

Munni Devi Vs. Lokesh Kumar @ Lucky and ors

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Court : Delhi

Decided On : Aug-20-2014

Judge : Mukta Gupta

Appellant : Munni Devi

Respondent : Lokesh Kumar @ Lucky and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision: August 20, 2014 + CRL.A. 426/2014 MUNNI DEVI Represented by: Appellant Mr.C.S.Rathour, Advocate. versus LOKESH KUMAR @ LUCKY & ORS Respondents Represented by: Mr.R.S.Juneja, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Munni Devi, mother of Pramod Kumar challenges the impugned judgment dated December 20, 2013 acquitting the respondent No.1 Lokesh @ Lucky for the charges punishable under Sections 328/364/302/ 34/201/379/482 IPC. The appellant has also impleaded respondent No.2 Sandeep @ Katora however, it may be noted that a supplementary charge sheet was filed against Sandeep however, he was discharged by the learned Trial Court vide order dated April 20, 2011. The said order having not been challenged the present appeal against the respondent No.2 is not maintainable as he did not face the trial and is thus not acquitted. Thus this Court is required to deal with the appeal qua

respondent No.1 Lokesh only.

2. Learned counsel for the appellant contends that the appellant is aggrieved by the defective investigation carried out and states that the Investigating Officer left many lacunae resulting in the acquittal of respondent No.1. According to him the call details were not got properly connected and the evidence from the medical store as to the pills purchased was also not collected. Be that as it may, the incident being of 2010 it would be too late now for this Court to direct collection of these materials which would not now be available. Thus we have proceeded to examine the appeal on the merits as to whether the learned Trial Court was justified in acquitting Lokesh.

3. The investigation was set into motion on May 20, 2010 when an information by Pratap Singh PW-6 the cousin of Pramod Kumar vide DD No.16A was received at PS Krishna Nagar stating that Pramod Kumar aged 25 years was missing since May 18, 2010 from 4.30 PM onwards along with his motorcycle No.DL13A4711 A missing report was lodged and efforts were made to trace Pramod by flashing wireless messages and informing the Missing Persons Squad. On May 21, 2010 the parents of Pramod informed that they had received a telephonic message from PS Niwari, Muradnagar regarding recovery of dead body of Pramod. SI Narender Kumar PW-15 along with the parents reached PS Niwari where the dead body was identified by Pratap Singh to be that of Pramod. A subsequent complaint was received from Suresh Pal PW-4 father of the deceased on July 31, 2010 stating that his son went missing on May 18, 2010 when he had gone to the book shop of Shankar and he had not returned thereafter. He also informed that thereafter his family had received one or two threatening calls asking them not to pursue this case. Thus he requested that the case of kidnapping and murder for his son be investigated. On the basis of this statement of Suresh Pal Singh a rukka was prepared by SI Ravi Kumar PW-22 and FIR was registered.

4. During investigation the documents regarding the recovery of the dead body of the deceased from PS Niwari were collected and call detail records of Mobile No.9250363337 of the deceased were collected. From the call details police traced Trishna PW-1 who admitted that she had been taking tuitions with the

deceased and Lokesh, who was a friend of her brother was not liking it. On August 02, 2010 Lokesh was arrested and from his possession phone Nos.9213916357 and 8802986571 were recovered. Pursuant to his disclosure statement he got recovered the motorcycle having fake number UP-14 AB-7611 from the house of his aunt Sunita PW-3. Maruti car bearing No.DL3D0276 was also recovered which was allegedly used in the commission of crime. Lokesh also pointed out to a shop namely Niraj Medical Store from where he purchased ten pills of which three he had given to the deceased. Statement of Nisha was also recorded and thus charge sheet was filed.

5. The post-mortem of the body of the deceased was conducted by Dr.Vipin Chandra Gupta PW-13 who exhibited his report Ex.PW-13/A. According to him there was no ante mortem injuries seen on the body due to decomposition and discolouration of the body skin. Even on internal examination no abnormality was detected in the internal organs. Only the brain matter was liquefied. The opinion as to the cause of death was kept pending awaiting the viscera report. In the Court Dr.Vipin Chandra Gupta deposed that in view of the Forensic Laboratory, Agra report No.K00082 dated March 21, 2012 stomach and liver contained aluminium phosphide (sulphas). Hence the death was due to aluminium phosphide (sulphas) poisoning.

6. The witnesses to be considered with regard to the prosecution case against Lokesh are Trishna PW-1, Sunita PW-3, Nisha PW-9 and Rajesh PW-7. Both Pradeep and Sunita have turned hostile and no part of their testimony is incriminating against Lokesh. Even Trishna Kumari stated that she knew Pramod Kumar @ Sumit since December, 2008 since he used to give her tuition in Class XII. She received tuitions from him for about three months and had no contact with him thereafter. She stated that Lokesh Kumar was the friend of her brother. On the intervening night of May 18/19, 2010 at about 1.30 AM the family members of Pramod Kumar came to her house to inquire about Pramod but she told them that she did not know his whereabouts however, on that day i.e. May 18, 2010 at about 9.00/9.30 PM she had seen Pramod Kumar @ Sumit in between gali No.12 and 13 near chowmein shop and had talked to him, who asked about her well being. Thus the testimony of this witness is also of no avail.

7. Nisha PW-9 stated that she knew Lokesh since January 2010. He met her at Cross River Mall and thereafter they developed friendship. Lokesh told her about his girl friend Trishna whom he claimed to be knowing for the last about eight years and who was having two different boyfriends namely Sumit and Pradeep. He told her that Trishna was troubling him as she used to visit his house at odd hours and she was getting tuitions with Sumit. He also asked her to call Trishna on the phone in the name of Teena so that he could get in touch with Sumit on the pretext that he would also like to have tuitions from Sumit. According to her Lokesh was having objections to Trishna meeting Sumit and getting tuitions late till night and for that purpose he wanted to meet Sumit so that he could ask him to keep away from Trishna. On April 18/19, 2010 she along with Lokesh received a call from Sumit from a STD booth telling them that he was at Big Bazaar and had agreed to disclose his package for tuitions. She along with Lokesh went to Big Bazaar where she was asked to wait while he waited outside. She waited for 10-15 minutes and then made call to Lokesh but he did not pick up the phone. Then she saw that Lokesh and Sumit were fighting with each other. Sumit was bleeding from his mouth and his T-shirt was also having blood stains. She intervened in the matter and the same was settled. Thereafter she along with Lokesh and Sumit went to a restaurant at Geeta Colony in the Maruti Van of Lokesh and remained there from 4.30 PM to 7.00 PM. During this period Lokesh got changed the blood stained shirt of the Sumit with the waiter and left the said shirt in the restaurant. After 7.00 PM they all left the place. She was dropped at the red light of Jagatpuri and Lokesh and Sumit went away in the van of Lokesh who stated that he will drop Sumit to his house. According to her till Sumit remained in the van from the restaurant his condition was perfect. On the same night at about 10.30 PM she called Lokesh who informed that he was at his house and that he had left Sumit at his house along with the motorcycle. Thereafter Lokesh never told her anything about it.

8. In the cross-examination by the learned APP Nisha denied that she had gone with Lokesh to Big Bazaar on May 18, 2010 and not on April 18, 2010. Despite her assertion about meeting Lokesh on April 18, 2010 and not on May 18, 2010, even considering the same took place on May 18, 2010 it does not show anything incriminating against Lokesh except that he did not like the friendship of Trishna with Pramod Kumar @ Sumit and her taking late night tuitions from him. Thus

Nisha only proves motive against Lokesh.

9. The analysis of CDR of mobile No.9289924203 establish that Pramod Kumar @ Sumit had made a call on May 18, 2010 between 2.00 to 3.00 PM. Though the case of the prosecution was that this phone was of Nisha however the Nodal Officer, Tata Tele Service PW-24 appeared in the witness box and stated that this phone was issued in the name of Nayan Kumar son of Kishori Prasad. The prosecution has not been able to prove the relation of Nisha with Nayan Kumar and hence there is no evidence on record to show that the mobile No.9289924203 was used by Nisha. Learned Trial Court even went to the extent of considering the prosecution version conserving that Nisha had met Pramod on May 18, 2010 however, this fact was belied by the version of PW-2 who stated that on May 18, 2010 he met Pramod @ Sumit at Welcome at 6.00-7.00 PM. Further, PW-8 Vinod stated that he had met Pramod at Bihari Colony at 8.30-9.00 PM and he was alone at that time and was going to Modi Nagar to take payment. Thus the finding of the learned Trial Court that the prosecution has failed to prove the last seen evidence against Lokesh cannot be faulted.

10. We are then left with the recoveries made at the instance of Lokesh. SI Ravi Kumar PW-22 deposed that when he arrested Lokesh on August 03, 2010 on his personal search two mobile phones bearing Nos.9213916357 and 9920986571 were recovered vide seizure memo Ex.PW5/B which was witnessed by HC Kailash PW-5 and Constable Kali Charan PW-18. However, these witnesses are silent with regard to recovery of two phones from Lokesh. As per PW-23 Shri Shishir Malhotra mobile No.8802986571 was issued by the company in the name of Rakesh Kumar and as per PW-24 Rajiv Ranjan mobile No.9213916357 was issued in the name of Asha Kumari wife of Hari Shankar. The location of mobile No.9213916357 on May 18, 2010 at 9.00-9.35 PM was in U.P. West. Thus the only inference which can be drawn from this evidence believing PW22 SI Ravi Kumar is that as per CDR and Cell ID of mobile No.9213916357 Lokesh was present in the area of U.P. West on May 18, 2010 at 9.30 PM.

11. As regards the recovery of motorcycle of the deceased at the instance of Lokesh from the house of aunt of Lokesh is concerned PW-3 Sunita, the aunt of

Lokesh has not supported the prosecution case. Further the motorcycle was recovered with a fake number plate though the chasis number and the engine number of the motorcycle recovered were noted in the seizure memo Ex.PW-3/A. However, no documents were produced by the prosecution to prove the engine number and the chasis number of the motorcycle of the deceased so as to prove that the recovered motorcycle belonged to the deceased Pramod Kumar.

12. Even as per Nisha three sedative pills were given to Pramod Kumar, however, the same is no material evidence to prove that Lokesh gave aluminium phosphide (sulphas) tablets to Pramod Kumar.

13. Considering the fact that there is no last seen evidence, the recoveries are not connected with Lokesh and there is no evidence that Lokesh administered Sulphas to the deceased merely on a weak motive and the fact that he was present in the Western UP on May 18, 2010 at about 9.30 PM no conviction can be based. Hence we do not find any illegality in the impugned judgment by the learned Trial Court acquitting respondent No.1.

14. The appeal is accordingly dismissed.

15. T.C.R. be returned. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG)
JUDGE AUGUST20 2014/vn

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