A STATE OF UTTAR PRADESH

v.

DEVENDRA SINGH

APRIL 13, 2004

B [DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Penal Code, 1860: ss. 302, 376 and 201—Rape and murder—Evidence of witnesses—Appreciation of—Victim last seen with accused shortly before occurrence—Accused refusing to have his sugarcane field searched—Dead body of victim recovered from the sugarcane field of accused—One of the witnesses (PW-4) aged 16 years deposing that he saw accused throttling the deceased—Conviction by trial court—Acquittal by High Court holding that PW-4 did not disclose about his having seen the occurrence for three days, his conduct was unnatural and his evidence did not inspire confidence—Held, human behaviour varies from person to person—There is no set rule of natural action—To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way—The witness was a young lad and according to his testimony accused was a hardened criminal and had threatened him—His silence in not telling others for sometime cannot be said to be suspicious or unnatural—Coupled with the evidence of PW-4, evidence of other two witnesses who claimed to have seen the deceased and the accused shortly before the occurrence is of significance—Last seen theory was a factor which was not duly considered by High Court—Accused had initially prevented search of his field, but the dead body was recovered from his field—This circumstance is sufficient, coupled with the initial repulsion exhibited by accused, to substantiate his guilt—Evidence on record leads to inevitable conclusion that accused was responsible for rape and murder of victim—In view of patently perverse conclusions reached by High Court, its judgment is indefensible and is set aside—Conviction and sentence recorded by trial court restored—Evidence—Appreciation of—Judgment of acquittal—Setting aside of—Last seen Theory.

Rana Pratap and Ors. **v.** *State of Haryana,* **[1983] 3 SCC 327, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 617 of 1998.

From the Judgment and Order dated 12.3.1996 of the Allahabad High Court in Crl. A. No. 191 of 1980.

Prashant Choudhary and Jatinder Kumar Bhatia for the Appellants.

Ranjan Mukherjee (A.C.) for the Respondent.

The following Order of the Court was delivered :

ARIJIT PASAYAT, J. The State of Uttar Pradesh in this appeal questioned the legality of the judgment rendered by Division Bench of the Allahabad High Court which set aside the conviction of the accused-respondent under Sections 302, 376 and 201 of the Indian Penal Code 1860 (in short 'IPC'). The Trial Court had found the accused guilty and sentenced him to imprisonment for life for the first offence, and seven years and five years for the other two offences respectively. High Court, in appeal, reversed the judgment of the Trial Court and directed acquittal.

Background facts as projected by the prosecution are as follows:

Complainant Brij Lal (PW-1) was father of the deceased aged about 10 years. On 26.12.1978, at about noon, the deceased went to the 'Kolhu' of Rajendra Singh father of the accused, in order to chew sugarcane. She was seen chewing the sugarcane at the 'Kolhu' by the witnesses. She, however, did not return home. The complainant (PW-1) searched for her, but she could not be found. He was told by the witnesses that deceased was seen chewing sugarcane at the 'Kohlu' of the accused and later on she was seen going with the accused towards his sugarcane field. The complainant and some other witnesses went the next day to the sugarcane field of accused Devendra Singh in order to search for the deceased in the said field. The accused did not permit the complainant to have a look at the said sugarcane field. Thereafter, the complainant took the 'pardhan' of the village with him as well as other persons and all of them searched for the deceased in the sugarcane field of the accused. During the search, some portion of the field towards the south was found to be freshly dug. The complainant and others dug the said place and the dead body of the deceased was found buried there. The complainant asked the other persons present there to have a watch over the dead body and he himself went to the police station to lodge the report. The complainant lodged the report at P.S. Bilgram at 7.10 p.m. on 27.12.1978. On the basis of the information, investigation was undertaken. On completion of investigation charge sheet was placed. The accused persons pleaded

A innocence and faced trial.

Prosecution examined primarily three witnesses to substantiate its accusations. They are PWs 2 and 3 who claimed to have seen the accused in the company of the deceased just prior to the occurrence, and PW-4 who claimed to be an eyewitness. He stated to have seen the accused throttling the B deceased. The High Court found that the evidence of PW-4 did not inspire confidence. His conduct was unnatural. It was accepted that he had not disclosed about his having seen the occurrence for about three days. The High Court also noticed that the said witness at one place had admitted that he had not seen the occurrence but during his examination later on the next C day again stated that he had seen the occurrence. In this background the witness was held to be unreliable. High Court held that there was no other material to link the accused with the alleged crime.

In support of the appeal, learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. Merely because D PW-4 who was at the relevant time about 16 years of age, and has given reasons as to why he did not disclose having seen the throttling for about three days that should not have been held sufficient to wipe out his credible evidence. He is an illiterate boy belonging to a very backward place and was a farm labourer. Therefore, the High Court should not have held that his conduct was not unnatural. It was pointed out that there is no record to show E that he had admitted not to have seen the occurrence. It appears to be an error of record. Further the evidence of PWs 2 and 3 and the fact that the dead body was found in the field of the accused, who prevented people to go into the field initially are circumstances which unerringly pointed to the guilt of the accused. The medical evidence clearly established that the victim was F raped and murdered.

In response, Mr. Ranjan Muherjee, learned amicus curiae urged that the High Court has rightly discarded the evidence of PW-4, finding his conduct to be unnatural. Though the record does not show it, on the first day of examination, PW-4 had stated not to have seen the occurrence. The statement G on the next day, shows that in all probabilities he had said so. If evidence of PW-4 is kept out of consideration, evidence of others who claimed to have seen the accused in the company of the deceased prior to the incident is of no consequence. The High Court's view is reasonable since the appeal is against the judgment of acquittal.

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In view of the rival submissions it has to be first seen whether prosecution has established its case. Strictly speaking, the case is not of circumstantial evidence. Human behavior varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. (See *Rana Partap and Ors.* v. *State of Haryana,* [1983] 3 SCC 327).

As rightly noted by the Trial Court, the witness was a young lad and according to his testimony the accused was a hardened criminal with records of violence. It is his evidence that he was threatened by the accused, therefore, his silence in not telling others for the some time cannot, in the circumstances of the case, be held to be suspicious and unnatural. Further the High Court erred in observing that he had stated during examination about his having not seen the occurrence and later on clarifying that he did so because of threats given by the accused. PW-4 nowhere stated of his having not seen the occurrence. The High Court also committed another error in holding that the witness refused to be cross-examined. This fact is also not borne out from the record.

Coupled with the evidence of PW-4, the evidence of PWs 2 and 3 who claimed to have seen the deceased and the accused shortly before the occurrence is of significance. Even if the High Court kept out of consideration PW-4's evidence, the last seen theory was a factor which was not duly considered by the High Court. The dead body was found in the field of the accused and evidence on record also shows that the accused initially prevented PW-1 and others from searching his field, but after lot of persuasions he permitted the persons searching for the dead body to go to his field and in

A fact the dead body was recovered therefrom. The said solid circumstance is sufficient, coupled with the initial repulsion exhibited by the accused to substantiate the guilt of the accused.

The evidence on record leads to the inevitable conclusion that the accused was responsible for the rape and murder of the victim. Though the judgment B under challenge is one of acquittal, in view of the patently perverse conclusions arrived at by the High Court, the same is indefensible and is set aside. The conviction as recorded by the Trial Court and the sentences imposed are restored. Accused shall surrender to custody forthwith to serve the sentence imposed by the Trial Court.

C We record our appreciations for the fair and able manner in which Mr. Ranjan Mukherjee, learned *Amicus Curiae* argued the case.

R.P. Appeal allowed.