

Bindu Vs. the State (Nct) of Delhi

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SooperKanoon Citation : sooperkanoon.com/704772

Court : Delhi

Decided On : Mar-25-2009

Reported in : 2009CriLJ4582

Judge : Pradeep Nandrajog and; Aruna Suresh, JJ.

Acts : Railway Act, 1989 - Sections 137, 141 and 147; Evidence Act - Sections 118; Indian Penal Code (IPC) - Sections 201 and 302; Code of Criminal Procedure (CrPC) - Sections 313 and 428

Appeal No. : Crl. A. 139/2008

Appellant : Bindu

Respondent : The State (Nct) of Delhi

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : Ritu Gauba, Adv

Disposition : Appeal dismissed

Judgement :

Aruna Suresh, J.

1. A ghastly murder took place on the intervening night of 25- 26.07.2005 in a jhuggi near Ganda Nala, Kishan Ganj, Delhi. Appellant Bindu used to reside with

deceased Chanda in her jhuggi. Appellant was an alcoholic. He had borrowed a sum of Rs. 6,000/- from Chanda. But on demand to repay the loan by Chanda, he used to quarrel with her. On the fateful night, the appellant picked up a quarrel with Chanda in the jhuggi, gave her physical beating and killed her and threw her dead body on the railway track.

2. The investigating agency swung into action on receipt of information on 26.7.2005 on wireless at Police Post Kishan Ganj at about 2.05 P.M. from HC Subhash that in Block No. 65 Chowk, Railway Line, Ganda Nala, Kishan Ganj a lady had been run over by the train. This information was recorded in DD No. 12 (Ex.PW-5/A) by Lady Ct. Kavita PW-5. On receipt of this information through additional SHO Shri O.P. Sharma, Insp. Jagjit Singh, SHO went to the Railway track near jhuggis, Ganda Nala, Kishan Ganj where he met other police officials. However, nobody could be found on the track till 4.00 P.M. Insp. Jagjit Singh also could not get any information if any person was removed to the hospital. He met a boy, namely, Sunil Kumar, aged about 10 years, the son of the deceased Chanda. Sunil Kumar PW-7 during interrogation disclosed that the appellant Bindu was residing with his mother and him in their jhuggi and that he (Bindu) had given beatings to his mother Chanda, killed her and threw her body in the nala near the Railway track. On this information Insp. Jagjit Singh and other police officials conducted search and they found blood on the stones near the plank 5th BG track near Km. Pole 3/22, Kishan Ganj towards North of Andha Mughal side. Despite best efforts, the dead body could not be found in the nala. The police party searched for the dead body in the gutter. At about 6.00 P.M. the dead body was spotted in the open flowing gutter, about 8-9 ft. deep in between Railway line and DCM ground wall near electric pole No. 3/19-A at a distance of 40 paces from Kishan Ganj, railway station. The headless dead body of Chanda was removed from the gutter by PW-2 Khusranjan.

3. On 27.7.2005 head-neck of the deceased Chanda was recovered from Ganda Nala. The dead body was identified by PW-7 Sunil Kumar as that of his mother Chanda.

4. Appellant Bindu was arrested on 29.7.2005 and at his instance churra (dagger) Ex.P-3 was recovered.

5. Vide impugned judgment dated 28.11.2007, the learned trial court was pleased to convict the appellant for the offence punishable under Section 302 Indian Penal Code (hereinafter referred to as 'IPC') as well as under Section 201 IPC. Vide order on sentence dated 5.12.2007, the appellant was sentenced to undergo imprisonment for life and to pay fine of Rs. 5,000/- and in default of payment of fine to further suffer simple imprisonment for two months for an offence punishable under Section 302. Appellant was further sentenced to undergo R.I. for a period of three years and to pay a fine of Rs. 2,000/- and in default to undergo S.I. for a period of one month for offence punishable under Section 201 IPC. Both the sentences were ordered to run concurrently and benefit of Section 428 Cr.P.C. was also given to the appellant.

6. During the trial, prosecution examined as many as 20 witnesses. Relevant are the testimonies of PW-7 Sunil Kumar, son of the deceased, PW-2 Khusranjan (Rikshaw puller), PW-3 Smt. Runzhun (neighbor), PW-10 Radha (another neighbor) and PW-8 Dr. Ashok Jaiswal. Relevant are also the statements of Inspector Jagjit Singh, SHO (PW- 20) and SI Sunil Kumar, Investigating Officer (PW-19). The other witnesses are police officials who were a part of the investigation at one stage or the other.

7. PW-7 Sunil Kumar, son of the deceased, Chanda who was aged about 10 years at the time of incident is an eye witness to the incident. He has deposed in the court that his father had expired and he was residing with his mother in the jhuggi near Ganda Nala, Kishan Ganj and that appellant Bindu used to come to his mother. That on the fateful night appellant Bindu came in the jhuggi and asked him (Sunil) to bring dahi. That on his refusal appellant gave him beatings as well as to his mother and appellant also pelted stones upon him and gave severe beatings to his mother and killed her in the night. He also deposed that appellant allured him to accompany him to his house and that he would give him Rs. 200/-. Appellant also threatened him of life; and that appellant had thrown the dead body of his mother in the Ganda Nala and that accused Bindu had borrowed Rs. 6,000/- from

his mother.

8. When cross-examined by learned APP for the State, PW-7 Sunil Kumar admitted having stated to the police that at that time accused had come drunk to the jhuggi, that at that time his mother had cooked rice and that accused had asked his mother to prepare fish for him, that he started quarreling with his mother and gave beatings to her as well as to him and due to fear he went from there and hid himself behind other jhuggies. He stated that after some time he saw that accused had picked up his mother and took her to the railway track and that after sometime appellant returned back and raised alarm 'Randi Kat Gai'. He admitted that he had stated to the police that accused had threatened the persons who had gathered there on hearing his alarm, of false implication if police was informed and also that appellant had thrown head-neck of the dead body and police would not be able to find the head-neck and that thereafter accused picked up the headless body of his mother and threw the same in the gutter. He also admitted that the headless body of his mother was recovered from the gutter by the police on the next day and the head of his mother was recovered on the next following day from the nala.

9. In his cross-examination Sunil Kumar deposed that he had seen Bindu picking up his mother and taking her to the railway track and thereafter he had hidden himself in the DCM plot covered with boundary wall. He also deposed in the cross examination that Radha had come to his jhuggi at about 8-9 P.M. shouting that 'Chanda Cut Gai Cut Gai' and that number of persons had assembled and had gone to see Chanda and that when Radha came to his jhuggi, Bindu and he (Sunil) were sitting in the jhuggi and that he had also gone to see his mother Chanda at the railway track.

10. PW-3 Smt. Runzhun is a resident of jhuggi cluster near Ganda Nala, Kishan Ganj and was a neighbor of deceased Chanda. She in her testimony deposed that Bindu was living with Chanda in her jhuggi and that PW-7 was also residing with his mother and that Bindu was addicted to liquor and that he used to give beatings to her. She further deposed that on the day of incident Chanda had cooked rice and Bindu gave beatings to Chanda and to her son Sunil Kumar and that she

along with other residents had intervened and saved Chanda and Sunil from the appellant. She further testified that at 12.30 night appellant Bindu again raised an alarm that Chanda had been beheaded and called the jhuggi people to come out and that appellant had requested the residents of the jhuggi to assist him to remove the dead body of Chanda but they all declined and that accused threatened them not to inform the police. She has also deposed that thereafter appellant went to the railway track, lifted the dead body of Chanda and threw the same in the gutter. She is also a witness to the recovery of head-neck of deceased Chanda from the nala which was identified by her. She did not support the prosecution to the fact that appellant had borrowed a sum of Rs. 6,000/- from deceased Chanda and that Bindu was overpowered by the public in the morning when the police came and he tried to flee and that he was beaten up by the public and was handed over to the police. There is no effective cross examination of the witness regarding the incident except that she stated that she did not know if Radha had come at about 8.00 P.M. shouting that 'Chanda Cut Gai'.

11. PW-10 Radha another neighbor, while corroborating the statement of PW-3, further deposed that at about 12.30 night she heard shouts of the appellant Bindu 'Sali Randi Cut Gai' about Chanda and that he had thrown head of Chanda and no one could trace it and also asked them to assist him to dispose of the headless body of Chanda. She further testified that she asked the appellant not to tamper with the dead body and that thereafter Bindu lifted the headless body of Chanda and threw the same in the gutter.

12. In her cross examination she denied the suggestion that at about 8.00 P.M. she had rushed to the jhuggi of Chanda and shouted that Chanda was cut and that accused and her husband who were taking dinner together in the jhuggi of Chanda also came out and went to see dead body of Chanda at the railway track.

13. PW-2 Khusranjan had joined the investigation on 26th July, 2005. He with the help of police and others had taken out headless body of deceased Chanda from the gutter near the wall of DCM. In his presence the dead body of the deceased was identified by PW-7 Sunil Kumar, son of the deceased, aged about 10-11 years. He also witnessed the recovery of head-neck from the nala on the next

following day at about 10.00 A.M. This witness has not been cross examined.

14. PW-8 Dr. Ashok Jaiswal had conducted the postmortem on the dead body of the deceased Chanda. In his postmortem report Ex.PW-8/A he has opined:

1. Decapitation of head (injury No. 1 and 2) is postmortem in nature caused by sharp edge weapon.
2. Injuries No. 1-a, 1-b, 1-c, 1-d and 1-3 are ante-mortem in nature.
3. Injury No. 1-a, 1-b are caused by blunt force/object.
4. Injury No. 1-c, 1-d and 1-e are suggestive of application of pressure over neck structure - manual strangulation (throttling).
5. Death in my opinion is due to asphyxia consequent to throttling (manual strangulation).
6. Manual strangulation is sufficient to cause death in ordinary course of nature.
7. Time since death is about two and a half days.
8. Head-neck and neck-torse appears to be of the same individual however blood sample, teeth(2) and skin piece from either body parts preserved sealed and handed over to police for matching/grouping/needful.

15. In his cross examination he stated that injuries to the neck i.e. decapitation of head (injuries No. 1 and 2) and marks of strangulation are not possible due to train accident.

16. Equipped with the aforesaid evidence and also the FSL report Ex.PW-20/H-2 while discarding the defence plea of the appellant that deceased had come in front of the running train and therefore was cut by the train and died due to decapitation of head, the learned trial court observed:..From the evidence as discussed above, it is proved beyond reasonable doubt that it was the accused who after taking the deceased who was already subjected to manual strangulation from the jhuggi to the railway track, had decapitated the Head-neck portion of the deceased from the

rest of the portion of the body with the help of Churra at the railway track and then had thrown the body parts in the ganda nala.

10. From the facts proved on record by the prosecution, it is also proved that accused after knowing that offence has been committed had thrown the parts of the body of the deceased into the Ganda Nala with the intention of causing the evidence of the offence of the murder to disappear.

17. Ms. Ritu Gauba, learned Counsel for the appellant has submitted that the deceased and other residents of the jhuggi cluster near railway lines had trespassed on the railway property and were illegal occupants in connivance with the SHO (Railway), Sarai Rohilla. The jhuggi of deceased Chanda was only two steps away from the railway line and she was accustomed to the sound of whistle of train off and on and her ears attuned to the sound all day and night and therefore she had committed offence under Sections 137/141/147 of the Railway Act, 1989.

18. These arguments have no relevance to the facts and circumstances of the case. In this appeal the court is not to decide whether deceased Chanda had trespassed into the railway line, the court has only to ascertain if deceased Chanda was murdered by the appellant. These arguments are nothing but an endeavour of the counsel to side track the main issue and distract the mind of the court to unnecessary issues having no relevance to the case.

19. Learned Counsel of the appellant further argued that PW-20 Insp. Jagjit Singh being a competent Investigating Officer has not left any stone unturned to ensure conviction of the appellant. Therefore, the act of the Investigating Officer, Jagjit Singh has caused great prejudice to the appellant. She has referred to 'Megha Singh v. State of Haryana : 1995 CrI. L.J. 3988'.

20. These submissions are devoid of any merits. Investigating Officer Insp. Jagjit Singh went to the spot only on receipt of DD No. 12 dated 26.7.2005 Ex.PW-5/A wherein it was disclosed that a person had been run over by a train near Ganda Nala. Investigating Officer is required to investigate the case thoroughly and has to ensure that every link in the chain was complete. There is nothing in this case to

suggest that Investigating Officer investigated the case in a manner prejudicial to the interest of the appellant. Simply, because the Investigating Officer happens to be the complainant does not vitiate the trial of the case and is not fatal to the prosecution under the facts and circumstances of this case.

21. Megha Singh's case is of no help to the appellants. In this case no independent witnesses were brought by the prosecution to prove its case and only two Constables, one of them being the complainant, were examined to prove the case of the prosecution. The facts of this case are entirely different.

22. It is further submitted by the learned Counsel for the appellant that the Investigating Officer has converted the case of railway accident into murder by fixing liability on the appellant who unfortunately was acquainted with the deceased who would probably have raised voice and claim compensation for the train fatality, and in that eventuality, the services of the Investigating Officer would have come under cloud of suspicion and he would have faced departmental inquiry for not removing the trespassers away from the railway property.

23. It is unfortunate that the learned Counsel for the appellant instead of hitting the nail on its head has tried to side line the entire issue with all endeavor to way lay the court but, she is unsuccessful in her endeavor. The appellant was only acquainted to the deceased and, was not a blood relation. PW-4 Ashok and PW-7 Sunil Kumar, the eye witnesses to the incident happen to be the sons of the deceased and claim, if any, would have been raised by them.

24. Frivolous arguments as raised by learned Counsel for the appellant are depreciable and have to be desisted and she cannot be allowed to beat around the bush with a view to brush aside the prosecution case, which stood proved during the trial of the case.

25. It is submitted that there is a delay of 7 hours in registration of the case. It cannot be disputed that the incident had taken place on the night of 25-26.7.2005 and DD No. 12 Ex.PW-5/A was recorded at the Police Station at about 2.00 P.M. and the FIR Ex.PW-1/A was got registered by the Investigating Officer at about 9.00 P.M.

26. This delay in registration of the FIR has been convincingly proved by the prosecution. Witness to the incident PW-7 Sunil Kumar, and other persons of the locality who had gathered at the spot on hearing shouts of appellant 'Sali Kat Gai' including PW-10 Radha and PW-3 Runzhun both neighbours have deposed in consonance that appellant had threatened the persons who had gathered at the spot not to inform the police and on hearing his shouts, the crowd disbursed. This explains why none of the neighbours informed the police at the earliest. The appellant had also asked the persons of the locality to assist him in removing the dead body of Chanda to which they all refused.

27. The Investigating Officer Jagjit Singh went to the spot on receipt of DD No. 12 Ex.PW-5/A. He did not find any dead body on the railway line. He searched the area and till around 4.00 P.M. he could not even get any information from the hospital about the incident. The Investigating Officer met PW-7 Sunil Kumar, and it was from interrogation of this child that he came to know that the dead body had been thrown in the nala. The IO continued to make efforts to trace out the dead body from the Ganda Nala but it was around 6.00 P.M. that he could spot a headless body in the gutter falling into the nala. He took the assistance of PW-2 Khusranjan, a rickshaw puller to take out the dead body of Chanda from the gutter. He continued with his search to trace out the head-neck of the deceased. When he failed in his efforts with the assistance of the public, he sent the rukka Ex.PW-20/A to the Police Station for registration of the case at about 9.00 P.M. The delay, therefore, in registration of the FIR was bonafide and was due to the unavoidable reasons as stated above.

28. Learned Counsel for the appellant has attributed this delay in registration of the FIR, alleging that Investigating Officer took time to convert a railway accident into a homicide. She has argued that it was due to striking of deceased Chanda against a running train, that her head was decapitated and the head-bone was fractured having fallen at a distance.

29. Needless to say, the head-neck could not have been decapitated by striking against a running train. Dr. Ashok Jaiswal PW-8 in his cross-examination was categorical when he stated that the decapitation of head and marks of

strangulation were not possible in a train accident. The doctor has opined the cause of death as asphyxia consequent to throttling (manual strangulation) which was sufficient to cause death in ordinary course of nature.

30. Under no circumstance, therefore, the death of Chanda can be termed as accidental death. She was murdered by strangulation and her head-neck was decapitated by a sharp edged weapon as per the report Ex.PW-8/A prepared by PW-8 Dr. Ashok Jaiswal.

31. Learned Counsel for the appellant has emphasized that grave doubt about alleged incident and involvement of the appellant in the alleged incident is created in view of the testimony of the witnesses who all were hostile and did not fully support the case of the prosecution. These variations are:

(a) PW-7 Sunil Kumar in his cross-examination admitted 'It is correct that Radha had come to my Jhuggi at about 8.00 P.M. shouting that Chanda Cut Gai Cut Gai. Thereafter so many persons had assembled and had gone to see Chanda. When Radha had come at my Jhuggi accused was sitting in the Jhuggi and I was present in the Jhuggi at that time. I had also gone to see my mother Chanda'.

(b) PW-3 Runzhun in her cross-examination has stated 'I do not know if Radha had come at about 8 P.M. shouting that Chanda Cut Gai Cut Gai'.

(c) PW-10 Radha in her cross-examination had stated 'It is wrong to suggest that at about 8.00 P.M. I rushed at the Jhuggi of Chanda and shouted that Chanda had cut and thereafter accused and my husband those were taken dinner together in the jhuggi of Chanda also came out and went to see dead body of Chanda at Railway track'.

(d) PW-2 Khusranjan has deposed 'It could not be learnt that as to who has killed Chanda'.

32. She has referred to the statement of accused recorded under Section 313 Cr.P.C. to emphasize that the appellant in answer to question 28 has specifically replied that it was a train accident, and he was falsely implicated in this case and therefore 'who has done it' is not proved by the prosecution.

33. Learned Counsel for the appellant has further argued that a grave doubt has been created regarding the time and place of the arrest of the appellant in view of the following statements appearing in the examination or cross- examination of the prosecution witnesses. Firstly, she has referred to the answer of the appellant to question No. 10 recorded under Section 313 Cr.P.C. wherein he stated 'I was falsely arrested'. She has highlighted the cross examination of PW-3 Runzhun wherein she stated that accused was arrested on the next day. Similar is the statement of PW-2 Khusranjan who also deposed that appellant was arrested on the next day i.e. on 27th July, 2005, though he denied having made any statement to the police. PW-19 SI Sunil Kumar has stated that accused was arrested on 29th July, 2005. The Investigating Officer has deposed that accused was apprehended by public persons on the next day of the FIR i.e. on 27th July, 2005 whereas arrest memo indicates the arrest of the appellant on 29th July, 2005. It is urged that seal throughout remained in the possession of the complainant as well as the IO.

34. The infirmities and variations as pointed out above by the counsel for the appellant which have crept in examination and cross examination of the witnesses are natural and trifling in nature and they are bound to creep in due to lapse of time. The prosecution witnesses are all illiterate persons residing in jhuggi cluster and they have all given time of the incident and also the date of the arrest of the appellant as per their own conception. These small contradictions are not fatal to the prosecution case in any manner.

35. PW-2 Khusranjan fully supported the prosecution case except that he did not state that appellant was apprehended by the public persons and was beaten up by them. Under these circumstances, this witness cannot be termed as hostile even if learned prosecutor chose to cross examine him.

36. PW-3 Runzhun has supported the case in all material particulars in her examination-in-chief as well as in her cross-examination. Simply because she has been cross- examined by learned APP for the State would not discard her testimony from consideration.

37. PW-10 Radha has also fully supported the prosecution case on all material particulars. She was cross examined by learned APP for the State only regarding

the recovery of head-less body of Chanda from the gutter and also that accused had fallen twice when he was disposing of the dead body of the deceased into the gutter. She fully supported the prosecution case when cross examined by the learned APP. As highlighted above, the appellant has not been able to highlight any material discrepancy appearing in the cross examination of these witnesses.

38. PW-7 Sunil Kumar was about 10 years of age at the time of incident. As per his testimony he stated that Appellant Bindu who used to reside with his mother and used to take meal from her had come in drunken condition and got aggressive since Chanda had cooked rice though he wanted fish. A quarrel ensued between the two. He was asked by the appellant to bring curd (dahi). On his refusal appellant gave him beatings and also threatened him of life. He also deposed that appellant had thrown the dead body of his mother in the nala. True that, this witness did not fully support the prosecution case, may be because he was a child at the time when he saw the incident and his deposition was recorded in the court after about more than a year. PW-7 Sunil Kumar has given an evident detailed description of the incident which cannot be over looked.

39. PW-7 Sunil Kumar was ailing on the day of incident and when he refused to bring curd for the appellant, he was given beatings by the appellant and not only this the stone was also thrown on him. The child due to fear went out of the house and hid himself behind the DCM wall near the jhuggi. He survived the wrath of the appellant and Chanda became the victim.

40. As per the provisions of Section 118 of the Evidence Act all persons are competent to testify, unless the court consider that by reason of tender years they are incapable of understanding the questions put to them and of giving rational answers but then it is for the Judge to satisfy himself as regards fulfillment of the requirement of the said provision. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness cannot be rejected per se, but the court as a rule of prudence is required to consider such evidence with close scrutiny and if it is convinced about the quality thereto and the reliability of the child witness can record conviction based on his testimony. If after careful scrutiny of a child

witness's statement the court comes to the conclusion that there is impress of truth in it there is no reason as to why the court should not accept the evidence of child witnesses.

41. In this case the opinion of the Judge had been recorded after testing the intellectual capacity of Sunil Kumar PW-7 a child of tender age to understand the question and give rational answers thereto. This satisfies the test laid down under Section 118 of the Evidence Act. Sunil PW-7 did understand the questions put to him by the court and gave rational answers. He has not been found to be suffering from intellectual incapacity to understand the questions and give rational answers thereto.

42. On close scrutiny of the testimony of this witness and the other evidence placed on record, I find no obstacle in the way of accepting the evidence of Sunil. Many a times when a ghastly crime is committed in the presence of the child, the same is registered in his mind very effectively.

43. Since testimony of Sunil finds sufficient and adequate corroboration from the other evidence placed on record including the prosecution witnesses it can be safely relied upon.

44. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Where two views are possible, one indicating the guilt of the accused and the other to his innocence, the defence raised by the accused should be accepted and the court must raise a presumption that the accused is innocent. However, the court must not reject the evidence of the prosecution on premise that the witnesses for the prosecution are false, not trustworthy, unreliable and made on flimsy grounds and made only on the basis of surmises and conjectures. The court has to judge the prosecution case in its entirety having regard to the totality of the circumstances. Thus, the approach of the court must be an integrated one and not truncated or isolated. The court has to use the yardstick of probability and appreciate the intrinsic value of the evidence on record and analyse and assess the same objectively.

45. In the present case, the totality of the evidence and the circumstances placed on record undoubtedly finger towards the appellant as the author of the crime. The circumstances proved are:

(i) PW-7 Sunil Kumar had seen the appellant giving beating to his mother and threatening her of her life.

(ii) PW-3 Runzhun and PW-10 Radha had seen the appellant lifting the dead body of Chanda and throwing it into the gutter. It is pertinent that it was the appellant who after killing Chanda after throwing her dead body on the railway track had shouted 'Chanda had suffered cut on her body' and had called the residents of the jhuggi cluster to come out. The appellant not only committed the offence but also made an effort to create an allusive atmosphere indicating that Chanda had died of train accident. All the circumstances, clearly induct the appellant in the commission of murder of Chanda.

(iii) PW-8 Dr. Ashok Jaiswal has opined the cause of death in his report Ex.PW-8/A as asphyxia consequent to throttling. Manual strangulation was sufficient to cause death in ordinary course of nature. Vide his report Ex.PW-8/B he has opined that cutting on neck from rest of the body (injury No. 1 and 2) can be possible by the dagger Ex.P-3.

(iv) During the investigation of the case, the IO had lifted bloodstained piece of stones. He also collected the clothes of the deceased from the hospital and recovered weapon of offence Ex.P-3 on behest of the appellant. On the weapon of offence human blood was found having blood of 'B' group. This blood group matched with the blood group of the deceased found on her clothes.

(v) It is not the case of the appellant that any of the witnesses were inimical to him.

46. The last but not the least submission of the learned Counsel for the appellant is that the witnesses for the prosecution have not fully supported the case as they have turned hostile and were cross examined by the learned APP for the State. Under these circumstances, according to her much reliance cannot be placed on their testimonies and the trial court went wrong while convicting the appellant on

the basis of the testimony of the hostile witnesses.

47. It is a well settled law that the evidence of a hostile witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examined him. The evidence of such witness cannot be treated as effaced or washed out the record altogether. The testimony of such witnesses can be considered and accepted by the court to the extent their version is found to be dependable on a careful scrutiny thereof. The portion of the evidence which is consistent with the case of the prosecution or defence as recorded by the court cannot be held to have washed off or unavailable to the prosecution to prove the guilt of the accused.

48. In the present scenario where the witnesses are illiterate and jhuggi inhabitants have supported the prosecution case on all material particulars except that either they did not depose certain facts or slightly made variations in their statements made before the police and to the court.

49. As already pointed above, these variations under the circumstances of the case which were natural with the lapse of time and the individual memory and intelligence of the witnesses are bound to occur. These variations in no manner can be considered fatal to the prosecution case. In the present case though the witnesses i.e. PW-2, PW-3, PW-7 and PW-10 have been cross examined by the learned APP for the State, they cannot be termed as hostile witnesses.

50. The above analysis of the evidence on record leads us to inevitable conclusion that the appellant Bindu had firstly murdered Chanda by manual strangulation and then decapitated her head-neck from her body and with a view to destroy the evidence, he threw the head-neck in the nala and also the headless body in the gutter flowing into the nala. The trial court, therefore, rightly convicted the appellant of the offence under Section 302/201 IPC.

51. The appeal being without any merit is hereby dismissed.

52. Trial court record be sent back immediately with attested copy of the order.

