Amit @ Ammu vs State Of Maharashtra on 6 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 3131, 2003 (8) SCC 93, 2003 AIR SCW 3980, 2003 CRIAPPR(SC) 441, 2003 (6) SCALE 244, 2003 ALL MR(CRI) 2327, 2003 (7) ACE 54, 2003 SCC(CRI) 1959, 2003 (9) SRJ 159, 2003 (4) SLT 828, (2003) 10 ALLINDCAS 623 (SC), 2003 (2) UJ (SC) 1404, (2003) 3 PUN LR 400, (2004) SC CR R 986, 2003 CHANDLR(CIV&CRI) 553, (2003) 26 OCR 293, (2003) 3 RAJ CRI C 724, (2004) 1 RECCRIR 563, (2003) 3 CURCRIR 116, (2003) 5 SUPREME 576, (2005) 2 ALLCRIR 1963, (2003) 6 SCALE 244, (2003) 2 UC 1454, (2004) 1 GCD 208 (SC), (2003) 9 INDLD 623, (2004) 1 BOMCR(CRI) 580, (2003) 47 ALLCRIC 629, (2003) 2 CAL LJ 511, (2004) 2 ALLCRILR 232, (2003) 3 CRIMES 318, 2003 (2) ALD(CRL) 806, 2003 (2) ANDHLT(CRI) 278 SC, 2003 (4) BOM LR 502, 2003 BOM LR 4 502

Author: Brijesh Kumar

Bench: Brijesh Kumar

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           CASE NO.:
Appeal (crl.)  376 of 2003

PETITIONER:
AMIT @ AMMU

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 06/08/2003

BENCH:
Y.K. SABHARWAL & BRIJESH KUMAR

JUDGMENT:
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JUDGMENT 2003 Supp(2) SCR 285 The following Order of the Court was delivered The dead body of deceased, a young child aged about 11-12 years and student of VI standard, was first sighted by PW1 on 29th March, 2001 at about 3.45 p.m. Immediately, he reported the matter to the concerned police station. His oral report was recorded into writing i.e FIR Ex. No. 28.

On Ex. 28, it has been recorded that on 29th March, 2001, PW1 accompanied by Ajay PWII, had gone to the rear portion of a place known as Gaimukh for grazing she-buffaloes. One of the buffaloes went in a dilapidated building close-by. In order to drive out that animal on going inside, he noticed the dead body of a school girl in school uniform lying in supine condition. He informed the police. The two police officials came to the site along with him. The said unidentified girl was seen by him

the previous day as well in the forest in the area where he usually goes for grazing of the animals. At that time she was in the company of a boy aged 20 years. She was carrying school bag. At that time too, PWII was with PWI. The description of the boy has also been given. The said boy was having with him bicycle like that of Ranger type. The boy on being asked gave his name as 'Gandhi' and stated that the name of the accompanying girl is Vidya who was his sister and as her family members were going to come to Devi Temple, he had brought her directly from her school. Both were brought up to the road and went away by sitting on the bicycle. The girl seen by PWII was the same whose body had been found. The investigation led to the arrest of the appellant at 11.00 p.m. on 29th March, 2001.

The father of the deceased and the appellant work in same office. Deceased and the appellant knew each other. The appellant was charged and found guilty of offence under Section 302, IPC for the murder of the deceased as also for her rape under Section 376, IPC. The Sessions Court, for offence under Section 302 awarded death penalty and for offence under Section 376, rigorous imprisonment for 10 years. Compensation of Rs. 25,000 in terms of the judgment of the Sessions Court was awarded under Section 357, Cr. PC for being paid to the parents of the victim for mental torture, agony and the loss sustained of their only female child.

The High Court by impugned judgment has confirmed the award of death penalty to the appellant as also other sentences and compensation awarded. The appellant aggrieved therefrom has approached this Court on grant of leave. The facts which are fully established and have also not been disputed by the learned counsel for the appellant in brief may first be noticed. The appellant knew the deceased. His father and that of deceased were colleagues. The appellant at about 11.30 AM had gone to the house of the deceased on 28th March, 2001 and had enquired about the deceased as deposed to by PW6, the elder brother of the deceased. PW6 told the appellant that the deceased had not come back from the school. In his statement under Section 313, CrPC the appellant admitted to have so gone to the house of the deceased. The father of the deceased PW5 used to drop her daughter at the school and as usual on 28th March, 2001 at about 7.30 A.M. he dropped her at the school. She used to return home from school around 12.00 noon. Since on that date, she did not return, mother of the deceased informed her husband on telephone. He rushed back home from the office and they searched for their daughter and ultimately not finding her, a missing report was lodged by PW5.

On consideration of the oral and documentary evidence adduced by the prosecution, the Sessions Court held the appellant guilty. The High Court on detailed and critical examination of evidence has upheld the conviction and sentence awarded by the Sessions Court. Reliance has been placed, inter alia, on Post-mortem report-Ex.57 and recovery articles such as match box used for burning the school bag, bycycle etc. Out of the deposition of the witnesses, the prosecution case was primarily based on the testimony of PWI and PWII and on the circumstance of last seen as deposed by these two witnesses.

As already noticed body of deceased was recovered on 29th March, 2001. It stands established that the same was recovered from a dilapidated building in the remote area of the forest as deposed to by PWI and PWII. As per the post-mortem report the case of death is strangulation. It also shows the commission of the sexual assault on the deceased prior to her death. It may be noted that the

defence admitted the post-mortem report. An argument was sought to be urged that the post-mortem report could not be relied upon in view of contradictions therein. The contradiction pointed out by learned counsel is that on one hand, the report states that the body had early signs of decomposition and on the other, all the injuries have been stated to be fresh. There was no requirement to note whether the injuries were fresh or not. Further, the post-mortem report having been admitted it is not open to the appellant to criticize the recitals therein without giving an opportunity to the doctor to explain it. The main submission of learned counsel for the appellant is that unless time of death is established it is not permissible to rely upon circumstance of last seen so as to convict the appellant. The main circumstance against the appellant is of last seen with the deceased as deposed by PWI and PWII. We have carefully examined the testimony of PWI and PWII. Their evidence is trustworthy and reliable. It has ring of truth. It stands fully established that they had seen the deceased and the appellant on 28th March as noticed hereinbefore. Apparently, both left as deposed by PWI but as the circumstances show that, in fact, they did not leave. When the next day PWI again came to the same area for grazing or buffaloes, he found the body of the deceased whereupon the matter was reported the police and FIR recorded and investigation conducted as noticed earlier. It has also come in evidence that usually PWI used to go to the same area for grazing of the animals which was a secluded area and also had a dilapidated building. It is apparent from the site plan as well. Regarding the contention that the time of the incident had not been established and therefore the circumstance of last seen is not sufficient to convict the appellant, the High Court on examination of the evidence has reached the following conclusion:-

> "In the instant case, the region being temperate, rigor mortis lasts for about two to three days. If we apply this analogy, then at the time of post-mortem examination, which was conducted on 30.3.2001 and begun at 11.40 a.m., the doctor did not find rigor mortis. That means the time of death must have been on 28.3.2001 between 3.00 p.m. and 4.00p.m., since the rigor mortis in a temperate region lasts for two days. This is not the case, therefore, where time of death cannot be ascertained on the basis of these recognised guidelines, merely because the same is not given in the post-mortem report. In our considered view, this is not the circumstance which affects the material particulars of the prosecution case in the crime in question."

We are in complete agreement with the conclusion of the High Court on the aspect of time of the death.

Learned counsel for the appellant has placed reliance on the decision of this Court by a Bench of which one of us (Justice Brijesh Kumar) was a member in Mohibur Rahman & Anr. v. State of Assam, [2002] 6 SCC 715 for the proposition that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case. In the decision relied upon it has been observed that there may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. The present is a case to which observation as aforesaid and principle laid squarely applies and the circumstances of the case cast a

heavy responsibility on the appellant to explain and in absence thereof suffer the conviction. Those circumstances have already been noticed. In which case such an irresistible conclusion can be reached will depend on the facts of each case. Here it has been established that the death took place on 28th March between 3 and 4 p.m. It is just about that much time that the appellant and deceased were last seen by PWI and PWII. No explanation has been offered in statement by the appellant recorded under Section 313, Cr.PC. His defence is of complete denial. In our view, the conviction for offence under Sections 302 and 376 has been rightly recorded by Court of Sessions and affirmed by the High Court.

The next question is of the sentence. Considering that the appellant is a young man, at the time of incident his age was about 20 years; he was a student; there is no record of any previous heinous crime and also there is no evidence that he will be a danger to the society, if the death penalty is not awarded. Though the offence committed by the appellant deserves serve condemnation and is a most heinous crime, but on cumulative facts and circumstances of the case, we do not think that the case falls in the category of rarest of the rare case. We hope that the appellant will learn a lesson and have opportunity to ponder over what he did during the period he undergoes the life sentence. Having regard to the totality of the circumstances, we modify the impugned judgment and instead of death penalty, award life imprisonment to the appellant for offence under Section 302, IPC. In all other respect, the impugned judgment is maintained. The appeal is allowed to this limited extent.