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Durga Devi @ Asha Rani Vs. Vinod Kumar Sharma and ors.

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Court : Delhi

Decided On : Sep-21-2005

Reported in : 124(2005)DLT428; 2005(84)DRJ544

Judge : R.S. Sodhi, J.

Acts : Indian Penal Code (IPC) - Sections 34, 201, 301, 302, 364 and 365; Code of Criminal Procedure (CrPC) - Sections 207

Appeal No. : Criminal Revision Petition 364/2000

Appellant : Durga Devi @ Asha Rani

Respondent : Vinod Kumar Sharma and ors.

Advocate for Def. : R.N. Mittal, ; Puneet Mittal and ; Shahida Begum, Advs.

Advocate for Pet/Ap. : Rajiv Taneja, Adv

Disposition : Revision dismissed

Judgement :

R.S. Sodhi, J.

1. Crl.Rev.P.364/2000 seeks to challenge the judgment dated 16.06.2000 of the Additional Sessions Judge, Delhi in Sessions Case No.17/92 whereby the learned Judge has acquitted the accused persons of all charges.

2. Brief facts of the case as brought out by the learned Additional Sessions judge are as follows:-

'The case of the prosecution as per the challan filed in Court is that on 23.9.91 Smt.Durga Devi @ Asha Rani wife of Shri Raman Kumar, resident of 19, Youth Hostel, Club Road, Delhi, met S.I. Vijay Pal Singh and made a statement that his yonder Prem Kumar Dua who lives in H.No.1K-22A, N.I.T. Faridabad had come to her house at 11.00 p.m. On the night of 10.6.91 in a Maruti Gypsy No.DL-3C-A-4191 of white colour Along with his friend Vinod Kumar who lives in H.No.I-C-33A Sundra Colony, Bata Chowk, behind Petrolpump, Faridabad. There was another person with them whom her brother had represented to be a friend of Vinod Kumar who was a resident of Jaipur; that Vinod Kumar and his friend slept on that night in the Gypsy while her brother slept in her house; that in the early morning at 4.00 P.M.Vinod Kumar awakened her brother and that all the three after taking tea left at about 5.00 a.m. On 11.6.91; that when she enquired from her brother where they were going, he told her that they will go to Siliguri after offering prayer in Hanuman Temple, Yamuna Bazar, Delhi, and will be coming back after a week. She further stated to the police that when her brother did not come back even after expiry of 15 days, she made enquiries from Vinod Kumar who told her that he did not accompany her brother on that day. When she enquired from Vinod Kumar about her friend of Jaipur, he proclaimed that he did not know any friend of Jaipur; that her brother-in-law etc.approached Vinod 5-6 times to make enquiry about her brother but every time he came out with a new story. She further stated to the police that she apprehended that Vinod Kumar and his friend of Jaipur are responsible for the disappearance of her brother and they have secretly abducted him to some unknown place; that she and her relatives have searched for her brother at every possible place but could not come to know the whereabouts of her brother. On the basis of statement of Durga Devi, the police registered a case Under Section 365 IPC and investigation was handed over to S.I. Mahender Singh but subsequently investigation was conducted by S.I.V.P.Singh who interrogated Vinod Kumar, that when Vinod Kumar confessed his guilt, he was arrested in this case. During police custody, Vinod Kumar made a volunteer disclosure statement that he along with his co-accused Rajesh and Viresh had made a plan to finish Prem Kumar Dua Along with his friend Narender Sharma, witness in column No.6,

who had to be left at Islampur, left in the Gypsy No.DL-3C-A-4191, they all left for Siliguri on 10.6.91 and on 13.6.91 as per the programme, Rajesh and Parvesh joined Prem Kumar and Vinod at Islampur; that on 13.6.91 after proceeding from Hansimara (West Bengal) in a lonely place in darkness and during heavy rain, when Vinod Kumar was driving the Gypsy, Parvesh put his belt in the neck of Prem Kumar and tightened it while Rajesh controlled Prem Kumar and when Prem Kumar became unconscious, the vehicle was parked and Prem Kumar was thrown near the 'Patri'. Thereafter Rajesh gave two knife blows to Prem and all of them became satisfied about the death of Prem Kumar and thereafter they proceeded further to destroy the evidence of the offence; that all the three accused were indebited to Prem Kumar to the extent of Rs.3000/-each and he use to insult them every now and then by placing demand for his money. During investigation, on the pointing out of Vinod Kumar, it was revealed that on 16.6.91, Case No.37/91, Under Section 302/301 IPC was registered at P.S.Kalchini, West Bengal; that after the legal heirs of Prem Kumar identified the photographs of the deceased, the police collected the necessary papers of 37/91 from Kalchini police and also recovered Gypsy No.D-3C-A-4191 from Kohima which had been left there for sale by Rajesh and Parvesh. Thereafter the police added the sections 302/364/201/34 IPC in the F.I.R. whichas originally registered Under Section 365 IPC.

After completing the investigation, the police filed the challan in the court of the concerned Metropolitan Magistrate who took cognizance of the case, supplied the copies of challan and other documents/statements to the accused persons as required Under Section 207 Cr.P.C. and committed the case to the Sessions Court as the offence Under Section 302 IPC is exclusively triable by the Court of Sessions.'

3. The prosecution in order to establish its case examined 22 witnesses. Of these, PW-1, Durga Devi is the sister, PW-2, Smt.Kaki Bai is the mother and PW-3, Smt.Manju Devi is the widow of the deceased. PW-4, Kuldeep Rai is the neighbour. PW-5, Harkeerat Singh is not supporting the prosecution version. PW-6 is the mechanic at Jalpaiguri, who is alleged to have repaired the Gypsy in which the accused persons traveled from Delhi to Jalpaiguri. PW-7, is Mirza Begh, another mechanic, while PW-9, Raman Kumar is the brother-in-law. PW-1, 3 and 9

depose to the effect that they had seen Vinod along with his friend and the deceased last when they left Delhi on 11.6.1991, purportedly going to Siliguri to sell the Car. While PW-6 and 7 are the mechanics who repaired the Gypsy in Rahimpur, Distt.Jalpaiguri, West Bengal, PW-9, is the brother-in-law of the deceased, who is the witness to the recovery memo.

4. With the aid of counsel for the petitioner and respondent I have been taken through the evidence on record and the judgment under challenge. It appears from a re-examination of the statement of witnesses as also the evidence on record that the prosecution has not been able to establish that accused Vinod was in fact at West Bengal or Siliguri along with the deceased.

5. The prosecution has also not been able to establish that any recovery or discovery was made at the instance of Vinod. The prosecution has also not been able to establish that the deceased Vinod or for that matter any other accused stayed at Sharma Hotel.

6. The prosecution has placed nothing on record by way of documentary or oral evidence to show the presence of the accused persons at Sharma Hotel. The prosecution has also not been able to establish that the accused persons did lead the Investigating Officer to the spot where the dead body was alleged to have been recovered by the West Bengal Police.

7. The statements of recovery were alleged to have been made in June, 1992, when PW-6 and 7 said that the accused were brought to them in July, in fact they were arrested only in the month of November of that year. Obviously, these witnesses are not truthful and have been introduced by the prosecution to butteries their case.

8. The trial court has carefully examined the testimony of each and every witness and has given reasons for disbelieving the material ones.

9. After careful consideration and re-examination of the statements, I find that the reasoning given by the trial court cannot be said to be perverse or even that an alternative view is possible.

10. That being the situation, I find no infirmity in the judgment and order of the trial court. Consequently, Crl.Rev.P.364/2000 is dismissed.

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