

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 655 OF 2001@@
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Bantu @ Naresh Giri ... Appellant (s)

Versus

State of M.P. ... Respondent (s)

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Being aggrieved and dissatisfied by the order passed by the High Court of Judicature at Jabalpur, M.P., the accused has filed this appeal. By the impugned judgment and order dated 19.3.2001, the High Court confirmed the judgment and order passed by the Addl. Sessions Judge, Umariya in Sessions Case No. 117/99 convicting the appellant for the offence punishable under Sections 302 and 376 of the Indian Penal Code and sentencing him to death.

It is a prosecution case that PW-1 Mohan Lal Sahu when returned at his home at about 6 P.M. on 25th January, 1999, he found that his grand daughter (daughter of his late daughter) Jyoti aged about 6 years was not present in the house. He enquired about her from his daughter-in-law and other persons. He was informed that she had gone to visit cinema alongwith the accused. Accused Bantu @ Naresh Giri, however, after some time went at the residence of PW-1 and enquired about whereabouts of Jyoti. It is alleged that accused stated that he did not know anything about Jyoti and he had not taken her alongwith him for visiting cinema. Thereafter, PW-1 and other family members and residents of the locality started searching Jyoti. As Jyoti was not found, report was lodged at the police station. Subsequently dead body of the deceased was noticed by PW-13 Sanjay Dube who was also neighbour of PW-1. The dead body was found lying in the bushes standing across the railway line. He noticed that underwear of the deceased was lying near the dead body and that there were ...3.

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blood stains and tooth mark on her cheek. He thereafter informed at the police station. On the basis of the said information investigating officer carried out necessary investigation. After recording the statement of the accused alongwith other person named Balu @ Balram Goswami was tried and convicted as stated above. Other accused was acquitted by the Addl. Sessions Judge.

From the evidence on record, the Sessions court as well as High Court arrived at the conclusion that the accused Bantu was neighbour of complainant Mohan Lal Sahu and was on visiting terms with him. After considering the other evidence, the court held that on the evening of the day of occurrence the accused visited the house of PW-1 and he took the deceased Jyoti for visiting cinema. As Jyoti was not found at evening time and accused informed PW-1

that Jyoti was not accompanied her, the report was lodged
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at the police station. During the course of investigation by the police accused was not found in his house from 9.30 p.m. to 3.30 a.m. but he absconded. He was arrested on the next day evening by the police. The Sessions court relied on the evidence of PW-6 Vimla, daughter-in-law of PW-1, PW-4 Ravi, nephew of PW-1 and PW-5 child witness and held that deceased had gone with the accused after coming from the school. Thereafter, her dead body was found the next day at 9 a.m. During the aforesaid evidence as well as medical evidence the court also considered the evidence of PW-8 Dr.Smt. S.Thakur who carried out post mortem examination. She has noticed that deceased was in a school uniform. She has also stated and three doctors who had examined the dead body, arrived at the conclusion that rape had been committed and the murder of the deceased was committed by pressing her nose and mouth and obstructing
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breath of the deceased. The doctor PW-9 A.P.Dwivedi had examined the accused and he noticed that there was a thin mark of scratch on the upper portion of penis. The Court also considered the evidence of PW-10 Manju who had stated that at about 3-4 p.m. when he was sitting on the ghat of a river he saw accused Bantu going with a girl aged about 5-6 years and the girl was wearing school uniform. Considering the aforesaid circumstances the High Court as well as Sessions Judge arrived at the conclusion that the prosecution has proved his case beyond reasonable doubt and convicted the accused for the offence punishable under Sections 302 and 376 of Indian Penal Code. At the time of hearing of this matter learned counsel for the appellant appointed amicus curiae. The learned amicus has taken us through the entire evidence. In our view the finding by the High Court cannot said to be in any way illegal or erroneous.
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However, the learned counsel for the appellant submitted that in any set of circumstances this is not the rarest of the rare case where accused was sentenced to death. He submitted that age of the accused on the relevant day was less than 22 years. It is his submission that even though the act is heinous, considering the fact that no injuries were found on the deceased, it is probable that death might have occurred because of gagging her mouth by the accused and nosetrix at the time of incident so that she may not raise hue and cry. The death, according to him, was accidental one as there was no intention on the part of the accused to commit the murder of deceased. Considering the facts, in our view, this cannot be the rarest of the rare case wherein death sentence is required to be imposed. Further there is nothing on record to indicate that the appellant having any criminal record nor
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it can be said that he will be a grave danger to the society at large. It is true that his act is a heinous, requires to be condemned but at the same time there is no

justifiable reason to impose the death sentence.

In the result, we confirm the conviction of the appellant under section 302 IPC but commute the sentence of death to an imprisonment of for life. For the offence punishable under Section 376 IPC, the accused has to undergo 10 years' sentence. In modification of sentence, the appeal is dismissed. Both the sentences to run concurrently. We appreciate the assistance rendered by the amicus curiae. He has taken us to the entire record.

The appeal is dismissed accordingly.

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.....J.
(M.B.Shah)

.....J.
(Doraiswamy Raju)

New Delhi,
October 17, 2001.