

Ram Nath Vs. State and ors

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Court : Delhi

Decided On : Jul-27-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : Code of Criminal Procedure (CrPC) - Section 372; Indian Penal Code (IPC) - Section 302, 34

Appeal No. : CRL.A. No. 908/2010

Appellant : Ram Nath

Respondent : State and ors

Advocate for Def. : Mr Pawan Sharma; Mr R.S. Deswal, Adv.

Advocate for Pet/Ap. : Mr Pradeep Kumar Arya; Mr Narinder Chaudhry; Mr Rana Kunal; Mr Anuj Tomar; Mr Ashish Sharma, Adv.

Judgement :

1. This is a victim's appeal under the proviso to Section 372 of the Code of Criminal Procedure challenging the judgment dated 21.05.2010 passed by the learned Additional Sessions Judge, Rohini Courts, Delhi, in sessions case No.67/2008 arising out of FIR No.121/2008, registered at P.S. Nangloi, under Section 302/34 IPC.

2. In this case there were originally five accused, three of them were juveniles and, therefore, they were being dealt with by the Juvenile Justice Board. The respondent nos 2 and 3, namely, Sushil @ Anil and Sunil @ Kala have faced trial before the said court and have been acquitted.

3. The prosecution case was based on the testimony of PW-1 and PW-6 as they were supposed to be the witnesses who last saw the appellant's son Ram Babu in the company of the accused at the STD booth. The case of the prosecution was also that blood stained clothes have been recovered at the instance of the respondent Sushil. It was also alleged that the murder weapon (knife) was recovered at the instance of respondent no.2 Sushil.

4. Insofar as the "last seen" evidence is concerned, the learned Additional Sessions Judge found that PW-6 turned hostile and that PW-1 could not be believed. According to the learned Additional Sessions Judge there were serious contradictions and improvements in the testimony of PW-1 with regard to his having last seen the deceased in the company of the accused. At one instance he has stated that his son Ram Babu was last seen in the company of the accused at the STD booth and at another point he has stated that the accused persons had come to his house to take Ram Babu to attend a marriage. Thus, his testimony has been disbelieved.

5. Insofar as the recovery of "blood stained clothes" is concerned, although there is recovery of clothes belonging to the accused Sushil, but, since there were no blood stains on them, there was nothing to connect these clothes with the alleged murder of the appellant's son Ram Babu.

6. Insofar as the recovery of the knife is concerned, the learned Additional Sessions Judge disbelieved the same inasmuch as there were serious contradictions between the recovery witnesses and, what is more material, because it was found from the malkhana record that the knife was already in the malkhana prior to its alleged recovery at the instance of the respondent no.2 Sushil. It is in these circumstances that the recovery of the knife was disbelieved by the learned Additional Sessions Judge.

7. In view of the foregoing, the learned Additional Sessions Judge found that the prosecution had not been able to prove its case beyond reasonable doubt and, therefore, acquitted the respondent nos 2 & 3. We see no infirmity in the said conclusion arrived at by the learned Additional Sessions Judge even on a prima facie view. Consequently, the appeal is dismissed.

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