

**Mahabir Vs. State**

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**Court :** Delhi

**Decided On :** Mar-08-2007

**Reported in :** 139(2007)DLT155

**Judge :** R.S. Sodhi and; P.K. Bhasin, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 34, 302 and 394; Code of Criminal Procedure (CrPC) - Sections 207

**Appeal No. :** Criminal Appeal No. 430 of 2002

**Appellant :** Mahabir

**Respondent :** State

**Advocate for Def. :** Ravinder Chadha, APP and ; Jagdish Prasad, Adv.

**Advocate for Pet/Ap. :** Braham Singh, Adv. in Criminal Appeal No. 430 of 2002,; Charu Verma, Adv. in Criminal Appeal No. 545 of

**Disposition :** Appeal dismissed

**Judgement :**

**R.S. Sodhi, J.**

1. Criminal Appeal Nos. 430/2002, 545/2003 and 328/2005 seek to challenge the common judgment and order of the Additional Sessions Judge dated 16.2.2002 in

Sessions Case No. 92/1997, arising out of FIR No. 177/97, Police Station, Srinivaspuri, whereby the learned Judge has held Mahabir, Jalvir and Mahesh guilty of the offences under Section 394/302/34 IPC. Further, by a separate order of the same date, the learned Judge has sentenced all the three appellants to undergo rigorous imprisonment for ten years under Section 394/34 IPC and a fine of Rs. 500/- each, in default of payment of fine further simple imprisonment for one month each. The learned Judge has also sentenced the appellants under Section 302/34 IPC to life imprisonment and a fine of Rs. 500/- each and in default of payment of fine, further simple imprisonment for one month each.

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

that Smt. Seema Sharma gave statement to the police alleging that on 24.2.1997 at about 4.15 P.M. she was present in her house bearing No. 28-B, pocket-B Sidharth Extension, New Delhi when she heard that her door bell rang and her maid servant Kamla @ Kharpai allegedly went to open the door. Accused Jalveer who is allegedly to be related to the complainant along with his three associates entered the house. Complainant was allegedly standing in the balcony where all the four reached. All the three associates of accused Jalveer took out knives, Jalveer also took out knife from his pocket. Two of the associates of accused Jalveer caught hold of the complainant and dragged her to her bed room where she was beaten and accused allegedly made enquiries about gold kept in her house and when she did not give any information, they kicked her on her stomach. They allegedly removed a gold chain along with locket and jumkas with chain from her ear. When Kamla, the maid servant of the complainant, allegedly started trying to intervene, two of the associates of the accused Jalveer tied a blouse around her neck as a result of which the complainant fell unconscious for sometime. After sometime she is alleged to have heard the screams of Kamla @ Kharpai, her maid servant, and when she saw, a nylon string is alleged to have been tied around her neck and she was lying on the floor, Jalveer along with his associate thereafter allegedly fled away from the spot. Complainant was admitted in the hospital. Police party reached at the spot, dead body of Kamla was removed to AIIMS where postmortem was conducted on her dead body. Subsequently, accused

Mahabir and Mahesh are alleged to have been arrested by the police of police station Hazarat Nizamuddin. A VCR, ear rings of this case belonging to complainant were allegedly recovered from their possession. They allegedly made disclosure statements regarding this case therefore, they were arrested in the present case. Police applied for holding TIP of accused Mahesh and Mahabir but they refused to join the proposed TIP. The TIP of jewellery articles and VCR allegedly recovered from the accused Mahabir and Mahesh was got conducted by the Metropolitan Magistrate. The complainant correctly identified the articles as well as the jewellery allegedly recovered from the possession of these accused persons. Subsequently, accused Jalveer was arrested in this case and Roopa was also formally arrested in this case after production warrants were issued. Photographs of the place of incident were taken, site plan was got prepared, finger prints were allegedly lifted from the place of incident. Statement of witnesses were recorded by the police and after investigation of the case they came to the conclusion that the accused persons committed the murder of maid servant Kamla and they also committed robbery in the house of complainant. Accordingly, the present challan was filed.

After complying with the provision of Section 207 Cr.P.C. Ld. Metropolitan Magistrate committed the case to the court of Sessions which in turn assigned the same to this Court for trial in accordance with law.

3. The Prosecution, in order to prove its case, examined 19 witnesses. Of these, Complainant, PW-4, Smt. Seema Sharma, is the eye-witness to the incident. Inspector Aman Sagar is the Investigating Officer who recorded the statement of Smt. Seema Sharma and sent the same through PW-8, Constable Om Prakash, for registration of the FIR. PW-7, HC Surender Kumar, on receipt of the rukka, recorded the FIR, Ex. PW-7/A. The scene of the crime was photographed. The Investigating Officer seized broken pieces of bangles and blouse lying at the place of incidence. Crime team was called. PW-17, SI Ravinder Singh Yadav, prepared the crime team report, Ex. PW-17/A, and lifted the finger prints. PW-14, SI Madanpal prepared the site plan of the place of incidence, Ex. PW-14/A. Accused Mahesh and Mahabir were arrested on 10.3.1997 by PW-15, Inspector Suresh Kaushik, of Police Station Hazrat Nizamuddin. The VCR was recovered from the

car and the golden ear rings from the pocket of the trousers.

4. PW-4, Smt. Seema, has stated in her deposition in Court that on 24.2.1997 she along with her husband and children was residing at House No. 28- B, Siddharth Extension. At about 3.40 p.m. she was standing on the balcony of her flat when the door bell rang and she asked her maid servant, Kamla, to answer the call. Kamla opened the door and two persons, namely, Jalvir and Mahesh, correctly identified in Court, entered the house. The witness went in and saw the accused standing on the table. At that time Roopa and Mahabir, correctly identified in court, came running with knives in their hands and all of them surrounded Seema. Roopa asked her to hand over the keys of her house. Seema resisted and tried to escape on which Mahabir obstructed her way and Roopa caught hold of her by her hair. She was dragged inside her bed room where Roopa, Mahabir and Mahesh beat her with fists and kicks. Roopa attacked her with a knife on her stomach and throat while kicking her in stomach and demanding keys. In the meantime, they had snatched the gold chain and locket from her neck. The witness was then thrown on the bed and Mahabir and Mahesh tried to smother her with the help of a pillow, all the time demanding the keys. Thereafter, they dragged her by hair to the second bed room where they again inflicted beating. At this time, her maid, Kamla, who tried to intervene was dragged by Jalvir into the third bed room from where the witness heard shrieks. Mahabir took out a plastic rope from his pocket and tied the same on her neck while Mahesh plucked her ear rings from the earlobes. She was then dragged to the bathroom by Roopa, Mahesh and Mahabir and tied with the plastic rope against her neck. Roopa, Mahesh and Mahabir caught the witnesses's five year old daughter and pressed her mouth with the result she defecated out of fear. Thereafter, the accused persons left. Some members of the neighborhood came to her house and untied the knot tied around her neck. The witness goes on to depose that her entire house was ransacked and that she was fully conscious at that time. She claims that her gold chain, locket, VCR, ear rings and chain were taken away by these accused persons and were found missing. The witness lost consciousness and was taken to the hospital where after four days she came to know that her maid servant, Kamla, had died. Her statement, Ex. PW-4/A, was recorded by the Police on 24.2.1997 which bears her signatures. Accused Mahesh and Mahabir were arrested on 20.3.1997 and brought to her

house where she identified them as the culprits. Roopa was arrested by the Police later on and identified as well. Jalvir was also arrested, he too was identified. The pointing out memo of Mahavir, Ex. PW-4/B, was prepared in the presence of this witness. Memo Ex. PW-4/C was also prepared in her presence as also Ex. PW-4/D. The VCR and one ear ring was released to her on superdari by the Court which she brought to the Court. She goes on to depose that the case property given to her on superdari consisted of VCR, gold chain and one ear ring. The VCR is Ex. P-1, ear ring is Ex. P-2 and the gold chain Ex.P-3. She identified the ear ring, chain and VCR during test identification parade conducted by Shri V.K. Bansal on 16.5.1997. Her statement, Ex. PW-4/E, was recorded.

5. In cross-examination, she states that she was in a position to speak when she reached Jeevan Hospital from AIIMS. She also states that her statement was recorded at Jeevan Hospital on 24.2.1997. She also states that during investigation she came to the Court of the Metropolitan Magistrate twice, once for identification of the VCR and on the second occasion to receive the VCR and other items. She was discharged from Jeevan Hospital after 10-15 days. She deposes that she saw Mahesh and Mahabir in Tihar Jail and also in the Court when she came to take her VCR. She testifies that she had seen Mahesh at the time of arrest also. In fact, Police had brought so many persons during test identification parade and asked me to identify the accused out of the lot. Jalvir used to visit her house frequently as he was related by marriage.

6. PW-17, SI Ravinder Singh has proved that he lifted the chance print from the place of incidence and has proved the report as Ex. PW-17/A. PW-14, SI Madanpal has prepared the site plan, Ex. PW-14/A. PW-3, Constable Girdhar Singh took photographs, Ex. P-1 to P-18. He also proved the negatives as Ex.P-19 collectively. PW-19, Inspector Anand Sagar, is from the crime team. PW-15, Inspector Suresh Kaushik has deposed to the arrest of Mahabir and Mahesh on 10.3.1997. He deposes that both the accused were arrested on the basis of a secret information while they were traveling in a car near Nizamuddin Yamuna bridge. The VCR wrapped in a gown was recovered from the car which was taken into possession vide Memo Ex. PW-15/B. Gold ear ring is alleged to have been recovered from the pocket of Mahabir. FIR of Police Station Nizamuddin was

proved as Ex. PW-3/A. PW-2, HC Brahampal, has proved the receipt of rukka from SI Udaibeer while Constable Praveen Kumar recorded the FIR, Ex. PW-3/A.

7. PW-19, Inspector Anand Sagar, deposes to the effect that he moved an application before the Metropolitan Magistrate on 13.1997 for Police remand of the accused who were already in custody in another case. He also moved an application for re-fixing test identification parade on 15.03.1997. The test identification parade was fixed for 19.03.1997. PW-13, V.K. Bansal, Metropolitan Magistrate went to the jail but the accused persons refused to join TIP on the ground that they were already shown to the witness. Roopa @ Roop Singh was also formally arrested in this case after he was produced in the Court of the Metropolitan Magistrate on production warrants. His arrest memo is Exhibit PW-13/M. He too declined test identification parade. The CFSL report, MLC and X-Ray report of the complainant, Seema Sharma, were proved as Exhibits PW-19/D, PW-19/E and PW-19/F by Inspector Anand Sagar.

8. It was argued by learned Counsel for the appellant that the testimony of PW-4, Seema Sharma, is not worthy of being relied upon since her testimony regarding identification in court is of no value as Mahesh and Mahabir were not known to the witness prior to the incident and that they were shown to her earlier. This aspect of the matter has been dealt with by the trial court when it holds that no doubt Seema had seen the accused persons at the time of arrest, yet the fact remains that accused Mahesh and Mahabir were arrested on 10.3.1997 by PW-15, Suresh Kaushik, thereafter produced before the Metropolitan Magistrate and remanded to judicial custody. An application was moved to hold test identification parade for both the accused on 13.3.1997 which was fixed for 15.3.1997 by the Metropolitan Magistrate. However, the accused could not be produced for test identification parade which was then re-fixed for 19.3.1997 on which day they refused to participate even though the accused were taken to the place of incidence on 20.3.1997. The accused, at no time before the Metropolitan Magistrate, either on 10.3.1997 or subsequent thereto made a complaint that they had been shown to the witness. Even otherwise, identification of the accused by Seema Sharma can hardly be said to be of no effect since she had identified them in Court as being the same persons who were involved in causing injuries to her as also the murder

of her maid. She was indeed the best person to have identified the culprits and she had no reason to substitute the real ones.

9. It was also argued that the recovery of VCR and ear rings from the possession of Mahabir and Mahesh is doubtful since there was no mention of the VCR or the ear rings in the complaint lodged by the complainant. There is nothing to connect the recovery of the VCR and the ear rings with the incident. This argument of the learned Counsel, finds no merit with us since the complaint is not the thesis of the entire occurrence but information regarding a cognizable offence. At the time the complaint was made and the state in which Seema was, it is unjust to expect her to remember each and every item that was stolen from her or her house. In any event, the articles were duly identified by Seema before the Metropolitan Magistrate and the identification of articles before the Metropolitan Magistrate, in no way, is faulty. Much has been made of description of ear rings and ear tops and the tika, but what was identified by the witness was the jewellery which belonged to her. The testimony of PW-4, Seema, is above board and can be relied upon to the fullest extent. No doubt, the injuries stated by Seema in her complaint inflicted on her stomach and throat were not present when medically examined, but that can well be explained, as during the course of assault on her it is likely that she was threatened and there was a close encounter of knife injury which she merely related at the time of making of the complaint. This cannot be said to be an infirmity of the nature as to discard her evidence. Once the testimony of PW-4, Seema, is believed, there is little or no possibility of any of the accused persons to be wrongly tried and convicted. The trial court has answered each and every argument advanced before it which also was merely reiterated before us, we find no infirmity in its evaluation of material placed before it. We too have examined the case from all aspects with the aid of learned Counsel and, as already noted above, believe PW-4, Seema, as a reliable witness and her testimony squarely proves that accused, Mahabir, Mahesh and Jalvir entered her house on 24.2.1997, beat her up, removed her jewellery and killed Kamla. The medical evidence together with the testimony of this witness leaves no manner of doubt that the appellants before us are guilty of the offences charged.

10. Accordingly, we uphold the judgment of conviction and order of sentence dated 16.2.12002. Criminal Appeal Nos. 430 of 2002, 545 of 2003 and 328 of 2005 are dismissed. Accused, Mahesh is stated to have jumped bail. He shall be taken into custody forthwith to serve out the remaining portion of the sentence.

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