

CASE NO.:
Appeal (crl.) 722 of 2005

PETITIONER:
Renuka Bai alias Rinku alias Ratan & Anr.

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 31/08/2006

BENCH:
K.G. BALAKRISHNAN & G.P. MATHUR

JUDGMENT:
J U D G M E N T

K.G. BALAKRISHNAN, J.

This criminal appeal has been filed by the two appellants herein who have been found guilty by the High Court of Bombay for various offences. These appellants were charged for various crimes alleged to have been committed by them during the period June 1990 to October 1996. They were tried by the Additional Sessions Judge, Kolaphur and found guilty and sentenced to death. The High Court confirmed their conviction on various counts and the sentence imposed on them.

The appellants Renuka Bai @ Rinku @ Ratan and Seema @ Devki @ Devli are sisters. Their mother, Anjanabai, a co-accused died in 1997 and hence she could not be tried. Approver Kiran Shinde who had studied upto 7th standard and left the school in 1982, belonged to Pune. He obtained some training in the work of tailoring and was doing tailoring work in a shop belonging to one Suresh. In 1983 he came in contact with the first appellant Renuka Bai and in December 1989 he married Renuka at a temple near Shirdi. Renuka was previously married to somebody else and was having a child by name Aashish. These two appellants and their mother Anjanabai and the approver Kiran Shinde and child Aashish were residing as tenants in a house at Gonthalinagar in Pune. The appellants and their mother used to commit thefts. For that they would go to the places of festivals and whenever they got opportunity they used to snatch the gold chains and made a living out of the income derived from such thefts committed by them.

In 1990, the first appellant Renuka Bai along with her child Aashish went to a temple. There was a large gathering at the temple, Renuka Bai tried to snatch a purse from a person but she was caught in that process. On being caught, she raised a hue and cry and questioned the person as to why he had caught hold of her hand when she was having a child with her and could not have been involved in a crime. Many people gathered around her and seeing the mother and the child, they left the appellant Renuka Bai. She narrated this incident to her sister Seema and mother Anjanabai and told how she had managed to escape as she had the child with her. The police had caught both the appellants and their mother on several occasions and they used to bribe the police and escape from the clutches of law. The appellants and their mother decided that thereafter they would have a child with them at the time of committing the crime so that by making use of the child

they can escape from the crowd. According to the prosecution, the appellants, their mother Anjanabai and approver Kiran Shinde entered into a conspiracy to kidnap small children below five years of age and make use of them whenever necessary and dispose them of when they are no longer useful. They thought that this was the only way to evade possible arrest whenever they were caught in the process of committing theft.

According to prosecution, these appellants alongwith their mother Anjana Bai and approver Kiran Shinde were instrumental in kidnapping 13 children and out of them they had killed 9 of them. All these crimes were allegedly committed during the period June 1990 to October 1996. The appellants have been convicted on various counts and the death penalty imposed on them by the Sessions Court was confirmed by the High Court.

The Sessions Judge meticulously considered the evidence of the prosecution and by a detailed judgment found these appellants guilty of majority of crimes charged against them. The High Court confirmed the finding in most of the cases. Though 9 cases of murder were alleged against the appellants, the Sessions Court found them guilty only of commission of 6 murders. When the matter came up in appeal before the High Court, it was held that the prosecution could succeed in proving only 5 cases of murder against these appellants. The trial Court convicted the appellants for murder in the case of death of Santosh, Anjali @ Pinki, Raja, Shraddha, Gauri and Pankaj. However, the High Court held that in the case of murder of Raja, the evidence was not satisfactory. Appellants in all these cases pleaded not guilty and alleged that they had been falsely implicated in these cases.

The gist of allegations against them is that these two appellants, along with their mother Anjana Bai, with the help of the approver in this case, namely, Kiran Shinde, had kidnapped 13 children and caused the death of 9 out of them. They also had attempted to kidnap yet another child but their attempt failed. Anjana Bai, the mother of the present appellants died in 1997. For the offences punishable under Section 302 read with Section 120B IPC, the appellants have been awarded capital punishment.

Brief summary of the successive criminal acts of kidnapping and murder committed by the appellants is thus.

These appellants were found guilty of kidnapping one child, namely, Santosh who was aged about 1-2 years in July 1990. They killed Santosh, and disposed of the dead body near the State Transport Stand at Kolhapur. For this offence, they have been found guilty and sentenced to death.

The appellants have also been found guilty of kidnapping one child named, Naresh, aged 9 months, in 1991 from Thane ST Stand. The appellants were alleged to have left the child near a temple at Nasik and later made a claim before the Court for the custody of that child based on false grounds. The appellants were found guilty of the offence punishable under Section 364 read with Section 120B IPC; Section 323 and sentenced to undergo 3 years imprisonment for the main offence.

In another case in 1993, these appellants kidnapped a child named Bunty aged about one year, and a girl named,

Swati, aged about two years from the Kalyan Railway Station, Mumbai. There was also an allegation that these appellants kidnapped Guddu aged 2 = years and a girl named, Meena, aged 3 years, in 1993, from V.T. Station, Mumbai. The appellants along with their mother, Anjanabai, ,killed Bunti and Guddu and disposed of their dead bodies. For kidnapping Guddu and Meena, they were found guilty, but as regards the murder of Guddu, the prosecution could not prove the offence under Section 302 read with Section 120B IPC and they were acquitted of the charge.

The next case for which these appellants had been charged was the kidnapping of a child, namely, Anjali @ Pinky, aged about two years from Kalika Mandir at Nasik on 18.X.1994 and killed her and disposed of the dead body with the help of the approver, Kiran Shinde. The appellants have been found guilty of the offence punishable under Section 302 read with Section 120B IPC and for this offence they have been imposed with capital punishment.

It is further alleged that in March 1995, the appellants along with their mother Anjanabai and approver, Kiran Shinde, kidnapped a male child by name, Swapnil @ Raja from the S.T. Stand at Kolhapur. They killed the child in the second week of March, 1995 and threw the dead body of the child near Khandala Ghat and for this offence, the appellants have been found guilty and sentenced to death.

Another criminal case charged against them is that these appellants kidnapped one girl, namely, Shraddha @ Rani @ Bhagyashree aged about one year nine months from Mahalaxmi Temple, Kolhapur, and thereafter killed the child while the appellants were traveling in a taxi from Pune to Surat and disposed of the dead body of the child. For these criminal acts, the appellants have been found guilty of the offences punishable under Section 302 read with Section 120 B and other allied offences and for the main offence, they have been sentenced to death penalty.

In the next case also, the appellants have been found guilty of kidnapping one child named Kranti, aged nine years and later killed the child and disposed of the dead body in a sugarcane field at a place called Narsoba. For this offence also, appellants have been found guilty and sentenced to death.

Another allegation against the appellants relates to making an attempt to kidnap a child namely, Devli from a primary school at Nasik. Though the Sessions Court found the appellants guilty of kidnapping, the High Court found that the case of kidnapping of a child was wrongly entered against the appellants.

In the chain of crimes committed by these appellants, they were again found guilty of offence punishable under Section 302 read with Section 120 B IPC for kidnapping and murdering one Gauri @ Bhavna aged 1=- years. This child was kidnapped from Ganga Ghat vegetable market in Nasik. The child was killed in Kolhapur and the appellants disposed of his dead body in the women's lavatory of a cinema theatre. For this offence, the appellants have been found guilty and sentenced to death.

In the last of the series of criminal offences charged against them, the appellants were found guilty of kidnapping

one male child, namely, Pankaj aged four years on 27.7.1996 from Vithal Mandir, Wadala, Mumbai. The appellants later killed the child in September 1996 in a house at Pune and disposed of the dead body of the child in a gunny bag. For this offence, the appellants have been found guilty on various counts.

In the appeal preferred by the appellants, the Division Bench of the High Court confirmed their conviction on almost all the counts and confirmed the death penalty imposed on these appellants.

We shall briefly consider the evidence adduced by the prosecution in these five cases and whether any error or illegality had been committed in the case of conviction of these appellants for these offences charged against them.

Kiran Shinde turned approver on 17-10-1997 and he was first examined on 17.9.1998 before the Magistrate.

One of the earliest cases of kidnapping and murder committed by these appellants relates to the incident of kidnapping of one Santosh. The prosecution case is that in July, 1990 the appellants and their mother Anjanabai had gone to Kolhapur. Appellant Renuka met a female beggar with a child at the bus stand. She promised the beggar that she would give her a job. Renuka managed to kidnap the child without being noticed by his mother and took the child to Pune where the appellants were staying. They named the child as Santosh. In July, 1990 itself, the appellants went to Shirdi for the purpose of committing thefts. As they did not come back to Pune for 5-6 days, Anjanabai went in search of them. About 7 days thereafter, the police brought the appellants and conducted a search of their house at Pune. There were two children with the appellants at that time. They were Ashish and Santosh. Approver-Kiran Shinde bribed the police and he escaped from Maharashtra. Appellants and their mother Anjanabai were taken into custody, but later they were released from police custody. In March, 1991, Renuka gave birth to a child and he was named 'Kishore'. In April, 1991, appellants, their mother and Kiran Shinde went to Kolhapur for committing thefts. They took a room in a "Dharamshala", kept their luggage there and went to Mahalaxmi temple in the evening. There, appellant-Seema tried to snatch the purse of a person. She was caught and beaten by him. Her mother Anjanabai then intervened. She threw Santosh on the ground who sustained a bleeding injury on his head. Many persons gathered around them and seeing the bleeding wound on the head of the child Santosh, people consoled them and the matter was not reported to the police. Appellant Renuka then suggested that they may commit some more thefts. They went to the bus stand and managed to commit theft of 2-3 purses. On their way back, the child Santosh started crying as he was bleeding. Anjanabai then told that the child was no longer useful as he was crying and there was a likelihood of their being caught by police. The further case of the prosecution is that Anjanabai pressed the mouth of Santosh and dashed his head on an iron bar whereby Santosh sustained more head injuries and died on the spot. The clothes worn by Anjanabai were washed at the water tap and now they wanted to dispose of the dead body of Santosh. They left the dead body near the heap of some old rickshaws and came back to Dharamshala. On the next day, the dead body of Santosh was found and the matter was reported to the Laxmipur police station. The

police could not find out any trace of the murder and later they filed the final report.

In order to prove the case of murder of Santosh, PW 53, PW 54, PW 56, PW 58, PW 63 to PW 65, PW 67 to PW 69, PW 124, PW 125, PW 127 and PW 132, PW 137 and PW 155 were examined. PW 132 Dr. Chandrashekhar Chanokar of CPR Hospital who conducted the post-mortem case was of the opinion that the cause of death of the boy was shock due to the fracture of the base of his skull with intra cerebral hemorrhage. PW 56 is a Peon who was present at the time when the dead body of Santosh was recovered from a place near the Vikram High School, Kolhapur. He deposed that there was bleeding from the ear and injury on the head of the deceased. The evidence of PW 67 is very crucial in proving the prosecution case. PW 67 is a Constable in the State Reserve Police Force. His house is at Gondhalinagar, Pune. Though he constructed this house in 1987, he was not staying there. He knew approver Kiran Shinde and these appellants and their mother. He gave this house in 1990 to these appellants and they stayed there for about 1-2 years. He used to go to this place for collecting rent and had seen Santosh at that place and when inquired about him, Anjanabai told that the boy was the son of the relative who was staying at Kolhapur. The photo taken from the dead body of Santosh was shown to the witness and he identified and the same was marked as Exhibit 235. When PW 67 inquired with the police, they told that these women were associated for committing theft of ornaments. Thereafter, he asked the approver Kiran Shinde to vacate the house and the witness came to know that these three women were in jail for about 9 to 10 months and at last he got back the possession of the house. The evidence of this witness alone is sufficient to prove that these appellants were responsible for the death of boy Santosh. There was also the supporting evidence of other witnesses and the prosecution satisfactorily proved the guilt of the accused persons and their conviction for murder of this boy Santosh is perfectly justified.

The appellants were found guilty of kidnapping 1 = year old child by name Naresh @ Kalpesh @ Aniket. PW 90, PW 91, PW 92, PW 96, PW 106, PW 107 were examined to prove the kidnapping of child Naresh. The approver Kiran Shinde stated that in the year 1992, they were residing at Indubai Chawl and as they were in need of money, they decided to go to Pune. They reached the bus stand at Thane. There, they met a beggar who was with a child about 8 to 9 months. Appellant Renuka started talking with the beggar and got the child in her arms. Appellant Renuka gave her some money and asked her to get milk for the child. When the mother of the child went out of the bus stand to get milk, the appellant slipped away with the child and left the bus stand in an auto rickshaw. The appellants took this child to Nasik to attend 'Kumbh' mela. Whenever the child cried deceased Anjana Bai used to beat him. Anjana Bai then advised the appellants to leave the child at a temple and the child was left at a temple. When the child started crying, a lady police constable came and took the child. The appellants then left that place. Appellant Renuka was so fond of this child that she wanted to retrieve this child. She came to know that the child was in an orphanage by name "Adhar Ashram" at Nasik. Deceased Anjana Bai filed application to this orphanage to get this child by stating that he was her child but she was not successful. They had also resorted to some litigation for getting this child back. Kidnapping of the child is proved by these items of evidence.

The appellants were found guilty of murder of the child Bunty. This child was picked up by the appellants in April 1993 from Kalyan Railway Station, Bombay and the child was killed in May 1993. The appellants had also kidnapped children Swati aged 2 = years, and Guddu aged 2 = years. Swati was abandoned and Guddu was allegedly killed in May 1993. But the prosecution could not produce any satisfactory evidence of the murder of Guddu. To prove these cases, series of witnesses were examined by the prosecution.

The appellants were found guilty of having caused the death of Anjali @ Pinki. She was a child of 2 = years of age and was kidnapped on 18.10 1994 from Kalika Mandir at Nasik. As regards the kidnap of Anjali @ Pinki, the approver Kiran Shinde stated that in the year 1994, he stayed at Pune and the appellants and their mother came to him and alongwith them, there was a girl aged 3 years and she was called Pinki. Approver made inquiries and he was told that they had gone to Kalika Mandir at Nasik and from there, they got Pinki. He further stated that Pinki was continuously crying and the neighbouring women asked the appellants as to who she was and the first appellant replied that her mother had been admitted in the hospital and hence the child was brought to them. As Pinki was continuously crying it became a nuisance to the appellant and her mother Anjana Bai was very much annoyed by this girl and she pushed this girl forcibly and the girl fell in front of the latrine and the first appellant held her legs together and after sometime the movements of Pinki stopped and she died. They kept the body in a bag and brought the bag near Saswad Road and threw it in a compound where there were lot of bushes.

The evidence of the approver is fully corroborated by the other items of evidence. PW 10 Sujata is the mother of Anjali @ Pinki. She gave a complaint to the police stating that she had gone to the Kalika Mandir on 18.10.1994 along with her husband and daughters Shweta and Anjali. The daughter Anjali was with her husband. PW 10 Sujata had gone to have a Puja. When the articles of Puja was being handed over to them, daughter Anjali was sitting on the floor. When they came back, the girl was not seen. They made fanatic search but the child could not be found. After the body was recovered, she identified certain photographs of the child.

PW 62 is the father of Anjali. He deposed that from 18.10.1994 onwards, Anjali was missing when they had gone to the Kalika Mandir at Nasik and on 1.11.1996, he lodged FIR. He had also identified the photographs Exhibit 87/1, 87/2, 87/3 and Exhibits 90 and 91.

There is also evidence to show that deceased Anjali was found in the company of appellants. PW 12 is the owner of a lodge at Nasik and he deposed that on 11.10.1994, three women alongwith two to three children came there to have a room in the lodge. They told that they would like to stay there for 8 to 10 days. Though he was reluctant to give them a room but as they had children alongwith them, he ultimately gave them room no. 6 which they took in the name of 'Sima Patil-Gavit' and these three women stayed in the lodge for 8 days. On one day PW 12 heard the cries of a child and he made enquiries and he was told that the girl was a child of the maternal aunt of one of them who was having a stall in the fair at the temple and the child was crying so they had brought her alongwith them. Again after 20-25 minutes, there was a

crying sound and PW 12 and his mother asked them to vacate the rooms. PW 12 identified the first appellant and one of the women who had stayed in the lodge. She also identified exhibit 87/1 and 87/2 photographs of the girl and deposed that the very same girl was with the three women when they were staying in the lodge.

There is also the evidence of PW 46 Kantabai Borkar who identified the photographs of Anjali @ Pinki. This witness was the neighbour of the accused and deposed that the deceased Anjali @ Pinki was with them. So there is also evidence of PW 22 Rajendra Sankpal who saw the dead body of Anjali near his nursery, and reported the same to the police. PW 25 Narsinh Kendgale recovered the dead body and prepared the Panchnama. PW 131 Dr. Lakshmikant Bade conducted the post-mortem on the dead body of Anjali. In the post mortem report, it was reported that there were series of injuries in the body of deceased Anjali @ Pinki. There were series of abrasions and the doctor deposed that injury no. 2 namely contusion of upper and lower lips and the laceration of mucosa of upper and lower lips in incisal area indicated that the mouth of the victim was pressed and that injuries no. 2,7,9,11 and 12 might have happened due to fall or being thrown from the staircase.

The entire evidence adduced by the prosecution clearly establishes that the approver's evidence was fully corroborated by other items of evidence and death of Anjali @ Pinki was caused by the appellants.

The Sessions Judge has dealt with in detail each item of evidence and the High Court also re-appreciated the evidence in respect of each item of evidence. We do not propose to consider each case but we are satisfied that the evidence adduced by the prosecution proved beyond reasonable doubt that the appellants were responsible for series of kidnapping of children and murders and they have been rightly found guilty for these offences.

The prosecution thus succeeded in proving that these appellants have committed a series of murders. The learned Counsel for the appellants strongly urged before us that the evidence of the approver should not have been accepted by the Court as it is a tainted evidence. It was argued that there is no satisfactory corroboration of the evidence of the approver and unless there is a corroboration, it should not have been acted upon. It is true that the evidence of the approver is always to be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts. Here the approver's evidence was not fully accepted by the High Court. High Court was of the view that he had suppressed some material facts. We find that the observation made by the High Court was justified. The tenor of the evidence given by the approver Kiran Shinde is to the effect that he was only a silent spectator but all these heinous crimes were committed by the appellants and their mother Anjana Bai. It is difficult to believe that these women alone had committed all these crimes unless there is strong support from the approver Kiran Shinde. When the Court suspected the evidence of the approver, the pardon given to him itself could be withdrawn and he could be tried along with the other accused. But unfortunately the provisions contained in the Criminal Procedure Code do not enable the Court to take such a strong action.

The approver was given pardon under Section 306 of the Cr.P.C. and thereafter he was examined as a witness for prosecution under Section 308 of the Cr.P.C. The procedure prescribes that if the approver is wilfully concealing anything essential or is giving false evidence or had not complied with the conditions on which the tender of pardon was made, the approver can be tried for the offence in respect of which he had been given pardon. In order to prosecute the approver, the public prosecutor has to give a certificate and he should express his opinion that the approver has either wilfully concealed anything essential or has given false evidence or has not complied with the conditions on which pardon has been made. The proviso to Section 308 also says that such person shall not be tried for the offence for giving false evidence except with the sanction of the High Court and the approver also would be entitled to plead that he had complied with the condition upon which such tender of pardon was made and that he had not given any false evidence or willfully suppressed anything. Thus, the Code of Criminal Procedure prescribes a procedure for prosecuting the approver who had given false evidence or wilfully suppressed anything.

In the instant case, the approver Kiran Shinde was present when many of the murders had taken place and it is quite possible that he also must have been an active participant and the High Court was justified in saying that the approver had not given full details of the crimes. The approver was moving with the two appellants for a long period and despite the repeated criminal acts committed by them, the approver did not inform the police or any authorities. Some of the children kidnapped by the appellants were in the custody of the appellants and the approver, and later their bodies were found. In one case, the post mortem examination showed that the child was subjected to some unnatural offence. The approver himself had admitted that he had bribed the police many times and saved these appellants from the clutches of law. Despite all these startling revelations, the approver could not be proceeded against and the public prosecutor had not taken any step to proceed against the approver. We feel, under such circumstances the court itself has inherent powers to proceed against the approver in case he is wilfully suppressing material facts or is giving false evidence.

The two appellants kidnapped several children and committed their murder in the most dastardly manner. In some cases, the body could not be found and in some cases the dead body could be traced out. The High Court felt that these five cases of murders have been proved against these appellants. The murder committed by the appellants are proved by satisfactory evidence. The approver's evidence is fully corroborated by other items of evidence. We do not find any reason to interfere with the order of conviction passed by the sessions court and confirmed by the High Court.

The appellants have been awarded capital punishment for committing these murders and their sentence was confirmed by the High Court. Going by the details of the case, we find no mitigating circumstances in favour of the appellant, except for the fact that they are women. Further, the nature of the crime and the systematic way in which each child was kidnapped and killed amply demonstrates the depravity of the mind of the appellants. These appellants indulged in criminal activities for a very long period and continued it till they were caught by the police. They very cleverly executed their plans

of kidnapping the children and the moment they were no longer useful, they killed them and threw the dead body at some deserted place. The appellants had been a menace to the society and the people in the locality were completely horrified and they could not send their children even to schools. The appellants had not been committing these crimes under any compulsion but they took it very casually and killed all these children, least bothering about their lives or agony of their parents.

We have carefully considered the whole aspects of the case and are also alive to the new trends in the sentencing system in criminology. We do not think that these appellants are likely to be reformed. We confirm the conviction and also the death penalty imposed on them. The stay of execution of the capital punishment imposed on these appellants shall stand vacated and the authorities are directed to take such further steps as are necessary to carry out the execution of capital punishment imposed on these appellants.

