

Vinod Kumar Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-24-1994

Reported in : 1994(2)WLC155; 1994(1)WLN370

Judge : M.R. Calla and; Y.R. Meena, JJ.

Appeal No. : D.B. Criminal Appeal No. 244 of 1993

Appellant : Vinod Kumar

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

M.R. Calla, J.

1. This criminal appeal Under Section 374 Cr.P.C. is directed against the judgment and order dt. 9.6.93 passed by the Sessions Judge, Baran, in Sessions Case No. 80/92 whereby the appellant has been convicted Under Section 302 and 364 IPC and sentenced to imprisonment for life and a fine of Rs. 200/- Under Section 302 IPC and Under Section 364 IPC, he has . been sentenced to five years' R.I. and a fine of Rs. 100/-, in default, he has been awarded three months' further R.I.

2. The alleged incident is said to have taken place in the early hours of 10th May, 1992. A written report was lodged at Police Station Anta on 10.5.1992 being FIR

No. 77/92 and on the said report, a case was registered Under Section 364 IPC. The written report which was lodged is Ex.P.7 and as per this report, the allegations are as under:

3. Smt. Nirmala Bai wife of the accused appellant has stated in the report that she was married to the appellant Vinod Kumar about 10-12 years back. Two years prior to the date of incident, a child was born to them who is named Nitesh. She has also stated that her husband had entered into a second marriage with Bhuli Bai of Rajapura and this marriage had taken place contrary to her (Nirmala Bai's) wishes and also contrary to the wishes of her father-in-law and the family members. Thereafter, her husband started living with Bhuli Bai at Anta in a rented house, while the son Nitesh and she herself were living with her father-in-law Devlal at Alipura itself. Her husband did not use to go to Alipura and they were not maintaining cordial relations and there used to be quarrel. On 5th May, 92 her father-in-law and other members of the family had gone to attend some marriage at Doongariaji and in their house at Alipura, Smt. Nirmala was there with her sister-in-law Chandrakala. Her husband came to Alipura on that day and told her that she should accompany him to Anta and they will live together there. She believed her husband and proceeded with him along with her son Nitesh to Anta where there used to be some exchange of words between Bhuli and her with an interval of 2-3 days. On 9.5.92 at about 10 or 11 in the night, her husband, the present appellant, told her that he may drop her at her parental house and she along with Nitesh were carried in a Jeep from Anta for Laxmipura. It has been alleged that she was dropped out from the Jeep between her village and Baran and the appellant Vinod Kumar returned with Nitesh. When she told that why she was being dropped out and where the child Nitesh was being taken, he told that this only would clear your and my way. There from, she reached her parental home and narrated the whole story to her mother. On 10.5.1992, at about 8 O'clock, she came to Anta along with her mother from Laxmipura and found that her husband and her son were not available in the house where they were living. She sent information to her father-in-law at Alipura, and she has also stated that she suspected that her husband Vinod Kumar might have killed her son. Upon this report, a case Under Section 364 IPC was registered and at about 2 p.m. the present appellant was arrested as per the arrest memo (Ex.P.10). Ex.P.11 is the

information given out by the appellant Under Section 27 of the Evidence Act, which shows that he had thrown his son in Kalisindh river near the bridge of the Railway line and thereafter, the body of the child was recovered from the river Kali Sindh. The post mortem report is Ex.P.6 and in the opinion of the doctor, the cause of death is asphyxia as a result of drowning. Thereafter, the case was registered Under Section 302 IPC also. The statement of the witnesses were recorded Under Section 161 Cr.P.C. and after completion of the investigation, challan was filed.

4. The accused appellant has faced the trial for the offenses Under Section 302 and 364 IPC. The prosecution examined ten witnesses and thereafter, the statement of the accused appellant was recorded Under Section 313 Cr.P.C. and two witnesses have been examined in defence.

5. Learned Sessions Judge, Baran, by the order dated 9.6.1993 recorded the appellant's conviction Under Section 302 and 364 IPC and has sentenced him, as stated above. Against this order dated 9.6.1993, the present appeal has been preferred.

6. In this case, there is no eye witness of the incident and the material witnesses are Smt. Nirmala Bai (PW-6), driver Bheru Lal (PW-8) and Kanhaiya Lal (PW-9) who had dived in the Kali Sindh river and brought out the body of the child. PW-5 is Gouri Shankar in whose rented house the appellant was residing at Anta and who is also the scribe of the FIR and PW-3 Rais is the witness relating to the recovery of the dead body of the child. As per the post mortem report, the cause of death is asphyxia on account of drowning and therefore, the child has died but the statement of PW-6, Smt. Nirmala Bai shows that the fact that the appellant had killed the child Nitesh and had thrown him in Kali Sindh river, was known to her prior to the filing of the FIR. She has categorically stated in the examination in chief that when, she went to the rented house where the appellant used to live in Anta, she had met Vinod Kumar and he revealed that he had killed the child and had thrown him in the river Kali Sindh. She has failed to explain as to why this fact was not mentioned in the FIR when it was already in her knowledge at the time when the FIR was lodged. Not only this, she also admits in the cross-examination

that the report (Ex.P.7) written by Gouri Shankar had been read over to her and she has nothing to say as to why this was not so mentioned in Ex.P.7 and she has also stated that the report had been made after the disclosure of this fact by Vinod Kumar to her that he had killed the child and had thrown him in the river Kali Sindh. She has also stated in the cross-examination that there had been no quarrel between her and her husband nor was she beaten by her husband at any point of time. Thus, the statement of this witness PW-6 Smt. Nirmala Bai in material aspects does not inspire confidence and militates against the credibility of the FIR particularly because of the absence of the disclosure of the fact of killing and throwing the child in the river by Vinod Kumar despite the fact that it was in her knowledge at the time of filing FIR. The absence of the mention of such a vital fact in FIR renders the whole story to be suspicious when the same has remained totally unexplained.

7. PW-5 Shri Gouri Shankar who is the scribe of the FIR has turned out to be hostile and similarly PW-3 Rais and PW-9 Kanhaiya Lal who were witnesses of the recovery of the dead-body of the child have also turned hostile. PW-8 Bhairu who was the driver of the Jeep in which Smt. Nirmala Bai and the child were carried and after dropping out Smt. Nirmala Bai, in the same Jeep the appellant is said to have come back along with the son Nitesh, does not throw any light because all that he says is that he had carried them to the village in the Jeep and Smt. Nirmala Bai was dropped out near the in-laws' house of Vinod and Vinod had returned in the said Jeep along with the child, therefore, his statement is only relevant to the extent that the child was in the company of the accused-appellant Vinod Kumar immediately before the incident.

8. The consideration of the entire evidence as it has become available in this case, does not indicate any motive for the appellant Vinod Kumar to cause death of his two years' old son Nitesh and besides the lack of the motive which is not even alleged, what to talk of being proved in evidence, we find that there is no direct evidence in this case. The circumstantial evidence on which the reliance has been placed against the appellant for the purpose of recording his conviction Under Section 302 and 364 IPC does not establish the links from the beginning to the end. The only incriminating evidence against the appellant in this case is that the

deceased child is his own son and was in his company immediately before the incident and that the appellant has furnished information Under Section 27 of the Evidence Act pointing out the place where the dead-body of the child had been thrown and was recovered. Besides the fact that the witnesses relating to the recovery have turned out to be hostile, it is considered to be quite natural for a son to be in the company of his father and there is no evidence of any sterling worth to show that the appellant had actually killed the child and had thrown him in the river Kali Sindh. Merely because the child was in the company of his father and merely because the appellant had pointed out the place where from the dead-body of the child was recovered, it cannot be said that these circumstances are sufficient to hold the appellant guilty for the commission of the offence Under Section 302 IPC and so far as the offence Under Section 364 IPC is concerned, there is no question of this offence being taken to be proved against the appellant as the deceased was his own son and son being with the father is something natural. Their lordships of the Supreme Court have considered the law relating to circumstantial evidence in *Baxi Singh v. State of Punjab* : 1971 CriLJ1452 on which reliance has been placed by the learned Counsel for the appellant and according to the Supreme Court, even if a person is not a party to the murder, he could as well come to know the place where the dead body of the deceased had been thrown. The law relating to circumstantial evidence is settled and in this very judgment in the case of *Baxi Singh* (supra), Supreme Court has observed as under:

The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

9. Having considered the entire evidence and the record, we are of the opinion that the prosecution in this case has failed to prove the guilt to the hilt and it cannot be said that the appellant had killed the child and thrown him in the river Kali Sindh and in the circumstances of this case, the appellant is entitled to the benefit of doubt.

10. The result is that this appeal succeeds and the same is allowed. The conviction and sentence of the appellant Under Section 302 and 364 IPC as recorded and awarded by the learned Sessions Judge, Baran is set aside, and the appellant is acquitted of the offences Under Section 302 and 364 IPC. The appellant is in Jail. He may be released forthwith, if not required in any other case. Record of the case may be sent back.

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