

Ali Hasan Vs. State

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Court : Delhi

Decided On : Feb-14-2013

Judge : Sanjiv Khanna

Appellant : Ali Hasan

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

14. h February, 2013 % + CRIMINAL APPEAL 899 2011 ALI HASAN Through Appellant Mr. Bhupesh Narula, Advocate. versus STATE Respondent Through Mr. Sanjay Lao, APP. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL SANJIV KHANNA, J.

(ORAL) By order dated 8th December, 2010, the appellant Ali Hasan stands sentenced to life imprisonment and fine of Rs.10,000/- for the offence under Section 302 of the Indian Penal Code, 1860 (IPC) arising out of FIR No.129/2007, Police Station Narela. It has been held that the appellant had committed murder of his step son Mohd. Anwar. The appellant, however, has been acquitted under Section 201 IPC and the State has accepted this portion of the judgment. The order on sentence dated 8th December, 2010 states that in case the appellant does not pay the fine of Rs.10,000/-, he shall undergo Rigorous Imprisonment for three months.

2. Learned counsel appearing for the appellant has challenged the conviction on the ground that there was delay in recording of the FIR as Mohd. Anwar, as per the prosecution version, had gone missing on 19th February, 2007. The FIR was registered on 2nd March, 2007 at about 9.30 P.M. It is submitted that there was no motive or cause for the appellant to finish and kill his step son Mohd. Anwar. Further the trial court erred in relying upon the purported earlier report/complaint dated 25th February, 2007 marked Ex.PW-2/B-2 and 7/B. It is stated that the so called complaint has been manufactured or created by the police to justify the delay in recording of the FIR and should be disbelieved as there is no daily diary entry of the complaint and for the alleged investigation thereafter being entrusted to ASI Karan Singh Dahiya, who had appeared as PW-10.

3. The first daily diary entry in the present case was recorded vide DD No.29A (Ex.PW-7/A) on 2nd March, 2007 at 6.20 P.M. The said DD entry records that information had been received from a PCR van that a dead body of a child was lying in the bushes near CRPF Camp, Narela-Bawana Road. Name of the child was not mentioned. The police thereafter got activated.

4. ASI Dharamvir (PW-15) has deposed that on 2nd March, 2007, he was on PCR van duty and was posted at Narela Bawana Road near JJ Colony-I. At about 6.15 P.M. on that day some passersby informed that a dead body of a boy was lying in the bushes opposite CRPF Camp. PW-15 reached there and found that a dead body of a boy aged about 8/9 years was lying in the bushes. He gave information to PCR and after some time, SI Mahinder Singh (PW-7) from Police Station Narela reached at the spot along with his staff. In the cross- examination he has stated that SI Mahender Singh along with his staff had reached at the spot within twenty minutes.

5. The aforesaid statement is fully corroborated by SI Mahender Singh (PW-7) and Constable Manjeet (PW-13). These two police officers had reached at the spot after the dead body of Mohd. Anwar was noticed by ASI Dharamvir (PW-15). PW-7 has made a similar statement that dead body of a boy was found in bushes near CRPF Camp, Narela Bawana Road. The age of the boy appeared to be 8-9 years. The body was decomposed and boy was wearing a T-shirt of yellow colour.

Constable Manjeet (PW-13) has deposed that body appeared to be lying there for some time. Both of them have stated that in the meantime Inspector Jitender Singh (PW-16), the then SHO and other officers reached at the spot. PW-7 has stated that the deceased boy was identified as Mohd. Anwar by his mother Rameeda Khatoon. The Investigating Officer thereafter recorded statement of Rameeda Khatoon, prepared rukka and sent it to the police station through Constable Ram Karan (PW-6) for registration of FIR. Further investigation was carried out by Inspector Jitender Singh. Constable Manjeet (PW-13) has similarly stated that one lady, namely, Rameeda Khatoon was present there and identified the dead body as that of her son Mohd. Anwar. He has stated that Rameeda Khatoon was present there with her previous husband. The discrepancy in the statement of police witnesses, whether Rameeda Khatoon had first reached the spot and thereafter her previous husband had come or both of them had together reached the said spot is a minor discrepancy, which does not destroy or make the prosecution case doubtful.

6. Rameeda Khatoon, who appeared as PW-2, in her statement before the Court, has stated that she was previously married with Mohd. Alam (PW-5) and was blessed with four children. Mohd. Anwar was one of them. Mohd. Alam had divorced her and got married to another lady. After three years, she also got married to the appellant Ali Hasan, whom she identified in the Court. Ali Hasan used to pull rickshaw at Chandni Chowk. After her second marriage, she along with her children from her previous husband started living with Ali Hasan. However, the appellant Ali Hasan did not like the children and used to beat them. On 19th of the relevant month in the year 2007, Mohd. Anwar had accompanied and gone with his step father Ali Hasan. Ali Hasan came back after 2-3 days, but Mohd. Anwar was not with him. When PW-2 enquired, she was informed that Mohd. Anwar had been left with one of his relatives. Ali Hasan assured her that he would bring back Anwar within 2-3 days. Thereafter, PW-2 insisted that the appellant should bring back Mohd. Anwar and threatened that in case he did not bring back her son, she would report the matter to the police. Appellant Ali Hasan then left the house on the pretext that he would bring back Mohd. Anwar. But the dead body of Mohd. Anwar was found on 2nd March, 2007, near Amrud Ka Bagh, JJ Colony, Bawana, Delhi.

7. At this stage, we may note that Rameeda Khatoon (PW-2) was residing in a Jhuggi near government school, JJ Colony, Bawana and the dead body was found near the Jhuggi area. PW-2 has deposed that she had reported the matter to the police and had suspected the appellants involvement. The dead body was found 11 days after Mohd. Anwar had left the house with the appellant. She had confided and informed about the entire incident to her previous husband Mohd. Alam. She and her previous husband visited the Police Station Narela. She had earlier made a complaint dated 25th February, 2007 (Ex.PW2/B-2) to the police. The carbon copy of the said complaint, which also has the seal of police station Narela is Ex.PW7/B. Office copy or the original copy is Ex.PW2/B-2. On the original copy it is recorded:ASI Karan Singh For n/action SHO/NCA 25/2/07 8. This complaint Ex. PW2/B-2 and Ex.PW7/B was not diarized in the daily diary. This should have been done as required and mandated by law. The appellant now wants to take advantage of this error and mistake made by the police. However, we feel that even if we ignore the documents Ex. PW2/B-2 and Ex.PW7/B, there are sufficient grounds and reasons to sustain the conviction of the appellant.

9. At this stage, we would only record that Rameeda Khatoon (PW-2) and her former husband Mohd. Alam belong to the lower strata of the society. PW-2 was a rag-picker at Chandni Chowk. It is difficult and requires courage for the said persons even to go to the police station and make a report. Police must be sensitive and serious about the complaints made by them. Their complaints should be dealt with in accordance with law. Lapses made by police can result in miscarriage of justice. What is apparent and clear from the testimony of PW-2 is that she had seen the dead body of her young son aged between 8-9 years on 2nd March, 2007 at about 7 P.M. The dead body was found from the bushes near Amrud Ka Bagh, Narela Bawana Road, Delhi. The facts narrated by her indicate that PW-2 and her previous husband Mohd. Alam had been looking around and searching for Mohd. Anwar, who had gone missing and was not traceable. Immediately after identifying the dead body, Rameeda Khatoon made a complaint Ex.PW2/A. The said complaint forms the basis or is the rukka which was recorded. Immediately tehrir was sent to the police station Narela for recording of FIR at about 9 P.M. on 2 nd March, 2007. The FIR (Ex.PW4/A) in question was recorded at 9.30 P.M. and DD No.33A was duly made in this regard. Thus, within about

three hours from when dead body of Mohd. Anwar was found, the FIR was registered on the complaint made by PW-2. For the sake of convenience what was stated by PW-2 in Ex.PW2/A, is quoted below: Ramida Khatoon w/o Ali Hasan r/o Jhuggi, Near BBlock Govt. School, J.J.

Colony, Bawana, Delhi made the following statement : I reside at the aforesaid address alongwith my children and do the work of rag-picking at Chandni Chowk. My first marriage was solemnized in the year 1990 with Mohd. Alam s/o Mohd. Mauleen r/o Village, Post Office and Police Station Nauhatta, Mohalla Pakhat Tola, Distt. Saharsa (Bihar). After five years of our marriage, we shifted to Delhi. Out of the said wedlock, I gave birth to four children including three daughters and a son namely Anwar who is about 8/9 years old. About five years ago my husband Alam divorced me and made second marriage and started living with his second wife. Thereafter about three years ago, I also married with one Ali Hasan s/o Mohd. Jameel r/o Village Jhalari, (?) Distt. Araria, Bihar. After that I alongwith Ali Hasan and my four children started living at the aforesaid address. Ali Hasan did not do any work and used to spend even the little money that I earned. He (Ali Hasan) would hate my four children and used to give beatings to them. On 19th (?) my son Anwar had gone with his father Ali Hasan. He did not return even after 2-3 days. On inquiring, Ali Hasan told me that he had left Anwar with someone. On 24/02/2007, when my son Anwar did not come, I said Ali Hasan to lodge a report at the Police Station in this regard. Thereupon, Ali Hasan said to bring Anwar back. Thereafter Ali Hasan left the Jhuggi and did not return till date. Today, the deadbody of my son Anwar has been found in the bushes at J.J.

Colony, Bawana near Guava Tree Garden, Delhi. I am sure that Ali Hasan has murdered my son Anwar and dumped him in the bushes. You have recorded my statement which I have heard and the same is correct. A R.T.I. of Ramida 10. Thus, from the very beginning PW-2 suspected involvement of her husband i.e. the appellant herein. Her testimony in court is on identical lines.

11. Testimony of PW-2 is also supported by statement of Shahana Khatoon (PW-3) aged 12 years, the elder sister of Mohd. Anwar. Before she was examined, questions were put to her by the Judge to verify whether she is capable of giving

cogent answers. She has stated that they used to live with the appellant after her mother got married with him. The appellant used to beat them as well as their mother. She did not remember the date, but stated that the appellant had taken her brother Mohd. Anwar away at about 8 P.M. and thereafter her brother Anwar did return though her step father returned after 2-3 days. When they inquired, the appellant informed them that he had left Anwar at the house of some known person. When her mother insisted that the appellant should bring Anwar back, otherwise she would report the matter to the police, the appellant left the house and did not return. After some days, dead body of Mohd. Anwar was found. Her mother asked PW-3 to inform her father Mohd. Alam. CrI.A. 899/2011 examination she deposed that she had not been tutored by anyone. Voluntarily again stated that Anwar was taken by the appellant in her presence, but she could not tell the date. At that time the appellant had stated that he was taking Anwar for a round. She denied the suggestion that she was tutored by her father i.e. Mohd. Alam.

12. The father Mohd. Alam has appeared as PW-5. He testified that PW-2 was his previous wife and after six-seven years of marriage he had divorced her. They had four children and Anwar was one of them. After divorce, PW-2 had started living in a Jhuggi in Bawana with the children. PW-5 married Zahira Khatoon and PW-2 also got married with the appellant-Ali Hasan. PW-2 had informed him that Anwar was taken away by the appellant on 19th February, 2007 and he did not return thereafter. They waited for 3-4 days for Anwar to return and then went to the police station to lodge a report. He continued with his efforts to trace Anwar as well as the appellant. On 2 nd March, 2007, Shahana Khatoon (PW-3) informed him that the dead body of Anwar was found lying in the bushes. He went to the said place and saw the dead body of Anwar. Police reached at the spot and carried out the proceedings. He identified the dead body and received custody of the dead body after the post mortem. 3-4 days thereafter the appellant was apprehended at the old Delhi Railway Station. He identified the appellant and had signed his arrest memo (Ex.PW5/B) and personal search memo (Ex.PW5/C). PW-5 in his cross-examination has stated that after divorce, PW-2 use to pick garbage to earn her livelihood. During his marriage with Rameeda Khatoon, she was a housewife. At the time of divorce, Anwar was 3-4 years of age and her elder daughter Shahana was 6 years old. After divorce he had asked PW-2 to handover custody of

children, but PW-2 refused as the children were too young and were not willing to leave their mother. On 25 th February, 2007, he was called by PW-2 through his daughter Shahana Khatoon (PW-3). They had gone to the police station at 10-11 A.M. He had started searching for Anwar and made inquiries from the locality and had visited the known places where the appellant could be found. He could not contact the appellant-Ali Hasan as he was not available. In the cross-examination he has stated that PW-3 had informed him about the presence of the dead body at about 3-4 P.M. This obviously is an error or mistake. With lapse of time such errors/inconsistencies do occur. This error or mistake does not make the prosecution case doubtful. We may notice here that the crime team was called at the spot and immediately report Ex.PW8/A was prepared. The crime team remained at the spot from 7.10 P.M to 8 P.M. on 2nd March, 2007. Name of the deceased is mentioned in the crime team report Ex.PW8/A as Mohd. Anwar s/o Mohd. Alam. This was possible only if somebody had identified the dead body. In the DD No.29A dated 2nd March, 2007 (Ex.PW7/A), which was recorded at 6.20 P.M. name of the child is not mentioned. It is obvious that the police came to know about the name of the child/deceased within this period. In addition, we have photographs marked Ex.PW1/B-1 to B-7 taken by the crime team. The said photographs show dead body of a young boy lying hidden in the bushes. The body was decomposed.

13. As per the post mortem report (Ex. PW14/A), no definite opinion could be given regarding cause of death due to advance stage of decomposition. The said post mortem report was given by Dr. Upender Kishore (PW-14), who had conducted the said post mortem on the body of Anwar aged about 8 years. He has stated that body was in highly decomposed condition. Maggots were crawling all over the body in mottling stage. Blackening of the body present, fangs were present, mandible, teeth, front and back of the neck exposed. Neck tissues were eaten by maggots. Bones of neck were exposed. Beetles in early stage were also present. Scalp hair was loose. Rigor mortis had passed off. Postmortem staining was not appreciable. Eyes were putrified. Stomach was empty.

14. The post mortem report confirms that Anwar must have been missing for some time. This would have necessarily shaken up the mother, PW-2 and other children.

It was natural for them to get in touch with Mohd. Alam, father of Anwar and previous husband of PW-2. The appellant was missing and was not traceable. He had earlier taken Anwar with him on 19th February, 2007 and thereafter Anwar did not come back. Ali Hasan, the appellant was not found at the site when the dead body of Anwar was found on 2 nd March, 2007. The appellant was arrested after nearly 3 days thereafter on 6th March, 2007 vide arrest memo Ex. PW5/B.

15. Confronted with the aforesaid facts, the appellant in his statement under Section 313 Cr.P.C. has stated: Rameeda Khatoon wants (wanted) to again join her previous husband, but I did not want to leave her. This answer was given by the appellant in response to the last question i.e., why the present case was registered against him? In response to other questions put to him the appellant simply denied the allegations as wrong or stated that it was a matter of record. He did not claim that he had also tried to locate or find Anwar.

16. The plea that Rameeda Khatoon (PW-2) wanted to re-marry her previous husband is a sham defence. Mohd. Alam (PW-5) and PW-2 have both stated that Mohd. Alam had got re-married. PW-5 has stated that he had married Zahira Khatoon. It is also not understandable why PW-2 and 3 would have framed and made false allegation against the appellant. It is difficult to accept the contention that PW-3 would have concocted a false story to implicate the appellant. As noticed above, rukka after recording of tehrir was sent to the police station for registration of FIR on 2nd March, 2007 at 9.30 P.M. The Investigating Officer has deposed on similar lines and has proved the investigation, which was undertaken in the present case finally leading to the arrest of the appellant.

17. The contention that delay in lodging FIR is fatal in the present case has to be rejected. Prompt and immediate lodging of FIR has advantages as it ensures prompt investigation without lapse of time and also negates the possibility of concoction of a false version. When there is delay in lodging of FIR we have to examine the reason and the cause for such delay. There can be a variety of genuine causes and when such causes are not reflective of an effort to concoct a false version, the delay by itself is not enough to doubt the case of the prosecution.

18. Keeping in view the factual matrix of the present case the socio- economic background to which PW2 and PW5 belong to and the close relationship amongst the victim, the complainant and the perpetrator, we hold that the so called delay in FIR is not fatal and has been satisfactorily explained. Of course if we take into consideration the complaint dated 25.02.2007 (Ex.PW-2/B-2) there would in fact virtually be no delay. Only one accused i.e. the appellant, was named in the FIR and in the factual matrix of the instant case the delay is certainly not reflective of an effort to concoct a false story to implicate the appellant.

19. In Tara Singh v. State of Punjab 1991 Supp(1)SCC 536.the Supreme Court has examined the question of delay in lodging of FIR and has observed:

4. It is well-settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.

20. This position was reiterated in Ravinder Kumar and Anr. v. State of Punjab (2001) 7 SCC 690.wherein it was observed:

13. The attack on the prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. OF course a prompt and immediate lodging of the FIR is the ideal as that would given the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to

any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of uncoversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or seductiveness of temper of moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

21. In the present case there is evidence of last seen, as Anwar, the boy was last seen being taken away by his step-father, the appellant herein. The statement of PW-2 affirming the said facts stands fully corroborated by the sister of Anwar, PW-3 Shahana Khatoon. The conduct of the appellant implicates him and establishes his involvement as he thereafter vanished. He was not present when the dead body of Anwar was found on 02.03.07. He was subsequently arrested on 06.03.07.

22. Keeping in view the aforesaid facts, the chain of incriminating circumstances that stand established against the appellant is complete and leads to the irresistible conclusion of guilt of the appellant. Therefore, we dismiss this appeal and affirm the judgment of the Trial Court and maintain the conviction and sentence of the appellant for the murder of Anwar, his stepson. (SANJIV KHANNA) JUDGE (SIDDHARTH MRIDUL) JUDGE FEBRUARY 14 2013 NA