

State Vs. Ajay and ors.

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Court : Delhi

Decided On : Aug-02-2013

Judge : G. S. Sistani

Appellant : State

Respondent : Ajay and ors.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment dated 02.08.2013 Crl. L.P. 413/2013 State Through : ...Petitioner Mr.Saleem Ahmed, ASC for the State. Versus ..Respondents Ajay & Ors. Through : Advs. CORAM: HONBLE MR.JUSTICE G.S. SISTANI HONBLE MR.JUSTICE G.P. MITTAL G.S. SISTANI, J CRL.M.A. 11592/2013 1. This is an application filed by the State seeking condonation of 130 days delay in filing the present leave to appeal. Heard. For the reasons stated in the application, the same is allowed. Delay in filing the present leave to appeal is condoned.

2. Application stands disposed of. Crl. L.P. 413/2013 3. The State seeks leave to appeal against the judgment dated 20.12.2012 passed by the learned Additional Sessions Judge (ASJ), Karkardooma in Sessions Case No.48/2010 whereby the respondents (accused before the trial court) were acquitted of the charges punishable under Sections 365/302/201/34 of the Indian Penal Code (IPC).

4. As per the prosecution version:- On 02.12.2005 on receipt of DD No.6 ASI Arvind Kumar along with Ct. Vinesh reached at B.D. company, Mela Ram Farm House, Mandoli where he met complainant Tarun Singhal. However, the complainant did not express any suspicion on anyone, DD no.6 i.e. missing report of Rinku s/o Raj Kumar was kept pending. On 03.12.05 complainant Tarun Singhal came to police post Harsh Vihar and got his statement recorded wherein he stated that he had been working as Accountant at B.D. Company, Melaram warehousing compound, Mandoli, Delhi. His buas son namely Rahul@Rinku Garg s/o Sh. Raj Kumar Garg, r/o 939, Tyagi Nagar Swarg Ashram Road, Hapur, Ghaziabad, U.P., was also working as Assistant Store Keeper in the same company. On 01.12.2005 at about 6 p.m. Rinku sat for Mangoli Chungi in the Indica car (white colour) bearing No.DL-5C-B4091 of respondent no.1, Ajay (who used to give tempo on rent to the company). Rinku was seen by Subhash (who also used to work in the same company) in the Indica car near Mandoli Chungi. That Rinku 411 tall, slim body, shallow complexioned, longish face and was wearing blue pants, checked shirt, maroon colour sweater and leather shoes; that he had not reached Hapur till date; that he made several efforts to search him, but vain. He suspected that Rahul@Rinku was kidnapped by Ajay or Rinku and Ajay both had been kidnapped by someone and they be traced out. ASI Arvind Kumar made his endorsement on the complaint and sent rukka to the police station through Ct. Ombir for registration of FIR. After registration of FIR further investigation was marked to SI Ajay Singh Negi. On 07.12.2005 SI Ajay Singh Negi along with HC Sohanvir, Ct. Omvir, Ct. Ramesh and Ct. Vijay Kumar with the permission of senior officer reached District Farukhabad PS Kampil in search of respondent no.1, Ajay and kidnapped boy Rahul. From PS Kampil SI Ajay Singh Negi along with SI Devi Ram (Chowki Incharge), Ct. Ram Prakash and Ct. Rakesh Kumar reached village Mistini i.e. the village of respondent no.1, Ajay and apprehended him. On interrogation he disclosed that he along with respondent no.2 Subhash and respondent no.3 Umesh abducted Rahul @ Rinku (deceased) in his Indica No.DL-5CD-4091 for the purpose of extorting money and thereafter they committed murder of Rahul @Rinku and buried his dead body outside the village near natural pond (Sota). At the instance of respondent no.1, Ajay, SI Ajay Singh Negi recovered the dead body of Rinku. The spot was got photographed. SI Devi Ram of PS Kampil

recorded panchnama of the dead body. SI Ajay Singh Negi seized blood stained earth and sample earth in separate plastic box, sealed with the seal of ASN, took the same into possession, prepared the site plan, recorded the statement of witnesses and obtained police remand of accused Ajay. At the pointing out of respondent no.1, Ajay, respondent no.2 Subhash and respondent no.3 Umesh were arrested from Gali mata wali, Jawahar Nagar, Loni, UP and at their instance clothes and bag of the deceased were recovered. After completion of other necessary formalities charge sheet was filed u/s 365/302/201/34 IPC.

5. On Respondents pleading not guilty to the charges, the prosecution has examined 19 witnesses to bring home the guilt of the accused (respondents in the present case). However, material prosecution witness on whom Ld. counsel for the State has placed reliance is PW-2, Tarun Singhal (the complainant/cousin of the deceased).

6. Mr. Ahmed, learned counsel for the state submits that the trial court has failed to make a proper assessment of facts and judicially appreciate vital circumstances in the case which has led to major miscarriage of justice. Counsel further submits that the learned trial court has failed to appreciate in totum the testimony of PW-2 who has supported the prosecution case in every material aspect and that the learned trial court has wrongly observed that the testimony of PW-2 is not dependable. Counsel further submits that the learned trial court has failed to appreciate the fact that the dead body of the deceased as well as his bag and clothes were recovered at the instance of the respondents.

7. We have heard the arguments of the learned counsel for the state and perused the evidence on record. This case is based on circumstantial evidence as no direct/ocular evidence has been adduced by the State. The circumstances sought to be proved by the State are as follows: (i) last seen evidence (ii) recovery of dead body of the deceased at the instance of respondent no.1 (iii) recovery of clothes and bag belonging to the deceased from the possession of respondent no.2 Subhash and respondent no.3 Umesh.

8. Law with regard to conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court in the case of Harishchandra Ladaku

Thange vs. State of Maharashtra, reported at AIR 2007 SC2957 9. In order to prove the last seen evidence, learned counsel for the State has sought to place reliance on the testimony of PW-2 (cousin of deceased) who deposed that in the year 2005, he used to work with Associated Ware Housing , R-6/9, Raj Nagar, Ghaziabad. Deceased was his cousin and he also used to work in the Delhi branch of the same company called Mela Ram Ware Housing Compound, Mandoli, Delhi-92, as an Assistant Store Keeper. On the evening of 01/12/2005 at about 6:00 pm deceased had gone with Ajay who was residing somewhere in Loni, in his white Indica car No.DL-5CD-4091 so that Ajay would drop him at the bus depot. Their depot incharge PW1 Venkataraman and PW8 Subhash had seen deceased with Ajay while they were going from the godown. In his cross examination PW-2 stated that he had last met the deceased approximately one week before the incident. Therefore, the learned trial court judge has rightly observed from the testimony of this witness that he had not seen the deceased going with respondent no.1 Ajay with his own eyes and that his deposition was entirely based on what was told to him by PW-1 and PW-8. However, PW-1 and PW-8 have not supported the case of the prosecution and are hostile witnesses. No efforts have been made by the Investigating Officer to lift chance prints from the vehicle (Indica car) in which the deceased allegedly sat with respondent no.1 on 01.12.2005. Moreover, there is nothing on record to establish any connection between the Indica car and the respondent no.1. No document of ownership of car was produced to establish how it came into the possession of respondent no.1 on the date of the incident. Therefore, last seen evidence has not been proved beyond reasonable doubt. 10.The next circumstantial evidence relied upon by the prosecution is the recovery of dead body of the deceased at the instance of respondent no.1. However, in view of multiple and material discrepancies present in the statements of public and police witnesses in this regard, this circumstantial evidence has also not been proved beyond reasonable doubt. On the one hand, PW-2 stated that respondent no.1, Ajay was apprehended on 04.12.05 on which date PW-2 personally visited the police station to identify him (respondent no.1). Contradicting the statement of PW-2, PW-3 on the other hand stated that respondent no.1 was apprehended on 07.12.2005 which is also reflected in the arrest memo PW-13/A. PW-3, PW-12 and PW-13 stated that the dead body of

deceased was discovered on pointing out the place by respondent no.1 where he had buried the dead body. In contradiction to that, PW-10 denied the fact that the dead body was discovered at the instance of respondent no.1. On the contrary, PW-10 stated that the dead body was discovered by the villagers themselves. Furthermore, there are contradictory statements with respect to how the dead body was dug out. PW-6 stated that dead body was dug out with the help of villagers. PW-12 stated that a farmer dug out the dead body of deceased. PW-17 stated that all police officials dug out the dead body with their hands. In view of these material contradictions and discrepancies in the statements of PWs recovery of dead body at the instance of respondent no.1 seems shaky and unreliable.

11. The next circumstantial evidence relied upon by the prosecution is recovery of clothes and bag belonging to the deceased from the possession of respondent no.2 Subhash and respondent no.3 Umesh. However, presence of material discrepancies in the statements of witnesses relied upon by the prosecution to prove the same do not inspire confidence. PW-2 stated that one of the two respondents (Subhash and Umesh) took them to his house at Jawahar Nagar and got recovered clothes and bag of deceased. However, PW-2 has also stated in his cross examination that he remained seated in the vehicle whereas police along with respondent no.1, Ajay had gone inside the house. Therefore, the learned trial court has rightly observed that PW-2 cannot be said to be a witness to recovery of clothes and bag of the deceased as all along he had been sitting in the vehicle outside the house and did not witness any recovery being effected. Contrary to what PW-2 stated, PW-6 stated in his testimony that the driver of the vehicle remained inside the vehicle while all others had gone to the house of respondent no.2 and respondent no.3. There are other material contradictions in the testimonies of various witnesses. PW-6 stated that both the respondents were residing on first floor of the building on rent whereas PW-19 stated that both of them were residing on the ground floor. PW-6 stated that both the respondents were residing in one room on the first floor whereas PW-17 stated that from the second room in the same house respondent no.3, Umesh produced a black colour raxine bag. PW-17 stated that he had sealed the clothes recovered at the spot whereas PW-2 stated that the clothes were sealed at PP Harsh Vihar in his presence. Therefore, in view of these material discrepancies in the statements of

the prosecution witnesses, the learned trial court rightly disbelieved the alleged recovery at the instance of respondent no.2 and respondent no.3. Furthermore, as observed by the trial court, no public witnesses were joined while the recovery was being effected despite the fact that it was a residential area where there was no dearth of public witnesses. In addition to the above, it is highly inconceivable that the respondents would conceal an evidence as incriminating as the clothes and bag of the deceased last worn by him, in their own house. Therefore, as far as the involvement of respondent no.2 and respondent no.3 is concerned, the only two evidences sought to be relied upon by the prosecution are, firstly, the disclosure statement of respondent no.1 and secondly, the circumstantial evidence of recovery of bag and clothes belonging to the deceased, from the possession of respondent no.2 and respondent no.3. Since the recovery of bag and clothes has not been proved beyond reasonable doubt, reliance cannot be placed solely on the disclosure statement of respondent no.1, in the absence of any further corroboration, to convict respondent no.2 and respondent no.3. Even with respect to respondent no.1, no circumstantial evidence has been proved beyond reasonable doubt. Moreover, no evidence has been adduced by the prosecution to show that the clothes so recovered actually belonged to the deceased. Family of the deceased was not joined to identify the clothes of the deceased, who had seen the deceased in the clothes last worn by him, before he went missing. 12. Therefore, on careful examination of the evidence, we find that there exists no infirmity in the judgment of the trial court. The acquittal recorded by the trial court is well reasoned and, thus, there are no grounds to grant leave to appeal. Consequently, the leave to appeal is dismissed. G.S.SISTANI, J G.P.MITTAL, J AUGUST2d, 2013 ssn

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