

Vijay Kumar Vs. the State (Gnct) of Delhi

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Court : Delhi

Decided On : Feb-22-2008

Reported in : 2008(101)DRJ725

Judge : B.N. Chaturvedi and; G.S. Sistani, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 302, 364A, 386 and 511;
Code of Criminal Procedure (CrPC) - Sections 313; Evidence Act - Sections 27

Appeal No. : Crl. Appeal Nos. 654, 723 and 783/2005

Appellant : Vijay Kumar;udaiveer Singh;arvind Kumar

Respondent : The State (Gnct) of Delhi;state of Delhi;state of Nct Delhi

Advocate for Def. : Richa Kapoor, Addl. P.P.

Advocate for Pet/Ap. : Randhir Jain, Adv. in Crl. Appeal No. 654/2005; K.B. Andley, Sr. Adv. an;

Disposition : Appeal dismissed

Judgement :

B.N. Chaturvedi, J.

1. Tried on charges under Sections 302/34 IPC and 386/511/34 IPC in Sessions case No. 62/2002 arising out of an FIR No. 168/2001 under Sections 364A/302/34

IPC read with Section 120B IPC, PS Kapashera, the appellants stand convicted therefore by a judgment dated 16.8.2003 of Additional Sessions Judge, New Delhi and sentenced to (i) imprisonment for life and a fine of Rs. 1,000/- each, in default of payment of fine SI for one month under Sections 302/34 IPC and (ii) RI for three years and a fine of Rs. 1,000/- each, in default of payment of fine, SI for three months under Section 386 read with Sections 511/34 IPC.

2. The sentences of imprisonment are to run concurrently.

3. The appellants are in appeal against the aforesaid judgment of conviction and order of sentence, passed by learned Addl. Sessions Judge, Delhi.

4. The appellants faced trial on the allegations that they committed murder of a 12 year old child and tried to extort Rs. 3 lacs from the father of the child by making a phone call for his safe release. The facts of the case reveal that on 6th of October, 2001 at about 2.00 p.m., Deepak, deceased, left his house telling his mother that he was going to the house of appellant Vijay Kumar to collect payment of Rs. 1,100/-, which he owed to them. He did not return. His parents made an unsuccessful search for him. Around 9.45 p.m. a phone call meant for Devinder Choudhary, father of the child, was received at a nearby provision shop. On Devinder Choudhary attending the phone call, he was asked to arrange for payment of Rs. 3 lacs by Monday in lieu of release of his son. On such a phone call being received, Realizing that his son had actually been kidnapped, Devinder Choudhary went to the Police Station Kapashera at about 10.30 p.m. to lodge a complaint for kidnapping of his child and, accordingly, an FIR under Section 364A IPC was initially registered.

5. On the intervening night of 6/7 of October, 2001, all the three appellants were apprehended together and subjected to interrogation by the police. Each one of them made a disclosure that the dead body of the missing child stuffed in a gunny bag was being kept by them in their room. The appellants led the police to their room No. 11 of House No. 629, Kapashera and got the dead body of Deepak, kept in a gunny bag under a table, recovered.

6. In the absence of direct evidence for commission of murder, the prosecution based its case on circumstantial evidence. The circumstances that were held by the learned trial court firmly established find mention in para 4 of the impugned judgment. On examining the evidence on record, the learned trial court found that the circumstances taken together formed a chain so complete that there was no escape from the conclusion within all human probability that the crime was committed by the appellants and none else. It found that the circumstances proved were incapable of Explanation on any reasonable hypothesis save that of the guilt against the appellants.

7. A common argument raised on behalf of the appellants against their impugned conviction and sentence was that the room from which recovery of dead body of Deepak was effected was actually not in their occupation and therefore, recovery of the dead body of Deepak from room No. 11 of House No. 629, Kapashera could not have been an incriminating circumstance to find them guilty of the murder in question. It was further contended that the recovery of the dead body of Deepak from the said room could not be held to have been effected pursuant to alleged disclosures by them as a joint disclosure would not be admissible under Section 27 of the Evidence Act. On behalf of appellants Arvind Kumar and Udaiveer Singh, it was contended that there is no evidence to establish that they were present at the scene of crime at the time when Deepak, deceased, had come to room No. 11 of House No. 629, Kapashera and was done to death. Further argument on their behalf was that no motive to commit murder of Deepak has been brought forth against them.

8. Ms. Richa Kapur, learned APP, appearing for the State contended that there is sufficient evidence to prove that the room in question was in joint occupation of the appellants and that on the fateful day the deceased had been to that place to realise the amount of Rs. 1,100/- which appellant Vijay Kumar owed to his parents. She submitted that in view of statements of the mother of the deceased and Ishwar Singh, PW-5, it is proved that the appellants Vijay Kumar and Udaiveer Singh were present at the gate of the house when the deceased approached them and that on being asked by appellant Vijay Kumar, the deceased had gone upstairs to take the payment. She contended that all the appellants had separately

disclosed that dead body of Deepak had been kept in a gunny bag in their room under a table and that they could get the same recovered. Relying on a decision in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru : 2005 CriLJ3950 , Ms. Kapur contended that all the three appellants made disclosure in regard to the dead body of Deepak being kept in a gunny bag in their room and even though the recovery of the dead body was got effected by the appellant Vijay Kumar, the aforesaid information in respect of the dead body given by each one of the appellants would continue to be admissible in evidence under Section 27 of the Evidence Act. She argued that plurality of information received before discovery would not necessarily take any of the information out of the ambit of Section 27 of the Evidence Act and the information received from each appellant separately did not cease to be the information causing 'discovery' simply because such a 'discovery' was facilitated by other assistance as well.

9. We have heard S/Sh. Randhir Jain, B.K. Aggarwal and K.B. Andley, counsel for appellants Vijay Kumar, Arvind Kumar and Udaiveer Singh respectively as also Ms. Richa Kapoor, Addl. P.P. for the State.

10. The conviction of the appellants for murder of Deepak rests on circumstantial evidence. The circumstances which accounted for their conviction may be broadly categorized as under:

1. The deceased being last seen with the appellants at their place of residence;
2. Disclosures made by each appellant leading to recovery of dead body of Deepak in a gunny bag from their residential room;
3. Recovery of rolls of Niwar and tape at the instance of appellant Vijay Kumar from the room in joint occupation of the appellants.

11. Deepak deceased left his house around 2.00 pm on 6th October, 2001 to go to the house of appellants to collect payment of Rs. 1100/- from appellant Vijay Kumar which he owed to his parents for execution of a job work. This fact is evident from the testimony of Smt. Babli, PW-1 and Devinder Chaudhary, PW-2. Deposition of Ishwar Singh, PW-5 supplies corroboration to their statements.

According to Ishwar Singh, PW-5 he, while going back to his place of work after taking lunch noticed Deepak, deceased going ahead of him to the room of the appellants and on reaching there he (PW-5) saw appellants Vijay Kumar and Udaiveer Singh present at the gate of the house. The appellants were jointly living in a room of the house belonging to one Bhoop Singh. Ishwar Singh, PW-5 heard Deepak, deceased demanding from appellant Vijay Kumar the amount due from him and appellant Vijay Kumar asking Deepak to come upstairs to his room to take the payment. He thereupon saw Deepak going upstairs. On Deepak not returning to his house his mother Smt. Babli, PW-1 went to the room of the appellants after about 30/45 minutes, looking for him. She however, did not go upstairs and called Deepak from down stairs only. Finding no response to her call, she went back. At about 3.00/3.30 pm, states Smt. Babli, PW-1, she again went to the room of the appellants. She found appellants Vijay Kumar and Udaiveer Singh standing outside the house. On her enquiring from them about her son Deepak she was told that though Deepak did come there but he had gone back after staying for about 5/10 minutes. Cross-examination of Smt. Babli, PW-1 and Ishwar Singh, PW-5 did not yield any material to discredit their respective statements. A credible and definite evidence is thus available on record to prove beyond doubt that Deepak, deceased had on the given date and time visited the room of the appellants and further that appellants Udaiveer Singh and Vijay Kumar were present there at the relevant time.

12. Mr. K.B. Andley, learned Senior advocate appearing for appellant Udaiveer Singh contended that in terms of statement of Ishwar Singh, PW-5 when appellant Vijay Kumar had asked Deepak, deceased to accompany him upstairs to the room, there is no evidence indicating that appellant Udaiveer Singh had also gone upstairs with them. No doubt Ishwar Singh, PW-5 did not state if he had seen appellant Udaiveer Singh as well going upstairs with co-appellant Vijay Kumar and Deepak, deceased, it is noticed from the testimony of Smt. Babli, PW-1 that appellant Udaiveer Singh was found keeping company with his co-appellant Vijay Kumar even when she visited their room on the second occasion at about 3.30 pm. Thus, his presence at the house at 2.00 pm, as deposed by Ishwar Singh, PW-5 and also at about 3.30 pm when Smt. Babli, PW-1 went to their room for the second time clearly indicates that he remained present at the house itself

throughout and had not moved away from there. There is however no evidence of appellant Arvind Kumar's presence either at 2.00 pm when Deepak, deceased was seen being taken upstairs to the room or at 3.30 pm when Smt. Babli, PW-1, the mother of the deceased had gone there and found only appellants Vijay Kumar and Udaiveer Singh present outside the house. The only evidence produced by prosecution against appellant Arvind Kumar to connect him with the commission of murder of Deepak is in the form of statement of one Sanjay Sharma, PW-16, who produced copies of gate pass and attendance register vide Ex. PW 16/1-3 to prove that appellant Arvind Kumar had left the factory premises, where he was working, at 1.47 pm on 6th October, 2001 by taking half day leave. Deepak would appear to have been done to death sometime after 2.00 pm. The appellant Arvind Kumar was on the relevant date working in a leather factory at Gurgaon. Sanjay Sharma, PW-16 on being cross examined in regard to distance between his factory and house of appellant Arvind Kumar expressed inability to give any positive answer. Even though there is no evidence on record showing the approximate distance of Kapashera from the factory in Gurgaon where appellant Arvind Kumar was working, it cannot be lost sight of that the factory being situated in Gurgaon one had to cover atleast some distance from Gurgaon to reach Kapashera. The appellant Arvind Kumar in his statement under Section 313 Cr.P.C. though admitted that on 6th October, 2001 he was on half day leave and had left his factory premises at 1.47 pm but added that he had taken half day leave to do some shopping. Even if it be accepted that the appellant Arvind Kumar left his factory premises at 1.47 pm and proceeded direct to Kapashera where he lived with his co-appellants, it was unlikely that he could have reached the place of his residence in Kapashera by 2.00 pm when Deepak, deceased was last seen with co- appellants Vijay Kumar and Udaiver. It is noteworthy that even at 3.30 pm when Smt. Babli, PW-1 had gone to the house of the appellants in search of Deepak she found only co-appellant Vijay Kumar and Udaiveer Singh present outside the house and appellant Arvind Kumar was not to be seen there. A number of tenants lived in different tenements forming part of house where the appellants lived in room No. 11 thereof but none of them was examined as a witness to prove that appellant Arvind Kumar was present there at the relevant time. The evidence to the effect that the appellant Arvind Kumar and his co-

appellant Vijay Kumar had on 6th October, 2001 at about 9.30/9.45 pm made a telephonic call from a STD booth of Mr. Surinder Tiwari, PW-3, cannot provide a basis to find the presence of the appellant Arvind Kumar at his room when the murder of Deepak was committed. He can, at best be held to have come to know at a later point of time about commission of murder of Deepak and his dead body being kept in a gunny bag on his reaching the room. Thus, the finding of learned trial court in regard to Arvind Kumar, in addition to his co-appellants Vijay Kumar and Udaiveer Singh, being last seen with the deceased would appear to be based on no evidence and is, therefore, liable to be set aside.

13. The dead body of Deepak was recovered from the room of the appellants pursuant to separate disclosures Ex. PW 2/4, PW 2/5 and PW 2/6 made by appellants Udaiveer Singh, Vijay Kumar and Arvind Kumar respectively on their interrogation by the police after arrest. From the statements of the witnesses namely, Ramesh Kumar, PW-8, Devinder Chaudhary, PW-2 and Ram Chander, PW-6 it is gathered that appellant Vijay Kumar was the first one to furnish the information about the dead body of Deepak being kept in a gunny bag in their room. Similar disclosure statements were made by the other two appellants recorded separately. Learned Counsel for the appellants Udaiveer Singh and Arvind Kumar contended that once co-appellant Vijay Kumar had made a disclosure with respect to dead body of Deepak, proximate information in that regard by appellants Udaiveer Singh and Arvind Kumar could not be held admissible in evidence against them as the said fact, which stood already discovered, could not be claimed to have been rediscovered on the basis of information furnished by appellants Udaiveer Singh and Arvind Kumar. Learned Addl. P.P. however submitted on the strength of the Supreme Court decision in *Navjot Sandhu @ Afsan Guru* (supra) that even though the disclosures made by each appellant led to plurality of information, the disclosure made by respective appellants did not cease to be an information causing 'discovery' within the purview of Section 27 of the Evidence Act. In *Navjot Sandhu @ Afsan Guru* (supra) dwelling on the scope of Section 27 of the Evidence Act with a particular reference to joint disclosures, it was ruled: Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. 'A person accused' need not necessarily be a single person, but it could be plurality of the

accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27.

The legal position on joint disclosures as it emerges is that the same per se are not inadmissible under Section 27 of the Evidence Act. The plea against admissibility of disclosure statements Ex. PW -2/4 and PW 2/6 made by appellants Udaiveer Singh and Arvind Kumar respectively must therefore get answered in negative. Unlike in the case of appellants Vijay Kumar and Udaiver, who were last seen with Deepak, deceased immediately before commission of his murder, there being no such evidence against appellant Arvind Kumar, the disclosure statement Ex. PW-2/6 regarding dead body of deceased would at the most lead to conclude that he had knowledge of the dead body of Deepak concealed in a gunny bag being kept in the room. Thus, even if his disclosure Ex. PW 2/6 is taken to have led to discovery of dead body of Deepak this circumstance alone cannot suffice to prove his complicity in commission of murder of Deepak.

14. Though the appellants in the course of their examination under Section 313 Cr.P.C. took the stand that on the relevant date when the murder of Deepak took place and recovery of his dead body was effected from room No. 11 of House No.

629 Kapashera they were not living in that room rather they were staying at different addresses, they omitted to produce any evidence to show that they had actually been living at addresses different from the room in question. Apart from statements of other witnesses including the parents of the deceased, the statement of Ramesh Kumar, PW-8 the owner/landlord of the house, establishes that all the three appellants were on the relevant date living as tenants in the room wherefrom dead body of Deepak was recovered. The fact that the appellants were in joint physical occupation of the room is proved by Smt. Babli, PW-1, Devinder Choudhary, PW-2, Ishwar Singh, PW-5 and Ram Chander, PW-6 as well. It was appellant Vijay Kumar who pursuant to disclosure made by him, opened the lock of the room in question with the key which he possessed. Unless the room was in their possession the key of the lock could not have been available with him. There is thus sufficient evidence on record to hold beyond doubt that the room No. 11 of House No. 629 Kapashera was in joint occupation of the appellants and none else. Thus the plea of the appellants to the contrary must fail.

15. On dead body of Deepak being taken out of the gunny bag it was found that its hands and feet were tied with Niwar and a piece thereof was also found tied around the neck. A piece of tape was found pasted over the mouth of Deepak deceased. A roll of Niwar Ex. P-11 and a roll of tape Ex. P-10 were recovered from the appellants' room at the instance of appellant Vijay Kumar. The roll of Niwar Ex. P-11 as also the pieces of Niwar used on the dead body were on forensic examination found to be 'similar in respect of colour, texture, design, width, thickness, weaving pattern, diameter of the fibers, microscopic appearance and U.V. fluorescence' vide Ex. PW 15/1. Similarly, the piece of tape pasted over the mouth of Deepak, deceased and the roll of tape Ex. P-10 recovered at the instance of appellant Vijay Kumar were also, on examination 'found to be possessing similar physico-Chemical characteristics' vide Ex. P 15/1. It is thus clearly established that the pieces of Niwar and adhesive tape used on the dead body of Deepak were taken out of the roll of Niwar Ex. P-11 and roll of tape Ex. P-10 recovered at the instance of appellant Vijay Kumar. While recovery of rolls of tape and Niwar constitutes an incriminating circumstance against the appellants Vijay Kumar and Udaiveer Singh, in view of doubtful presence of the appellant Arvind Kumar at the time of commission of murder of Deepak, such recovery

cannot be used to sustain the impugned conviction under Section 302/34 IPC against him.

16. Apart from being held guilty by the trial court for the murder of Deepak, the appellants have also been convicted for attempting to extort Rs. 3 lacs from Devinder Choudhary, PW-2 in return of 'safe release' of his son Deepak. A phone call was received by Devinder Choudhary, PW-2 at about 9.45/10.00 pm demanding a ransom of Rs. 3 lacs for release of his son. This phone call was received at a provision store of one Mr. Ved Prakash, PW-4, situated near his house. Immediately on receiving the call for ransom, Devinder Choudhary, PW-2 rushed to the Police Station Kapashera and on his lodging a complaint, a FIR Ex. P-2/1 was registered on 6th October, 2001 at 10.30 pm. In that FIR Devinder Choudhary, PW-2 made mention of the ransom call for Rs. 3 lacs. In terms of testimony of Surinder Tiwari, PW-3, at the same time when Devinder Choudhary, PW-2 had received the said phone call at the shop of Ved Prakash, PW-4, a phone call was made by appellants Vijay Kumar and Arvind Kumar from his STD booth. The STD booth of Surinder Tiwari, PW-3 was pointed out by the said two appellants after their arrest vide memos Ex. PW 3/1 and PW 3/2. The prosecution has though omitted to produce relevant evidence from concerned telephone exchange to connect the phone call made by appellants Vijay Kumar and Arvind Kumar from STD booth of Surinder Tiwari, PW-3 to the phone installed at provision store of Ved Prakash, PW-4 that was received by Devinder Choudhary, PW-2, it cannot go unnoticed that Devinder Choudhary, PW-2 did receive a ransom call at the phone of Ved Prakash, PW-4 and the ransom call so received could have been made only by a person/s who could be holding custody of Deepak, dead or alive. Recovery of dead body of Deepak from the room of the appellants, coupled with timing of the phone call made by appellants Vijay Kumar and Arvind Kumar from STD booth of Surinder Tiwari, PW-3 coinciding with the time of phone call received by Devinder Choudhary, PW-2 clearly lead to infer that the ransom call was made by the appellants only and none else. Thus the conviction of the appellants under Section 386/34 IPC read with Section 511 IPC recorded by the trial court against the appellants and sentence imposed on them deserve to be upheld.

17. In view of findings as aforesaid, we find no merit in Crl. Appeals No. 654/2005 and 723/2003 and thereforee dismiss the same. Crl. Appeal No. 783/2003, filed by Arvind Kumar is partly allowed and the impugned conviction and sentence under Section 302/34 IPC against him are set aside. Extending benefit of doubt he is acquitted of the charge. His conviction under Section 386/34 IPC read with Section 511 IPC is however, upheld and the appeal in that respect stands dismissed.

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