

Raji Vs. State

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Court : Delhi

Decided On : Nov-01-1996

Reported in : 1997(40)DRJ47

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 2111 of 1996

Appellant : Raji

Respondent : State

Advocate for Pet/Ap. : Neelam Grover and; H.J.S. Ahluwalia, Advs

Judgement :

S.K. Mahajan, J.

(1) The petitioner has applied for being admitted to bail in a case punishable under Sections 302/211/34 IPC.

(2) The prosecution case is that on 13th November, 1995, the complainant reported that his son Yogesh about five years old was missing since 10th November, 1995 when he was playing on the road near jhuggi. The next day he

got another statement recorded with the police stating that a few days back Raju who was residing in a jhuggi in the same area, while under the influence of liquor, had pushed his wife at which there was an altercation with Raju and he had also slapped Raju twice. Raju feeling insulted had threatened to take revenge upon the complainant and on 10th November, 1995, at about 9/9.30 p.m. when he was looking for his son, Raju and his friend Vir Pal came there and when the complainant informed them about his missing son and about his intention to lodge a report Raju and Vir Pal persuaded him not to lodge a report with the police as the police would not do anything and they joined the complainant in looking for the boy. However, when the boy could not be traced, the complainant lodged a complaint with the police on 13th November, 1995, where after Raju, Vir Pal and the petitioner were allegedly not seen by anybody.

(3) The complainant suspected that his son had been killed by Raju and his associates on which Raju and Vir Pal were arrested. Both of them have alleged to have admitted their having committed the crime and made a disclosure statement, where after the petitioner was also arrested. Body of Yogesh has not been recovered till date. Statement of one Chunni Lal, a three-wheeler scooter driver was recorded by the police on 16th November, 1995, who is alleged to have identified the three accused, including the petitioner, and it is stated that they had hired his scooter and carried them to Yamuna Bridge.

(4) The contention of learned counsel for the petitioner is that there is no evidence against the petitioner except that he has been named by his co- accused Raju and Vir Pal in their disclosure statements. Ms.Grover submits that no reliance whatsoever can be placed on the statement of the three- wheeler scooter driver as the petitioner was shown to him and admittedly no test identification parade had taken place. There was no motive as far as the petitioner was concerned and the dead body of Yogesh has not been recovered till date. Reliance has been placed upon judgment reported as - Rameshwar Singh Vs . State Of J&K; : 1972 CriLJ15 in support of her contention that the identification by the three-wheeler scooter driver is no identification in the eyes of law. According to her, the investigation in the case is complete; delay in lodging the Fir has not been explained; there was no motive for the petitioner to commit offence and he has been falsely implicated

in the case.

(5) I have gone through the case diary and I find that Raju in his confessional statement recorded on 15th November, 1995 has stated that on account of his having been slapped by the complainant, he decided to take revenge and hatched a conspiracy with Vir Pal to kidnap and kill Yogesh, son of the complainant. Thereafter, Raji, the petitioner, also joined them. On 10th November, 1995 they all found Yogesh playing on the side road near Mathura Road and at about 4.30 p.m. they picked up Yogesh and as he knew Raju, he did not raise any alarm. At 7.15 p.m. they engaged a three- wheeler scooter for going to Seelam Pur. Vir Pal asked the scooter driver to stop near the old Yamuna Bridge. After alighting from the scooter, he asked Virpal as to why he had asked the scooter to stop at that place and he was informed by Vir Pal that Yogesh had died. They, thereforee, threw the dead body of Yogesh,wrapped in a towel, into the River Yamuna from the bridge.

(6) Virpal, in his confessional statement besides corroborating the statement of Raju, said that Raju handed over Yogesh to Raji, who handed him over to Virpal near the Shafi Hospital. Virpal took Yogesh to Nizamuddin Railway Station and when it started getting dark in the night, Yogesh insisted to go home and started crying. On hearing his cries, some persons stopped for a moment and then went away. At this he, with a view to keep him quiet, pressed his neck with his hands and Yogesh became quiet. Virpal thought that Yogesh had become unconscious and he, thereforee, rested him with his shoulders and wrapped him with the towel and it was only in the three wheeler scooter that he realised that Yogesh had died and they, thereforee, threw his body into the river Yamuna from over the old Bridge.

(7) At this stage of considering the application for bail, the Court is not to go into the details of evidence collected by the prosecution and appreciate the same to find out as to whether such evidence is sufficient to convict the accused. At this stage, the court is only to take into consideration the nature of the accusation, the nature of evidence in support of accusation, the severity of the punishment which conviction will entail and the allegation that the accused, if released on bail, will try to tamper with evidence. At this stage, it will not be proper for me to give any

finding as to whether the confessional statement of the co-accused can be used against the petitioner and what is the effect of the petitioner having not been subjected to test identification parade.

(8) From the record, however, I find that it is not only the confessional statement of the co-accused which implicate him in the case, but the petitioner himself has also made a confessional statement about his being involved in the commission of offence. He has been duly identified by the three-wheeler scooter driver in whose scooter they had gone from Nizamuddin, being one of the three persons who had taken a child to the Yamuna Bridge on the date of the incident. The trial has not yet started and the possibility of the petitioner, therefore, tampering with evidence, in case he is released on bail, cannot be ruled out.

(9) A small child of five years of age has lost his life only because one of the accused wanted to take revenge from the father of the child and the other accused including the petitioner joined him in committing the crime. There, taking into consideration the gravity of the offence and the manner in which it has been committed, I am of the opinion that the petitioner is not entitled to be released on bail. The petition is, therefore, dismissed.

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