

Devender Kumar Vs. State

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Court : Delhi

Decided On : Aug-08-2002

Reported in : 100(2002)DLT516

Judge : Dalveer Bhandari and; R.S. Sodhi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 364A; [Evidence Act, 1872](#) - Sections 45 and 73

Appeal No. : Criminal Appeal No. 358 of 1998 and Crl. M. No. 955 of 2002

Appellant : Devender Kumar

Respondent : State

Advocate for Def. : Ravinder Chadha, Adv.

Advocate for Pet/Ap. : Roopesh Sharma, amices Curia

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. This criminal appeal is directed against the judgment and order of the learned Additional Sessions Judge dated 9.6.1998 and 10.6.1998 convicting the appellant under Sections 364A and 302, IPC and sentencing him to undergo life imprisonment for the offence punishable under Section 364-A, IPC with a fine of Rs. 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. The appellant was also sentenced to undergo life imprisonment for the offence punishable under Section 302, IPC with a fine of Rs. 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. Both the substantive sentences were directed to run concurrently.

2. The facts of the case, as have been noted by the learned Additional Sessions Judge are that:

'on 25.11.1994 deceased Amit left his house at about 12 in the day did not come back where after search continued for him for the next two days, but to no avail. On 28.11.1994, Shri Jal Singh- uncle of deceased Amit, went to the Police Post Meet Nagar and lodged a missing report Ex. PW 1/A on the basis of which a case FIR under Section 363, IPC was registered. On 28.11.1994, a ransom note said to have been delivered at the place of the deceased was handed over to the police wherein a sum of Rs. two lacs was demanded for the safe return of the missing child Amit A telephonic call was also received at the house of a neighbour Mr. Rathee wherein also the said demand was repeated but none came to the given place for collecting the money where a police team accompanied by Jal Singh awaited for the suspect. The telephone caller was recognised by the complainant from his voice as being accused Devender, who was a tenant in the house of the complainant. It was on 30.11.1994, a police team consisting of Special Staff, the complainant and two other persons

happened to be present near a wine shop at Loni Road where complainant Jal , Singh pointed out towards accused Devender as being the suspect. Accused Devender was found present in the company of one other person and was arrested. Accused Devender was interrogated and his disclosure statement was recorded. The accused was wearing a shirt torn on its back which was also taken in possession. Accused Devender then led the police team to Police Farms Yamuna Khadar and after taking it near to Sarkanda Jhunda -- he pointed out towards a dead body of a child which was later on identified as the missing child Amit. While leaving the Police Farms -- the accused also pointed out towards barbed wires where a torn cloth piece was found entangled which resembled to the cloth piece of the shirt of the accused and it was also taken in possession. The other four accused of this case were subsequently arrested by the police on the same day. Investigations were carried out further which included holding of the inquest proceedings, conduct of post mortem on the body of the deceased etc. Specimen writing of accused Devender was also obtained and the torn cloth piece and shirt of accused Devender and the specimen writing and the ransom note were sent to Forensic Lab.'

3. The Trial Court acquitted the co-accused, Virender, Anand Kumar, Amar Singh and Pawan Kumar.

4. In order to establish their case against the appellant, the prosecution examined 16 witnesses. PW1, Jal Singh is the uncle of the deceased who was taking care of the deceased and his widow mother. This witness has testified that the deceased, Amit, aged 11 years left his house on 25.11.1994 and did not return. On intensive search, Amit could not be located as such a report was lodged with the police being Ex. PW 1/A on 28.11.1994. On the same day, a ransom note was found outside this witnesses's house wherein a demand of rupees two lacs had been made for the release of Amit. However, no one came at the place and time given in the ransom note, when this witness reached along with the police party. PW 1 has also testified to the telephonic call received at this neighbour's house which was attended by him to the same effect as was mentioned in the ransom note. This witness claims to have recognised the voice to be that of the accused-Devender who was his tenant in the house. PW 1 has further testified that on 30.11.1994 he along with the police party was searching for the accused-Devender who was located near a liquor vend at Loni Road and was apprehended. On interrogation, the accused made a disclosure statement and thereafter led the police party to Pushta, Yamuna Khadar and pointed out to a place which was fenced by barbed wire where the dead body of Amit was lying. The body was identified by PW 1. During identification of the body, PW 5, the Investigating Officer noted a small piece of cloth entangled with the barbed wire. This piece of cloth, prima facie, matched the cloth of the torn shirt worn by the accused person.

5. PW 2, Somender and PW 3, Amir Ahmad, have deposed to the effect that they had seen the deceased in the company of the accused on 25.11.1994 at Shastri Park. PW 4, mother of the deceased has testified to the effect that her son had left the house with accused Devender, at around 9.00 a.m. but did not come back. On search, the shop of the accused, Devender, was found closed and Devender could not be located. She has corroborated the version of the telephonic call received and the demand note. She has further testified that on 22.11.1994 she was informed by PW 2 and PW 3 that they had seen the deceased in the company of Devender on 25.11.1994, PW 5 is the Investigating Officer. He has testified to the effect that he took into possession the ransom note, Ex. PW 1 /B, and also went to the place indicated in the ransom note but no one came there. PW 8 is the Doctor who conducted post mortem on the body of the deceased. He deposed to the cause of death being 'asphyxia' due to strangulation. PW 13, SI Kuldeep, was member of the police party that apprehended accused-Devender. He deposed to the effect that Devender was found wearing a torn shirt and, on interrogation, made disclosure statement, Ex. PW 1/C which led to recovery of the dead body identified by PW 1, Jal Singh. The piece of cloth entangled in the barbed wire was also taken into possession. This piece of cloth matched cloth of the torn shirt worn by the accused-Devender. PW 16, Dr. V.K. Khanna, Sr. Scientific Officer, CFSL, examined the specimen writing of the accused with the writing on the ransom note and opined that the same were similar.

6. Learned Counsel for the appellant strenuously argued that there was a delay in lodging the FIR. He also argued that the case is based on circumstantial evidence and the opinion of the Handwriting Expert cannot be relied upon. therefore, the prosecution case fails due to the circumstantial chain being incomplete. As

regards the first contention, namely, the delay in lodging the FIR, the same has been explained by PW 1 who has stated that the deceased was in the habit of disappearing from his house and also habitually absenting himself from school. It was on this account that efforts were made to trace the child before a missing person report was lodged with the police. In any event of the matter, the delay in lodging the FIR in the present case does not help the accused in view of the evidence collected, namely, the recovery of the body at the instance of the accused the torn piece of cloth matching the torn shirt worn by the accused and also the conduct of the accused in absconding and not attending to his daily chore. Learned Counsel has not been able to show us any material on record which could belie the disclosure statement and/or the recovery made at the instance of the accused.

7. Scanning through the cross-examination of the recovery witness, we find that no attempt has been made to challenge the testimony of PW 1 and/or the Investigating Officer on this point. There has been no challenge to the recovery of the torn piece of cloth and/or its matching the torn shirt worn by the accused although there is great force in the argument of learned Counsel that the ransom note could not be compared with the writing of the accused during investigation while in custody as the same is not admissible under Section 73 of the Indian Evidence Act and cannot be opined on under Section 45 of the Indian Evidence Act by an expert. The so-called admitted hand writing was never taken before the Court seized of the matter. therefore, comparison of the ransom note with the specimen taken in contravention of law would not be admissible in evidence.

8. As we have noted above that even de hors the ransom note there is sufficient material to link the accused with the crime. The accused has baldly denied the occurrence and has chosen not to lead any evidence in his defense. We have carefully gone through the judgment of the Trial Court which has dealt with the aspect of recovery and linking the accused to the crime by placing reliance on the last seen evidence. We find no ground to differ with the same. Consequently, for the reasons given above, the conviction and sentence of life imprisonment of the appellant is upheld. However, the sentence of fine, in the peculiar facts and circumstances of this case, is set aside;

9. Criminal Appeal 358 of 1998 and Crl. M. 955 of 2002 are dismissed.

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