

STATE OF U.P.

v.

RAJA @ JALIL

(Criminal Appeal No. 1310-1311 of 2002)

AUGUST 28, 2008

**[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ]**

Penal Code, 1860:

ss. 302,376/511 – Attempt to commit rape – Murder – Circumstantial evidence – Extra judicial confession stated to have been made by accused – Conviction and death sentence awarded by trial Court – Acquittal by High Court – HELD: When a case rests on circumstantial evidence, a complete chain of circumstances which rule out every other possibility except guilt of accused has to be established – On facts, High Court has rightly noted that alleged extra-judicial confession was extracted from accused by assaulting him severely, and the same was not voluntary or natural – Injuries clearly indicate that he was beaten very badly after he was allegedly apprehended – Additionally, evidence of mother of deceased was full of contradictions and inconsistencies – Circumstantial evidence – Extra-judicial confession.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
Nos. 1310-1311 of 2002

From the final Judgment and Order dated 6.2.2001 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Crl. Appeal No. 385 of 1999

Pramod Swarup, Bharat Ram and Anil Kumar Jha for the Appellant.

Manish Kumar (A.C.) for the Respondent.

The Order of the Court was delivered by

A **Dr. ARIJIT PASAYAT, J.** Heard.

B Challenge by the State of Uttar Pradesh in these appeals is to the judgment of a Division Bench of the Allahabad High Court directing acquittal of the respondent Raja @ Jalil (hereinafter referred to as the 'accused'). Learned Sessions Judge, Barabanki had found the accused guilty of offences punishable under Sections 302, 376/511 Indian Penal Code, 1860 (in short 'IPC') and imposed death sentence and three years respectively.

C The accused filed appeal from jail and a represented appeal through counsel. A reference was made to the High

D Court under Section 366 of Code of Criminal Procedure, 1973 (in short 'CrPC') for confirmation of death sentence. The High Court disposed of all the three matters by the impugned judgment. The allegation against the accused was that he had taken a girl of about 11 years of age namely Kumari Reema, tried to commit rape on her and killed her. According to the prosecution on 17.10.1994 at about 8 a.m. the accused requested the mother of the deceased to allow the deceased
E to accompany him for harvesting paddy crop in the fields of Naumi Lal and Ganga Ram. Since the deceased did not return late in the evening, Sushila Devi, the mother of the deceased, went to the house of Naumi Lal and Ganga Ram who told her that paddy crop in the field was not even ripe for harvesting.
F Thereafter Sushila Devi continued to search for her missing daughter and went to the market, where in front of the house of one Yaseen Chikwa, she met Jung Bahadur, Jagat Narain, Vishwanath, Ram Shankar and others. In the meantime, Ganga Ram accompanied by the accused arrived there. Vishwanath
G and Ram Shankar told Sushila Devi that they had seen the deceased going along with the accused around 8 or 9 A.M. On hearing this, the accused started running but was chased and apprehended. It was about 10 P.M. at that time. On being
H interrogated, the accused stated that he had taken the deceased for harvesting paddy crop in the field of Ganga Ram.

After some paddy crop was cut, he overpowered her and took her to the field of Ram Khelawan Yadav and tried to commit rape. When the deceased resisted, he wanted to close her mouth, the deceased bit on his hand whereupon the accused struck Khurpa on her neck and killed her. The accused led all these persons to the sugarcane field of Ram Khelawan Yadav and the dead body was pointed out. He further led to his house and handed over the blood stained Khurpa. FIR was lodged at the police station. A case was registered. Post mortem was conducted and 14 injuries were found.

The appellant was also medically examined after he was apprehended by Dr. J.P. Bhargava PW5 who found seven injuries on the body of the accused. Injury No. 3 was kept under observation and the accused was referred to the District Hospital Barabanki for the opinion of surgeon.

Similarly, injury Nos. 4 and 6 were also kept under observation. After completion of the investigation, a charge sheet was filed. Since the accused pleaded innocence, trial was held. Seven witnesses were examined to further the prosecution version. Sushila Devi (PW1) stated about the request made by the accused to allow the deceased to accompany him. Learned Sessions Judge was of the view that the case rested on circumstantial evidence brought on record. Accordingly, the accused was found guilty.

As noted, at the outset, the accused filed two appeals and reference was made by the trial court to the High Court for confirmation of death sentence.

The High Court found that the prosecution version lacks credibility. The serious injuries sustained by the accused were not explained. The evidence of PW1 was also found to lack credence. The High Court found that the evidence relating to extra judicial confession on which the prosecution version rested was not reliable. There was serious injury on the eyes of the accused. There were also other injuries sustained by him. The High Court analysed the evidence and taking note of the nature

A of injuries, came to hold that it was possible to infer that the accused was given a thorough beating which resulted injuries on his body.

B Finding circumstance to be insufficient to fasten guilt on the accused, the High Court directed acquittal.

C Learned counsel for the appellant submitted that the circumstances highlighted by the trial court were sufficient to conclude that the accused was guilty of the offences as charged. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

D It is fairly well-settled that when a case rests on circumstantial evidence, a complete chain of circumstances which rule out every other possibility except guilt of the accused has to be established.

E That being so, the High Court's view was that the circumstances were not sufficient to fasten the guilt on the accused. The High Court has rightly noted that alleged extra judicial confession was extracted from the accused by assaulting him severely. The injuries clearly indicate that the accused was beaten very badly after he was allegedly apprehended. Therefore, the findings of the High Court that the so-called extra judicial confession was not voluntarily or natural cannot be faulted. Additionally the evidence of mother of the deceased was full of contradictions and inconsistencies.

F Looking at from any angle, we find no merit in these appeals which are dismissed.

R.P.

Appeals dismissed.