

Parminder Singh Sethi and anr Vs. State and anr

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Court : Delhi

Decided On : May-16-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 372; Indian Penal Code (IPC) - Sections 302, 201

Appeal No. : CRL.A. 751/2010

Appellant : Parminder Singh Sethi and anr

Respondent : State and anr

Advocate for Def. : Ms Richa Kapoor; Mr Javed Hashmi, Adv.

Advocate for Pet/Ap. : Mr Ashutosh Bhardwaj, Adv.

Judgement :

1. This is an appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973 on behalf of the victim (namely, the appellant No.2 Smt Jagwant Kaur), who is the wife of the deceased Jagjit Singh. The appeal is directed against the impugned judgment and / or order dated 16.03.2010 in Sessions Case No.7/2008 delivered by the learned Additional Sessions Judge, Tis Hazari Court, Delhi, whereby the accused Mohd Shafiq (the respondent No.2 herein) was acquitted of the charges under Sections 302/201 IPC for having committed the murder of Jagjit Singh and for having disposed of his body in a gunny bag so as to

cause the disappearance of evidence.

2. The case for the prosecution was that Jagjit Singh had given a sum of ` 6 lakhs by way of loan to the accused Mohd Shafiq. Request for return of the money was being made from time to time and that on 12.04.2008, Jagjit Singh had sent his wife (Smt. Jagwant Kaur PW-9) and his son (Prabhjot Singh PW- 10) to Mohd Shafiq to demand return of the said money. However, according to the prosecution, Mohd Shafiq did not respond positively and, thereafter both Smt. Jagwant Kaur and Prabhjot Singh narrated the story to the deceased Jagjit Singh. It is further the case of the prosecution that on 18.04.2008 between 1 to 1.30 p.m., a call was received from Mohd Shafiq by Jagjit Singh, whereupon Jagjit Singh left his house and went to Mohd Shafiq's residence. He did not return to his house. And, it is apparently the case of the prosecution, that Smt. Jagwant Kaur and other relatives searched for him for one or two days before a missing person's report was lodged on 22.04.2008 at police station C.R. Park [Exhibit PW-9/C]. In the meanwhile, a dead body had been recovered on 19.04.2008 at about 11.05 a.m. wrapped in a quilt placed inside a gunny bag which had been sewed from outside. The gunny bag was recovered from near the petrol pump at Rajender Market, Tis Hazari, Delhi. The dead body was, however, identified as that of Jagjit Singh, several days later, i.e., on 23.04.2008 by Smt. Jagwant Kaur and her son Prabhjot Singh. The accused Mohd Shafiq was arrested on 29.04.2008. He is stated to have made a disclosure statement whereupon the following articles are said to have been recovered:-

- i) a scooter belonging to the deceased from near Shastri Park Metro Station on 29.04.2008;
- ii) spectacles, purse and petro card belonging to the deceased allegedly at the instance of the accused from the banks of river Yamuna, near Wazirabad Bridge on 29.04.2008;
- iii) an iron pipe, which was the alleged weapon of murder, was also stated to have been recovered at the instance of the accused from the same place on the banks of river Yamuna on 30.04.2008.

3. The trial court has, as pointed out above, acquitted Mohd Shafiq of all charges against him. This, it did, in view of the fact that the recoveries were not established. The trial court was also of the view that the alleged loan transaction of ` 6 lakhs between the deceased Jagjit Singh and Mohd Shafiq was also not established on the basis of the evidence. Certain mobile call records were sought to be pressed into service by the prosecution to indicate the location of the deceased Jagjit Singh and that of Mohd Shafiq on 18.04.2008. However, the trial court, and in our view rightly so, held that the said mobile call records were inadmissible in evidence in view of the clear provisions of Section 65 B of the Indian Evidence Act, 1872 as also the clear position in law in the case of Rakesh Kumar & Others v. State: 183 (2009) DLT 658 and State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru: 2005 (11) SCC 600.

4. In any event, this is not of much material significance because the accused Mohd Shafiq has admitted in his Section 313 Cr PC statement that Jagjit Singh had come to see him on 18.04.2008 at around 2.30 p.m. as they had business dealings inasmuch as Mohd Shafiq used to purchase jeans material from Old Delhi through Jagjit Singh and on that day he had paid him a sum of ` 1.75 lakhs, which he had taken and left his place shortly thereafter.

5. The learned Additional Sessions Judge, in the impugned order, has discussed the evidence threadbare and has come to the conclusion that the recoveries do not stand established. First of all, it was pointed out by the learned Additional Sessions Judge that PW-9 Smt. Jagwant Kaur was not a reliable witness inasmuch as the recoveries were concerned. This is so because, in her testimony, she stated that several articles, including a turban, a broken piece of mobile phone and iron rod were recovered in her presence, when, no turban or broken piece of mobile phone were at all recovered and the iron rod was recovered the next day when, admittedly, as per the prosecution case, PW-9 Smt Jagwant Kaur was not present at all. Apart from this, the learned Additional Sessions Judge also noted that both PW-4 Sunder and PW-8 Abdul Sattar, who were divers and who had allegedly fished out the spectacles, purse and petrol card as also the iron pipe from the waters of river Yamuna had stated that they had not recovered anything, although they had attempted to do so at the instance of the police officials for quite

some time. PW-4 Sunder is said to have taken out the spectacles, purse and the petrol card belonging to the deceased from the waters of the river Yamuna, but he has categorically stated that he had spent one and a half hours in search of the articles, but no articles were recovered in his presence. He also stated that he had been called to the police station and, alongwith the other diver Abdul Sattar, he was made to sign on a paper on the next day. He also stated in his cross-examination by the learned APP that he was illiterate and that he was only able to sign. He denied the suggestion that he had recovered from the water one pair of gold coloured spectacles, the left glass of which was broken or one black leather purse containing one petrol card. He also denied the suggestion that he had handed over these articles to the police who had prepared the recovery memo [Exhibit PW-4/A]. More importantly, this witness also denied the suggestion that Smt. Jagwant Kaur, who is the wife of deceased Jagjit Singh, was present at that time and had identified the recovered items. In fact, he volunteered to state that there was no lady present at that time.

6. PW-8 Abdul Sattar, who was the other diver who had been produced by the prosecution as a witness to the recovery of the said articles, in particular, the iron pipe on 30.04.2008, also denied having recovered anything from the river. He also stated that he was called to the police station and gave his thumb impression on a blank paper as he was an illiterate. PW-8 Abdul Sattar also stated that on that day, only the police officials were present and no lady was with them. He categorically stated that the wife of the deceased was not present at the spot, i.e., Yamuna river alongwith the police officials. It is on the basis of the testimonies of PW-4, PW-8 and the unreliable testimony of PW-9 Smt. Jagwant Kaur that the learned Additional Sessions Judge came to the conclusion that the recoveries at the instance of the accused Mohd Shafiq had not been established beyond doubt.

7. With regard to the recovery of the scooter, the trial court has, in our view, rightly concluded that the same cannot be foisted upon the accused inasmuch as the same was recovered from an open area near the Shastri Park Metro station. The scooter was lying alongside the road and was accessible to the general public. The scooter was also not found to be in working condition. In any event, the learned Additional Sessions Judge has correctly concluded that the scooter cannot

be said to be in the exclusive possession or knowledge of the accused Mohd Shafiq and, therefore, the alleged recovery of the scooter cannot be taken as a circumstance against Mohd Shafiq.

8. As mentioned above, the learned Additional Sessions Judge also noted that the prosecution has not been able to produce any evidence of the alleged loan transaction of ` 6 lakhs. We may also note that Exhibit PW-9/C, which is the complaint lodged at police station C.R. Park with regard to Smt. Jagwant Kaur's husband being missing, which was lodged on 22.04.2008, there is no mention of a sum of ` 6 lakhs and the figure of ` 6 lakhs was stated later on, i.e., on 29.04.2008 after the arrest of the accused.

9. After having gone through the impugned judgment and the evidence in detail, we do not find any infirmity in the impugned judgment. Consequently, this appeal is dismissed.

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