

Yogesh Vs. the State

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Court : Delhi

Decided On : Jan-04-2011

Judge : Badar Durrez Ahmed; Manmohan Singh, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 364, 201, 34

Appeal No. : CRL.A. 257/1997

Appellant : Yogesh

Respondent : The State

Advocate for Def. : Ms Richa Kapoor, Adv.

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

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment Yes
2. To be referred to the Reporter or not Yes
3. Whether the judgment should be reported in Digest Yes BADAR DURREZ AHMED, J (ORAL)

1. This appeal relates to the murder of a 15 year old boy named Girish @ Baboo, who is the son of Shri Ram Rakha (PW-1). As per the charge-sheet filed before the trial court, there were four accused the present appellant (Yogesh), Mewa Ram, Baij Nath and Rakesh. Two of the accused, Baij Nath and Rakesh were

discharged by the trial court vide order dated 19.08.1996 after recording that there was no evidence against the said accused apart from the disclosure statements which could not be relied upon as evidence. Thereafter, the trial continued in respect of the present appellant Yogesh and Mewa Ram. The charges were framed against the present appellant for having allegedly committed the offence punishable under Sections 302 and 364 IPC as also the offence punishable under Section 201/34 IPC alongwith the other accused Mewa Ram. The trial court, after examining the testimonies of 11 prosecution witnesses and other evidence on record, acquitted the present appellant as well as Mewa Ram of the charges under Section 201/34 IPC. However, the present appellant [Yogesh] was convicted under Section 302/364 IPC for having kidnapped and murdered the deceased Girish by virtue of the judgment dated 21.03.1997. Subsequently, by a separate order on the point of sentence passed on the next day, i.e., on 22.03.1997, the appellant was sentenced to undergo imprisonment for life for the offence punishable under Section 302 as also to pay a fine of ` 1,000/- and, in default thereof, to undergo rigorous imprisonment for a period of six months. The appellant was also sentenced for the offence punishable under Section 364 IPC and was required to undergo rigorous imprisonment for a period of 120 months and also to pay a fine of ` 1,000/- and, in default thereof, to further undergo rigorous imprisonment for a period of six months. Both the above sentences were to run concurrently.

2. The appellant, aggrieved by the said judgment and the order on sentence, has filed the present appeal and has assailed the same on the plea that the case is one which is entirely based on circumstances which have not been established. It has been submitted by the learned counsel for the appellant that no motive for the alleged crime has been established by the prosecution. It has further been contended by the learned counsel for the appellant that the entire prosecution case rests on the testimony of PW-2 [Jagdish Sharma], who is said to be the person who last saw the deceased Girish in the company of the appellant Yogesh while Girish was leaving the house in the morning of 16.09.1995 at about 10-10.30 a.m. She submitted that PW-2's testimony is the link on which the entire case of the prosecution hinges. She submitted that the testimony of PW-2 is a very weak link, if it can be called a link at all. It was contended that the Section 161, Cr PC

statement of PW-2 was recorded on 12.12.1995, i.e., more than three months after the alleged incident, which took place on or about 16.09.1995. The appellant had already been arrested on 22.09.1995 on the basis of suspicion raised by PW-1 [Ram Rakha], which finds mention in the FIR [Exhibit PW-8/DA] which was recorded on the basis of D.D. 17A dated 18.09.1995 at 5.15 p.m. The said FIR [Exhibit PW-8/DA] discloses that PW-1 had indicated that his son was missing and had gone somewhere from the house. The said FIR further indicates that PW-1 suspected a boy named Yogesh.

3. The learned counsel for the appellant also submitted that the alleged recovery of clothes of the deceased Girish at the instance of the appellant Yogesh is also not free from doubt. She submitted that, while Yogesh was arrested on 22.09.1995 and his alleged disclosure statement was recorded on the same day in which he had indicated that he could get the clothes recovered, the actual recovery of the clothes was allegedly done only on 25.09.1995, i.e., three days later.

4. The learned counsel for the appellant, therefore, submitted that the circumstances did not form a complete chain and, in any event, were not free from doubt and, therefore, the appellant ought to have been acquitted by the trial court. It was consequently prayed that the impugned judgment and the order on sentence be set aside and the appellant be set free.

5. Ms Richa Kapoor, appearing on behalf of the State, supported the decision of the trial court. She referred to the circumstances mentioned in paragraph 7 of the impugned judgment which are as under:- "(i) That the deceased Girish @ Baboo, the victim aged about 15 years had told his father, PW1, Ram Rakha, one week before the occurrence that accused Yogesh was his friend.

(ii) Deceased had told PW1, Ram Rakha, his father, about 2 hours before leaving the house on the day of occurrence that the accused Yogesh was to give to the deceased Girish the exercise material.

(iii) PW2 had lastly seen the deceased Girish @ Baboo alive in the company of the accused Yogesh; near the house of deceased and PW-1, Ram Rakha, his father.

(iv) As per DD copy Ex.PW8/A dated 18.9.95 the dead body of the deceased Girish had been recovered at the spot.

(v) The above dead body of the deceased Girish had been identified by PW1, Ram Rakha, his father on 22.9.95.

(vi) The accused Yogesh had been arrested by the police on 22.9.95; in pursuance to the disclosure statement made by him, he had pointed out the place and produced the shirt Ex.P1, Baniyan Ex.P2, Pant Ex.P3 and the pair of Hawai Chappal Ex.P4/1 and 2 being the clothes etc of the deceased lying wrapped by him in Ex.P8, the polythene bag (Panni).

(vii) The accused Mewa Ram had been arrested by the police who also made a disclosure statement and got recovered the Rehri Ex.P7 in which the dead body of deceased is stated to have been transported, to the place of recovery.

(viii) The post mortem on the dead body of the deceased was conducted by PW9, Dr. Anil Kohli on 22.9.95. In his opinion the time since death was 6 days.

(ix) The accused Yogesh had also been found missing from his house since 16.9.95; since when the deceased was found missing from his house."

6. She submitted that each of these circumstances has been established as would be clear from a reading of the trial court judgment and, therefore, the case against the appellant has been unequivocally proved. She, therefore, submitted that no interference with the impugned judgment or the order on sentence was called for. She submitted that although no motive has been established for the alleged crime, it is not always necessary to establish the motive for convicting a person of a crime if there is other sufficient evidence for the same. In this line, the learned counsel for the State submitted that the last seen evidence of PW-2, coupled with the fact that in the FIR itself, PW-1 had indicated that his son was wearing a grey pant and a blue shirt and the fact that these very clothes were recovered at the instance of Yogesh, were sufficient to establish the complicity of Yogesh in the said kidnapping and the murder.

7. We have heard the counsel for the parties and we are of the view that the case against the appellant Yogesh has not been established by the prosecution. We find that the fact that Girish told his father about his friendship with Yogesh and that he was to buy some exercise material with Yogesh does not, in any way, implicate Yogesh. Apart from this, there is no other reason for PW-1 [Ram Rakha] to have suspected Yogesh for the alleged crime of kidnapping and murder. In his testimony, PW-1 stated that PW-2 had come and met him on 18.09.1995 at about 4.00 p.m. and he had told him that PW-2 [Jagdish] had seen Girish in the company of Yogesh while the two were leaving his house. However, this fact had not been told to the police by PW-1 on 18.09.1995. In any event, we find that the statement of PW-2 [Jagdish] was recorded on 12.12.1995, i.e., more than three months after the date of the incident, i.e., on 16.09.1995 as also long after the date of arrest of Yogesh and the recording of his purported disclosure statement on 22.09.1995. There is no explanation as to why PW- 2 Jagdish's statement was recorded after such a long time gap. This in itself is sufficient to cast doubts on the testimony of PW-2 [Jagdish] insofar as his "last seen evidence" is concerned. It is clear that if the testimony of PW-2 is taken out from the equation, the entire case of circumstantial evidence against the appellant Yogesh breaks down.

8. Apart from this, we find that Yogesh was admittedly arrested on 22.09.1995 and his purported disclosure statement was recorded on the very same day. In his statement, he had clearly indicated, as per the case of the prosecution, that he could point out the clothes of the deceased Girish and could get the same recovered. Despite this disclosure having allegedly been recorded, the recovery was made only after three days, i.e., on 25.09.1995. This also casts some doubts on the recovery itself.

9. Even in the FIR [Exhibit PW-8/DA], PW-1 has only indicated his suspicion with regard to Yogesh. Unfortunately, the prosecution has not been able to take the case beyond the realm of suspicion into the area of proof. Unless and until that happens, the benefit would definitely go to the accused / appellant.

10. For all these reasons, we are not inclined to agree with the conclusions and the reasoning of the trial court. Insofar as we are concerned, there is too much

doubt and the circumstances which could have led to the establishment of the prosecution case have not been proved. Consequently, the impugned judgment and / or order on sentence are set aside. The appellant is given the benefit of doubt and is acquitted of all charges. The appellant's sentence had been suspended and he is on bail. Consequently, the bail bond and the sureties stand discharged. The appeal is allowed.

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