
(1986) 01 DEL CK 0048

In the Delhi High Court

Case No : Criminal Appeal No. 129 of 1982 and Criminal Revision Appeal No. 209 of 1982

Ram Kumar and Karam Bir

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-01-1986

Acts Referred:

Citation : (1987) ILR Delhi 480

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : A.N. Mulla, C.M. Nayar, D.R. Sethi and G.S. Bakshi, for the Appellant;

Judgement

Aggarwal, J.

(1) Karambir Singh son of Balbir Singh aged about 20, years and Ram Kumar son of Chhotu aged about 17-112 years (ago found by the Additional Sessions Judge to be 18 years as on 9th May 1980 on the basis of the medical report) residence of village Tajpur were tried on the charges under sections 376 and 302 of the Indian Penal Code in the Court of Shri G. S. Dakha, Additional Sessions Judge. The charges against them were that on the night of 28th-29th April 1980 at about 10 p.m. they had in the house of Tara Chand raped Kumari Kamlesh, daughter of Tara Chand, and thereafter murdered her. The Additional Sessions Judge found both the accused guilty of the offences charged with and sentenced each one of them to life imprisonment on the charge u/s 302 of the Indian Penal Code and to rigorous imprisonment for 7 years on the charge u/s 376 of the Indian Penal Code. Dissatisfied with their convictions and sentences both the accused have come in appeal. The complainant Tara Cho.nd 1m filed a petition for enhancement of the sentence to death. This judgment shall dispose of both the appeal and the revision petition.

(2) The motive for the crime alleged is previous enmity between the family of Karambir accused and tora Chand ("father 482 of the deceased Kamlesh). A

short pedigree table will be useful in understanding the relationship and the alleged motive :

Chhate Bakhtawar Hazaro Tara Chand Vedo Chanan Balbir Baljit (p. w. 4) Singh (dead) (dead) Karambir Kamlesh (appellant) (deceased)

(3) The prosecution case is that some 5 or 6 years before the occurrence Vedo had transferred her land to Tara Chand without any consideration and this became the bone of contention between the two families resulting in inimical relations.

(5) From the above evidence thus it would be clear that there was an enmity between the families of Karambir and Tara Chand. The second accused Ram Kumar is the son of Chhotu. Chhotu has a brother named Sube. Public Witness 7 Gian Wati has deposed that there is litigation between Ram Kumar and Sube on account of the transfer of land by Chhotu to Sube. The witness refuted the suggestion that her husband and Sube are friends and are on visiting terms.

(6) According to the site plan Tara Chand has a two room house with an open courtyard. The courtyard is enclosed by a boundary wall about 7 feet high. There is a mulberry tree in the compound. The house of Karambir is in the opposite side. A gali intervenes between the house of Tara Chand and Karambir. The ghar of Tara Chand is near the house of Karambir (a gali separates the house of Karambir and the ghar of Tara Chand). The house of Ram Kumar is about 3 or 4 houses away from the house of Karambir.

(7) Tara Chand is employed as a constable in the Delhi police force. At the relevant time he was on night duty. On the fateful evening of the occurrence it is alleged that he had gone for his duty at about 2.30 p.m. and returned on the morning of 29th April 1980. Tara Chand along with his wife and 5 children including the deceased Kamlesh aged about 12 resided in the house at Village Tajpur. The eldest is a daughter named Krishna, next was Kamlesh aged 12 and thereafter there are 3 sons named Balbir aged 10, Harbir aged 8 and Satbir who was aged 4 or 5.

(8) The case for the prosecution is this. On 28th April 1980 at about 2.30 p.m. Tara Chand had gone on his night duty. At about 7 or 8 p.m. Gian Wati Along with her two elder sons left for the fields to work on the thresher. Kamlesh and the youngest son were left behind in the house. Kamlesh and the youngest son slept together on one cot. (P.W. 24 Balbir, however, deposed that in the morning he saw Satbir sleeping on a separate cot at a distance of about 6 or 5 feet of the cot on which Kamlesh was found lying dead). On 29th April at about 6 in the morning Gian Wati sent Dalbir to the house to get her tea. Dalbir on reaching the house found it bolted from inside. He shouted for his sister but she did not respond to his shouts. He got inside the house through the house of a neighbour and he found Kamlesh lying on the cot covered with a chadar. He tried to wake her up but there was no response. Dalbir ran back to his mother and told her that Kamlesh is lying dead. Gian Wati rushed home and she found injuries on the

left side neck of Kamlesh and also found that she had been raped.

(9) An anonymous caller informed the police station Alipur on telephone at 8.30 a.m. that a quarrel is taking place in village Tajpur Kala and that some police officers might be sent immediately. The report, copy of which is Ex. Public Witness 3 /A, was handed over to Asi Tara Chand (P.W. 25) for investigation. P.W. 25 reached the spot and recorded the statement Ex. Public Witness 7/A of Gian Wati and sent the same with his endorsement to the police station for the formal registration of the case, on the basis of which the formal report Ex. Public Witness 31B was recorded at 10.15 a.m. Public Witness 26 Sho Daya Kishan also reached the spot. The crime team also reached at about 11 a.m.

(10) Kamlesh was seen lying dead on the cot. On a brick by the side of the cot froth was seen lying. (Some witnesses have stated that phlegm (Blilgam) was found lying). A button was also seen near the cot. The scene of crime was photographed and Exts. Public Witness 1/AI to A6 are the photographs of the dead body, the brick and the button. Photograph Ex. Public Witness IIA6 is the photograph of the brick. On the photograph the material seen lying on the brick has been encircled with the remark "blood. The material whether blood or phlegm on the brick is hi sufficient quantity and is in an area of about 6 inches of the brick. (This can be seen from the photograph). The brick and the button were seized and sealed in separate parcels. The material on the brick on Chemical examination was found to be human blood of "A" group which also is the blood group of the deceased. The report of the Chemical examiner would prove that the material on the brick was blood and not froth or phlegm as described by some of the witnesses.

(11) Public Witness 25 after preparing the inquest report sent the dead body for post-mortem.

(12) Dr. Bharat Singh held the autopsy on the dead body of Kamlesh on 29th April 1980 at 4 p.m. The doctor found the following (reproduced from the original) : "Body is placed on a old torn mattress having blood stains at places. One sheet is also placed on the body. No blood on it. No other foreign material on it. Body is wearing kamij, having brown stains on the collar area (this fluid has oozed but from the noshils), deceased is also wearing salwar which is having its cord tied loosely in its normal site, and is blood stained over the external genitalia are and perineum. No fresh tears present on these clothes. No foreign hair on these clothes. There is evidence of matting on salwar by seminal fluid at the periphery of stained area on it. One plastic kara around the wrist.

(13) Body is normal built. R.M. is present all over. Body is of a young girl aged about 13-14 years with scanty pubic hair (brown). No matting of pubic hair by seminal fluid in the upper part but it is stained with blood on the sides and valve area. No foreign hair in public area or over the perineum. Breasts are small hemispherical .Areola is small and pink. No axillary hair. Face is congested. Food material is regurgitating from the mouth and nose. In the nostril food is brown

stained. Eyes are partially open, conjunctivae show petechial haemorrhage on both sides. Cornea hazy, pupils equal, Mouth partially open, tongue in normal position. Lips deep blue. No discharge from ears. Nails of fingers are deep blue. Blood is deposited over the vulva, and over the perineum and medial sides of both thigh in upper part. Blood is present in vagina and vulva which is dilated : External Injuries : (1) Abrasion on the left side neck upper part, size 1" X 1", placed horizontally, colour i.s reddish brown; (2) one abrasion on the left side neck near the submandibular angle size 2 1/10" X 1" reddish in colour. (3) One abrasion on the left side chest, 1/4" below the clavicle in mid-line. Size 1/4" X 1/10" red in colour. (4) One contusion on right side neck near the angle mandible 1/2" diameter, and clotted blood in soft tissues; (5) One linear to curved abrasion on the right cheek below the eye resembling nail mark, red in colour (6) Abrasion on lumbar area mid-line 2/10" X 1/10" red; (7) There is bruise on the left side vulva (labia minora), size 1"X3/4" bluish red in colour; (S) Hymen shows fresh tear at 4 O'clock position extending to the vaginal wall 1-1/4" long with bruising of vaginal wall left side, vaginal swab taken and sealed.

(14) On internal examination the doctor found brain congested, clotted blood is present in the soft tissues of neck underneath the abrasion on the left side neck; farther a fine blood clot was seen on the right side neck underneath the contusion.

(15) The doctor further found that all the injuries are ante mortem Injuries I to V are possible by hand during manual strangulation, injury No. 6 is possible by friction against hard surface and injuries 7 and 8 are possible by sexual act. The doctor gave the opinion that death was due to asphyxia resulting from strangulation.

(16) On 30th April 1980 Karambir and one Chander Bhan were taken into custody by the police and sent for medical examination. Karambir was medically examined on 30th April at 12.15 p.m. On physical examination the doctor found the external genitalia is well developed, prepuce could be retracted back, no smegma present. The pubic and axillary hair are well developed, external genitalia is not affected by any local disease. There is no evidence of any injury on his person. The doctor further found that the patient is having gonorrhoea. There is discharge of pus from the urethra. The doctor further found no stains of blood or semen on his under-garments. The doctor gave the opinion that there is nothing to suggest that Karambir is not capable of doing sexual intercourse.

(17) On the medical examination of Chancier Bhan, the doctor found the external genitalia well developed, prepuce could be retracted back, no smegma present. The doctor found no evidence of any injury on his person. No stain of blood or semen were found on his pyjama. The doctor gave the opinion that there is nothing to suggest that he is not capable of doing sexual intercourse.

(18) After the medical reports both Karambir and Chander Bhan were released by the police.

(19) On 8th May 1980 the police arrested Karambir and Ram Kumar. Ram Kumar was sent for medical examination and he was medically examined on 9th May 1980 at 10.10 a.m. On physical examination the doctor found the following;- "Person is of average built tall. pubic hair present. Genitals are normally developed. Prepuce could be retracted back. No blood, semen on the elans. No injury to glans fraenum. There is a thin layer of smegma on the glens .No fresh injury mark on the body. No spot on the cloth. No tear on the clothes. The doctor gave the opinion that there is nothing to suggest that he is incapable of doing sexual act.

(20) The underwear and the shirt worn by Ram Kumar were seized by the police and sealed in a parcel. The underwear of Karambir was also seized and sealed in a separate parcel. The report of the Chemical examiner on the clothes seized from the person of Karambir and Ram Kumar is that the human semen was detected on their clothes.

(21) On 8th May, 1980 Ram Kumar and Karambir are alleged to have made disclosure statements. Ex. Public Witness 11 /A and Pw II/B, respectively, and Ram Kumar led the police to the kotha in the house of tora Chand from where a cot 6 feet in length and 3 feet in width with round legs and knitted with ban strings was recovered. On the head side of the cot stains of blood were found. 5 strands of hair of small size were also recovered. The cot and the hair were seized and taken into possession. On Chemical analysis a few small sized dark brown stains of human blood of "A" group were found on the cot. The strands of hair were also sent for comparison, with the hairs of the accused but the Chemical examiner gave the opinion that the hairs in exhibits 5, 7, 10, 13 and 15 arc of human origin, but it is not possible to express a definite opinion regarding similarity or otherwise of the hairs in exhibit 10 with the hairs in Exts. 5, 7, 13 and 15. Samples of saliva of both the accused were taken and were sent for Chemical examination. The Chemical examiner could not give any definite opinion regarding the saliva of Karambir, but as regards the saliva of Ram Kumar it was found to be of "A" group.

(22) The shirt seized from the person of Ram Kumar had five buttons on the front side and two buttons on the sleeve and one button on the side of the lower-most position was missing. The button found at the spot was sent for comparison with the buttons on the shirt of Ram Kumar and the report of the expert is that the button marked Ex. No. 2 (found at the spot) is similar to the buttons stitched on the bush-shirt marked Ex. 9B, as regards their colour, size and shape.

(23) Karambir Singh in his statement at the trial stated that as far as he knew Tara Chand had grabbed the land of Vedo without any justification. He further stated that Tara Chand and his wife were having enmity with his parents. Karambir further denied all the allegations of the prosecution. He, however, admitted that he was suffering from. gonorrhoea. He further stated that the witnesses have given false evidence against him. He further stated that Vedo had good relations with his parents and she used to visit his parents and that Tara

Chand became apprehensive that on account of cordial relations between his parents and Vedo she might give her share of the land to his parents and that on that account Tara Chand had become inimical towards them. He further stated that his parents had no intention to take the land of Vedo. Karambir further stated that he had been implicated falsely on account of enmity.

(24) Rain Kumar in his statement u/s 313 of the Code of Criminal Procedure denied the prosecution case in its entirety. He denied that the shirt Ex. P6 and the underwear Ex. P10 were taken by the police from his person. He further stated that there is litigation between his father and his uncle Sube and that Sube is a friend of Tara Chand and he has been implicated in the case falsely at the instance of Tara Chand. He further stated that the police had let off Chander Bhan and in his place falsely implicated him.

(25) The learned Additional Sessions Judge has believed the prosecution case that Karambir had a motive to commit crime. He has also accepted the prosecution case that Ram Kumar had a year before the occurrence teased Kamlesh in her ghar and he was reprimanded by Krishna, the elder sister. He has further believed the disclosure statement, made by both the accused and the recovery of the cot. He further accepted the prosecution case that Gian Wati had seen both the accused together on the night of the occurrence at 8 p.m. and again at 9 p.m. Relying on the various pieces of evidence produced by the prosecution the Additional Sessions Judge came to the conclusion that it was both the accused who had first raped Kamlesh and thereafter strangled her.

(26) Mr. Mulla, learned counsel for the appellants, has argued that both the accused have been falsely involved in the case and that the evidence produced against them is wholly unreliable and insufficient to connect the accused with the crime. Bawa Gurcharan Singh, appearing for the complainant, has canvassed for the correctness of the view taken by the Additional Sessions Judge.

(27) It cannot be disputed that Kamlesh who was aged about 13 years was the victim of a most heinous crime inasmuch as she was raped and thereafter strangled to death. The post-mortem report clearly proves that Kamlesh was first raped and thereafter strangled.

(28) We have carefully gone through the record and we find that the chain of circumstances taken together do not establish the case against the appellants beyond a reasonable doubt. We find considerable doubt regarding the guilt of the appellants.

(29) The first piece of evidence against the appellants is that they were seen sitting together by P.W. 7 when she was going to her fields at about 7 or 8 p.m. Public Witness 7 gave evidence that on the night of the occurrence when she was going towards the thresher she saw Karambir and Ram Kumar in the way sitting together. In cross-examination she stated that she saw them sitting together in a bunjar land belonging to the Panchayat at a distance of about 4 kilos from her thresher. She further stated that on the evening of 28th she had gone to her

house to take food at about 8 p.m. and she had gone back to the fields at about 9.30 p.m. and she saw Karambir, Ram Kumar and Chander Bhan sitting together when she went back to her fields. The witness maintained that she told the above facts to the police on 29th April. The witness was confronted with her statement Ex. Public Witness 7/A where these facts are not mentioned. She further stated that she had told Tara Chand about it when he had returned after cremating Kamlesh.

(30) Tara Chand (P.W. 10) does not mention in his deposition about any such talk with Public Witness 7. Public Witness 24 Dalbir testified that all of them including Kamlesh had their food together and they had left their house for the fields at about 7 or 8 p.m.

(31) We find that Public Witness 7 in court has attempted to make improvements in the prosecution case on material points. P.W. 7 gave evidence that when she returned to her house in the morning she was told by her youngest son Satbir that during the last night Karambir had caught the hands of Kamlesh and gagged her mouth and Ram Kumar had caught her by her legs and then both of them had listed her and taken her inside the kotha. She further deposed that she had told the said facts to the police in her statement Ex. Public Witness 7/A. The "witness was confronted with her statement Ex. Public Witness 7/A which does not contain any such statement.

(32) There is absolutely no doubt that Public Witness 7 has deliberately tried to make the above improvement in the prosecution case. If Satbir had told these facts to the mother there is no doubt that she would have named both the accused to the police at the very first instance. This statement has been made by Public Witness 7 purposely and we shall revert back to this aspect while dealing with the disclosure statements said to have been made by both the accused on 8th May 1980.

(33) Public Witness 7 did not mention in her first statement before the police about her having seen both the accused along with Chander Bhan on the night of 28th April 1980. Bawa Gurcharan Singh contended that Public Witness 7 had in her supplementary statement to the police on 29th April 1980 stated that she had seen Karambir and Ram Kumar sitting together on the evening of 28th April. Public Witness 7 has in cross-examination testified that her second statement was recorded after 10 or 15 days of the occurrence. This seems to us to be more probable.

(34) If Public Witness 7 had stated to the police of her having seen both Ram Kumar and Karambir together on the night of 28th April there, seems to be no reason why the police would not have got hold of Ram Kumar on 30th April. We have in evidence that on 30th April the police had joined Karambir and Chander Bhan in the investigation and sent them for medical examination. After the medical examination they were released. There is nothing on the record showing that any attempt was made to get hold of Ram Kumar until 8th May.

(35) We have while describing the topography of the scene of crime noticed that Karambir lives opposite to the house of Tara Chand and Ram Kumar lives just 3 or 4 houses away from the house of Karambir. Even assuming for the sake of argument that both Karambir and Ram Kumar were seen together on the evening of 28th April we do not think that any significance can be attached to this circumstance, by itself it is an inconsequential type of evidence.

(36) Shri Gurcharan Singh contended that. on medical examination no smegma was found on the glans-penis of Karambir and from this circumstance it could be concluded that he had sexual intercourse with the deceased on the night of 28th, 29th April. We are unable to agree with this contention. If any case. it is an inconclusive type of evidence. Karambir was medically examined on 30th April at 12.15 -p.m. The month of April is a summer month. Karambir must have taken his bath on the 29th morning and again on 30th morning. It is possible that while taking bath the smegma on the glans may have been washed away. Modi in his Medical Jurisprudence and Toxicology, 20th Edition at page 341 has stated that the smegma accumulates if no bath is taken for 24 hours. Keeping in mind that it was the month of April it would be reasonable to hold that Karambir must have taken his bath on 29th and again on 30th. This piece of evidence, in our view, is of no consequence.

(37) Shri Gurcharan Singh next contended that semen stains were found on the underwear seized from the body of Karambir on 8th May. This piece of evidence is also of no substance. The under garments worn by Karambir were seen by the doctor during his medical examination on 30th April and the doctor found no stain of blood or semen on his under garments. This would prove that the underwear that was worn by Karambir on 8th May was different from the underwear worn by him on 30th April. Karambir was hardly aged 18 at the time of the occurrence and the seminal stains on his underwear could have come for a variety of reasons. We must not forget that the underwear worn by Karambir was taken into possession after 8 or 9 days of the occurrence.

(38) We may discuss here another aspect concerning the medical examination of Karambir. Karambir was found to be suffering from gonorrhoeal on 30th April. He was having discharge of pus from the urethra. Public Witness 15 Dr. Bharat Singh has stated that if there is a pus discharge from the urethra of the male partner, in that case the gonorrhoeal infection may be found in the vagina. Dr. Bharat Singh, of course, further deposed that it is not necessary that the vaginal swab will exhibit the presence of gonorrhoeal organism if she is subjected to intercourse by a person suffering from gonorrhoeal disease. Dr. Bharat Singh to a question by the counsel on behalf of Karambir stated that if organism of gonorrhoeal are present in the urethra all over the penis they may travel into the vagina during the process of sexual act.

(39) The post-mortem report does not show any gonorrhoeal infection or organism in the vagina of the deceased. The medical books seem to be of the view that it is not necessary that in every case the infection would get

communicated. So this circumstance also is of inconclusive nature and no definite opinion can be expressed one way or the other.

(40) The next important circumstance on which great stress was laid by Bawa Gurcharan Singh is that on 8th May on a disclosure made by both the accused a cot was recovered from inside the kotha which contained blood stains of A group which is the blood group of the deceased. The disclosure statement made by Karambir was that on the intervening night of 28th-29th April he and Ram Kumar after scaling the wall of the house of Tara Chand had gone down with the help of a Jaman tree, that there were keys lying on the head side of Kamlesh alias Guddi and they had opened the lock of the kotha and spread the cot knitted with jute strings which was lying inside the kotha, that they pressed the mouth of Kamlesh and look her inside the room and turned her feet towards the head side of the cot and thereafter committed rape on her and thereafter strangled her, and that thereafter Ram Kumar caught hold of her feet and laid her outside on the cot and kept the keys by the head side after locking the kotha. Ram Kumar is also alleged to have made a similar disclosure statement. Thereafter, according to prosecution, Ram Kumar is alleged to have pointed out the kotha to the police and the cot with some stains of blood and a few hairs was recovered and seized.

(41) Shri Gurcharan Singh contended that the above disclosure statement except the portions where the accused admitted to have raped and strangled the deceased, the rest is admissible in evidence. We are unable to agree with this contention. The disclosure statements if believed to have been made would only be admissible to the extent of the discovery of the cot,

(42) We have our serious doubts regarding the genuineness of the above disclosure statements. The house, of Tara Chand consists of only two rooms. It is not possible to believe that during these 8 or 9 days they had not opened the room and it remained closed and locked as it was on the night of 28th- 29th April. There is no evidence of recovery of any keys from the bed on which the deceased was found lying dead on the morning of 29th April. A good deal of blood was seen lying on the brick by the side of the cot. This blood could have only come from the deceased. The brick- and the button were taken into possession by the police on 29th April. The investigating officer says that he did not take into possession the cot on which the deceased was lying. This we find difficult to believe. Public Witness 2 constable Shiv Raj Singh states that in his presence the police had taken into possession the cot on which the deceased was lying. In a case like the one before us the police could not have missed to take the cot into possession. We are unable to see how the few small sized stains of blood could have come on the cot lying inside the kotha. We find it very difficult to swallow the case of the prosecution that Kamlesh was forcibly taken inside the kotha, raped and strangled there and thereafter brought back and laid on the cot in the courtyard. If that were so, some blood would have been seen on the ground in the kotha. We find it very difficult to believe this part of the prosecution case.

(43) Here, we can also appreciate the effort on the part of P.W. 7 to introduce for the first time in the court the story regarding he; son having told her on the morning of 29th April that Karambir and Ram Kumar had forcibly taken Kamlesh inside the kotha. This statement, obviously, has been made to give strength to the prosecution case regarding the alleged disclosure statements. We find that Public Witness 7 has made improvements in her statement to suit the prosecution case and it would not be safe to rely on her testimony.

(44) The next important piece of evidence is the recovery of a button from the spot and the finding of the forensic science expert that it is similar to the buttons stitched on the bushshirt regarding colour, size and shape. As already stated, the bushshirt is said to have been seized from the person of Ram Kumar on 8th May. We are of the view that this is not a conclusive piece of evidence. In any case it would not be safe to base the conviction on such type of evidence. The only other piece of evidence against Ram Kumar is that about a year or so before the occurrence he had leased the deceased in her ghar and he was reprimanded by Krishna, elder sister of Kamlesh. The witnesses who have given evidence regarding this incident are highly interested, and we do not feel safe at all in acting on this interested evidence.

(45) Great stress has been laid by Bawa Gurcharan Singh on the motive Vedo had transferred her land to Tara Chand, father of the deceased, some 6 or 7 years before the occurrence. Karambir was only aged about 10 or 11 at that time. Karambir are five brothers. There may be enmity between the two families over the transfer of the land but we are unable to understand why would Karambir take into his head to take revenge by committing rape and murder of the daughter of Tara Chand who was only aged about 12 or 13. We can understand that the crime may have been committed, to satisfy the lust but we do not agree Karambir would have decided to wreak vengeance on the family of Tara Chand by committing this heinous crime and Ram Kumar would have agreed to join him in this beastly crime.

(46) On a careful examination of the entire record we are of the view that it would not be safe to sustain the conviction on the evidence brought on the record. There are a number of circumstances which create considerable doubt regarding the guilt of the accused. We allow the appeal and quash the convictions and sentences of the appellants. The appellants shall be released forthwith. The petition for enhancement of the sentence is dismissed.