

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Reference No.4/2013

In Reference

Vs.

Anokhilal

Criminal Appeal No.748/2013

Anokhilal

vs.

The State of Madhya Pradesh

For the State : Shri Vijay Pandey, Deputy Advocate General

For the Accused/
Appellant : Shri K. S. Rajput, Advocate

Present: HON'BLE MR. JUSTICE AJIT SINGH
HON'BLE MR. JUSTICE ALOK ARADHE

JUDGMENT
(27.6.2013)

The following judgment of the Court was delivered by:

Ajit Singh, J. The Sessions Judge, Khandwa, by his judgment dated 4.3.2013 passed in Sessions Trial No.53/2013 has sentenced accused Anokhilal to death for committing the murder of a minor girl, aged nine years, after raping and performing carnal sex with her. He has also convicted the accused for offences under sections 376(2)(f), 363, 366 and 377 of the Indian Penal Code and sentenced to life imprisonment and other terms of imprisonment with fine stipulations. All the sentences have been directed to run concurrently. The Sessions Judge has, therefore, made a reference to the High Court. Being aggrieved with the conviction, the accused has also filed Criminal Appeal No.248/2013. The reference and criminal appeal are being decided by this common judgment.

2. The relevant facts are these. Victim of the incident was a minor daughter, aged nine years, of Ramlal (P.W.2) and Shantu Bai (P.W.3). Although Ramlal belongs to village Langoti, he has shifted with his family to village Sargaon Joshi, District Khandwa, where he is employed as

Chowkidar in a school. Ramlal lives in a room provided by the school within its premises which is in the outskirts of village. The accused also belongs to neighbouring village Dabhiya of the village of Ramlal and he too had started living in village Sargaon Joshi because of his employment since 5/6 months prior to the date of incident. The accused and Ramlal were, thus, known to each other. On 30.1.2013 sometime in the evening the accused came to the house of Ramlal and gave money to the victim to bring "bidi" for him from a kirana shop. After the victim left, the accused also left the house of Ramlal on a false pretext of attending a telephone call. And later when the victim did not return home, Ramlal went to Police Station Chhaigaon Makhan, Khandwa, and narrated the incident. The police recorded this information as of missing person vide Ex.1. On 1.2.2013, during search, Ramlal and other villagers found the dead body of victim on a mud-bound of an agricultural field. Her body was then carried by Ramlal to his house. Information in this regard was made at the police station which was recorded as Ex.2. The police thereafter prepared Panchayatnama, Ex.5, of the body and seized hairs, eight in number, from the fist of victim. The police also prepared spot map, Ex.3, and seized blood-stained soil, one match-box, a packet of biscuit and a coin of rupees five vide seizure memo, Ex.6, from the spot.

3. The body of victim was immediately sent for post-mortem examination which was conducted by Dr. Raksha Shrimali (P.W.5) and Dr. Anil Tantwar (P.W.6). The doctors found the following injuries on her body:

- (a) Oozed blood from mouth
- (b) Blood in vagina with a tear in posterior vaginal wall and torn hymen suggesting vaginal intercourse
- (c) Perennial region bruises with the presence of blood in perennial region
- (d) Multiple bruises and abrasion over back region
- (e) Abrasion over left axilla area, size ¼ cm
- (f) Abrasion around left side of lips, size ¼ cm
- (g) Abrasion around left breast
- (h) Brown colour bruise over anterior aspect of neck and sphincter torn suggesting anal intercourse.

The doctors in their report, Ex.13, opined that the cause of death of victim was asphyxia due to throttling. The doctors had also cut the nails of both hands of the victim which contained skin. They prepared the seizure of cut nails along with the clothes (frock, pajama and inner garments) of the victim. The doctors also prepared two vaginal slides and two anal slides of the victim and handed over all articles in a sealed condition to the police for their chemical analysis. Dr. Raksha Shrimali (P.W.5) and Dr. Anil Tantwar (P.W.6) on further query opined vide Ex.15-A that during penetrative sexual assault, the above mentioned injuries found on the private part of victim were possible.

4. Since the accused had absconded, the police could arrest him on 4.2.2013. He was then referred to the doctor on 5.2.2013 for his medical examination. Dr. Anil Tantwar on examining the accused found scratch mark over lateral aspect of left side and right side of his neck. He also found the accused capable of performing sexual intercourse. The medical report of Dr. Anil Tantwar is Ex.16. He even prepared the specimen of the pubic hair, semen slides, underwear, head-hair, skin slide and blood sample of the accused. Dr. Anil Tantwar thereafter handed over the specimen of these articles in a sealed condition to the police for their chemical analysis.

5. The police sent all the above mentioned articles seized from the body of victim and the accused in a sealed condition to the State Legal Medicine and Forensic Science Laboratory DNA Finger Printing Unit, Sagar. The report of the DNA Finger Printing Unit is Ex.P58 which confirms that the articles were received in a sealed condition. The police also having regard to the gravity of crime promptly completed the investigation and filed a charge sheet against the accused.

6. The trial court, after appreciating the evidence of witnesses examined by the prosecution and materials brought on record, held the accused guilty of committing the murder of victim in a most brutal manner after raping and performing carnal sex with her. The trial court also took note of the fact that even earlier the accused was found guilty of committing carnal sex with a minor boy and was sentenced to six

months rigorous imprisonment for an offence under section 377 of the Indian Penal Code. The trial court, therefore, sentenced the accused with death penalty for an offence under section 302 of the Indian Penal Code apart from sentencing him to imprisonment for life and other sentences of imprisonment for offences under sections 376(2)(f), 363, 366 and 377 of the Indian Penal Code.

7. There is no eyewitness to the incident and the entire case of prosecution is based on circumstantial evidence such as of last seen and the report, Ex.58, of the DNA Finger Printing Unit. The accused has not examined any witness in his defence.

8. We shall first examine whether the chain of evidence proves the guilt of the accused beyond reasonable doubt in committing the crime. The learned counsel for accused has not disputed that the victim was minor, aged nine years, and she was throttled to death after being raped and subjected to carnal sex. Ramlal has clearly deposed that on the evening of 30.1.2013 the accused had come to his house and gave money to the victim to bring "bidi" from a kirana shop whereafter the victim left the house and did not return. This evidence of Ramlal stands fully corroborated with the report of missing person, Ex.1, made by him on that very day at the police station. Ramlal has also deposed that after the victim left the house, the accused also went away on a pretext of attending a telephone call. Shantu Bai has testified that on the same evening, while she was returning towards her house, on way she had met the victim to whom she told to return home early. Shantu Bai has further deposed that on way she also met the accused following the victim. Kirti Bai (P.W.1) is a resident of village Surgaon Joshi. According to her evidence, on the evening of 30.1.2013 when it was getting dark, she had gone to attend the call of nature in a field where she saw the accused along with the victim. Kirti Bai has testified that she had even asked the victim as to where she was going but the victim did not reply. She has also deposed that when on the next day she came to know that victim was missing, she had disclosed this fact to Ramlal and Shantu Bai. There is nothing on record to suggest that these witnesses have any enmity with the accused and, therefore, there is absolutely no reason why they

would depose against him. The accused has also admitted in question number 13 during his examination under section 313 of the Code of Criminal Procedure that Kirti Bai might be knowing him by face. As already stated above, the dead body of victim was found on a mud-bound of an agricultural field. The victim was, thus, last seen alive with the accused by Kirti Bai whose evidence discloses that the victim and accused were seen together at the point of time in proximity with the time and date of the commission of crime. Also after the incident no one saw the accused alone because he had absconded. We are, therefore, of the view that the prosecution has successfully established the last seen theory beyond any reasonable doubt against the accused.

9. We also find that the report, Ex.58, of the DNA Finger Printing Unit completely connects the accused with the commission of crime. The report clearly states that the hairs seized from the fist of victim and the skin found in the cut-nails of victim belonged to the accused. The report further states that the semen found on the pajama of victim was of the accused. Not only this, according to the report, blood found on the underwear of accused was of the victim. The cremation of the body of victim was done on 1.2.2013 whereas the accused was arrested on 4.2.2013. There was, therefore, no possibility of the blood of victim having been put on the seized underwear of the accused.

10. After the accused was arrested he was sent for medical examination and Dr. Anil Tantwar had found scratch mark over later aspect of left side and right side of his neck. This fact also proves that when the accused was committing the crime, the victim must have resisted with all her might by scratching him with her nails and pulling the hairs of his head due to which the hairs and skin of the accused were found in her fist and nails. It is true that the semen of accused was not found in the private part of victim but the possibility of his ejaculating outside due to resistance cannot be ruled out and for this reason alone the prosecution case cannot be disbelieved. For these reasons, we are in complete agreement with the finding of the trial court that the accused kidnapped the victim and then most brutally throttled her to death after raping and performing carnal sex with her.

11. The evidence on record clearly establishes that the accused was close to the family of Ramlal and the victim trusted him. She, therefore, on his asking immediately rushed to buy "bidi" for him from a kirana shop. The accused then followed the victim with a premeditated mind to commit the crime. The accused, taking advantage of the trust of victim, after kidnapping and subjecting her to brutal rape and carnal sex most gruesomely throttled her to death. The numerous injuries on the body of victim testify this fact. He even dumped the body of victim in the field. Earlier also, the accused was convicted vide judgment dated 21.10.2010, Ex.49, for committing carnal sex with a small boy. Thus, an innocent hapless girl of nine years was subjected to a barbaric treatment showing extreme depravity and arouses a sense of revulsion in the mind of a common man. We feel that the crime committed satisfies the test of "rarest of rare" cases. We, therefore, uphold the death sentence and also other sentences imposed by the trial court.

12. The death sentence of the accused is confirmed and his appeal is dismissed.

(AJIT SINGH)
JUDGE

(ALOK ARADHE)
JUDGE

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