
(2010) 04 AHC CK 0213

In the Allahabad High Court

Case No : Criminal Appeal No. 4175 of 2009 With Criminal Appeal No. 4917 of 2009

Aslam Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 201, 302, 364A

Citation : (2010) 04 AHC CK 0213

Hon'ble Judges : Amar Saran, J and Shyam Shankar Tiwari, J

Final Decision : Dismissed

Judgement

Amar Saran and Shyam Shankar Tiwari, JJ

1. Heard learned Counsel for the appellants, learned Counsel for the complainant and learned Additional Government Advocate and perused the judgment and record of the case.

Since both the aforementioned criminal appeals have been filed against the judgement and order dated 3.7.2009 passed by the Special Judge (DAA), Kanpur Dehat convicting and sentencing the appellants to life imprisonment under section 302/364A/201IPC, the prayers for bail in both the appeals are being considered and disposed of by this common order.

2. The informant Anil Kumar lodged a report on 20.12.2005 alleging that his son Gaurav Singh alias Bachcha Singh, a student of ClassX, aged about 16 years, had left his home on 8.12.2005 for his school in Prayagptir. He was seen along with the appellant Lal Singh by Arun Pal, P.W. 2 and Babulal, P.W. 3. Jitendra Kumar also saw the deceased going along with Lal Singh at the railway station. He met the appellant Aslam Khan and his other companions. Lal Singh gave his cycle to Aslam Khan and asked him to take it to his home. Aslam Khan narrated these facts to the informant, who became suspicious. The informant also received a ransom letter on 15.12.2005 purportedly written by one Arjun Singh

Gurjar demanding Rs. 8 lakhs as ransom for the release of his son. On 4.1.2006, the accused were arrested and on their pointing out the dead body of Gaurav was recovered from the grove of Chet Ram in the presence of Ram Yash Gautam, SDM, P.W. 4.

It is argued by the learned Counsel for the appellants that after the disappearance of the deceased on 8.12.2005, initially a report of his Gwmshwdgi was lodged on 12.12.2005 and very belatedly the FIR was lodged on 20.12.2005, which expressed suspicion against Lal Singh and Aslam Khan for this crime. In this connection, it was submitted that Arun Pal, P.W. 2 and Babu Lal, P.W. 3 gave statements to the police under section 161 Cr.P.C, after 21 days, and hence no reliance ought to have been placed on their testimonies.

3. It was,also submitted that SDM Ram Yash Gautam, P.W. 4 admits that by the time he arrived, the dead body has already been exhumed by the appellants. It was an open place and the dead body could easily be recovered and the case foisted on the appellants.

Learned Counsel has also challenged the recovery memo because it did not bear the signatures of the accused persons. In support of his contention, learned Counsel has placed reliance on the decision of the Apex Court in Jackaran Singh v. State of Punjab AIR 1995 SC 235.

Learned Counsel for the appellants contends that the weapons which were recovered at the instance of the appellants were valueless as the cause of death of the deceased was strangulation and there were only contusions and abraded contusions on the deceased and the weapons did not contain any blood etc. The time of death was also not established as P.W. 5 Dr. K.P. Gupta, who conducted the post mortem on the deceased on 5.1.2006 opined that the deceased could have died 2 or 3 weeks earlier. No public witness has come forward to support the recovery of the dead body and the weapons from the deceased. The appellants were on bail during trial.

Learned AGA, however, submitted that the belated disclosure by the witnesses P.W. 2 Arun Pal and P.W. 3 Babu Lal were not fatal because consequent to the information given by these witnesses the accused persons were arrested and that the dead body was dug out by the accused persons from under the ground and that this was a clinching circumstance for establishing the complicity of the accused in this offence. Moreover, P.W. 2, Arun Pal gives a satisfactory explanation for his delayed statement to the police by deposing that he had gone away to Delhi after the incident.

4. It was argued by the learned Counsel for the complainant that if the complainant was interested in falsely implicating the appellants, he would have named them straight away after the boy's disappearance on 8.12.2005 and their names would not have been disclosed only in the report, which was lodged on 20.12.2005.

It was not very material whether the SDM had come exactly before the dead body was exhumed or a little after that. In any case, not much advantage could be derived from such minor inconsistencies.

The Apex Court has itself reviewed the view taken in Jackaran Singh (supra) that the accused need to affix their signatures on the recovery memo. In this context, it was pointed out in the Division Bench decision of the Kerala High Court in the case of Saidu Mohammad v. State of Kerala, 2006 Cr. L.J. that in 1998 JV(.I) Kerala 1 to 5, the Apex Court has deleted the paragraph about the need of the signature of the accused in the recovery memo. Paragraph 48 of Saidu Mohammad (supra) reads as follows:

48. We shall now consider whether there is any merit in the argument that the Investigating Officer must obtain the signature of the accused in the recovery mahazar to make it admissible. In Jackaran Singh v. State of Punjab, 1997 SCC (Cri) 651 = 1995 Cri LJ 3992 = AIR 1995 SC 2345 originally there was an observation by the Apex Court to the effect that the failure to obtain the signature in the disclosure statement affects the reliability of the same. The said case was decided on April 20, 1995. The Supreme Court subsequently held that the observation contained to that effect in that decision was to be reviewed. Therefore, the registry was directed to post the case before the same Bench for suo motu review. It was heard on 25/4/1996. The Supreme Court issued a corrigendum, which is reported in Jackaran Singh v. The State of Punjab 1998 J.V. (1) (Ker) pp 1 to 5. It reads as follows:

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Instead of

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Page 6, Line 8 to 17

"does not bear the signatures or thumb impression of the appellant. Even, the recovery memo of the revolver and the cartridges, Ex. P9/A, which is also attested by Yash Pal and Sukhdev Singh, ASI does not bear either the signatures or the thumb impression of the accused. The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded under S. 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement.

"was made long time after the appellant was taken into custody by the investigating agency and it is doubtful whether the same was voluntarily made by the appellant."

So, the legal effect is that there is no dictum laid down in Jackaran Singh's case 1995 Cri LJ 3992 to the effect that the statement made by an accused to be admissible under section 27 must contain his signature or thumb impression. These aspects were elaborately considered by a Division Bench of the Madras

High Court in Natarajan v. Union Territory of Pondicherry 2003 Cri LJ 2372. Further, in State of Rajasthan v. Teja Ram, 1999 (38) ACC 627 (SC) the Apex Court held that the Investigating Officer is not obliged to obtain the signature of an accused. Since the Apex Court had suo motu reviewed the observations contained in Jackaran Singh's case (supra), that decision is not an authority to hold that to accept a statement under section 27, it must contain the signature or thumb impression of the accused. Moreover, it is relevant to note that the words "any person supposed to be acquainted with the facts and circumstances of the case" occurring in subsection (1) of section 161 of the Code of Criminal Procedure are comprehensive enough to include an accused person and subsection (1) of section 162 of the Code of Criminal Procedure enjoins that such statement, if reduced to writing, shall not be signed by the maker. Section 27 of the Indian Evidence Act only makes that part of such statement relevant and admissible.

3. sible in evidence as would raise within the ambit of that section."

5. The same view that taking of signature of the accused is not essential on the recovery memo has been laid down by the Apex Court in State of Rajasthan v. Teja Ram, 1999 (38) ACC 627 (SC). In Madan Singh v. State of Rajasthan, AIR 1978 SC 1511 and Mohammad Aslam v. State of Maharashtra, (2001) 9 SCC 362 the Apex Court has observed that reliance only on official witnesses and nonproduction of public witness does not vitiate the recovery. If the evidence of the official recovery witness is reliable, even if the private witnesses turn hostile, or do not appear to support the prosecution case, it will not vitiate the recovery at the instance of the accused.

6. The observations of the doctor in the postmortem report dated 5.1.2006 that the death took place within two or three weeks earlier, in no way contradicts the prosecution version and in any case opinion of the doctor as to the period of death or injury is always an estimate. So far as the weapons are concerned, the accused have got Fawra and Khurpi and such other weapons recovered which were used for digging the ground for burying the body of the deceased.

After considering the submissions of the parties, without expressing any opinion on the merits of the case, we are of the view that the appellants Lal Singh and Aslam Khan have not made out any case for bail. Their prayer for bail is rejected.

Bail Rejected.