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under law, proceedings can continue against a retired person for imposing any punishment, on him.

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**S.C.K.**

*Before Jawahar Lal Gupta & Mehtab S. Gill, JJ*

THE STATE OF HARYANA,—*Prosecutor*

*versus*

RAJU @ RAJU CHAUHAN,—*Accused/Respondent.*

M.R. No. 3 of 1999 &  
CRL. APPEAL No. 463-DB of 1999

26th April, 2000

*Indian Penal Code, 1860—Ss. 302, 363 & 376—Rape and murder of a minor girl after kidnapping—Sessions Judge awarding sentence of death—No delay in recording the FIR—Accused's guilt proved beyond doubt—His conduct not humane—Death sentence confirmed—Appeal dismissed.*

Held that the FIR was recorded without any delay. The oral evidence proves the story given at the outset. The medical evidence and the Laboratory report fully corroborate the oral testimony. Cumulatively, there is no doubt regarding the appellant's guilt. Thus, we hold that the charge is proved beyond doubt.

(Para 23)

Further held that the accused is a youngman. But his conduct was not humane. He kidnapped a young child. Committed rape. And then, he killed her brutally. Smashed the child's skull and face with a brick. All indicative of an insensitive and sick mind.

(Para 24)

Further held, that it is true that the extreme penalty has to be awarded in the rarest of rare cases. But, we cannot allow every sick man to evade the rope and make the society suffer. Society needs to be saved from the sick men like Raju. They must be eliminated. So that others may live. Helpless children like Rinku need to be given a sense of security and protected from such persons. We find no mitigating circumstance which may warrant anything less than the extreme penalty.

(Para 25)

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Baljit Kaur, Advocate, *for the Accused.*

Amol Rattan Singh, A.A.G., Haryana, *for the State.*

### JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The appellant has been found guilty of offences punishable under Sections 363, 376 and 302, Indian Penal Code. The Sessions Judge has proposed the penalty of death for the offence of murder. He has also awarded a sentence of 7 years under Section 376, and 3 years under Section 363, I.P.C. Aggrieved by the order, the accused has filed an appeal. We have murder Ref. No. 3 of 1999 and Criminal Appeal No. 463-DB of 1999.

(2) The child was allegedly missing from the evening of 5th January, 1997. Her body was found in the morning. The story was initially revealed by Ram Kewal, the uncle (father's younger brother) of the deceased to Sub-Inspector Shakuntla. On the basis of this statement, the F.I.R. was recorded at 7.30 A.M. The special report had reached the Court of the Chief Judicial Magistrate at 11.55 A.M.

(3) It was stated by the complainant that Banwari Lal had five daughters. Rinku, one of these five, was 11 years old. She was studying in Class II. On 5th January, 1997 she had gone out of the house at about 6 P.M. to bring milk. After she had brought the milk, the complainant had seen Raju, aged 20/22 years, offering toffees to Rinku. She had not come back till 8/9 P.M. It was suspected that Raju "might have kidnapped" her. Makhan Lal a neighbour had seen Raju and Rinku going towards Chandan Nagar. They looked for the two throughout the night. But Raju and Rinku were not found. Next morning, the dead body of Rinku was found lying under the bushes in the Government College ground. It appeared that "Rinku had been raped and murdered by hitting a brick on her head as bloodstained brick and blood were found lying on the spot." On the basis of this statement, first information report (Exhibit PA), was recorded at 7.30 A.M.

(4) The prosecution has produced 15 witnesses in support of the case. The medical evidence consists of the statements of Dr. Suresh Bakshi (P.W. 5), who had conducted the post-mortem examination; Dr. Gajraj Singh (P.W. 10), who had examined Raju, the present appellant; and Dr. Vandana Narula (P.W. 13), who had conducted the physical and the post-mortem examination.

(5) Dr. Suresh Bakshi (P.W. 5) was working as Medical Officer at General Hospital, Gurgaon. He along with Dr. Vandana Narula (P.W. 13) had conducted the post-mortem examination, and found the following injuries on the person of the deceased :—

1. There was an oblique lacerated wound extending from the frontal aspect of the frontal bone, 3 inches above the left eyebrow, middle third, extending backward to parietal region, of size 4" x 2" x bony deep and on further dissection, there was presence of blood in sub-cutaneous tissues and there was fracture of the parietal bone, left side, with laceration of the meninges and injury to the brain matter of size 2.5 cms. x 1.5 cm. deep with presence of blood in the cranial cavity.
2. There were oblique lacerated injury extending from right eyebrow medial aspect extending upwards backwards right parietal region of size 4"x1"x bony deep with presence of blood in the sub-cutaneous tissues and there was fracture of right parietal bone with laceration of meninges and brain matter of size 2 cms.x1.5 cm.x1.5 cm. deep with presence of blood in the cranial cavity about 50 cc. approximately.
3. There was cut injury with separation of upper lip extending from middle third to right side face nasal area lateral aspect. There was presence of oedematous gums upper right first molar canine and incisor tooth were missing and the surrounding area was lacerated and there was presence of blood in the sub mucosa and mucous layer with presence of clotted blood.

(6) The factual position with regard to the local examination was also disclosed by him. It was as under :—

Local examination was conducted by Dr. (Mrs.) Vandana Narula and the following was observed :—

There was no external mark of injury over the genital area, introitus and hymen appears torn at the lower margin from 5 O' Clock to 8 O' Clock position. Rest of vaginal mucosa was intact, cer vix and uterus were healthy and of normal size. No injury was present. Vaginal swabs was taken for forensic examination and sent to Chemical Examiner, Karnal, along with clothes of the deceased, with a forwarding letter.

In his opinion, the death had occurred on account of haemorrhage and shock. The injuries were ante-mortem in nature. The clothes, the

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vaginal swabs etc. were sent for chemical examination. He also examined the brick and opined that the injuries on the body of the deceased could have been inflicted therewith.

(7) Dr. Gajraj Singh (P.W. 10) had examined Raju appellant. In his opinion there was nothing to suggest that "the accused was not capable of performing sexual act." He had also found that the underwear of the accused had semen marks inside and blood marks on the outer side. He was wearing whitish jean, which had bloodstains on both legs. Even the shirt was stained with blood on both the sleeves and on the front portion.

(8) Dr. Vandana Narula (P.W. 13) had conducted the post-mortem examination on the body of Rinku along with Dr. Suresh Bakshi. During the course of her testimony before the Court, she stated that "possibility of rape before murder cannot be ruled out in this case after going through the FSL report." Her statement was not challenged and no cross-examination was conducted despite opportunity.

(9) The oral testimony primarily consists of the statements of Ram Kewal (P.W.1), and Makhan Lal (P.W. 2). Ram Kewal (P.W. 1) is the uncle of the deceased. He stated that on 5th January, 1997 his brother's children were present in the house. Rinku, the deceased, was sent to bring milk from the neighbourhood. She had returned to the house with milk. After leaving the milk, she had gone out saying that she had been called by "Chacha Raju". The accused was living in the neighbourhood. Earlier he was a tenant of the complainant family. He had vacated the house 5 to 7 days before the occurrence. He had come out and seen that Raju was giving toffees to Rinku and other small children. Makhan Lal, a neighbour, was also present at that time. Rinku did not return till 9 P.M. They searched for Rinku and Raju. But could not locate them. On the next morning, he along with Makhan Lal reached near the bushes of Government College and found the dead body of Rinku lying there. They suspected that rape had been committed. She had injuries on her head and mouth. Her Chappal, shawl, bloodstained earth and the bloodstained brick were seen lying. He had left Makhan Lal at the spot and gone to the Police Station to lodge the report. The bloodstained earth, the brick on which hair were also stuck, the shawl and the pair of Chappal were taken into possession by the Police,—*vide* memo. Ex. PB.

(10) The witness was cross-examined. He was confronted with his statement before the Police (Ex. PA). The witness very fairly admitted that certain facts, as revealed by him to the Court, had not been mentioned before the Police. He stated that he had "lodged the report

with the Police at about 6 or 6.30 A.M.” However, he admitted that he “was not carrying any watch.....” He also explained that the report was not lodged at night because they expected Rinku to return. They had no suspicion that the accused could commit such a crime. He also stated that he did not “return to the house before going to the Police Station.” He admitted that they had got the “house vacated from the accused, which was under his occupation because.....felt difficulty in providing necessary accommodation to.....children.” He was questioned with regard to the distance at which the brick and the shawl etc. were lying. He denied the suggestion that the accused had “paid rent in advance for one year and before the expiry of the period of one year” they had got the house vacated. He also denied the suggestion that the accused had given beating to him on this account. The suggestion that the accused had been implicated on this ground, was categorically denied.

(11) Makhan Lal (P.W. 2) is a neighbour. He was working as a washerman. He corroborates the facts as revealed by Ram Kewal. In cross-examination he reiterated that the dead body of Rinku was spotted at about 6.45 A.M. The brick was found lying at a distance of about 30 paces from the dead body. The description regarding the clothes was also given. He stated that the Police had arrived at the spot at 7.30 or 7.45 A.M. It had remained at the spot for about one hour. He had denied the suggestion that he had not seen the accused distributing toffees to the children. He also denied the suggestion that he had not seen the accused taking Rinku towards Chandan Nagar.

(12) Subhash Sharma (P.W. 3) stated that Raju had met him on 6th January, 1997 and told him that “he had committed rape on a girl and he had also committed her murder inside the boundary wall of the College building.” While he was taking the accused towards the Police Station, he had met the girl’s uncle as also the Police. Consequently, he had handed over the accused to the Police. On 8th January, 1997 he had gone to the Police Station to inquire about the case. He was taken by the Police along with the accused to the place of occurrence. The accused had shown the place where he had committed the rape and also the place where he had thrown the dead body of the girl. The Police had recovered the brick, which had bloodstains and the hair stuck to it. The brick was lying near the tree. The witness was cross-examined. He admitted that he had no links with the Police. He was not a Lamberdar, Sarpanch or a Member Panchayat of any village. He was not a political leader or a Municipal Councillor. He had never remained an M.L.A. or an M.P. He further admitted that Ram Kewal (P.W. 1) was running a tea stall and that he had been taking tea

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there. The father of the accused had been plying rickshaw and he had been sending his goods in his rickshaw. The accused had been selling vegetables and fruit on a Rehri. He had been coming to his workshop. Otherwise, he had no acquaintance with the accused. He had gone to the Police Station at the asking of the father of the accused. He denied the suggestion that the accused had not narrated anything about the murder to him or that he had made a false statement as he knew Ram Kewal.

(13) Smt. Sumitra, wife of Ram Kewal, appeared as P.W. 4. She stated that Rinku had gone to bring milk. After doing that she gone outside, saying that "Raju Chacha was calling her....." Rinku did not return. In the cross-examination she stated that Makhan Lal, Subhash and Ram Kewal had gone in search of Rinku. She also stated that the Police had searched and informed about the dead body of Rinku. She denied the suggestion that she had been tutored by the counsel of the complainant or that she had made a false statement that Raju had called Rinku.

(14) Mr. B.R. Bhatia (P.W. 6) had taken the photographs (Exhibits P1 to P8). He also produced the negatives (Exhibits P9 to P16). Constable Sarwan Kumar (P.W. 7) had prepared the site plan (Exhibit PE). Head Constable Aas Mohammad (P.W. 8), Head Constable Gugan Ram (P.W. 9) and Constable Kallu Ram (P.W. 14) merely tendered their affidavits. Constable Sunder Singh (P.W. 11) stated that he had delivered the special report to the Illaqa Magistrate at 8 A.M. Inspector Shiv Narain (P.W. 12) conducted part of the investigation. Sub Inspector Shakuntla (P.W. 15) conducted the basic investigation. She had recorded the statement of Ram Kewal, which formed the basis of the first information report. She summoned the photographer, who had taken eight pictures. She had prepared the inquest report (Exhibit PN) and sent the dead body for post-mortem examination. She had inspected the place of occurrence and taken into possession the blood stained earth, the pair of Chappals, the shawl and the brick with blood and hair stuck to it. She had prepared four separate parcels,—*vide* recovery memo. Ex. PB. She had gone to the General Hospital. She had given complete details with regard to the investigation and the interrogation of the accused.

(15) This is the whole evidence produced by the prosecution.

(16) In his statement under Section 313, Code of Criminal Procedure, the accused was confronted with the entire evidence against him. He denied the allegation. In reply to Q. No. 45 he merely stated that he was innocent. He had paid advance rent of one year to Ram Kewal but he was turned out of the house after six months. He had

been implicated in this case as there was quarrel between him and Ram Kewal. Even though during the cross-examination it had been suggested that he had given beating to Ram Kewal, yet he did not make such an assertion in his statement before the Court.

(17) We have heard Ms. Baljit Kaur, learned counsel for the appellant, and Mr. Amol Rattan Singh, Assistant Advocate General, for the State. It has been contended by the learned counsel for the appellant that the prosecution story is improbable and false. The testimony of the witnesses is not worthy of credence. The dead body had, in fact, been recovered by the Police and that the story, as given by the prosecution witnesses, cannot be believed. The claim made on behalf of the appellant has been controverted by Mr. Amol Rattan Singh.

(18) It is the admitted position that appellant Raju had stayed in the house of the complainant. It is his own case that he had vacated the house a few days before the occurrence. Thus, it is clear that he was not a stranger to the complainant family. Even the deceased was 11 years old. She would have known the appellant. In this situation, it is not surprising that she had told her family that Raju Chacha' was calling her outside and that she was going to see him. Still further, it is clearly established on the record that Ram Kewal (P.W. 1) had actually seen her going out and Raju was giving a toffee to her. In fact, he has further stated that Raju was distributing toffees to the children. Still further, it is mentioned in the first information report that Makhan Lal (P.W. 2) had told Ram Kewal that he had seen Rinku with Raju and that both of them were seen going towards Chandan Nagar. This assertion is clearly supported by Makhan Lal, when he appeared as P.W. 2 before the Court. The witness was cross-examined at length. However, nothing was brought out to show that he was not telling the truth or that he had any reason to falsely implicate the appellant.

(19) On an examination of the testimony of these two witnesses it is clearly established that the deceased was last seen with the appellant. Still further, the testimony of these two witnesses is corroborated by the extra-judicial confession made by the appellant before Subhash Sharma (P.W. 3). He had no reason, whatsoever, to implicate the appellant falsely. Thus, the oral testimony clearly establishes the allegations against the appellant.

(20) Furthermore, it is the admitted position that the appellant was taken to Dr. Gajraj Singh (P.W. 10) for medicolegal examination. He was actually examined on 6th January, 1997. At the time of examination his underwear was found to be stained with semen and

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blood. The blood was also found on his shirt and trousers. These clothes, as also the clothes of the deceased, were forwarded to the Forensic Science Laboratory for chemical examination. The clothes were found to be smeared with human blood and semen. Still further, the medical evidence on record clearly indicates that the deceased had been subjected to sexual intercourse and that her hymen was ruptured. The Forensic Science Laboratory report (Ex. PT) clearly corroborates the medical and oral evidence.

(21) Ms. Baljit Kaur, learned counsel for the appellant, contended that the appellant had paid the rent for the whole year. He was turned out after the expiry of six months. The complainant had falsely implicated the appellant on account of a quarrel in this behalf.

(22) The contention is misconceived. Firstly, nothing has been produced on record to show that the appellant had paid any rent, much less than the rent for a period of one year. Even the amount, which was allegedly paid, has not been indicated. No receipt has been produced. Still further, if the appellant had been evicted before the expiry of the period for which the rent had been paid, the complainant would have no cause for grievance. It is only the appellant who could be aggrieved. The appellant may well have chosen to punish the complainant family for this grouse. However, the allegations even if assumed to be true, shall provide no motive for the complainant to falsely implicate the appellant.

(23) Lastly, it also deserves notice that the F.I.R. was recorded without any delay. The oral evidence proves the story given at the outset. The medical evidence and the Laboratory report fully corroborate the oral testimony. Cumulatively, there is no doubt regarding the appellant's guilt. Thus, we hold that the charge is proved beyond doubt.

(24) This brings us to the question of sentence. The appellant is a youngman. But, his conduct was not humane. He kidnapped a young child. Committed rape. And then, he killed her brutally. Smashed the child's skull and face with a brick. All indicative of an insensitive and sick mind.

(25) It is true that the extreme penalty has to be awarded in the rarest of rare cases. But, we cannot allow every sick man to evade the rope and make the society suffer. Society needs to be saved from the sick men like Raju. They must be eliminated. So that others may live. Helpless children like Rinku need to be given a sense of security and protected from such persons. We find no mitigating circumstances which may warrant anything less than the extreme penalty.



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(26) Resultantly, we confirm the death sentence and dismiss the appeal.

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S.C.K.

*Before M.L. Singhal, J*

MUKHTIAR SINGH,—Appellant

*versus*

TARA SINGH AND OTHERS,—Respondents

R.S.A. No. 2047 of 1999

25th July, 2000

*Code of Civil Procedure, 1908—Joint property—Exclusive possession of the co-owners—Whether a co-owner can raise construction on the portion of his own share without getting the property partitioned—Held, yes—However, such construction will be subject to partition and liable to be removed if required on partition without any demur.*

*Held*, that a co-owner in exclusive possession of the property can raise construction and enjoy the property and if he raises any construction thereon and the raising of construction does not amount to ouster and further that construction will be subject to partition and if on partition any portion of the property on which he has raised construction falls to the share of other co-sharer, he will remove that construction without any demur.

(Para 11)

S. L. Chandershekhar, Advocate, *for the appellant.*

A.K. Kalsi, Advocate, *for the respondent.*

### JUDGMENT

*M.L. Singhal, J*

(1) Harbans Singh and Mukhtiar Singh filed suit for permanent injunction against Tara Singh and others restraining the latter from making any sort of construction over joint property bearing khewat khatauni No. 247/293 Khasra No. 250 shown in red in the plan attached to the plaint situated in village Buzurg, tehsil Jagraon as per jamabandi for the year 1990-91 without getting it partitioned. It was alleged in the plaint that they are co-sharers in the suit property bearing khasra No. 250 measuring 14 Marlas *ibid*. Tara Singh and others defendants No. 1 to 4 are co-sharers in the suit property and are in