

Jag Ram Vs. State

Jag Ram Vs. State

SooperKanoon Citation : sooperkanoon.com/686787

Court : Delhi

Decided On : Feb-14-2008

Reported in : 148(2008)DLT778; 2008(101)DRJ271

Judge : Vikramajit Sen and; P.K. Bhasin, JJ.

Acts : Evidence Act - Sections 3; Indian Penal Code (IPC) - Sections 34, 201 and 302; Code of Criminal Procedure (CrPC) - Sections 161, 162, 164 and 313

Appeal No. : Crl. A. No. 239/1998

Appellant : Jag Ram

Respondent : State

Advocate for Def. : M.P. Singh, APP

Advocate for Pet/Ap. : Bhupesh Narula, Adv. in Crl. No. 239/1998 and; Lekh Raj Rehalia, Adv. in Crl. A. No. 363/199

Disposition : Appeal dismissed

Judgement :

P.K. Bhasin, J.

1. The two appellants are impugning the judgment of conviction dated 24.01.1998 and order of sentence dated 28.01.1998 delivered by the learned Additional

Sessions Judge, Delhi in Sessions case No. 23/96 whereby both the appellants were convicted under Section 302 r/w Section 34 I.P.C. for the murder of one Ramesh, who was the husband of appellant Munni and elder brother of appellant Jag Ram, and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 10,000/- each and to undergo further rigorous imprisonment for one year in case of default in payment of fine. Further, both the appellants were also convicted and sentenced for the commission of the offence punishable under Section 201 r/w Section 34 I.P.C. Since both the appeals arose out of the same judgment of the trial Court they were heard together and now are being disposed of by this common judgment.

2. The prosecution case in nutshell is that on 1.4.95 an information was received at Police Station Seema Puri about a dead body lying in a nallah near Railway Lines, SDN Hospital, Shahdara. That information was recorded as DD No. 15(Ex. PW-8/A) and then PW-21 Sub-inspector Sajjan Kumar along with constable PW-13 Yudvir Singh reached the spot and took out a dead body from the nullah which was wrapped in a quilt (razai). The dead body was in a highly decomposed condition. Since it appeared to be a case of murder FIR No. 147/95 (Ex. PW-3/A) was got registered under Section 302 IPC. As the dead body could not be got identified and it was preserved in the mortuary. On 5.4.95 post-mortem examination was conducted on the dead body and as per the post-mortem report(Ex.PW-18/B) the cause of death of the deceased was shock due to cut throat injuries. As per the further prosecution case PW-17 Pratap had lodged a report (Ex PW-19/A) at the Mansarover Park police station on 03.04.1995 that his brother Ramesh(husband of appellant Munni) was missing since 27-03-95. In the said report it had been stated by PW-17 Pratap that his brother Ramesh had left the house on 27-3-95 after saying that he was going to Chander Prakash in Ashok Nagar and would come back within 2/3 days but had not come so far. It is also the case of the prosecution that on coming to know that a dead body had been recovered by the policemen of Seema Puri police station on 01.04.1995 and had been kept in the mortuary for identification Pratap contacted the police at Seema Puri Police Station on 06.04.1995 and then he was taken to the mortuary by Inspector Ram Niwas Vashisht (PW-15) and there he was shown the dead body which was recovered on 1.4.95. Pratap identified the dead body being that of his

brother Ramesh. Thereafter investigation started to find out as to who had killed Ramesh. The son(PW-2) and one daughter(PW-1) of the deceased Ramesh and appellant Munni claimed before the police during investigation that the two appellants and their maternal uncle Satish had killed their father. During the investigation statement of daughter of the deceased, PW-1 Seema, was got recorded under Section 164 Cr.P.C. also. As per that statement (Ex. PW-20/A) Seema had claimed before the Metropolitan Magistrate that one day a quarrel had taken place in their house when Jag Ram was also present. Then she gave a detailed version as to what had transpired on the day when that quarrel had taken place and what happened on the night when her father was killed. This is what she narrated before the Magistrate:

My uncle Jagram and my mother were talking at upstairs. My mother asked me to inform her if father comes. I replied that I would not tell. In the meantime, my father came and asked me as to where was my mother. I replied that mother was at upstairs and that Jagram uncle was also there. my father asked Jagram to pick up his Baza and get lost from there. whereupon Jagram went away from there. My father asked me to take care of my mother. My father picked up a pat(Thapki) and started giving beatings to my mother whereupon my mother went to the shop. Two or three days thereafter, I was sleeping in the upper room and my brother who is younger to me was also sleeping with me. My brother used to quarrel with my sister. I was waking. I was hearing shouting voice whereupon I asked my mother as to who was there thereupon my mother said that none was there and she asked me to sleep comfortably but I did not sleep. My mother switched off the light of our room. I was present in that very room but I was watching stealthily from the quilt. At that time my mother, my father and uncle Jagram were present in the room besides me and my brother. My maternal uncle was sleeping outside. My uncle Jagram was holding a knife in his hand. In the meantime my maternal uncle also came inside. My uncle Jagram and my maternal uncle Satish strangulated my father and closed the mouth of my father. My mother closed the mouth of my father from her hand. Thereafter, my uncle Jagram inflicted a knife blow on the back of my father and after that my mother, maternal uncle and uncle put my father into a gunny-bag and then wrapped my father in a quilt. Thereafter, Jagram uncle said to my mother that he would throw the dead body into the nullah. My

maternal uncle also left for somewhere. I again inquired from my mother as to what was the matter whereupon my mother asked me to sleep and she threatened me that if I would disclose anything to anyone else, they would do the same with me also. My mother also threatened my brother likewise. Thereafter, I went to the house of my Mausi(mother s sister). My mother is in jail these days.

During investigation the police also came to know that the two appellants had illicit relationship with each other.

3. The appellants were then arrested but their accomplice Satish could not be arrested and so he was got declared by the police as a proclaimed offender. On completion of investigation charge sheet was filed against the two appellants and in due course their case was committed to the Court of Session and then they were tried for having murdered Ramesh and causing disappearance of the evidence of his murder in furtherance of their common intention.

4. The prosecution examined 24 witnesses to establish its case. When the statements of the appellants were recorded under Section 313 Cr.P.C. appellant Munni in her statement admitted that report Ex. PW-19/A was lodged by PW-17 Pratap on 3-4-95 with the police at Mansarovar Park police station that her husband Ramesh was missing. She, however, pleaded that she was innocent and had been falsely implicated by the police and regarding the disappearance of her husband Ramesh she claimed that her husband had gone to his friend Sat Prakash either on 25th March, 1995 or 26th March, 1995 but thereafter he had not come back and she made enquiries for 2-3 days but she found that he was not there. Appellant-accused Jag Ram in his statement under Section 313 Cr.P.C. had claimed that he was innocent and was falsely arrested by the police on 7-4-95 when he had come to Delhi with his father from Kanpur on getting the information that his brother Ramesh was missing. At the time of recording of their statements both the appellants had stated that they would adduce evidence in defense but finally did not adduce any evidence.

5. During the trial PW-17 Pratap, brother of the deceased, did not support the prosecution and claimed that the dead body which he was shown in the mortuary was not of his brother Ramesh and stated that, in fact, he could not identify that

dead body as it was in a badly decomposed condition. This witness was also examined to establish the motive part of the prosecution case, namely, illicit relationship between the two appellants but he did not support the prosecution on this aspect also. Not only this brother of the deceased Ramesh but even the daughter of the deceased, PW-1 Seema, who was examined as an eye witness of the incident, turned hostile and she deposed that she did not know how her father had died.

6. The learned trial Court, however, convicted the two appellants on the basis of the evidence of son of the deceased (PW-2 Sunil) who was also examined as an eye witness. Feeling aggrieved, the appellants preferred separate appeals challenging their conviction by the trial Court.

7. We have heard the learned Counsel for the appellants and the learned additional public prosecutor for the State and with their assistance we have also gone through the relevant prosecution evidence which only was referred to from both the sides during the course of hearing of these appeals.

8. The common argument which was advanced on behalf of both the appellants by their counsel was that the prosecution case should have been rejected by the trial Court solely on the ground that the prosecution had failed to establish that the recovered dead body which it was claiming to be that of appellant Munni s husband Ramesh was, in fact, that of Ramesh. It was further contended that the learned trial Court had, in fact, wrongly come to the conclusion that it had been established from the evidence of the investigating officer that the recovered dead body was that of Ramesh since he had claimed that PW-17 Pratap had claimed before him during investigation that that dead body was of his brother Ramesh since, according to the learned Counsel, whatever PW-17 had claimed before the investigating officer during the investigation stage was inadmissible piece of evidence and could not have been taken into consideration by the learned trial Court and particularly when PW-17 himself had not claimed so during his evidence. On this aspect we are in agreement with the learned Counsel for the appellants that the statement of the investigating officer(PW- 21) SI Sajjan Kumar to the effect that PW-17 Pratap had claimed before him that the dead body which

was shown to him in the mortuary on 6-4-95 was that of his brother Ramesh could not have been taken into consideration by the learned trial Court for coming to the conclusion that the prosecution had been able to establish that the dead body recovered on 1/4/95 was that of the husband of appellant Munni. Whatever was stated by PW-17 Pratap before the investigating officer was a statement made to a police officer in the course of investigation of a crime and so is hit by Section 162 Cr.P.C. So, it can be said that the prosecution had not been able to establish that the dead body which was recovered from a nullah on 1-4-95 by the police officials of Seema Puri police station was that of Ramesh for whose murder the appellants were tried. As has been noticed already, the witness who was examined for establishing the identity of the dead body, namely, PW-17 Pratap had not supported the prosecution and there is no other evidence adduced by the prosecution to establish that the dead body recovered on 1-4-95 was of appellant Munni's husband.

9. However, it is now well settled by a catena of judgments of the Hon'ble Supreme Court that in a case of murder even if the dead body of the person who is alleged to have been murdered is not recovered the prosecution can still establish the factum of homicidal death of that person either by adducing direct evidence of the murder or by adducing reliable circumstantial evidence. In this regard we may make a useful reference to only one such decision of the Hon'ble Supreme Court which is reported as : 1981 CriLJ298 , Rama Nand and Ors. v. State of Himachal Pradesh. In this case while dealing with the importance of corpus delicti in a murder case it was held as under:

27. Although the High Court has held that the body recovered was that of Sumitra deceased and that the bones sent to the medical experts were not parts of the decomposed body found, but appeared to have been fraudulently replaced with the bones of a child during transmission to the medical experts, we would assume that the identity of the body found in the river was not established beyond reasonable doubt. In other words, we would take it that the corpus delicti, i.e., the dead body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been

murdered by Rama Nand appellant It is true that one of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused caused the death of the person alleged to have been killed.

28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. I would never convict, said Sir Mathew Hale, a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead. This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old body doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasizing that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. homicidal death is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be proved, if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The

corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned.

10. So, prosecution case cannot be rejected because it has not been established that the dead body recovered from the nullah on 1/4/95 was that of appellant Munni s husband Ramesh. We shall now proceed to examine whether the prosecution has adduced other reliable and sufficient evidence to establish that the husband of appellant Munni was murdered by the appellants. As noticed already, the prosecution had examined two witnesses who during the investigation stage had claimed to have witnessed the murder of the deceased Ramesh. Those witnesses are PW-1 Seema and PW-2 Sunil. Both of them are the children of appellant Munni and Ramesh. The daughter, however, did not support the prosecution and it is quite understandable that being a daughter she may have decided not to state anything against her in Court and because of her having already lost her father she may not be willing to lose her mother also. However, PW-2 Sunil, the son of appellant Munni had fully supported the prosecution case and his evidence has been found by the learned Additional Sessions Judge to be reliable and sufficient enough to hold the appellants guilty for the murder of the deceased Ramesh. PW-2 Sunil was a small child of 8 years of age at the time when he was examined in the trial court and about 7 years of age on the day of incident. In order to satisfy itself that this child witness was mature enough to testify the learned trial court had done a preliminary questioning of this witness and thereafter on being satisfied that he could give evidence the learned Additional Sessions Judge had then proceeded to record his testimony which, of course, was without administration of oath to him since he was less than 12 years of age. The statement of this child witness was a brief one and we would like to reproduce here his entire chief-examination and the same is to the following effect:

Munni is my mother and accused Jagram is my uncle who are present in the court. About a year ago during the night he was lying in the house mentioned in the above address my mother and Jagram inflicted knife injury on the neck of my father. Accused Jagram was holding a knife with which he inflicted a knife injuries on the neck of my father. My mother had caught hold the feet of my father at that

time. After killing my father my maternal uncle Satish and uncle Jagram wrapped the dead body of my father in a quilt and threw him in the nala. I was asked by my sister Seema and we were in the same room lying on a wooden takhat. I had seen the incident while lying on the takhat. I had not told this incident to any one nor my mother had asked me anything whether to disclose this facts or not. I do not know as to why the accused had killed my father. Before the above incident a quarrel had taken place between my father on the one side and my mother and my uncle Jagram on the other side. I do not know as to why that quarrel had taken place.

11. The learned Additional Sessions Judge had found that the testimony of this child witness was wholly reliable. In these appeals the evidence of this child witness has been attacked on behalf of both the appellants by their learned Counsel on the ground that he cannot be said to have witnessed the incident since during his cross-examination he had stated that at the time of incident there was no light in their house and that he could not see anything in the darkness during night. It was submitted by the learned Counsel for the appellants that since this witness himself was admitting that at the time of the incident there was no light in his house where the incident had allegedly taken place and further that he could not see anything during night it becomes clear that this child had not actually witnessed appellant Jag Ram inflicting knife injuries on the neck of his father and appellant Munni catching hold the feet of his father at that time as had been deposed to by him and that in fact he had been tutored to say so. Learned Counsel submitted that the fact that this witness was tutored by the police is also evident from his own admission made in the cross-examination that the policeman had told him his statement before his making the statement in Court as to what he had to say about the incident. In support of the submission that evidence of this child witness should not be accepted some decisions of the Apex Court which are reported as *Nirmal Kumar v. State of U.P.* 1993 SCC (Cri.) 289, *Arbind Singh v. State of Bihar* 1994 SCC (Cri.) 1418 and *Chhagan Dame v. State of Gujarat* 1995 SCC (Cri.) 182 were also cited by the learned Counsel.

12. There is no doubt that PW-2 in his cross-examination had stated at one time that on the date of incident there was no light in their house. However, from this answer alone given by the witness it cannot be concluded that his evidence to the

effect that he had actually seen the occurrence was false. In fact, in his cross-examination on behalf of the accused persons he had also stated that he had seen both the accused (appellants herein) killing his father in the light of the candle and then in reply to a leading question, which the trial court had allowed to be put to him by the additional public prosecutor on the conclusion of cross-examination and for which the defense counsel had not objected he had categorically stated that he had himself seen the incident with his own eyes. He had also, no doubt, stated in cross-examination that one police uncle had told him about his statement but from this answer also it cannot be concluded that he was a tutored witness. Even if some police official had told him about the statement to be made by him it cannot be said that the policemen had tutored him to make a false statement in respect of the incident which he had actually not witnessed. All that can be said is that the policeman might have told him to state before the Court whatever he had actually seen. In this regard reference can be made to a decision of the Hon'ble Supreme Court in *Ratansinh Dalsukhbhai Nayak v. State of Gujarat* : 2004 CriLJ19 wherein the Hon'ble Supreme Court had come to the conclusion while analyzing the evidence of a child witness of the murder that from certain answers given by the child witness it appeared that the witness was repeating what somebody else had asked her to say. However, the Hon'ble Supreme Court did not reject the testimony of the child witness on this ground and it was observed that mere fact that the child was asked to say about the occurrence and as to what she had seen there was no reason to jump to a conclusion that it amounted to tutoring and that the witness was deposing only as per tutoring and not what actually had been seen by her. Similarly, in another case which is reported as : 2003 CriLJ1254 , *State of Karnataka v. Shariff*, the prosecution witness of the occurrence was a child witness whose mother had been murdered by his father. He had supported the prosecution case. However, during his cross-examination it was elicited from him that at the time when his mother had caught fire he was in his grand mother's house. The Supreme Court, however, did not attach any importance to this answer given by the child witness and relied upon his evidence and observed that on account of this stray sentence in his cross-examination his otherwise reliable testimony could not be discarded particularly when the son of the accused could not be attributed any motive for falsely deposing against his own mother. We may

refer to yet another decision also of the Supreme Court which is reported as : 1995 CriLJ1461 , Mangoo and Anr. v. State of Madhya Pradesh wherein also evidence of a child witness of the murder was sought to be discredited on behalf of the convicted accused. The reason put forth was that he had been brought to the court by the police and before that he was with the police for some days and so there was every chance of his being tutored. However, on this ground also the evidence of child witness was not rejected despite the fact that the child witness had also admitted that he was in the police headquarters for about 12 days before adducing the evidence in court. It was observed by the Supreme Court that whether or not the child witness was before should be found out after examining his evidence and the mere fact that the witness was brought to the court by the police was not a ground to conclude that the witness must have been tutored. So, the evidence of PW-2 Sunil in the present case cannot be discarded for the aforesaid reasons put forth on behalf of the appellants by their counsel.

13. Another ground put forth for discarding the evidence of PW-2 Sunil by the learned Counsel for the appellants was that if actually this witness had seen his father being killed by the appellants and that incident had actually happened during the night of 25th or 26th March, 1995, as is the prosecution case, the complaint to the police would have been about the murder of the deceased Ramesh and not only of his disappearance as was lodged by PW-17 Pratap. Learned Counsel submitted that the children of the deceased would have definitely told their uncle Pratap about the incident of murder if actually they had witnessed any such occurrence and absence of any report of murder to the police belies the claim of PW-2 Sunil that he had seen his father being killed by the appellants and the proclaimed offender Satish. We do not find any force in this submission also of the learned Counsel for the appellants. It had not been elicited from PW-1 in his cross-examination that when his mother had informed PW-17 Pratap that her husband was missing he(PW-2) was present at that time nor was it elicited from PW-17 Pratap. As far as PW-17 Pratap is concerned he must have reported to the police whatever appellant Munni had told him and in the facts and circumstances of this case it is quite obvious that Munni had got a missing report lodged through PW-17 Pratap only to mislead the police.

14. In the various judgments of the Supreme Court cited by the learned Counsel for the appellants on the point of appreciation of evidence of a child witness all that has been laid down is that evidence of a child witness should be examined carefully as a child is prone to tutoring. We have accordingly examined the testimony of PW-2 Sunil with caution and minutely to find out if he is a tutored witness, as was the submission of learned Counsel. PW-2 is the son of appellant Munni and nephew of appellant Jag Ram and this relationship between the witness and the two appellants itself guarantees the truthfulness of this child witness. No reason has been put forth on behalf of the appellants as to why this child witness had claimed during the trial that his father had been killed by his mother and his uncle (Chacha). It was not even suggested to him in cross-examination that he had falsely deposed against the appellants for some particular reason. It was also not put to him on behalf of appellant Jagram that he (Jagram) was not in their house at the time of alleged incident as was being claimed by him. So, the presence of appellant Jagram in the house of the deceased, as claimed by PW-2, stood admitted by Jagram and as far as Munni is concerned she is not even claiming that she was not present in her house on the night of the incident as claimed by her son Sunil. In these circumstances, we find no reason to discard the testimony of PW-2 Sunil. We do not find any traces of tutoring in his testimony which has credibility and has a ring of truth. He withstood the test of cross-examination and could not be discredited. As per the case of the prosecution, statement of this witness had been recorded under Section 161 Cr.P.C. during investigation. On no point any contradictions between his version during the investigation and during his evidence in Court could be brought on record by the defense side during his cross-examination and that fact is also significant and shows that he had maintained during his evidence in Court whatever he had claimed before the police also during investigation. We are therefore of the view that the learned Trial Court was fully justified in relying upon the testimony of PW-2 Sunil.

15. It was also the submission of the learned Counsel for the appellants that even if for the aforesaid reasons put forth by them for discarding the evidence of the child witness Sunil do not find favor with this Court and it is held that his testimony was reliable his evidence by itself cannot be made the basis for convicting the two

appellants without corroboration and there is no corroborative evidence adduced by the prosecution.

16. We are not impressed by this argument as well raised by learned Counsel for the appellants. PW-2 Sunil had also deposed that before the present incident there was a quarrel between his father on one side and the two appellants on the other side. In his cross-examination no suggestion was put to him that this part of his statement was not true and he had made a false statement in this regard. So, it also stood established that the relations between the deceased Ramesh and his wife Munni and brother Jag Ram were not cordial and that is a circumstance which corroborates the evidence of PW-2 Sunil despite the fact that the prosecution has not been able to adduce any direct evidence to establish the illicit relationship between the two appellants.

17. The evidence of PW-2 Sunil gets corroborated from other circumstances also. As far as appellant Munni is concerned she has taken a plea that her husband had one day gone to his friend Satya Prakash but did not come back home thereafter and then she had made enquiries for 2-3 days but could not find him. This she had stated in her statement under Section 313 Cr.P.C. In the cross-examination of PW-2 Sunil it was put to him that on the night (about which he was deposing) his father was not at home and had gone to Ashok Nagar to meet one Chander Prakash and thereafter he had not returned back. PW-2 Sunil had categorically denied that suggestion. Now, if, in fact, the husband of appellant Munni had gone somewhere and had not returned back home she would have informed her relatives and neighbours as well as the police on the first night itself when her husband had not come back home. Although she is claiming that she had been making enquiries for 2-3 days about her missing husband but no one had been examined by her to substantiate this plea taken by her. As has been noticed already, appellant Munni had claimed in her statement under Section 313 Cr.P.C. that her husband was missing since 25th/26th March. The missing report, however, was got lodged by her through PW-17 Pratap only on 3rd April, 1995 and there is no Explanation coming forth from appellant Munni as to why she got the missing report lodged after so many days. That abnormal behavior of hers shows her guilty mind and this circumstance can also be utilized for the corroboration of

the testimony of PW-2 Sunil.

18. As far as appellant Jagram is concerned, the testimony of PW-2 Sunil to the extent it implicates him is also duly corroborated. As held already, the statement of PW-2 Sunil that Jagram was present in their house at the time of the incident had remained unchallenged in his cross-examination. The plea taken by the appellant Jagram in his statement recorded under Section 313 Cr.P.C. was that on the day of occurrence he was in his village at Kanpur and that he had come to Delhi with his father on 07.04.1995 only after coming to know that his brother Ramesh had been missing for several days. However this plea has not been substantiated by Jagram. He has even failed to examine his father with whom he stated to have come to Delhi on 07.04.1995, as claimed by him. Father of Jagram was the best witness who could have substantiated the version of Jagram. The Apex Court in its decision reported as : 1975 CriLJ1494 , Gajendra Singh v. State of U.P. had held that non-examination of the most material witness to prove the defense version in a criminal trial is the strongest possible circumstance to discredit the defense version. So, in the present case non-examination of father of the appellant Jagram discredits the plea of Jagram that on the day of the incident he was not in Delhi. In fact, Jagram's father himself also having chosen not to come to the rescue of his son also clearly shows the falsity of the version of the appellant Jagram. The circumstance of Jagram having taken a false plea also lends assurance to the reliability of the testimony of PW-2.

19. Learned Counsel appearing for appellant Munni had also raised an argument that appellants had not been accorded a fair trial and in support of this submission the learned Counsel placed reliance upon a decision of the Apex Court in Kalyani Baskar v. M.S. Sampooram 2007 (1) SCC (Cri.) 577 and particularly to the following observations:

Fair Trial includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defense is a valuable right and denial of that right means denial of fair trial.

We are, however, not impressed by this argument also of denial of fair trial advanced by the learned Counsel. After having perused the records of the trial

court we are of the opinion that the appellants were given a fair trial.

20. For the reasons stated above, we are of the view that reliance placed by the trial court on the evidence of PW-2 Sunil, which was duly corroborated also, was fully justified and we do not find any infirmity in the impugned judgment of the learned trial Court. There is no merit in the challenge thereto and these two appeals are devoid of any merits and are accordingly dismissed. Appellant Munni s sentence was suspended during the pendency of her appeal. She shall now be taken into custody to serve out the sentence awarded to her.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com