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**Lal Dev Parsad Vs. State**

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**Court** : Delhi

**Decided On :** Mar-25-2010

**Judge** : Pradeep Nandrajog and; Suresh Kait, JJ.

**Appeal No.** : Crl. Appeal No. 216/2010

**Appellant** : Lal Dev Parsad

**Respondent** : State

**Advocate for Def.** : M.N. Dudeja, A.P.P.

**Advocate for Pet/Ap.** : S.B. Dandapani, Adv.

**Disposition** : Appeal dismissed

**Judgement** :

**Pradeep Nandrajog, J.**

1. With consent of learned Counsel for the parties, while admitting the appeal on 2nd March 2010, it was directed that the appeal would be listed for hearing today in the category of 'After Notice Miscellaneous Matters'.

2. Accordingly, the appeal has been heard for final disposal today.

3. Believing the testimony of Smt. Sunita PW-2, the learned Trial Judge has convicted the appellant for the offence of having sodomised Baby 'S' as also for

having murdered Baby 'S'.

4. That Baby 'S' was sodomised stands established through her post-mortem report Ex.PW-15/A proved at the trial by Dr. Anil Shandil PW-15. External injury No. 2, being a bruised tear with abrasion and laceration extending from the anal margins into the anus itself with adherent specs of blood, show that Baby 'S' was sodomised.

5. That Baby 'S' was strangulated to death as a result of manual strangulation is evidenced from external injury No. 1 on the neck of Baby 'S' which records multiple pressure abrasion with bruising and crecentic marks over front and sides of neck and base of chin. Indeed, the internal examination shows extravassation of blood in the neck muscles and the tissues. Cause of death recorded is asphyxia resulting from manual strangulation.

6. Information of Baby 'S' being found dead next to her mother in the jhuggi where Baby 'S' slept with her mother in the intervening night of 17th and 18th June 2005 was reported at the local police station by Rajbir PW-11, a jhuggi dweller in the same complex, as deposed to by Rajbir himself. The information was recorded at the police station vide DD No. 29A at 3:45 AM i.e. when dawn had yet to rise on the horizon and it was still night time of the intervening night of 17th and 18th June 2005.

7. Copy of DD No. 29A was entrusted to SI Bhagwat Prasad for investigation and accompanied by Insp.Ramesh PW-14, he i.e. SI Bhagwat Prasad went to the place where the crime was committed i.e. the jhuggi cluster opposite factory No. F-1862, DSIDC Complex, Narela. As deposed to by Insp.Inderjeet Singh PW-19, he was the Addl.SHO of PS Narela and even he received information of the crime and even he left for the spot, where he met SI Bhagwat Prasad and Const.Ramesh. Since, in the meanwhile the PCR officers had removed Baby 'S' to MB Hospital, he proceeded to the hospital, where he learnt that Dr. Jai Kumar PW-5, the Medical Officer of MB Hospital had, after examining Baby 'S', declared her 'brought dead', as per MLC Ex.PW-5/A. Insp.Inderjeet Singh took a copy of the MLC and he met the mother of Baby 'S', namely, Smt. Sunita PW-2, whose statement Ex.PW-2/A was recorded by him. Making an endorsement Ex.PW-19/A

beneath the statement of Smt. Sunita, he sent the same for FIR to be registered recording, therein that the time of dispatch of the teherir was 11:30 AM on 18.6.2005.

8. Vide DD No. 9A, the FIR Ex.PW-12/B was registered for the offence of murder at PS Narela by HC Sumitra PW-12.

9. In her statement Ex.PW-2/A, Smt. Sunita informed that along with her husband and children she was residing at a jhuggi opposite factory No. 1862 and her husband used to ply rickshaw on hire to transport material in between the factories at Narela. She was blessed with 4 children and eldest being a daughter, Baby 'S', aged 9 years. That the appellant used to visit their jhuggi complex and was a friend of her husband. Last night she prepared fish curry and rice. Her husband and the appellant consumed alcohol. The family members i.e. her children ate fish curry and rice. The appellant and her husband completed their drinking session by 12:00 midnight and took food. She i.e. Sunita slept along with her daughter Baby 'S' and her son Deepak next to the door of their jhuggi. They unrolled a plastic sheet on the floor and all three i.e. she, her daughter Baby 'S' and her son Deepak slept thereon. Her husband slept on his rehri parked just outside along with her other daughters. Appellant went to sleep in the jhuggi of one Guddu (Guddu Prasad PW-7) which was adjoining their jhuggi. Around 3:00 in the night, the crackling sound of plastic sheet disturbed her sleep and as she opened her eyes she saw the appellant place her daughter Baby 'S' next to her on the plastic sheet. She enquired from the appellant as to where from was he bringing her daughter. He responded that he saw her daughter sleeping elsewhere. She shook her daughter who did not respond. She sensed something wrong. She yelled. The appellant ran away. Jhuggi dwellers in the neigbourhood gathered and somebody informed the police who took her daughter to the hospital.

10. Needless to state, the appellant was the suspect. He was searched out and apprehended the same day and was got medically examined at RHTC Najafgarh by Dr. Anand Bihari PW-4 who wrote on the MLC Ex.PW-4/A that the appellant was capable of sexual intercourse and that smegma was absent on the penis of the appellant. As deposed to by Dr. Anand Bihari, he took the semen sample and

blood sample of the appellant and handed over the same along with the undergarment and loose pubic hair of the appellant to the investigating officer.

11. The slides prepared from the anal swab and the vaginal swab of the young unfortunate girl, were sent for forensic examination and relevant would it be to note that semen has been detected on the swab pertaining to the anal swab.

12. Deposing in Court as PW-2, Smt. Sunita, the mother of the deceased fully supported the case of the prosecution and has deposed substantially in sync with her statement Ex.PW-2/A.

13. Nothing has been shown to us with reference to her testimony which discredits her version.

14. Ram Dayal PW-3, the father of the young unfortunate girl, on being cross-examined stated that there was no place between his rickshaw rehri and the place where his wife and children were sleeping and that there was no intervening space for any person to enter.

15. Guddu Prasad PW-7 has deposed that at around 12:00 PM in the intervening night in question the appellant came to his jhuggi to sleep after consuming liquor and eating fish and rice at the jhuggi of Ram Dayal. He deposed that at around 2:30 AM, wife of Ram Dayal raised an alarm. He i.e. Guddu Prasad and his wife woke up and learnt that the appellant had left Baby 'S' in her jhuggi in a dead condition. He deposed that the mother of the child was so saying.

16. Relevant would it be to note that Guddu Prasad has not been cross-examined save and except a suggestion put to him which he admitted, that he did not see the accused commit the offence.

17. Suffice would it be to state that the testimony of Guddu Prasad would be res gestate evidence of the conduct of the mother of Baby 'S' i.e. Smt. Sunita PW-2. Her contemporaneous utterance in the middle of the night that the appellant had fled after leaving her daughter next to her in her jhuggi, as deposed to by PW-7, corroborates what has been deposed in Court by Smt. Sunita.

18. Two submissions have been urged at the hearing of the appeal before us. Firstly that the testimony of the father of the victim as also the fact that there were jhuggies nearby, render it improbable that the appellant would be in a position to commit the crime as sought to be proved. The second submission is that DNA analysis of the semen sample of the appellant with reference to the semen detected on the anal swab of the deceased not having been done, the appellant should be entitled to the benefit of a doubt.

19. As regards the first plea, suffice would it be to state that it has not been disputed that Baby 'S' was found dead next to her mother in the jhuggi where she and her mother slept, with her father sleeping on the rehri at the door outside the jhuggi. That Baby 'S' has been sodomised and smothered to death is also not in dispute. That a crime has been committed is not in dispute.

20. Now, Baby 'S' could be sodomised and strangulated to death either in the jhuggi itself where she slept or somebody took her out and after committing the offence brought her back. That Baby 'S' was sleeping next to her mother with her father sleeping outside renders it next to impossible that she could be sodomised inside the jhuggi and then strangulated to death. It is apparent that the young girl who was in deep slumber was removed to a spot somewhere else and after the crime was committed, to confuse the investigator, she was brought back.

21. We note that the month of June in Delhi is a fairly hot and humid month. It is difficult to sleep in a jhuggi till the temperature cools. It is apparent that the young victim slept late night and was in deep slumber. She was aged 9 years. Experience tells us that children of the said age have a deep sleep and in their sleep can be shifted from place to place. We have seen this and experienced this whenever there are marriage functions in the families. As elders party late night, children sleep. They are shifted from the drawing room to the bed room of the house without their sleep being disturbed.

22. It is apparent that the appellant could move into the jhuggi where Baby 'S' was sleeping and lifted her and took her to some other spot. After subjecting the poor little girl to a sexual assault and strangulating her, he brought her back. Thus, nothing much turns on the admissions of the father of the girl that there was no

place for anyone to enter the jhuggi.

23. That the father of the young girl detected nobody move into the jhuggi is explainable. He was drunk. That PW-2 could not detect anyone enter her jhuggi when her daughter was removed is explainable because she was in deep slumber. Be that as it may, the fact of the matter remains that somebody has removed her daughter away and has brought her back. The only issue is as to whether the appellant is the person.

24. From the testimony of PW-2 it is apparent that the appellant was seen by her as the person putting her daughter besides her side at around 3:30 AM in the night.

25. Guddu Prasad PW-7 has categorically deposed that around 12:00 in the night the appellant came to sleep in his jhuggi. He has deposed to the res gestate conduct of PW-2. Relevant would it be to note that he has not deposed that when all this was happening, the appellant was still sleeping in his jhuggi. It is apparent that the appellant was nowhere to be seen at around 3:30 AM in the night. His abscondence is another piece of circumstantial evidence against him.

26. That no smegma was found on the penis of the appellant the day next is also indicative of that he had indulged in a sexual relationship. We note that the appellant has nowhere explained the circumstances under which smegma was not detected on his penis. We note that as per the MLC the appellant had not undergone circumcision.

27. No doubt it was desirable to subject the semen of the appellant to a DNA analysis with reference to the semen detected on the anal swab of Baby 'S' but that does not mean that Courts should close its eye to the clinching evidence brought on record, which nails the guilt of the appellant.

28. We find no merit in the appeal which is dismissed.

29. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jai, Tihar to be supplied to the appellant.

30. We express our gratitude to Mr. S.B. Dandapani, learned Counsel for the appellant and Mr. M.N. Dudeja, learned Counsel for the State for having enabled this Court to decide the instant appeal within less than a month of the same being admitted.

31. It is of reassurance to the judicial system and to the citizens of this country that the stigma of judicial delays is being successfully wiped out. The trial of the instant case has proceeded fairly fast. The appellate disposal has also been quick.

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