
(2010) 03 DEL CK 0344
In the Delhi High Court
Case No : Criminal Appeal 627 of 2008

Babu Lal @ Pappu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 364

Citation : (2010) 5 ILR Delhi 174

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Dileep Singh, M.P. Singh, Amresh Yadav and Ajay Kumar, for the Appellant; M.N. Dudeja, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide impugned judgment and order dated 7.5.2008 the learned Trial Judge has convicted the appellant for the offences punishable under Sections 302/364 IPC. For the offence of murder the appellant has been sentenced to undergo imprisonment for life and to pay a fine in sum of Rs. 5,000/- in default to undergo simple imprisonment for 2 months. For the offence punishable u/s 364 IPC he has been sentenced to undergo rigorous imprisonment for 10 years and to pay a fine in sum of Rs. 5,000/- in default to undergo simple imprisonment for 2 months. The sentences have been directed to run concurrently. We understand this to mean that after undergoing the sentence for 10 years it would be treated that the appellant has undergone the sentence for the offence punishable u/s 364 IPC.

2. The broad contours of the case set up by the prosecution are that the deceased Kanhiya Lal aged 11 years along with his father Diwari Lal PW-3 and sister Rakhi PW-8 resided in a jhuggi near Hanuman Mandir, Bhama Shah Road, Model Town, Delhi. The appellant Babu Lal and juvenile co-accused Inder Dev also resided in the same jhuggi cluster. Appellant Babu Lal, co-accused Inder Dev

and deceased Kanhiya Lal were all employed in a sweet shop, run by Vinod Sharma PW-4, situated near Hanuman Mandir. Appellant Babu Lal used to tease Rakhi PW-8, sister of the deceased, to which Diwari Lal PW-2 and Kanhiya Lal often objected. Motivated by this, appellant Babu Lal along with his co-accused Inder Dev kidnapped Kanhiya Lal and murdered him in the sweet shop of Vinod and hid the body in a trunk inside the godown of the adjoining temple.

3. The process of criminal law was set into motion on 9.2.2005 when Diwari Lal PW-3 went to PS Model Town and lodged a missing persons complaint Ex.PW-3/A wherein he inter alia stated that his son Kanhiya Lal left the house at around 7:00 am on 7.2.2005 to play near the temple and could not be found thereafter. He further stated that he suspected Babu Lal @ Pappu for the reason Babu Lal used to tease his daughter and in this context often had verbal duels with Babu Lal.

4. SI Kishan Lal PW-13 who recorded the statement Ex.PW-3/A made an endorsement Ex.PW-13/A under said statement of Diwari Lal and got an FIR registered for the offence of kidnapping. He searched Babu Lal and apprehended him near Hanuman Mandir. He interrogated Babu Lal and recorded his disclosure statement Ex.PW-9/A wherein Babu Lal disclosed his involvement in the murder of Kanhiya Lal. Babu Lal further stated that he could get the dead body of Kanhiya Lal recovered from within an iron trunk lying in a hall situated behind the temple. He further disclosed that he had burnt the clothes worn by the deceased and could get the remnants of the same as well as the danda (fatta) used in the commission of the offence recovered from the dump yard of the temple.

5. Since Babu Lal disclosed that he had murdered the deceased, the investigation was taken over by Insp. Hira Lal PW-15 before whom Babu Lal was produced by SI Kishan Lal. Thereafter, Babu Lal led SI Kishan Lal and Insp.Hira Lal to the godown adjoining the temple as also adjoining the shop of Vinod PW-4 and pointed out an iron trunk from within which the dead body of Kanhiya Lal was recovered in a naked condition and was seized vide memo Ex.PW-4/A. Clothes and other objects being costumes of characters at Ramlila in the trunk were also seized.

6. Babu Lal disclosed the involvement of his co-accused Inder Dev, who being a juvenile faced trial before the Juvenile Court.

7. It is apparent that the appellant has been convicted on the incriminating evidence of getting recovered the dead body of the deceased Kanhiya Lal.

8. In the celebrated decision reported as AIR 1947 PC 67 Pulukuri Kottaya and Ors. v. Emperor (para 10) Section 27 of the Evidence Act is wholly applicable when a person in police custody produces from some place of concealment some object, such as a dead body. In the decision reported as 1989 Cri.L.J. 200 (Gauhati) Parimal Banerjee Vs. The State, Ram Lochan Ahir Vs. State of West Bengal, Ram Lochan Ahir v. State of West Bengal, the recovery of a dead body

lying concealed is a highly incriminating evidence where it is found that the person was murdered. Such a recovery incriminates the person at whose instance the dead body was recovered.

9. Thus, the only thing required by us to be seen is whether the prosecution has successfully proved that it could lay hands on the dead body of the deceased only with the aid of the mental knowledge of the appellant of the place wherefrom the dead body was recovered.

10. As deposed to by SI Kishan Lal PW-13 whose testimony stands corroborated through the testimony of Const. Jagdish Singh PW-9 the disclosure statement Ex.PW-9/A of the appellant was recorded by SI Kishan Lal. Not only does it record that the appellant can get recovered the dead body from within a trunk but also the fact pertaining to the condition of the dead body i.e. that the same is in a nude condition, for the reason it stands recorded that Babu Lal said that after killing the deceased his clothes were removed and were burnt.

11. Now, as recorded in the seizure memo Ex.PW-4/B proved by Vinod Sharma PW-4 whose testimony has been corroborated by SI Kishan Lal and Insp.Hira Lal, the dead body was recovered from inside a trunk in the godown adjoining the temple in the complex whereof shop of Vinod Kumar was situated. The trunk was pointed out by the appellant. It is apparent that the recovery of the dead body is not from an open place and could not have been accessed by the police without somebody telling the police about the same.

12. Prima facie, the recovery stands proved and with credibility. That the fact that the body was in a naked condition also assumes importance for the reason the state of the body was disclosed by the appellant much before it was recovered and when it was recovered it confirmed what was told to SI Kishan Lal.

13. We would be failing if we do not note the submissions which were urged at the hearing of the appeal. It was urged that Diwari Lal PW-3 admitted during cross examination that his statement was recorded by the police for the first time after the body of his son was recovered and that the police arrested Vinod PW-4 but does not know the reason why Vinod was left. It was urged that it is apparent that everything was manipulated after the dead body of Kanhiya Lal was recovered.

14. It is apparent that Diwari Lal PW-3, who lives in a jhuggi and from said fact makes it evident that he is a man with lesser means and lesser knowledge, was thoroughly confused in Court. If he is to be believed with reference to what he said during cross-examination, we wonder as to wherefrom SI Kishan Lal got about investigating the missing of Kanhiya Lal. Common sense tells us that SI Kishan Lal was investigating Kanhiya Lal being missing and as per documentary record it was after the FIR was registered on 9.2.2005, which was preceded by Diwari Lal PW-3 making the statement Ex.PW-3/A. To satisfy our judicial conscious we saw the case diary maintained by SI Kishan Lal and the same also reconfirms the aforesaid.

15. Now, SI Kishan Lal has categorically deposed that he commenced investigation after Diwari Lal made the statement Ex.PW-3/A. No suggestion has been given to SI Kishan Lal that he commenced the investigation otherwise.

16. As regards the controversy of Vinod PW-4 being arrested and let off and his being a suspect, suffice would it be to state that there is no record of Vinod being arrested. On the contrary the record shows that Vinod has participated in the recovery and has signed the recovery memos prepared when the dead body of Kanhiya Lal was recovered and clothes inside the iron box were seized. He has also witnessed the recovery of ashes stated to be of burnt clothes at the instance of the appellant.

17. We may record it incidentally, for the reason it is a weak evidence, that a kadai and a wooden danda got recovered at the instance of the appellant have been opined to be the objects capable of inflicting injuries on the person of the deceased.

18. We hold that the confused testimony of Diwari Lal PW-3 nowhere brings out false implication and planting against the appellant.

19. That the deceased was murdered is proved through the post-mortem report Ex.PW-1/A and the testimony of its author Dr. Upender Kishore PW-1. The post-mortem record shows 10 external injuries, all caused by blunt objects. The injuries directed towards the skull, though dangerous and capable of causing death are not the cause of death for the reason the deceased was asphyxiated to death as per the post-mortem report.

20. We find no merit in the appeal which is dismissed.

21. Since the appellant is still in jail, we direct that a >copy of this decision be sent to the Superintendent Central Jail Tihar to be made available to the appellant.