

Smt. Saroj Vs. State

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Court : Delhi

Decided On : Apr-28-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 201 and 302; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Crl. A. No. 464/2008

Appellant : Smt. Saroj

Respondent : State

Advocate for Def. : M.N. Dudeja, APP

Advocate for Pet/Ap. : Charu Verma, Adv.

Disposition : Appeal allowed

Judgement :

Suresh Kait, J.

1. Instant appeals have been preferred against the judgment and order dated 11.01.2008 convicting the appellants for the offence punishable under Section 302 read with Section 34 IPC and for the offence punishable under Section 201 IPC. For the former offence, the appellants have been sentenced to undergo

imprisonment for life and for the latter to undergo RI for a period of one year. The third accused namely Sri Niwas was not committed to trial since he was declared a Proclaimed Offender.

2. On 31.07.2005 at about 5:45 AM Anwar PW-2 made a call from his shop at No. 100 and informed that a dead body was lying near railway level crossing, Bakner, the same information was received by Ct.Satender Kumar PW-1 posted in PCR which is Ex.PW-1/A. Information was passed on to police station Narela by Ct.Satender Kumar. Police Station Narela registered DD No. 30-A, the same is Ex.PW-19/A.

3. The investigation of the case was entrusted to SI Ishwar Singh PW-14 who reached at the spot and noticed that a dead body was lying near the railway level crossing (phatak), Lampur Road. He was accompanied by HC Saheb Singh PW18. Meanwhile, SHO Inspector Manohar Singh PW-19 reached the spot and started investigation. HC Kanwal Singh PW-12 was present at the spot. PW-19 recorded the statement of HC Kanwal Singh which is Ex.PW-12/A and sent Rukka Ex.PW-19/B for registration of the FIR, Ex.PW-4/A

4. PW-2 deposed that on 31.07.2005 at about 5:45 AM he came to open his shop i.e STD booth situated at railway road, near railway level crossing, Bakner. Some persons from public were found present near railway level crossing. They requested him to inform PCR at No. 100 that a dead body was lying near railway level crossing, Bakner. Accordingly, he rang up PCR staff from his telephone No. 55218340. In his cross- examination he stated that he himself did not see anybody near railway crossing. He further stated that he did not see the persons from public had caught hold of anyone. The persons gathered over there were 10/15 in number.

5. PW-4 Ram Chander who received rukka sent by SHO through Ct. Saheb Singh recorded the FIR No. 372/2002 Ex. PW-4/A.

6. PW-6 Rohtash and PW-7 Dharampal identified the dead body and received the same from the mortuary.

7. PW-8 Sajjan Kumar, a photographer in Mobile Crime Team, deposed that on 31.07.2005 on calling he reached at the spot near the railway level crossing, Bakner. They found that the dead body was covered with a galicha (the carpet). On unfolding the galicha (carpet) a dead body was found naked. He took the photographs and thereafter handed over the photographs to the IO. In his cross-examination PW-8 deposed that he along with crime team reached the spot at about 6:30 AM. SI Ishwar Singh PW-14 and other police staff were already present there. Some public were also gathered there. He deposed that he did not notice if the public persons had caught hold of anybody at the spot. He remained at the spot for about 30 minutes.

8. PW-9 Inspector Sat Parkash who was the Incharge of Crime Team prepared the detailed report which is Ex.PW-9/A which bears his signatures at point 'A'. In his cross-examination he stated that he received the information at about 6:00 AM and he and his team reached at the spot at about 7:00 AM. He stated that the IO and his staff were present in addition to persons from the public. They remained at the spot for about 30-40 minutes. He further stated that no one was in custody of police or had been apprehended by the police.

9. PW-10 Vijay Kumar was posted at railway level crossing No. 17 (phatak) of Bakner as a Gateman. He deposed that on 31.07.2005 at about 5:00 AM he shut down the barrier, as Jammu Mail Train No. 4034 was approaching from Jammu with destination to Delhi. Thereafter, he went in the forest nearby to ease himself. At that time he noticed one lady accompanied by two children and a male present at a distance of about 40 metres from his cabin. They were having with them at that time a bundle. On seeking them he avoided that direction and went to other side to ease himself. He returned to his cabin after easing himself. By that time the train had passed by the crossing. He further stated that while present at his cabin he observed that one male person picked up the bundle on his head and started crossing the railway crossing in the company of a female and two children referred above. At the same time, HC Kanwal Singh PW-12 reached over there. The said PW-12 followed the aforesaid male, female and two children and checked the bundle. HC Kanwal Singh PW-12 also called him to that place. He reached over there and found that a female and two children were not there. HC Kanwal Singh

raised alarm to attract the public and apprehended the aforesaid male person. Then HC Kanwal Singh brought the aforesaid person near his cabin. Meanwhile, PCR van also reached there. On the apprehension of the aforesaid male person a dead body was found in the bundle. He himself saw the dead body in the bundle. In his cross-examination he deposed that the PCR staff reached the spot within 5 minutes. He further deposed that the PCR took the male person from the spot at about 5:30 AM. The dead body was removed from the spot at about 10:30 AM.

10. The star witness of the instant case is HC Kanwal Singh PW-12 who deposed that on 31.07.2005 he was posted at PS Alipur. On that day after his duty hours were over, he was going to his house which is situated in District Sonipat (Haryana). He reached at Bakner phatak at about 5:15 AM. He was waiting for some vehicle. He saw two male persons and one female person near the railway track by the side of bushes. He further stated that the female called one of the male persons and then picked up a bundle from the bushes. The female was having one male and one female child with her at that time and one of the male persons accompanied the female carrying the bundle and started moving towards Bakner village whereas the other male person started moving towards the railway station. He further deposed that due to suspicion of theft, he crossed the railway line and stopped the female carrying the bundle. He enquired from the female as to what she was carrying in the bundle. She replied that there were household articles in it. She further replied that she had brought the same from her quarter. He asked her to show the bundle to him but she refused. He brought the bundle down from her head and directed her to open the bundle but she refused. He himself opened the bundle and found a dead body of naked male lying in it. In the meanwhile, he found that the female had fled away. He along with the public person apprehended the appellant Sheoraj and took him near the bundle. Meanwhile PCR reached the spot. He handed over the appellant Sheoraj and bundle of the dead body to PCR officials. SHO recorded his statement Ex.PW-12/A. He put his signatures at point 'A'.

11. In his cross-examination he stated that he alighted from a bus at the railway level crossing of Narela and then started moving on foot to my village. He further stated that the PCR staff reached the spot at about 5/5:30 AM. SI Ishwar Singh

PW-14 and SHO Inspector Manohar Singh PW-19 were also reached there. He further stated that he produced the dead body and appellant Sheoraj before the two PCR staff in his presence. He left the spot at about 6:30 AM.

12. SI Ishwar Singh PW-14 deposed that on 31.07.2005 he was posted at PS Narela. On that day DD No. 6A (should be DD No. 30A) was entrusted to him. He was accompanied by Ct. Saheb Singh PW HC Saheb Singh PW-18 reached at the railway level crossing and found dead body of a naked male person. SHO Inspector Manohar Singh PW-19 reached at the spot and started investigation. SHO reduced into writing the statement of HC Kanwal Singh and sent rukka from the spot through Ct. Saheb Singh PW-18 for registration of the case. In his presence one bed sheet and one gadela (Galicha) were seized vide seizure memo Ex.PW-14/A.

13. PW-18 HC Saheb Singh deposed that on 31.07.2005 he accompanied SHO Inspector Manohar Singh PW-19, Ishwar Singh PW-14 and HC Ramesh reached at the spot at the railway crossing at Lampur Road at about 6:00 AM. On reaching near the railway level crossing they found dead body of a male person, about 40/45 years, lying on a bed sheet with a galicha type item under it. The SHO inspected the dead body. Persons from the public were present there. Nobody could identify the dead body. HC Kanwal Singh was present there. The SHO recorded his statement at 7:40 AM. He took the rukka and got the case registered. He further deposed that HC Kanwal Singh had already apprehended one person namely Sheoraj. Sheoraj made his disclosure statement Ex.PW-18/A. Pursuant to the disclosure statement of the appellant Sheoraj, he accompanied the SHO and other staff and reached at R-5, Street No. 2, Swatantra Nagar, Narela Colony. Appellant Sheoraj pointed out the same as the place of occurrence and also towards a red colour Dupatta lying there used in the commission of crime. Thereafter, the SHO himself conducted the search of the room. In the said room a raxine bag was lying. Three identity cards i.e. of Srinivas, Raghubir and Somwati, a ration card in the name of Raghubir and an application addressed to the DSP Guhana by the complainant Saroj were recovered vide recovery memo Ex.PW-18/1 to 5 respectively. On 02.08.2005, he along with SHO and other police staff took the appellant Sheoraj from the lock-up and went in search of co-accused

Saroj and Srinivas. They reached railway station. HC Kanwal Singh met them there. At the same time one secret informer informed to the SHO that the lady was standing at the platform of Narela railway station and waiting for someone. At the instance of HC Kanwal Singh lady accused Saroj was apprehended there. She disclosed her name as Saroj wife of Raghubir Singh. She was arrested vide memo Ex.PW-12/B. Her personal search memo Ex.PW-12/C was prepared. Her disclosure statement is Ex.PW-12/D. He put his signatures at point 'B'. Appellant Saroj also pointed out the place of occurrence vide memo Ex.PW-18/E. His signatures at point 'B' were taken.

14. PW-19 Inspector Manohar Singh is the IO of the case who deposed that on 31.07.2005 he was posted at PS Narela. On that day he received DD No. 30-A Ex.PW-19/A and thereupon accompanied by Ct.Saheb Singh, Ct. Ramesh and SI Ishwar Singh reached railway level crossing, by the side of Nisha Electronics, Lampur. On reaching there they found naked dead body of a male person, aged about 40/45 years lying on a galicha (carpet). He observed the dead body. There was no external injury on it. HC Kanwal Singh was found present there. Recorded his statement Ex.PW-12/A and his signatures at point 'B'. He appended rukka Ex.PW-19/B to the said statement and sent rukka to the police station through Ct. Saheb Singh whereupon the case was registered.

15. Crime team was called to the aforesaid place. Dead body was got photographed. Efforts were made to get identified the dead body but it could not be identified. The dead body was then sent to mortuary with a request for its preservation. He prepared the site plan which is Ex.PW-19/C. The Galecha and bed sheet were seized vide memo Ex.PW14/B. He put his signatures at point 'B'. Appellant Sheoraj was arrested vide memo Ex.PW-18/C and his personal search was conducted vide memo Ex.PW-18/D. Appellant Sheoraj made his disclosure statement Ex.PW-18/A. Pursuant thereto they reached at the spot of occurrence i.e. the house of Raghubir situated in Swatantra Nagar and pointed a red colour Dupatta lying on a cot stating that this very Dupatta was used in strangulating Raghubir. The Dupatta was seized vide memo Ex.PW-18/B. Three election I-Cards, one ration card and one copy of complaint made by Saroj against her husband Raghubir were recovered from a bag lying in the same room. All the said

articles were seized and sealed.

16. In his cross-examination he deposed that he interrogated appellant Saroj about her children. She disclosed that she left her children in the house of her relative at Halalpur. Investigation revealed that at the time of removal of dead body appellant Saroj was accompanied by two children. He stated that he did not join those two children as they were not traceable. He stated that he reached House No. 5, Street No. 2, Swatantra Nagar, as Saroj used to live there. He further stated that investigation revealed that she (Saroj) lived there only for 2/3 days. He did not join the owner of the said house during investigation. None of the person in the neighbourhood could tell him about the owner of the house. He did not take any step to collect any document title of that house. He further deposed that at the time when they reached House No. 5, Street No. 2, Swatantra Nagar, it was found lying locked. The key of the lock was lying on a hole in the outer wall of the house and the key was picked up as pointed out by appellant Sheoraj. The lock and key were not seized. Rather the house was locked with the same key after the investigation and the key was placed in the same hole.

17. Dr. Upender Kishore PW-3, who conducted the post mortem Ex.PW-3/A recorded the alleged history of being found dead of the deceased, the relevant portion of his report is as under:

External Antemortem Injuries:

- i) Reddish abrasion of size 2x1 cm present over the outer aspect of left middle forehead.
- ii) Reddish abrasion of size 1x1 cm present over the left side face below the left side of lower lip.
- iii) Reddish abrasion of size 2x1 cm present over the right side chin.
- iv) Reddish abrasion of size 3x1 cm present over the middle of neck 7 cm below the chin.
- v) Reddish abrasion of size 2x1 cm present over the back of left side shoulder.

vi) Reddish abrasion of size 3x2 cm present over the outer aspect of back of left shoulder.

vii) Ligature mark present around the neck over the thyroid cartilage completely encircling the neck in the midline 2.5 cm broad and placed 7 cm below the chin on the right side of neck a mark of 2.5 cm broad and placed 6 cm below the right side mastoid. On the left side of neck, the mark was 2.5 cm broad and placed 7 cm below the mastoid. At the nape of neck, a mark of 2.5 cm was broad and placed 9 cm below the occiput.

The mark is soft to feel and multiple hemorrhages present over the mark.

Internal examination: Petechial hemorrhages seen under the scalp, brain congested, neck structure intact, multiple small hemorrhages seen in the soft tissue of the neck and muscles of neck. Both lungs congested. All internal organs congested and soft to touch. Stomach contained 50 ml liquid. Mucosa congested. No abnormal smell appreciable. Time since death about 2 days.

18. PW-3 Dr. Upender Kishore recorded the cause of death to be asphyxia as a result of ante mortem strangulation by ligature. He opined that strangulation could be possible with the 'Dupatta' produced or a similar one 'Dupatta'. His opinion was recorded as Ex.PW-3/B.

19. Statement under Section 313 Cr.P.C. of the appellants were recorded in which appellant Sheoraj denied each and every suggestion put forth to him but in the last he stated that he was present at railway station Narela when he was picked up by two police officials. On the other hand appellant Saroj also denied every suggestion put forth to her but regarding her arrest and disclosure statement, she stated that she was picked up by the police from the house of her daughter Maya and that the police removed dupatta from the head of her daughter while she was present at the police station, Narela. Both of them did not lead any defence evidence.

20. The trial Judge while convicting the appellants has relied upon the following incriminating evidences:

i) The appellant Saroj and Sheoraj were seen moving with the dead body contained in a bundle near railway level crossing, Bakner on 31.07.2005 at about 5:15 AM.

ii) The appellant Sheoraj was arrested from near the railway level crossing whereas appellant Saroj made good her escape and she was arrested on 02.08.2005 at the pointing out of the HC Kanwal Singh.

iii) Pursuant to the disclosure statement of the appellant Sheoraj on the same day i.e. on 31.07.2005 a dupatta Ex.PW-18/6 was recovered from the house of Raghubir and Saroj.

iv) The recoveries of three identity cards, one ration card and one copy of complaint by Saroj to the police against her husband.

21. We note that there is no consistency in the statement of PW-10 Vijay Kumar and PW-12 Kanwal Singh. They were the witness of having seen the appellants with the dead body. PW-10 Vijay Kumar was posted at railway crossing. He stated that at that point of time he noticed that one lady accompanied by two children and a male person were with a bundle, whereas PW-12 Kanwal Singh stated that the female was having one male and one female child with her at that time and one of the male persons accompanied by the female carrying the bundle and started moving towards Bakner village, whereas other male person started moving towards railway station.

22. Thereafter as per PW-10 there was one female, one male and two children. But as per PW-12 he saw two male persons and one female with two children near the railway track by the side of the bushes.

23. There is also no consistency even as to who was carrying the bundle of the dead body, whether a male or a female? As per PW-10 Vijay Kumar one male person was picking up the bundle on his head and started crossing the railway crossing. But, as deposed by PW-12 HC Kanwal Singh stated that due to suspicion of theft, he crossed the railway line and stopped the female carrying the bundle. He asked her to get the bundle down from her head and directed her to

open the bundle. Inconsistency between the two witnesses is that as per PW-10 male persons were picking the bundle of dead body whereas PW-12 deposed that female was carrying the same.

24. It is very interesting to note that as per the deposition of IO PW-19 Inspector Manohar Singh the place of occurrence of the crime was found lying locked. The key of the lock was lying in a hole of the outer wall of the house and the key was picked up as pointed out by appellant Sheoraj. After seizure, they locked the premises again and the key was placed in the same hole. Neither he seized the lock nor did he seize the key.

25. We have not come across any of the case where the recovery was effected from the locked premises and the investigating officer has not taken into possession the lock and key of the premises.

26. We have noted, there is no consistency even in the apprehension of the appellant Sheoraj along with bundle of dead body. Only PW-10 Vijay Kumar and PW-12 Kanwal Singh stated that the appellant Sheoraj was apprehended with the dead body, whereas PW-8 Sajjan Kumar, a photographer of the crime team, deposed that he did not notice if the public persons caught hold of anybody at the spot. Though, he admit that he remained at the spot for about 30 minutes. Even PW-9 Inspector Satya Prakash, Incharge of crime team also stated that IO and his staff were present in addition to persons from public. He remained at the spot for about 30-40 minutes. No one was in custody of the police or had been apprehended by the police.

27. We have gone through the trial court record and the photographs of the deceased lying in the trial court file. On perusal of the photographs of the deceased show that the weight and height of the deceased is not given but from the photographs itself one can make out that the deceased was having fairly healthy body and is aged about 45-50 years. If not more, the weight of the deceased cannot be less than 60 kgs. It is unbelievable that either of the appellants could carry 60 kgs of weight on his or her head. For a moment, if we believe that the appellants could carry 60 kgs, it is not again believable that a full size dead body which is neither cutted into pieces nor tied with any string can be

wrapped in a gadhri (bundle) and carried on head. Moreso, the month of occurrence was of July and time at about 5:30 in the morning there was a proper light. We cannot believe if they would have dispose of the dead body in such a manner and in a day light.

28. Not only it is not possible for a lady to singularly or for an average man to singularly lift a dead body on the head and cart it around for the reason the dead weight of a body is much more when actually carried than that of a living person. Further, the testimony of HC Kamal Singh PW-12 who claimed to have apprehended Sheoraj at the spot and saw appellant Saroj carrying the bundle containing the dead body is most unbelievable when he states that due to suspicion of theft he made Saroj put down the bundle from her head and open it and since she refused he himself opened the bundle and found the dead body and in the meanwhile Saroj had fled. Now, as claimed by him there were two children with Saroj. It means that Saroj fled with her two children. This is unbelievable for the reason HC Kanwal Singh could have immediately chased and caught the three.

29. Keeping in view the aforesaid discussion, we are of the view that there is no consistency as to how many persons were with the dead body; who were carrying the dead body and who were the children along with. Further there is no consistency on the apprehension of the appellant Sheoraj along with dead body and no evidence whether the appellant Saroj was staying with her husband or not. There is also no evidence as to whether the deceased was staying in that house.

30. In view of the discussion made hereinabove, we do not concur with the view taken by the learned trial Judge while convicting both the appellants.

31. The appeals are allowed. Judgment and order dated 11.01.2008 is set aside convicting the appellants Saroj and Sheoraj. Both the appellants are acquitted of the charge framed against them.

32. Appellants Saroj and Sheoraj are in jail. Copy of this order be sent to the Superintendent Central Jail, Tihar with direction that unless required in custody in some other case, both of them would be set free forthwith.

