 30 years and no compelling inference can arise that the stain was caused during the course of the sexual assault committed by him on the girl." 43. Forensic Science Laboratory has further stated that the Bidis recovered from the spot from morphological and microscopic examination had not tallied with the bidis and match-box recovered from the accused at time of arrest and hence, no definite opinion regarding the comparison can be given.

44. In view of the discussion made above, we find that prosecution has miserably failed to complete the chain of circumstance to lead to the conclusion that offence of murder was committed by the appellant. Thus, taking totality of the circumstances, we accept the present appeal, set aside the conviction and the sentence of the appellant and acquit him of the charges by extending benefit of doubt.