

Deeparam @ Deepak Vs. State

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Court : Rajasthan Jodhpur

Decided On : Feb-24-2014

Appellant : Deeparam @ Deepak

Respondent : State

Judgement :

D.B.CRIMINAL APPEAL NO.216/2008 1/17 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN JODHPUR.

JUDGMENT

D.B.CRIMINAL APPEAL NO.216/2008 DEEPA RAM @ DEEPAK V/S STATE OF RAJASTHAN D.B.Criminal Appeal No.216/2008 under section 374 (2) Cr.PC against the judgment dated 20.02.2008 passed by the Additional Sessions Judge, Phalodi in Sessions Case No.10/2004.

DATE OF

ORDER

2402.2014 PRESENT HON'BLE Mr.GOVIND MATHUR,J HON'BLE Mr.ATUL KUMAR JAIN ,J Mr.Kalu Ram Bhati for the appellant Mr.O.P.Rathi, Public Prosecutor for the State BY THE COURT (Per Hon'ble Mr.Jain,J.).The Additional Sessions Judge, Phalodi District Jodhpur by judgment dated 20.02.2008 in Sessions Case No.10.2004 titled as State of Rajasthan V/s Deepa Ram @

Deepak & ORS.had convicted the accused persons as under:- 1.Deepa Ram 302 IPC Life imprisonment with fine of Rs.10,000/-& in default of payment of fine, to undergo six months additional RI.

Contd..D.B.CRIMINAL APPEAL NO.216/2008 2/17 369 IPC five years RI with fine of Rs.5000/- and in default of payment of fine, to undergo three months additional RI.

379 IPC Two years RI with fine of Rs.500 and in default of payment of fine, to undergo ten days additional RI.

All the substantial sentences were ordered to run concurrently.

2.

Jetha Ram:- The accused was convicted under sections 411 and 414 IPC but because of death of the accused-appellant Jetha Ram, his appeal has already been abated.

3.

Ramesh Kumar: He was convicted and sentenced under section 176 IPC by one month's simple imprisonment with fine of Rs.500/-.

Perhaps he has not filed any appeal against his conviction and sentence.

Thus, we are going to decide the appeal of Deepa Ram only by this judgment.

Deepa Ram was charged for kidnapping and murder of a girl aged 07 years for robbing her jewels worth Rs.600 or Rs.700/-.

Contd..D.B.CRIMINAL APPEAL NO.216/2008 3/17 We have heard arguments of learned Advocate for the appellant as well as of learned Public Prosecutor appearing on behalf of the State.

The learned Advocate for the appellant has argued that the trial court has blindly relied upon the statements of near relatives of the deceased and the trial court has proceeded with the presumption as if the appellant was obviously guilty of the

offence charged, the trial court has not bothered to distinguish the motive and intention behind the crime in the matter.

It was further argued by the learned defence counsel that there was no motive alleged against the appellant notwithstanding assuming the witnesses as it is, there was every likelihood that the deceased would have insisted her neighbour Deepa Ram for accompanying to 'Bhomiya J.Ka Than' and out of soft attitude towards the young girl, Deepa Ram would have accompanied the young girl and due to hot weather of June, there is every probability that Deepa Ram would have carried the girl in his lap for some distance.

It has been argued on behalf of the accused- Contd..D.B.CRIMINAL APPEAL NO.216/2008 4/17 appellant Deepa Ram that only on the basis of this piece of evidence, he cannot be convicted for murder or kidnapping.

It has also been argued that on the basis of planted recovery of 'Loong' (golden earring) and its price money from the accused-appellant or other persons, it cannot be said that the appellant has murdered the girl.

It has also been argued that 'Loong' (golden earring) which has been recovered is a common jewelery item which is easily available in the market.

On the basis of these arguments, the learned Advocate for the accused-appellant has prayed for acquittal of Deepa Ram.

On the other hand, the learned Public Prosecutor has argued that the prosecution has proved its case beyond reasonable doubt so the accused-appellant Deepa Ram should not be given any benefit of doubt in the case and he should be punished for kidnapping Ms Purna with intent to steal jewels worn by her and then committing her murder.

We have perused the impugned judgment of the trial court.

We have also examined the record of the case.

It Contd..D.B.CRIMINAL APPEAL NO.216/2008 5/17 will be better here to discuss fiRs.the evidence in the case in a summary manner to reach to the correct

conclusion.

A written report (Exp.1)) was lodged by PW1 Raman Lal on 02.06.2004 at 06:45 PM at Police Station, Phalodi.

In this FIR , it has been mentioned that niece of Raman Lal (Ms Purna D/o Shri Ram Chandra Mali aged 07 yeaRs.was playing outside her house wearing silver Payal and golden ear ring.

When she did not come back to the house after play time then all of her relatives tried to search for her but she was untraceable and then a neighbour Chaina Ram @ Chain Sukh (Pw2) informed them that he had seen at 12:00 noon that day Deepa Ram carrying Ms Purna in his lap towards 'Khaddi'.

In the FIR, it was further mentioned that when the complainant Raman Lal went towards 'Khaddi' in search of the girl then Madan Lal (Pw8) also told him that he had also seen Deepa Ram carrying Ms Purna in his lab going towards 'Khaddi'.

It was further mentioned in the FIR that all efforts to trace Ms Purna proved in vain.

At about 04:30 PM, when they came to know about return of Deepa Ram to his residence then all Contd..D.B.CRIMINAL APPEAL NO.216/2008 6/17 of them went to the house of Deepa Ram and when Deepa Ram was inquired about the missing girl Ms Purna then he was found not able to give any answer.

He did not explain his conduct.

In the end, the informant Raman Lal mentioned in the FIR that Deepa Ram must have committed rape and murder of the girl and then robbed her of her jewels which she was wearing.

On this report, the police had registered an FIR bearing No.112/2004 under sections 365 & 302 of Indian Penal Code etc.Raman Lal has been examined as PW1 by the prosecution and in his statement in the court, he fully supported the contents of the FIR.

He states that after lodging the FIR (Exp.1).the accused Ramesh had brought the dead body of Ms Purna and after throwing it in front of her parents house, he had run away.

He states that Smt.

Dheera Devi (PW5) had taken the dead body to the Police Station whereby the police had taken custody of the dead body and after necessary entries and preparing necessary Contd..D.B.CRIMINAL APPEAL NO.216/2008 7/17 documents, the police had returned the dead body to them.

In the cross examination, the informant Raman Lal (PW1) has not been spoken and he has not deviated from his examination in chief on all points.

PW2 Chainsukh @ Chaina Ram also supported the contents of the FIR and he also states that he had also seen the accused-appellant Deepa Ram carrying Ms Purna.

He states that when he confronted Deepa Ram on this point then accused Deepa Ram had denied the fact that he had ever been found going with Ms Purna.

This witness states that the accused-appellant Deepa Ram had bluntly denied the incident but at the time of sun-set , the accused Ramesh had brought the dead body of the girl and he had placed the dead body in front of the house of Ram Chandra (PW19) and then he slipped away.

Ramesh was brother of Deepa Ram and it appears that Ramesh was not feeling good about the conduct of his brother and so as a way of repentance, he had brought the dead body of Ms Purna from the place where it had been buried by the accused-appellant Deepa Ram.

Pw2 Chain Sukh @ Chaina Contd..D.B.CRIMINAL APPEAL NO.216/2008 8/17 Ram is also a trustworthy witness and defence has not been able to shake the credibility of this witness also.

PW8 Madan Lal, though declared hostile, has also supported the prosecution story as mentioned in the FIR albit halfheartedly.

Ram Chandra is PW19 who is father of Ms Purna.

He states that at the time of the incident, he was at Pokaran and on receiving the telephonic information, he reached his house at 04:00 PM when his wife told him that Deepa Ram has killed his daughter Ms Purna.

He states that he had seen the dead body of his daughter and he found her skin also badly damaged and distorted at so many places.

He states that Deepa Ram had totally denied his involvement in kidnapping and murder of Ms Purna.

Smt.

Dheera Devi, mother of Ms Purna was examined as PW5 in the case and she also states that Chaina Ram and Madan Lal had told her about the fact of kidnapping of her daughter by accused-appellant Purna Ram.

She states that Ramesh had brought back dead Contd..D.B.CRIMINAL APPEAL NO.216/2008 9/17 body of her daughter, when she found that her daughter was not wearing 'Loong' (earring) in her ears and Payal in her feet.

She states that skin of her daughter was also badly damaged and distorted at so many places.

She states that identification parade was conducted regarding 'Loong' (earring) and 'Payal'.

She states that she had correctly identified the 'Loong' & 'Payal' of her daughter before the Tehsildar.

Memo of identification Parade is Exp.14.

She states that before the dead body was brought by Ramesh she had gone to the house of Deepa Ram to inquire in the matter and search for her daughter but Deepa Ram was not able to answer any question.

So by conduct of Deepa Ram, she was convinced that Deepa Ram had killed her daughter.

In her cross examination, she has also been found to be a fully trustworthy and reliable witness.

In his examination under section 313 Cr.PC, the accused-appellant Deepa Ram has said nothing about statements of the witnesses who had been examined against him but he states that Smt.

Dheera Devi, mother Contd..D.B.CRIMINAL APPEAL NO.216/2008 10/17 of Ms Purna is a quarrelsome lady and she often starts quarrel with him for petty matters or for election and votes.

He further states that Smt.

Dheera Devi wanted to sell her household goods and ornaments through him and when he did not cooperate, in consequence Smt.

Dheera Devi has levelled charges of murder and kidnapping against him to take benefit of the fact that while coming from 'Bhomiya J.Ka Than' Ms Purna had succumbed because of heat strokes and for this incident, false charges of kidnapping and murder have been levelled by Smt.

Dheera Devi against the accused-appellant.

We have no hesitation to say that the accused- appellant Deepa Ram has raised totally baseless and unbelievable defence plea which is not a plausible defence.

No doubt Dw1 Bhala Ram and DW2 Budh Lal have tried to support the defence story but after perusal of the statements of these two witnesses, it can safely be said that these two witnesses are totally false witnesses and their statements are not reliable at all.

Contd..D.B.CRIMINAL APPEAL NO.216/2008 11/17 Vikram Singh, the then Station House Officer, Police Station, Phalodi (Investigating Officer) has been examined as PW23 in this case.

He states that he had conducted investigation of FIR No.112/2004 registered at Police Station, Phalodi and on the basis of information (Exp.16) given under section 27 of the Indian Evidence Act by accused Deepa Ram to Shri Hari Kishan Gaur, Sub Inspector (PW22).He had proceeded on 02.06.2004 from Police Station, Phalodi to make necessary recoveries at 10:45 PM in presence of witnesses Raju Ram (PW10) and Nakhat Mal (PW4) at the instance of accused Deepa Ram soon after his arrest.

He states that he reached to the shop of Chunni Lal Sunar and there the accused Deepa Ram had indicated that he had sold the golden ear ring to Chunni Lal Sunar (PW3) and on his information, one pair of golden ear ring was recovered from Chunni Lal Sunar and seizure memo (Exp.7) was prepared and the seized articles were sealed on the spot.

He also states that the Silver Payal was also recovered on the information of Co.accumulator Jetha Ram (whose appeal has abated due to his death) from possession of Hari Narayan Soni (PW11).Contd..D.B.CRIMINAL APPEAL NO.216/2008 12/17 Chunni Lal (PW3) and Hari Narayan Soni (PW11) have also supported the factum of recovery from them.

They were found to be bonafide purchasers as per the police investigation and so they were not made accused in the matter.

PW23 Vikram Singh has further stated that price money Rs.470/- in lieu of the golden earring was received by accused Deepa Ram which was also recovered by the police in the presence of the witnesses from his house.

Memo of information (Exp.60) and Exp.67 and the seizure memo Exp-20 & Exp.61 are duly proved by prosecution evidence in this case.

The place where the dead body was buried was shown to the police by accused Ramesh as per memo of information (Exp.69) and also by accused Deepa Ram.

In his cross examination, Vikram Singh, Investigating Officer has been found to be a reliable and truthful witness.

There is no reason to disbelieve his statement.

He has proved the prosecution story in a lucid manner.

Contd..D.B.CRIMINAL APPEAL NO.216/2008 13/17 The memo of identification of 'Loong' is Exp.13 and memo of identification of 'Payal' is Exp.14 and these two memos of identification have been duly proved by the statement of PW21 Jitendra Pandey who was the then Tehsildar, Phalodi at that time.

Jitendra Pandey has duly proved the fact of identification of 'Loong' & 'Payal' by Smt.Dheera Devi.

There appears no doubt in the process of identification and it can be said that 'Loong' which was recovered at the instance of the accused Deepa Ram was certainly of deceased Ms Purna and which was the same 'Loong' (earring) which had been worn by the Ms Purna at the time of her death.

PW22 Hari Kishan Gaur, Sub Inspector posted at Police Station, Phalodi has also proved that FIR was chalked by him and he further states that he had arrested accused Deepa Ram and memo of his arrest was prepared by him and the information given by accused Deepa Ram was recorded by him in Exp.60.

He also states that the memo of recovery of dead body (Exp.61) and memo of description of dead body was also prepared by him.

Contd..D.B.CRIMINAL APPEAL NO.216/2008 14/17 'Loong' (golden earring) was recovered in the presence of Raju Ram (PW10) and Nakhat Mal (PW4).As per seizure memo (Exp.7) which has been exhibited in this case, both these witnesses have supported the factum of recovery of golden ear ring from the possession of Chunni Lal Sunar at the instance of accused-appellant Deepa Ram.

Dr.Heera Lal has been examined as PW17 in this case and he states that the girl died because of asphyxia.

PMR-Exp.53 has been exhibited by him.

Thus, the statement of Dr.

Heera Lal has also been consistent with the prosecution story that the girl was murdered by putting pressure on her Nos.and mouth to cause asphyxia.

Other witnesses examined in this case are either not material or not much relevant as regards the offence committed by the accused-appellant Deepa Ram.

They may be relevant for other accused persons namely Jetha Ram and Ramesh, so it is not necessary for us to discuss these witnesses in detail here and thus, we are of the view that in this case, it has been proved beyond reasonable Contd..D.B.CRIMINAL APPEAL NO.216/2008 15/17 doubt that the accused Deepa Ram was the person who was last seen with Ms Purna before her death on the same day.

The dead body of Ms Purna was brought by accused Ramesh from the place where it was buried by accused Deepa Ram and it has also been proved beyond reasonable doubt that it was accused Deepa Ram who had sold the golden robbed earring of Ms Purna to Chunni Lal Sunar for a petty sum of Rs.470/- and co-accused Jetha Ram was also with him in the crime.

Jetha Ram has already expired.

We know that before the court can record conviction, we will have to satisfy that the circumstances from which inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together should not only be of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

We also know that in the case of circumstantial evidence, motive bears Contd..D.B.CRIMINAL APPEAL NO.216/2008 16/17 important significance.

Motive always locks-up in the mind of the accused and some time, it is difficult to unlock.

People do not act wholly without motive.

The failure to discover the motive of an offence does not signify its non- existence.

It can be further said here that in a case of circumstantial evidence, motive is one of the circumstances which assumes importance but it cannot be said that in absence thereof other proved circumstances altogether complete the chain would be of no consequence.

In the present case, the motive of robbing the girl from her jewels though of a small value is on record.

The evidence of molesting the girl has not been brought by the prosecution but the case can not be said to be of no motive.

Further, in this case, the accused had offered no explanation for any of the circumstances which have come in evidence against him.

In the present case, the chain of circumstances is so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

All the established facts in this Contd..D.B.CRIMINAL APPEAL NO.216/2008 17/17 case are consistent only with the hypothesis of the guilt of the accused and are inconsistent with his innocence.

Hence, the conviction and sentence of the accused- appellant Deepa Ram under section 302, 369 & 379 IPC recorded by the trial court deserve to be upheld which are hereby upheld and the appeal of the accused Deepa Ram is hereby dismissed.

A copy of this judgment be sent to the trial court along with the record of the case.

A copy of this Judgment should also be sent to the Superintendent, Central Jail where the accused is undergoing sentence so that the copy of the judgment be received by the accused-appellant also.

[ATUL KUMAR JAIN], J.

[GOVIND MATHUR], J.

Anil Singh Contd...

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