

Ravi Shankar Vs. State

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SooperKanoon Citation : sooperkanoon.com/956313

Court : Delhi

Decided On : Mar-13-2013

Judge : Sanjiv Khanna

Appellant : Ravi Shankar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + Crl. Appeal No. 1097/2012
Reserved on:

25. h February, 2013 Date of Decision:13th March, 2013 % RAVI SHANKAR
ThroughAppellant Mr. Sumer Kumar Sethi, Advocate. Versus STATE Through
Respondent Mr. Sanjay Lao, APP. CORAM: HONBLE MR. JUSTICE SANJIV
KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL SANJIV KHANNA, J.

The appellant Ravi Shankar by the impugned judgment dated 21st December 2010 has been convicted under Section 363/366/302 IPC for kidnapping the minor girl S (name withheld), aged 5, with intent of having an illicit intercourse, and thereafter strangulating her to death. By order of sentence dated 13th January 2011, the appellant has been sentenced, under Section 302 IPC, to undergo life imprisonment, and to make payment of fine of Rs 10000/-, in default of which he is to undergo RI for six months. Under Section 366 IPC he is to undergo rigorous imprisonment for 10 years and pay fine of Rs 5000/-, in default of which, he shall undergo SI for six months. Under Section 363 IPC he has been sentenced to

rigorous imprisonment for seven years and a fine of Rs 5000/-, in default of which, simple imprisonment for six months shall be undergone. All the sentences are to run concurrently and benefit under Section 428 Cr.P.C. is given. He has however been acquitted under Section 376 IPC for lack of evidence.

2. Prosecution version in a nutshell is as follows: on 28th December 2006 the appellant, who worked as a baildar with the deceaseds father (PW-6), came to their house at A-39 Prem Nagar- I, Sultan Puri, Delhi and at 6.00 P.M. took along 5 years old S (now deceased) for a walk on the pretext of treating her to toffees. The two did not return. After much search, the next day on 29th December 2006, at 2.30 P.M. FIR No. 2107/06 (Ex.PW 1/A) was registered under Section 363 IPC on the basis of statement (Ex PW 6/A) made by Prem Pal (PW-6), girls father, in which it is alleged that the appellant had taken away S in the ruse of buying her toffees. Thereafter, efforts were made by the police to trace the appellant and finally, seven days after the occurrence, on 4th January, 2007 the police team managed to apprehend him from Swarna Park, Nagloi. Pursuant to the disclosure made by the appellant, the dead body of S was ultimately recovered from the mustard fields situated towards the south side of main Rohtak Road near village Hiran Khudna, Delhi, belonging to Sukbir Singh Rana (PW-8). He was arrested vide arrest memo (Ex.PW 10/A) at 5.15 P.M. on the same day and the father (PW-6) and his brother Banwari Lal came for identification of the corpse at around 7.00 P.M. The next day, on 5th January 2007, post mortem of the deceased was conducted.

3. Post Mortem Report (Ex. PW-22/A) delineates that body of S, aged 5, was brought by Inspector Ravinder Singh (PW-21) on the said date. Dr. Manoj Kumar (PW-22) who had conducted the post mortem had concluded that the death was due to asphyxia consequent to pressure over neck structure produced by strangulation. Time since death was estimated to be eight days. In the Post Mortem Report (Ex.PW-22/A) the external injuries were as mentioned: dead body that of female, soft tissue missing from face and bilateral dorsum of foot and bilateral wrist and neck. On neck soft tissues bones haematoma present over right horn of hyoid bones. little finger missing from right hand.

4. On Internal examination lavia majora b/c boosead lancination of lavia minora smeared with mucord discharge was found on the genital organs. The appellant was medically examined on 5th January 2007 at 1.25 A.M. by Dr. Indermeet Singh (PW-18) at CMO Sanjay Gandhi Hospital and it was verified that the appellant was sexually potent. The post mortem is suggestive of the fact that the deceased was sexually assaulted before she was strangled to death; although the Trial Court has held that charges against the appellant under Section 376 IPC could not be proved because as per the FSL reports (Ex. PX and PX-1) as no semen could be detected from the clothes or vaginal swab of the deceased. On the appellants undergarment and deceaseds clothes Blood Group A was found, but the blood group could not be matched with the appellants blood sample as the same had putrefied. However, we shall not dwell further into these aspects as the State has not appealed against appellants acquittal under Section 376 IPC.

5. Prosecution case is premised on circumstantial evidence including the evidence of last seen and the recoveries, of the dead body and other incriminating material, pursuant to the arrest. The appellants counsel, on the other hand, has contended that the manner of arrest and alleged disclosures are debatable and cannot be believed. Let us examine these aspects in detail.

6. On the evidence of last seen we have testimonies of Savitri Devi(PW-4) mother of the deceased and Sikander Ali (PW-9) the next door neighbour. At that time when the appellant took the girl out of the house for buying her toffees, Savitri Devi (PW-4) mother of the deceased was present at the house and she has averred that she did not object to this because the appellant was known to them. He was from the same village and had worked with her husband. She has stated that they waited for the entire night but when the appellant did not return and their search in the nearby area went futile, they went to the police on 29 th December 2006. In the cross-examination she has reiterated the familiarity with the appellant who use to call her bhabhi and visited them occasionally. She was alone in the house when the appellant took S away. She has further stated that at the time, the appellant wanted to take the son too but S had stated she would bring him eatables. She has accepted that the appellant had never taken liquor at the house and she did not know whether he was an alcoholic.

7. Sikander Ali (PW-9), who was running a tailor shop and lived next door, has averred that on 28th December 2006 at about 6.00 P.M. he had seen S with appellant who had come to Prem Pals (PW-6) house. At that time PW-9 was sitting on the takhat outside his house. Appellant had passed by wishing him and said that he was taking S for toffee. He knew that the appellant who use to visit his neighbour Prem Pal (PW-6) even prior to the incident. There is nothing in the cross-examination which perforates his statement.

8. Prem Pal (PW-6) who is the father of the deceased girl S has averred that appellant was from the same village and also sometimes worked as Beldar with him which had led to the appellants familiarity with his family. The appellant frequented their house often. At the day of the incident, PW-6 was ill and had gone to the doctor. When he returned at 7.00 P.M., he was apprised that appellant had taken S and had not returned. They waited for some time but when S did not return, PW-6, PW-4 and PW-6s brother Banwari searched in the nearby area. Next day i.e. on 29th December 2006 PW-6 went to the Police Station Sultan Puri and recorded his statement (Ex.PW 6/A). Thereafter, he did not hear any news till 4th January 2007 when Ct. Devender (PW-10) from police station Sultan Puri called at his house, in the evening, and apprised that the appellant had been arrested and his daughters body was found in the mustard crops at Village Hiran Kudana. PW-6 with his brother went to the crime spot and identified the body. In the Court, PW-6 identified the clothes worn by the deceased at the time of the incident (marked as Ex.P1). In the cross-examination PW-6 revealed that the appellant was known to him since childhood and was residing in Delhi for last eightnine years. He knew that the appellant was residing in Mundka and was related as a distant cousin. When the two went missing, PW-6 had searched Prem Nagar while brother Banarsi went to village Mundka where the villagers told him that appellant had not come there. He called the police on No. 100, the next day and went to Police Chowki thereafter. He has accepted that on that particular day of the incident it was only his wife who told him that appellant had taken S and no one else but has repudiated that he was falsely implicating the appellant because of a quarrel between them.

9. From these statements it clearly transpires that the appellant was a trusted person who had often visited the family. Even nearby neighbours were aware of this fact and knew him by name. PW-9 lived next door and was sitting outside at the time when the appellant took S. Their testimonies have clearly established that S was last seen on 28th December 2006 at 6.00 P.M. with the appellant who was taking her to buy her toffees. Neither the appellant nor the girl S was seen, thereafter by anybody.

10. It can also be seen that the appellant was the prime suspect from the very beginning. The first DD Entry No. 14 registered on 29th December, 2006 at 2.30 P.M. mentions that a neighbours boy had taken the girl. On the same day, at 4.40 P.M. PW-6s statement was recorded that on 28th December 2006 a boy from his village named Ravi, son of Laturi, age thirty years, who use to frequently come to his house, yesterday evening at 6.00 P.M. came and took S (description provided) to buy her sweets. They have not returned and cannot be found. On the basis of PW-6s statement rukkaa was made and FIR was registered at 5.15 P.M. under Section 363 IPC which mentions Ravi (s/o) Laturi as the main suspect. After 28th December 2006, the appellant could not be traced, even when searches were conducted at his Delhi and native residence. He was absconding for seven days till his arrest at Swarna Park, on the basis of information provided by a secret informer.

11. Now comes the contentious point of arrest and the subsequent recoveries made pursuant thereto. The involved police officials were Inspector Ravinder Singh (PW-21), ASI Kishan Kumar (PW-11), Ct. Devender (PW-10) and Ct. Suresh. ASI Kishan Kumar (PW-11), who is the first investigating officer has stated that on 29th December 2006 on receiving DD. NO. 14 he reached A-39 Prem Nagar and was apprised about the kidnapping. He recorded the statement of Prem Pal (Ex.PW6/A) on the basis of which rukka (Ex.PW11/A) bearing his signature was sent to the police station and FIR (Ex.PW 1/A) was registered. Search for S and the appellant started, wireless messages were sent to different Police Stations and a team went to appellants village in U.P. but the appellant could not be traced. On 4th January 2007 a secret informer apprised that the appellant was present at Swarna Park, Kamruddin Nagar country liquor shop. PW-11, along with PW-10

and Ct.Suresh reached the wine shop and, on pointing out of the informer, apprehended him. The appellant was interrogated and he made a disclosure statement confessing his involvement and murdering S. PW-10 informed SHO Ravinder Singh (PW-21) who reached there and was handed over the appellant. The appellant was arrested vide arrest memo Ex. PW-10/A to which PW11 was a witness with Ct. Suresh. Appellants disclosure statement (Ex.PW11/C) was signed by PW-11. Thereafter, the appellant led them to the mustard crop fields near Hiran Khudna Village main Rohtak Road Highway towards south side at a distance of about half kilometres from the road. Inside the mustard crop field dead body of the girl was found. One empty quarter bottle of liquor, two DTC Bus tickets, one cover of biri bundle, one cover of Parle G biscuits packet were lying at a distance of 10-12 steps near the dead body. PW-21 directed PW-10 Devender to call PW-6 Prem Pal for identification. PW-6 came with his brother Banwari and identified the dead body. The Crime Team and photographer were called who inspected the place and took photographs. Earth mixed with hair was collected vide memo Ex. PW-21-C, earth control was taken vide memo Ex. PW-11/F and empty quarter bottle of liquor make Shokeen Masaledar Desi Sharab, two tickets of DTC bus, one cover of Bidi Bundle, one cover of Parle G Biscuit were sealed vide memo Ex. PW-11/G. These were correctly identified in the Court by PW-11. Inquest report was prepared and body was sent to SGM Mortuary. In the cross-examination he has averred that he had seen the appellant first at 3.30 P.M. on 4th January 2007, after 45 minutes PW-21 Ravinder Singh 21 recorded his disclosure statement and arrest was made. All this took half an hour, after which they left for the place of crime in a government vehicle Tata 407 with police officials. They remained at the spot Hiran Khudna for around two hours for investigation purposes. He has stated that none of the public witnesses were recorded since they declined to oblige. The residence of the complainant is five kilometres away from the spot i.e. mustard field, Hiran Khudna. He has specifically averred that he had not informed the senior police officers regarding information of the suspect but, after apprehension of the appellant and after making the complete enquiry regarding the crime which took around thirty minutes, he had informed the senior police officers. He, however, could not remember the appellants clothes on the day he was apprehended. He was also not aware of any statement being recorded from the

native village of the appellant or if the local police was intimidated on this regard. He has repudiated the allegation that recoveries were planted.

12. Statement of Ct. Devender (PW-10) is on a similar line, that he along with PW-11 and Ct. Suresh had left the police station in search for the appellant for Kamruddin Nagar. When they reached the appellant was present there and was apprehended. Thereafter, Inspector Ravinder Singh (PW-21) from PS Sultan Puri was informed who interrogated and arrested him vide arrest memo (Ex. PW10/A). After this the appellant led them to the crime spot south side of Rohtak Road to fields with mustard crops and pointed out dead body from around which recoveries, one empty quarter of liquor, two bus tickets, one bidi bundle, one parle biscuits packet, seized vide seizure memo (Ex. PW 11/G), were also made. He was directed to call the father of the deceased while the crime team and photographer collected the evidence. In his cross-examination he has stated that the appellant was apprehended at 4.30-5.00 P.M. near wine shop. ASI had asked him to join at 4.00-4.30 P.M. and the distance between the police post and place of arrest was around 2-3 kilometres. He denied all allegations of false investigation.

13. Inspector Ravinder Singh (PW-21) has stated that on 4th January, 2007 he reached Swarna Park Nangloi where PW-11 who had informed about this case earlier on 29th December 2006, and PW-10 were present. PW-21 had arrested him vide arrest memo (Ex. PW10/A) and recorded the disclosure statement (Ex. PW11/C). Thereafter, the appellant led the police party to the field near village Dharam Pudna and pointed towards the place from where recoveries were made. Earth control was seized vide Ex. PW11/F and recovery articles were seized vide Ex. PW11/G. On 5th January 2007, post mortem was conducted after which body was handed over to the father. Later on case properties were deposited in the malkhana, exhibits were sent to FSL Rohini and scaled site plan was prepared. In the cross-examination he has averred that he had received the information at 4.30 P.M./4.45 P.M. on 4 th January 2007 on the telephone and had reached there within 15 minutes.

14. Appellants counsel has contended that there is material discrepancy to the extent that the crime team report(Ex. PW-15/A) was recorded on 4th January 2012 at 4.50 P.M. while the arrest of the appellant (Ex.PW 10/A) specifies the time of arrest as 5.10 P.M. on the same day. Through this he seeks to establish that the body of the deceased was not recovered pursuant to the appellants disclosure, after his arrest, but was already discovered or was in knowledge of the police from before, and therefore, no recovery can be attributed to the appellant. This is ostensibly an attractive argument but cannot stand if we look at the evidence carefully. The appellant was apprehended at about 4/4.30 P.M. by ASI Kishan Chand (PW-11). The said witness has deposed that information regarding the appellant was spotted near the wine shop at Swarn Park was received by him at around 3.30 P.M. PW-10 has also deposed that he had joined investigation around 4/4.30 P.M. and the appellant was apprehended at 4.30/5.00 P.M. The appellant after being apprehended was interrogated by PW-11. It is then he revealed that he had murdered S in the fields of Rohtak Road. Thereupon, Ravinder Kumar (PW-21) was informed at Police Station at around 4.30/4.45 P.M. PW-21 reached the spot and took over the investigation. PW-21 formally arrested the appellant vide arrest memo (Exhibit PW-10/A) and written disclosure statement (Exhibit PW-10/C) was recorded. Thus, it is apparent that before the formal written disclosure statement was recorded, PW-11 had orally interrogated the appellant who disclosed and revealed for the first time that S had been murdered and her body was in the fields of the Rohtak Road. After the initial oral disclosure was made, PW-11 intimated and informed Ravinder Singh (PW-21) at Police Station Sultanpuri at about 4.30/4.45 P.M. This explains how the crime team was informed and the time mentioned of the crime team report (Exhibit PW15/A), i.e., 4.50 P.M. on 4th January, 2007. Learned counsel for the appellant submitted that the oral interrogation and disclosure should be disregarded. Normally there will be an interregnum between the oral statement made by the accused and before the disclosure statement is recorded or reduced into writing. It will be highly unusual and peculiar that the accused would make a disclosure statement in writing without being first interrogated and making an oral statement. Moreover, Section 27 of the Evidence Act does not postulate that the disclosure statement must be mandatorily in writing. It is not a statutory prescription, though it is advisable. It

may not be a fatal blow to the prosecution case. A Full Bench of the Gauhati High Court, in the case of Rajiv Phukan v. State of Assam (2010 Cri LJ

338) came to this conclusion and held that: (28)When the statute has not made it mandatory for a police officer to reduce into writing the disclosure statement of an accused person, it would be impossible to treat the evidence of the co-villagers as inadmissible and thereby reject the same. The written record of the disclosure statement is really required for the purpose of inspiring confidence of the Court that the statement, as deposed to, had indeed been made and such a written record would further help the Court know as to what exactly the accused had stated to the police and what statement or which part of a given statement of the accused had really led to the discovery of the fact. (56) Because of what have been discussed and pointed out above, we conclude that a 'disclosure statement', to be admissible under Section 27 of the Evidence Act, is not statutorily required to be reduced into writing, though prudence demands that such an information should be reduced into writing in order to enable the Court to know exactly as to what the accused is allegedly to have stated and the extent to which the information given by him is admissible. The reference shall stand answered accordingly.

15. From facts of the present case, it can be concluded that it was pursuant to the disclosure made to PW-11 that the dead body of S was recovered from the field. It has also come on record that the place of arrest Swarna Park was approximately 2-3 kms from the crime spot at side of Rohtak Road. The police station was about 15 minutes away from the place of arrest. Therefore, the apprehension, arrest and recoveries were made swiftly within a span of few hours. After the arrest was made at 5.10 P.M. the police officials (PW-10, PW-11 and PW-21) also reached the place of recoveries and conducted further investigation. The recoveries made pursuant to the disclosure are, in our view, admissible, reliable and cannot be doubted.

16. The appellant has contended that it is difficult to believe that nobody had chanced upon the dead body in the seven-eight days it was lying there. There is no force in this contention as the un-scaled plan of the recoveries drawn on 4th

January, 2007 (Ex. PW21/B) and the scaled map drawn on 3rd March 2007 (Ex. PW21/A) reveal that the body was found within the fields which had fully grown crops, since it was the time just before the harvesting season. On two sides, after the crops, there was open land, on another side there was wheat cultivation, followed by 220 cms boundary wall and the rest of the view was obstructed by the mustard crops. It can also be seen that the spot was away from the foot way and was on the other side of Kacha Road. Therefore, it would have been difficult for passer-by or public to spot the body. Importantly, Sukhbir Singh Rana (PW-8), who was the owner of the agricultural land where the body was found, has not stated that he had knowledge regarding the body and no question was put forth in his cross-examination suggesting the same. The other incriminating materials were found within 250 meters of the body inside the field of mustard crops.

17. To recapitulate, testimonies of PWs 4 and 9 establish that the girl S was last seen with the appellant on 29 th December, 2006 at 6 P.M. Thereafter, her dead body was recovered from the mustard fields in the evening of 4th January, 2007. As per the post-mortem report (Exhibit PW-22/A), time since death was estimated as eight days. The postmortem was conducted on 5th January, 2007. Thus, the estimated time of death was soon after S was taken by the appellant on 29th December, 2006 at 6 P.M. The last seen theory comes into play when the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased died is approximate. The principle being there is a possible link between the accused and the death of the deceased. There is proximity between the time when S went missing and she was seen with the appellant and when she was murdered. The postmortem report which delineates that time of death was approximately eight days relates us back to the day of disappearance of the deceased with the appellant. It supports the last seen evidence.

18. To establish an offence of kidnapping from lawful guardianship under Section 363 IPC it has been verified that the girl was minor and was kidnapped by appellant who had taken her on pretext of buying her toffees but did not drop her back. Being a girl of small age, it is difficult to perceive that she could have ventured out so far on her own. It was the appellant in whose custody she was

when she went missing. After 28th December 2006 when the two, appellant and S, went missing, he could not be found anywhere. PW-6 has averred that he had searched the whole colony and his brother went to appellants place but still they could not find the appellant or S that night. The police investigation took them to his Mundka residence in Delhi and his native place but it was to no avail. Thus, the abscondence of appellant corroborates his involvement.

19. To additionally prove charges under Section 366 IPC that of kidnapping, abducting a woman, including for the purpose of forced or seduced illicit intercourse, the intent of the appellant has to be gathered through his conduct. Further in the present case, no call or demand for ransom was made and there was no enmity between the appellant and the deceaseds parents. Thus, possibility of kidnapping her for any other reason is completely ruled out.

20. The Post Mortem Report (Ex. PW-22/A) delineates that the deceased was strangled to death, thus the fact that the deceased had a homicidal death cannot be disputed. For the offence of murder, apart from the last seen evidence, it has to be kept in mind that till the time appellant was arrested, on 4th January 2007, for about seven days no one knew the whereabouts of the body. The recovery of the dead body and other incriminating material, including empty quarter bottle of liquor, two tickets of DTC bus, one cover of Bidi Bundle, one cover of Parle G Biscuit (sealed vide memo Ex. PW-11/G), was pursuant to the appellants disclosure statement. Thus, it was only the appellant who had the knowledge regarding the spot from where the body could be recovered. In totality, the evidence produced before us prove the involvement of the appellant, beyond doubt, in the present case.

21. In view of the above findings, we uphold the conviction and sentence of the appellant under Section 363/366/302 IPC. Appeal is accordingly disposed of. -sd(SANJIV KHANNA) JUDGE -sd(SIDDHARTH MRIDUL) JUDGE MARCH 13 h, 2013 VKR