

Sanjay Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-24-2006

Reported in : RLW2006(2)Raj1521; 2006(2)WLC632

Judge : Shiv Kumar Sharma and; R.S. Chauhan, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 363 and 364

Appeal No. : D.B. Criminal Appeal No. 662 of 2003

Appellant : Sanjay

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : M.K. Kaushik, Adv.

Disposition : Appeal allowed

Judgement :

R.S. Chauhan, J.

1. The unfortunate death of Vishnu, a ten year old boy, is shrouded in mystery. The half-baked testimonies of Prosecution witness have not solved the enigma of his death. Yet, vide judgment dated 13.9.2002, the Additional District and Sessions Judge, (Fast Track) No. 2, Dholpur has convicted the appellant for

Vishnu's abduction and murder. For offence under Section 364 IPC the learned Trial Court has sentenced the appellant to ten years of rigorous imprisonment and imposed a fine of Rs. 1000/- and to further undergo a sentence of three months of imprisonment in default thereof. For offence under Section 302 he has been sentenced to Life Imprisonment and imposed with a fine of Rs. 2000/- and to further undergo an imprisonment of six months in default thereof.

2. The brief facts of the case are that on 17.10.2000, one Kedar Singh lodged a written report at Police Station Kotwali, Dholpur wherein he stated that 'his son, Vishnu is ten years old and is studying in the second class. After school, his son used to go to the Jagdish Talkies and used to sell biscuits there. Yesterday, he went to sell the biscuits around 6:00 O'clock in the evening and was supposed to come back by 8:00 o'clock. But, last night he did not return home. We, therefore, started searching for him. Dinesh told him that Sanjay, who lives in Kayastha Pada, was seen holding Vishnu's hand at around 7:00 o'clock. We kept on looking for Vishnu, but haven't been able to find him. Sanjay is a bad boy. He has abducted my son. He can even kill my son. I request you to take action'

3. On the basis of the said report, the Police chalked out a formal FIR, FIR No. 274/2000, initially for offence under Sections 363 and 364 IPC. However, with the discovery of Vishnu's body on the next day, the offence of Section 302 IPC was added. Eventually, the appellant was charge sheeted for the abovementioned offences.

4. In order to prove its case, the Prosecution examined fourteen witnesses and submitted sixteen documents. Although the defense did not examine any witness, it did submit four documents. After considering the oral and documentary evidence, the learned Trial Court was pleased to convict and sentence the appellant as aforementioned.

5. Mr. M.K. Kaushik, the learned Counsel for the appellant, has argued that the case is based on circumstantial evidence. The appellant's conviction is based on the evidence of 'the last seen', and on the recovery of his trouser, which is said to contain human blood according to the FSL Report (Ex. P. 16). The evidence of last seen is based on the testimony of Dinesh (P.W. 10) and Mahesh (P. W. 13).

However, according to the learned Counsel, both these witnesses are unreliable as their testimony has been shattered in the cross-examination. Further, the prosecution has failed to prove the alleged recovery of the trouser as the Prosecution has not examined the recovery witnesses. Therefore, the chain of circumstantial evidence is incomplete. Hence, the conviction is illegal.

6. On the other hand, Mr. R.P. Kuldeep, the learned Public Prosecutor has argued that the chain of circumstances is not only complete, but it also points unerringly to the appellant's guilt. Therefore, he has supported the impugned judgment.

7. We have heard both the counsels and have critically examined the record and perused the impugned judgment.

8. Dinesh (P.W. 10) is the star witness of the Prosecution. He is also related to the deceased as they were cousin brothers. Although in his examination-in-chief he claims that on 16.10.2000 he did see the appellant take away Vishnu with him, in his cross-examination he states that along with the appellant there was another person who took away the deceased. In his examination-in-chief, Dinesh says that 'at night about 10:00 PM, Vishnu's father came to me and I told him that I had seen Sanjay taking away the boy.' Yet, in his cross-examination he states that he did not tell anything to Vishnu's father about Sanjay taking away Vishnu. Therefore, he contradicts himself on the point about the last seen and about his informing the complainant. In the first part of the cross-examination, Dinesh claims that he and Ors. went to Sanjay's house in the morning of the 17th. But, in the later part of the cross-examination he denies this fact. Hence, the testimony of this witness is replete with self-contradiction. Such a witness is an untrustworthy witness as he keeps on changing his stand. No reliance can be placed on such a witness for convicting the accused appellant.

9. Similarly, Mahesh (P.W. 13) gives a self-contradictory testimony in the court. In his examination-in-chief he states that he saw Sanjay taking Vishnu with him. But, in his cross-examination he states that he merely saw Sanjay talking with Vishnu in the inner courtyard of the Talkies. Hence, according to the cross-examination he did not see Sanjay taking the child away, but only saw them talking to each other in the courtyard. Hence, even his testimony is insufficient to prove the evidence of

'last seen.'

10. The alleged recovery of the trouser is not much of a help to the Prosecution case. According to the Recovery Memo of the trouser (Ex. P. 4) an old trouser which is ripped from both the sides, having few drops of blood was recovered from the house of the accused at his instance. According to the FSL Report (Ex.P- 16) the pant had blood of 'B' group. According to Mahesh (P.W. 13) Sanjay had come to see a movie on the fateful day. It is unbelievable that Sanjay would go to see a movie in a trouser, which is ripped from both the sides. The Prosecution has also not examined the Recovery witnesses of the said recovery. The withholding of the material witness should be read as adverse to the Prosecution case. The possibility that the Recovery witness would not have supported the prosecution case cannot be ruled out. Hence, the recovery of the trouser is doubtful.

11. The FSL Report merely shows the presence of 'B' blood group on the said trouser. Before the Prosecution can derive benefit from the said Report, it was its duty to eliminate the possibility that the said blood group does not belong to the accused himself. In a case based on circumstantial evidence, It is the duty of the Prosecution to establish its case with clear and cogent evidence. Before, circumstances can be held to unerringly point to the guilt of the accused the other reasonable possibilities arising out of the circumstances have to be eliminated. But, the Prosecution has not eliminated the possibility that the blood group could be of the accused also. Therefore, although a strong suspicion may arise that the blood on the trouser did belong to the deceased, as the same blood group was found on the stone and the blood smeared soil, but even then strong suspicion cannot take the place of the legal proof. Hence, even the alleged recovery and the FSL Report does not buttress the Prosecution case.

12. But for these two circumstance, which have not been established beyond a reasonable doubt, there is no other evidence against the accused appellant. Therefore, the Prosecution has failed to unerringly point to the guilt of the accused appellant.

13. For the reasons, we allow the appeal and set aside the conviction and sentence of the appellant under Sections 364 and 302 IPC. We acquit him of the

said charges. Appellant Sanjay, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

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