

Mohd. Yunus @ Raja Vs. State

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Court : Delhi

Decided On : May-25-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 377; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : CrI. A. 1074/2008

Appellant : Mohd. Yunus @ Raja

Respondent : State

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

Advocate for Pet/Ap. : Bhupesh Narula, Adv.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. As recorded vide endorsement Ex.PW-16/A, it was dispatched from S.P. Mukherjee Marg Bus Stand, Opp. Kauria Pul at 7:05 AM on 4.3.2005. The endorsement Ex.PW-16/A is beneath the statement Ex.PW-12/A made by HC Anil PW-12 and as recorded by SI Naresh PW-16. The statement Ex.PW12/A reads as

under:

I am posted in Police Station Kotwali as Head Constable. On the intervening night of 3/4-03-2005 along with Const. Ved Prakash No. 2074/N my duty was at Chhatta Rail Picket from 9:00 PM to 9:00 AM. Today on 4.3.2005 at about 4:45 AM when I was present out of the police booth Chhatta Rail Chowk along with Const. Ved Prakash, a boy whose name and address was learnt later on, on interrogation, as Alam s/o Ajmad R/o Village-Mishol, Distt.Sitamarhi, Bihar came and told that a man named Raja was committing bad act with children forcefully by way of showing the terror of blade near bus stand and that the said person had attempted to do bad act with him also but he had managed to flee from there on the pretext of latrine. He also told that they were present near the bus stand itself whereupon I and Const. Ved Prakash immediately rushed towards Kauria Pul. When we three reached near bus stand at the front of St. Marie Church by the side of the road coming towards Chhatta rail from Kauria Pul, I saw that a bald boy was sitting on the chest of the other boy and was pressing his throat and another boy was also standing near them whose name was learnt later, on interrogation, as Ramesh S/o Kanta R/o Village Bahoti, PS Mahuganj, Distt. Allahabad (UP). Immediately on seeing us, the bald boy fled away from there. I and Ved Prakash chased him. We overpowered the aforesaid bald boy at Old Lajpat Rai Market near Public Toilet whose name and address was learnt later, on interrogation, disclosed as Yunus @ Raja S/o Akhtar aged about 32 years R/o Kachhi Sarak, Gali No. 6, Mahmood Nagar, Police Station Civil Lines, Muzzaffar Nagar, U.P. Present Address: a vagabond, Hanuman Mandir, Yamuna Bazar, Delhi. I and Const.Ved Prakash, after catching hold of him, came back to bus stand SPM Marg where the said boy namely Ramesh and Alam immediately on seeing, identified Yunus @ Raja and disclosed that he was that very boy who has committed bad act with him and the other boy (deceased). On checking at the bus stand, the boy on whose chest the aforesaid Mohd. Yunus was sitting and pressing the throat, was found lying dead. In th meantime, you (Police) came over there along with the staff members. I told you the entire facts. You have recorded my statement which I have heard and the same is correct.

2. The endorsement Ex.PW-16/A reads as under:

To

The Duty Officer,

PS Kotwali,

Delhi.

Sir,

It is officially submitted that at about 5:15 AM I, the Sub-Inspector along with accompanying HC Dilbagh Singh, No. 319/N, Const.Randhir Singh No. 1078/N, Const.Bale Singh No. 1472/N and Sub-Inspector Jai Singh reached S.P.M. Marg, Kauriya Pul bus stand where HC Anil Kumar No. 227/N and Const.Ved Prakash met me present and produced Yunus @ Raja, Ramesh and Alam R/o the aforesaid addresses and told the facts to me, the SI. At that time, an unknown boy aged about 14-15 years was lying in dead condition under the bus stand whose head was found towards east, feet towards west and from whose mouth, froth was coming out and was in dead condition. At the spot child Ramesh r/o the aforesaid address disclosed that Yunus @ Raja had committed bad act with him and the deceased boy after showing the blade and that the deceased was given elbow blows and was killed by way of strangulating him with the help of a muffler. The contents of the statement of HC Anil Kumar, the facts and the inspection of the place of occurrence reveal the commission of an offence under Section 302/377 of Indian Penal Code. Crime team has already been informed through a message. This writing is being sent to the Police Station through HC Dilbagh Singh for the purpose of registration of a case (FIR). After registration of a case, its investigation may be entrusted to Shri J.P. Raghav, Addl. SHO, Kotwali and he may be sent to the spot and information may please be given to the higher authorities through special messenger.

Date and hour of occurrence: 4.3.2005 at 4:30 AM

Place of occurrence: S.P.M Marg, Bus Stand, Kauria

Pul Opp. St. Marie Church, Delhi.

Dispatch of writing: 4.3.2005 at 7:05 AM

Sd/-

Naresh Kumar (In Eng.)

SI, No. D/878

(PIS No. 27800028)

I/C PP Fountain, Delhi

4.3.2005

3. The FIR Ex.PW-3/B was recorded at 7:20 Hours at PS Kotwali vide DD No. 10A.

4. Believing Mohd.Alam PW-1, the boy who informed HC Anil Kumar about the crime as recorded in the statement Ex.PW-12/A, as also believing Ramesh and finding corroboration to the testimony of the two boys through the testimony of HC Anil PW-12 and Const.Ved Prakash PW-21 as also SI Naresh PW-16, vide impugned judgment and order dated 7.4.2007, the appellant has been convicted for the offence punishable under Section 377 IPC qua Ramesh PW-2 as also the offence punishable under Section 377 IPC and Section 302 IPC qua the deceased Shambhu Nath Mehto.

5. 2 quilts were seized at the spot.

6. Before noting the testimony of Mohd.Alam PW-1, Ramesh PW-2, HC Anil PW-12, Const.Ved Prakash PW-21 and SI Naresh PW-16 it would be relevant to note that after he was apprehended, the appellant was medically examined by Dr. Amit Pendharkar PW-7 working as a Senior Resident at Hindu Rao Hospital on 4.3.2005. He prepared the MLC Ex.PW7/A of the appellant as per which the appellant had 4 injuries on his person, being: (i) bruise of size 8 cm x 8 cm over right buttock, (ii) bruise of size 6 cm x 6 cm situated over left buttock, (iii) superficial incised wound of size 7 cm situated obliquely over anterior neck 3 cm above suprasternal notch, (iv) swelling of size 4 cm x 4 cm over lateral border of

upper right forearm. Dr. Anil Pendharkar referred the appellant to the EMO Surgery for examination and treatment as also for medico legal expert potency test.

7. Appellant was thereafter examined by Dr. Subhajyoti Deka PW-5 who gave the report Ex.PW-5/A re- recording therein having seen the 4 injuries recorded on the MLC of the appellant. He further recorded that the examination of the external genitalia showed no anatomical deformity. The appellant was thereafter examined by Dr. J.N. Chakaravorti PW-4 who gave his report Ex.PW-4/A at the back of the MLC of the appellant recording therein that there was nothing contrary to indicate that the appellant was incapable of performing sex.

8. Relevant would it be to note that none of the three doctors who proved the reports and the MLC respectively, being Ex.PW-4/A, Ex.PW-5/A and Ex.PW-7/A, were cross- examined and hence the contents of the 2 reports and the MLC have gone unchallenged.

9. With respect to the MLC Ex.PW-7/A and the report Ex.PW-5/A suffice would it be to note that a bruise injury on the left and the right buttock of the appellant as also an injury on the suprasternal notch were contemporaneously detected on 4.3.2005. When examined under Section 313 Cr.P.C. the appellant admitted his being examined by the 3 doctors but rendered no explanation as to how he suffered the injuries on his person.

10. The post-mortem report Ex.PW-6/B of the deceased records the following external injuries:

1. Ligature mark: There is very faint and diffuse ligature pressure bruise mark, visible at some places and only impression like at another places, running transversally all around the neck of variable width between 4.5 to 7 cm at places. The colour of skin above and below the mark is slightly darker and ecchymosed. Bruise reddish in colour.

2. There are multiple transverse tear-lacerations (superficial) with bruising all over the external anal sphincter at multiple places, reddish in colour.

11. The internal injuries recorded are:

Intact meninges and brain mater congested. Patchy SAH present. Multiple petechial seen in white matter. Brain oedema present. On reflection of skin of neck. Subcutaneous and platysmal bruising seen scattered over front and sides of neck. Little effusion of blood seen in superficial and deeper neck layers with bruising of muscles at few places. There are fracture of sub-luxation of both superior horns of thyroid cartilage with marks bruising around. Epiglottis and larynx intensely congested with petechial haemorrhages. Tracheal mucosa congested. Blood tinged froth in trachea.

12. After the post-mortem the clothes which were on the dead body as also an anal swab were handed over to the investigating officer.

13. None can dispute that the deceased died a homicidal death on account of manual and ligature strangulation. The brain oedema as also the multiple petechial in the white mater is obviously the result of the head of the victim striking, not with considerable force, a hard surface and certainly would be possible if a boy aged 12 years (age of the victim) offers resistance when sodomised on a street and the assailant tries to pin down the victim.

14. Ramesh PW-2 was got medically examined on the day of the incident itself and as recorded on the rear side of the MLC Ex.PW-22/A, the endorsement being Ex.PW-27/A he had fresh bruises at the anal margins at 6'O clock, 12'O clock and 7'O clock position. After he was medically examined the pant which Ramesh was wearing as also an anal swab was seized by the investigating officer.

15. The clothes of the appellant, the two quilts seized at the spot as also the pant of Ramesh and the anal swabs o Ramesh and the deceased were sent for forensic examination and as per report Ex.PW-26/J semen was detected on one quilt, the pant of the appellant as also Ramesh. Spermatozoa was detected in the anal swab of Ramesh. None could be detected in the anal swab of the deceased.

16. Mohd.Alam PW-1 deposed that it was the fourth day of a month which he did not remember, but was about four months back (He deposed on 16.8.2005. The

incident is of 4.3.2005.) He along with Ramesh was returning from Gurudwara Sheesh Ganj Sahib after taking food and had reached Kauria Pul at about 10:00 PM - 11:00 PM when the accused called the two. He i.e. the accused took out a razor and kept the same on his neck and the neck of Ramesh and told the two to sleep with him. Accused gave Rs. 10/- to Ramesh to bring a quilt. Ramesh brought a quilt on rent from Kauria Pul. In the midnight around 2/2:30 AM the accused called a boy on the road and strangulated the boy who became semi-unconscious. Accused committed unnatural act upon him and thereafter strangulated him. Thereafter the accused committed sodomy with Ramesh. On the pretext of answering the call of nature he i.e. Mohd.Alam managed to escape and called the police. When the police arrived the accused was about to leave the place. When he returned he saw the accused sitting on the chest of the third boy and had covered a muffler around the neck of the boy. Accused was apprehended by the police.

17. Relevant would it be to note that on being cross- examined Mohd.Alam stated that his statement was recorded by the police at Sheesh Ganj Gurudwara. He also admitted that it was correct that today i.e. on 16.8.2005 his statement had been read over to him.

18. Ramesh PW-2 deposed in sync with Mohd.Alam and additionally stated that the accused inserted his penis in his rectum and that he was produced before a Magistrate where his statement Ex.PW-2/A was recorded.

19. HC Anil Kumar PW-12 deposed facts which stand recorded in his statement Ex.PW-12/A. Const.Ved Prakash PW21 has fully supported the testimony of HC Anil Kumar. SI Naresh PW-16 has deposed facts which already stand recorded in his endorsement Ex.PW-16/A.

20. It is true that as read, an apparent unnatural conduct surfaces through the testimony of Mohd. Alam PW-1 and Ramesh PW-2, inasmuch as both of them have stated that when they were returning from Gurudwara Sheesh Ganj Sahib and had reached near Kauria Pul the accused met them and by placing a razor on their neck threatened them to sleep with him. Thereafter both of them have deposed that the accused gave Rs. 10/- to Ramesh for taking on rent a quilt and

thereafter all three slept and at around 2:00/3:00 AM the accused called a boy going on the road and made him semi- unconscious by strangulating him and thereafter committed unnatural act on that boy followed by committing an unnatural act with Ramesh.

21. Indeed, if Ramesh got Rs. 10/- from the accused to bring on rent a quilt, it stands to logic and reason that Ramesh should have warned somebody or sought a help from somebody so that he and his friend could be saved from the appellant.

22. But, what really appears to have happened and as disclosed by the two boys has surfaced through the testimony of HC Anil, as per whom Mohd. Alam told him that the accused committed unnatural intercourse with children on the blade point.

23. It appears to be a case where Mohd.Alam and Ramesh have somewhat intermingled the facts. The fact of the appellant committing sodomy on the deceased followed by sodomy on Ramesh at the point of a razor, have stated as that the razor was shown to them at around 10/11:00 PM when they were asked to sleep and when the accused gave Rs. 10/- to Ramesh to bring a quilt.

24. Deviating from our narratives, we wish to record that we are noticing that the learned Trial Judges as also the learned Public Prosecutors are not alive to when witnesses depose in Court. Street children have no command over their language, much less on their thought process. They tend to confuse facts. As in the instant case, where the confusion is writ large, for the reason an unnatural conduct surfaces if what is being spoken of by Mohd. Alam and Ramesh is literally accepted. We expect the learned Trial Judges to seek clarificatory questions in such situations so that truth emerges. The role of a Judge at a trial is often described as that of a neutral umpire, but that does not mean that he sits as a sphinx in his Court. It is the duty of the Judge, who is the recipient of facts and the trier of facts, to seek clarification on grey areas.

25. Reverting back, the MLC Ex.PW-22/A of Ramesh clearly evidences that he was sodomized. The FSL report Ex.PW-26/J shows that the trouser worn by Ramesh and the appellant tested positive for human spermatozoa. The quilts Ex.P-2 and Ex.P-6 also tested positive for semen. The rectal swab taken by the doctor

who conducted the post-mortem on the dead body of the deceased showed negative for human spermatozoa. The pant of the accused tested positive for blood and semen.

26. It is apparent that the appellant had semen discharge which got detected on his pant. It is apparent that Ramesh had a semen discharge in his anal region. There was no semen discharge in the anal region of the deceased but the post-mortem report shows deceased being sexually assaulted and strangulated to death.

27. Reading the testimony of PW-1 and PW-2 as corroborated through the testimony of PW-12 we have no manner of doubt that the two have truthfully deposed of what transpired in the night.

28. That Mohd. Alam was briefed in the morning when he appeared in Court appears to be the act of an overzealous officer. But, Ramesh, a victim, was not briefed. Further, the statement Ex.PW-12/A and the endorsement Ex.PW-16/A stand so contemporaneously recorded that there is hardly any scope of falsification. No investigation was required thereafter to catch hold of the culprit who was caught at the spot. The only other evidence gathered was scientific evidence through the dead body of the deceased, the medical examination of the appellant and Ramesh and the FSL report.

29. We concur with the view taken by the learned Trial Judge and hence we dismiss the appeal.

30. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar to be made available to the appellant.