Supreme Court of India
State Of Maharashtra vs Suresh on 10 December, 1999
Bench: G.T. Nanavati, K.T. Thomas

CASE NO.:
Appeal (crl.) 1092-1093 of 1998

PETITIONER:
STATE OF MAHARASHTRA

RESPONDENT:
SURESH

DATE OF JUDGMENT: 10/12/1999

BENCH:
G.T. NANAVATI & K.T. THOMAS

JUDGMENT:

JUDGMENT 1999 Supp(5) SCR 215 The Judgment of the Court was delivered by THOMAS, J. A gory episode is narrated in this case the gravamen of which is a grisly perpetrated rape and murder of a four year old female child. The rapist had abducted the child from her house and decoyed her to a field at Arvi (in Wardha district of Maharashtra State). After the rape and murder the mangled body of the child was dumped in the field where pulses and cotton were cultivated. The man whom the police challaned as a culprit was convicted and condemned to death penalty by the sessions court but he now stands exonerated as a Division Bench of the High Court of Bombay proclaimed him not guilty. The State of Maharashtra is not prepared to reconcile with the clean chit granted to him by the High Court and hence this appeal by special leave has been filed by the State.

Sneha is the name of the little child who was subjected to the beastly sexual ravishment. She was endearingly called Gangu by her kith and kin. She had a brother younger to her the children were living in the family house which is presumably a joint family house. The life of Gangu was snuffed off on 22.12.1995.

As per the prosecution version the accused (who is respondent in this appeal) was already an accused in another case facing ah allegation that he committed rape and murder of one eight year old female child by name Ujawala. While he was in Jail in connection with that case he came into acquaintance with a prisoner (PW6-Sanjay) who is the brother of Gangu's father (PW5-Rameshwar). Both of them were later released from prison. (We are told that respondent was acquitted in that case).

After such release from jail respondent visited Sanjay's house, and subsequently he paid frequent visits to the said house. During such visits he made himself familiar to Gangu. On 22:12,1995 respondent went to that house and when he was told that Sanjay had gone out, he left the house. Sneha was then playing near the gate other house. Respondent would have moved away by alluring the little child to go with him. The fact remains that after respondent left the house in the afternoon no one in that house had seen Gangu alive.

Respondent took Gangu to the shop of PW8 Mahadeo, and later to the shop of PWI4 Motiram, and thereafter to a farm whereon pulses and cotton were cultivated. He chose that venue For sexually ravishing that little child and smothering her to death.

As Gangu was not seen in the house or its precincts till nightfalls the panic-stricken member of her family began to make hectic searches for her. As all such efforts failed her uncle Raju went to the police station and reported that Gangu was missing from that house. Next morning her father Rameshwar (PW-5) went to the police station and lodged Ext; 22-complaint in which he expressed strong suspicion against the respondent regarding the disappearance of his child.

Respondent was arrested on the evening of 23.12.95. During interrogation the police came to know that dead body of the child was concealed in a farm. Though a search was made in the night to find out the spot where the body was concealed it did not fructify due to darkness. Hence the police resumed the search operation on the next morning and the spot was pointed out by the respondent wherefrom the dead body of Gangu was traced out When autopsy was conducted on the body by two doctors of the local hospital a woeful picture of sexual molestation was etched by them. Ext. 68 (Post- mortem Report) contains the data, inter alia, that the vagina was torn down at the perennial region by 1" with irregular lacerations and a fleshy torn portion was found protruding out therefrom. Contusions and abrasions on the labia majora of both sides besides swelling were also noticed by the doctor. There were number of contusions and abrasions on her face also. Dr. Avinash S. Lawhale, Medical Superintendent and Dr. Pathoda, Medical Officer of Rural Hospital, Arvi, District Wardha, after completing the jointly conducted autopsy reported that death of the child was due to asphyxia by rape and smothering.

There is not even a speck of doubt that Gangu was kidnapped from her house and she was raped arid killed by someday on the evening of 22.12.1995. In fact the Sessions Court and the High Court concurrently found the aforesaid point affirmatively. The whole endeavour was therefore confined to the question whether the crime was committed by the respondent.

The trial court and the High Court focused on the circumstances which prosecution presented through the evidence for proving that the culprit in the ghastly infanticide was the respondent himself and none else. The Sessions Judge found that all those circumstances were established and they formed themselves into a completed chain unerringly pointing to the guilt of the respondent. But the Division Bench of the High Court differed from the findings of the Sessions Court regarding some of the circumstances and that resulted in exoneration of the respondent.

The circumstances which prosecution presented can be recast as follows (1) Respondent visited the house of Gangu at about 3.30 P.M. and after he left the house it was realised that Gangu also disappeared; (2) PW-8 Mahadeo saw the accused and a female child together in his shop at about 4.30 P.M. on the same days; (3) PW-14 Motiram saw them together in his shop at about 4.00 P.M.; (4) A little later PW-3 Sayyed Niyamat saw them walking along the road; (5) Respondent after his arrest disclosed to PW.26 (Police Inspector of Arvi Police Station) that the dead body of the child was concealed in the farm and he offered to hand it over. Pursuant thereto the spot was pointed out by the respondent wherefrom the dead body was recovered; (6) PW-20 Dr. Avinash S. Lawhale

stated that the person who caused the injuries on the vagina of the deceased child would have sustained injuries on his male organ. When respondent was medically examined on 25.12.1995 by PW-22 Dr. Nand Kumar it was noticed that his glands penis was swollen with multiple tiny punctuated abrasions besides abrasions on the posterior aspect of both elbow joints. According to the doctor those injuries could have been caused 48 hours earlier than the time of his examination; (7) Stains of human blood and semen were detected on the under-clothes of the accused when he has arrested.

The Division Bench of the High Court was not disposed to rely on the evidence of me three witnesses who claimed to have seen me respondent and the girl together though their evidence was found reliable by the trial court. Nor did the High Court concur with the Sessions Courts's finding regarding recovery of the dead body as sequel to the information supplied by the respondent. The High Court declined to take the injuries which the doctor noticed on the person of the respondent as an incriminating circumstance on the premise that it is not a conclusive circumstance. The Division Bench sidestepped the circumstance that semen and blood were detected on the under-clothes of the accused on the premise that there was delay in seizing those wearing apparels.

The evidence of PW-3 Sayyed Niyamat (PW-8) Mahadeo and Motiram (PW-14) needs scrutiny by us because acceptability of that evidence will have a decisive impact on the final conclusion of this case.

PW-8 Mahadeo claimed to have seen the respondent with a. little girl at his grocery shop around 4 P.M. on 22.12.1995. He said that the man with the girl had purchased some peppermint from his shop presumably for appeasing the girl as she was then crying. His reason for remembering his purchase was that next he heard about the murder of a little girl and he visited the house of the girl on 24.12.1995, and identified the dead body as that of the same girl. In a test identification parade conducted by PW-26 Magistrate he identified the respondent as the person who accompanied the child. PW-3 Sayyed Nayamat gave evidence that when he was returning from his Friday Namaz he saw a young man holding a crying girl around 4.00P.M. He too gave almost the same reason for remembering it that when he heard next day about the murder of a little girl he had some doubt whether it was the same crying girl. He also identified the respondent in the test identification parade.

PW-14 Motiram has a betel shop in the locality. His evidence is that a young man wearing pant and shirt visited his shop at about 4.30 p.m. and bought some "Kharra" from the shop. He remembered it as a little girl was with him who was found crying then. When he heard next day about the murder he felt suspicious because the young man whom he saw the previous day in his shop was a total stranger in the locality. So he informed the police about it. He too was called in the Test Identification Parade wherein he identified the respondent as the person whom he saw with the girl.

If a criminal court is to view the testimony of the aforesaid three witnesses as unnatural it would be easy to brush it aside with the stereotyped reasoning that those persons had no cause to remember having seen the man with the girl accompanying him. Such a reasoning overlooks the broad aspect that a human mind, on hearing about any shocking incident, would have the tendency to recollect any previous event which could have had a connection with that incident If as a matter of fact those

witnesses had occasion to see a crying girl of that age on the very day of the gruesome episode as happened in this case, there is nothing improbable in those witnesses remembering the person who was seen in the company of that girl. If they had immediately informed the police that they noticed a similarly aged girl crying in the company of an utter stranger of that locality that cannot be brushed aside as a doubtful conduct. Either the three witnesses concocted the story falsely or what they said must be true. Why should they concoct it falsely. We are not told of any reason whatsoever for those three witnesses to bother themselves to concoct such a canard.

It seems that a minor discrepancy in their evidence had affected their credibility before the High Court. They said that they went to the police station on 24.12.1995, whereas PW-26 Police Inspector said that they visited me police station only on 25.12.1995. We do not attach any significance to the aforesaid discrepancy as PW-26 should have been more correct because he was speaking with the help of investigation records while the witnesses would have spoken from their memory only. Another reason advanced by the Division Bench is that when PW-3 Sayyed Niyamat went to the bereaved house he did not inform anyone in that family as to what he saw earlier. But PW-3 himself gave an explanation for it that as members of that family were then in a shock he did not venture to tell them about it at that occasion. Here also the question is not whether PW-3 should have told them despite his hesitation but whether the witness had chosen to adopt such a reticence in a situation like that. It is not for the Court to suggest that he should have divulged it to the members of the bereaved family despite his own thinking about it At any rate we are not impressed by the aforesaid reasoning for rejecting the testimony of an important witness like PW-3.

The Division Bench then advanced a theory that there is "an inherent incredibility in the evidence" on the premise that a culprit kidnapping a minor girl with sinister design would normally take the precaution not to be seen by any other person on the way, but in this case the culprit along with the girl had moved from place to place in the town. We are unable to appreciate such a reasoning as proposition of human conduct. For considering that reasoning it must be remembered that Gangu would certainly have been abducted by some body (even assuming that it was not this respondent) and that person had taken the abducted girl from her house up to the farm. Unless it is suggested that there was another alternative and safer route for the culprit to take the girl unnoticed by any shopkeeper or even a pedestrian there in no rationale in the reasoning that there is "inherent incredibility" in the version that respondent would have taken the girl through this route.

The last reasoning of the Division Bench is based on a criticism of the modes adopted by the Executive Magistrate who held the test identification parade. The aforesaid criticism was based on the evidence of two witnesses who said that the accused were taken on foot from police station to the place where the parade was conducted and that their faces were not covered during such transit.

Ext 17 is the minutes of the test identification parade conducted by the Magistrate who himself was examined as PW-2. It contains the details of the steps adopted by him. Seven other persons were kept ready in the room and the witnesses were kept in another room from where they could not see the suspect Thereupon the suspect was brought from the lock up with the help of two respectable persons and all precautions were taken that the witnesses could not see the suspect during such transit. Then me suspect was permitted to stand anywhere among the 7 persons. It was thereafter

that the witnesses were brought with the help of the same respectable persons and the witnesses were then asked to identify the person whom they saw on the crucial day. If potholes were to be ferreted out from the proceedings of the magistrates holding such parades possibly no test identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every test identification parade would become unusable. We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes; The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held, vide Budhsen v. State of Uttar Pradesh, [1970] 2 SCO 128 and Ramanathan V. State of Tamil Nadu, [1978] 3 SCC 86.

When we scanned through. Ex. 17 minutes of the test identification parade, we feel that the safeguards adopted by PW-2 Executive Magistrate were quite sufficient for ensuring that the parade was conducted in a reasonably foolproof manner. We feel that the Division Bench niggled on unimportant details and came to the wrong conclusion that the test identification parade was irretrievably vitiated. The reasons by which the testimony of those three witnesses had been jettisoned by the Division Bench were fatuous and we cannot support them.

One of the formidably incriminating circumstances against the accused was that the dead body was recovered as pointed out by the respondent. The statement of the respondent which led to the recovery of the dead body has been incorporated in Ext. 79 and the admissible portion of it reads thus :

"Her dead body is kept concealed in the field; I will take it out and produce the same; come with me."

But unfortunately the Division Bench of the High Court did not rely on the above circumstance on a very fragile reasoning. The first limb of that reasoning was based on a mistake committed by PW-3 Sayyed Niyamat in his evidence when he said that he saw the dead body of the child on 23,12.1995. Much strain is not required in holding that what PW-3 said should have been understood as 24.12.1995. The second limb of the reasoning is that two other possibilities could not have been ruled out. Of which one is that respondent would have seen someone else placing the dead body at that spot, and the second is that respondent would have been told by somebody else that the dead body was placed there:

We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if

the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities me criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can Offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court mat the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

It is regrettable that the Division Bench had practically nullified the most formidable incriminating circumstance against the accused spoken to by PW-22 Dr. Nand Kumar. We have pointed out earlier the injuries which the doctor had noted on the person of the accused when he was examined on 25.12.1995. The significant impact of the said incriminating circumstance is that the accused could not give any explanation whatsoever for those injuries and therefore he had chosen to say that he did not sustain any such injury at all. We have no reason to disbelieve the testimony of PW-22 Dr. Nand Kumar, False answer Offered by the accused when his attention was drawn to the aforesaid circumstance renders that circumstance capable of inculpating him. In a situation like this such a false answer can also be counted as providing "a missing link" for completing the chain.

It is disconcerting that a case like his in which the prosecution has presented such reliable and formidable circumstances forming into a completed chain and pointing unerringly to me irresistible conclusion mat the little girl Gangu was raped and killed by none other than the respondent himself, ended in unmerited acquittal from the Division Bench of the High Court Criminal justice unfortunately became a casualty in this case when the High Curt side-stepped all such circumstances and exonerated the culprit of such a grotesque crime.

We, therefore, set aside the impugned judgment and restore the conviction passed by the trial court. Regarding sentence we would have concurred with the Sessions Court's view that the extreme penalty of death can be chosen for such a crime, but as the accused was once acquitted by the High Court we refrain from imposing that extreme penalty in spite of the fact that this case is perilously near the region of "rarest of the rare cases" envisaged by the Constitution Bench in Bachan Singh v. State of Punjab, [1980] 2 SCC 684. However, the lesser option is not unquestionably foreclosed and so we alter the sentence, in regard to the offence under Section 302 IPC, to imprisonment for life. The sentences imposed by the trial court on all other counts would remain unaltered. The bail bond shall stand cancelled. We direct the respondent to surrender to bail. We also direct the Sessions Judge, Wardha to take immediate and necessary steps to put the accused in jail if he is not already in jail, for undergoing the sentence imposed on him.