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(2016) 01 DEL CK 0262

In the Delhi High Court

Case No : Crl. A. 334/2000

Ram Kishore and Others — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, Section 301, Section 302, Section 34, Section 364, Section 364-A, Section 377

Citation : (2016) 2 ADDelhi 257 : (2016) 5 RCRCriminal 307

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Aditya Vikram, Advocate, for the Appellant; Varun Goswami, APP., for the Respondent

Final Decision : Disposed off

Judgement

Mukta Gupta, J.—1. Ram Kishore @ Romi and co-accused Rashid have filed the above captioned appeal challenging their conviction vide judgment and order dated May 05, 2000 for the offence of kidnapping, murder and destruction of evidence as also the order dated May 13, 2000 sentencing the two.

2. Vide order dated September 17, 2015 holding that Ram Kishore @ Romi was a minor on the date when the offence was committed, noting that Ram Kishore does not accept he having committed the offence, and notwithstanding he having undergone imprisonment during trial more than the maximum prescribed of three years and that too not at a place of safety, the Division Bench treated the appeal filed by Ram Kishore @ Romi as disposed of making a reference to the Juvenile Justice Board.

3. Thus, our concern in the appeal would be limited to appellant No. 2 - Rashid.

4. On May 15, 1998 at 8.55 PM Sukhbir Singh lodged a missing report vide DD No. 87-B at PS Bhajan Pura informing that his son Vijay Kumar aged 14 1/2

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years, wheatish colour, height 4 1/2 feet, wearing check shirt and brown pant had gone to deliver the meal to his brother along with one boy namely Ram Kishore @ Romi on May 14, 1998 at about 11.00 AM on cycle; however he did not turn up to the house after delivering the meal to his brother. They had visited the house of Ram Kishore @ Romi where they were informed that Ram Kishore @ Romi had gone to his sister''s house at Tuglakabad, however at Tuglakabad they neither met Ram Kishore @ Romi nor got any satisfactory reply. On May 17, 1998 at 12.00 AM Sukhbir Singh got recorded his statement suspecting Ram Kishore @ Romi and his associate Rashid in the kidnapping of his son Vijay Kumar and thus FIR No. 261/1998 under Sections 364/34 IPC was registered. Search was made for Ram Kishore @ Romi and Rashid and pursuant to their apprehension they made disclosure statements leading to the recovery of dead body of Vijay @ Sonu. On completion of investigation, a charge sheet was filed for offences punishable under Sections 302/301/377/364-A/34 IPC and after the evidence was led, the learned ASJ convicted Ram Kishore @ Romi and Rashid for offences punishable under Sections 364/302/201/34 IPC.

5. Learned counsel for the appellant Rashid contends that Rashid was not named in the missing report and has been implicated later on. Rashid has been convicted on the basis of circumstantial evidence, however the chain of circumstances do not prove the possibility of Rashid having committed the offence. Though PW-2 Narender Kumar stated that he identified the dead body of Vijay @ Sonu after seeing the letters "RKS" written on his arm, however Dr. Pramod Kumar PW-13 who conducted the post-mortem on the body of the deceased found no monogram or tattooing. The body was in a very decomposed condition and thus could not have been identified by the family. Though the prosecution version is that the appellant hired a cycle from Lukman and after committing the offence returned it to Lukman, however Lukman who appeared as PW-3 did not support the prosecution case. There are contradictions in the statements of the witnesses as to how they reached the spot from where pointing out was done. No public witness from the nearby village was called at the time of alleged recovery of the dead body.

6. As noted above Sukhbir Singh, the maker of FIR on May 15, 1998 got lodged a missing report and at around 12.00 AM on May 17, 1998 got registered the FIR. Name of appellant Rashid is mentioned in the FIR based on the input received from Daya Chand to whom Vijay Kumar @ Sonu had gone to deliver the lunch at the shop. Thus the last seen witness of the occurrence is Daya Chand PW-6 and his testimony in this regard is material.

7. Daya Chand PW-6 deposed that on May 14, 1998 at about 11.30 AM Vijay @ Sonu his younger brother came to provide him with the lunch on a cycle and was accompanied by Ram Kishore @ Romi and Rashid. Thereafter all the three went away on the cycle from his shop. When he reached his home in the evening at 8.00 PM after closing the shop, he came to know from his father that Vijay Kumar had not reached home, where after he along with his father went to the

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house of Ram Kishore @ Romi who was not present at his house. Father of Ram Kishore @ Romi informed them that Ram Kishore @ Romi had gone to Tuglakabad in the morning where also neither Ram Kishore @ Romi nor Vijay could be traced. Since his brother could not be traced, his father lodged the missing report in the evening of May 15, 1998. In cross-examination this witness reiterated that he had himself seen the two boys i.e. Ram Kishore @ Romi and Rashid who came with Sonu and they were standing at a distance of 200 paces from his shop. He denied that he had not seen Ram Kishore @ Romi and Rashid standing on the road on May 14, 1998 or that he had not told this fact to his father hence the same was not mentioned in the missing report. However what is material is that even though this witness claims to have seen both Ram Kishore @ Romi and Rashid with his brother Vijay Kumar @ Sonu at around 11.30 AM on May 14, 1998 and when he came in the evening and did not find Vijay Kumar at home, he told this fact to his father however still neither was Rashid named in the missing report filed on May 15, 1998 nor search was made at the house of Rashid.

8. Statement of SI Rakesh Kumar PW-17 the Investigating Officer records that on May 16, 1998 in the night at about 11.30 PM on receipt of DD No. 87B dated May 15, 1998 he along with Tejpal went to the house of Sukhbir Singh where he recorded the statement on the basis of which FIR was registered and that statement of Daya Chand was also recorded who disclosed about Ram Kishore @ Romi and Rashid coming to his shop together with his brother on May 14, 1998 and after giving lunch, his brother left with Ram Kishore @ Romi and Rashid on the cycle. They arrested Ram Kishore @ Romi from his house who was interrogated and he disclosed that Rashid had left for his house. Rashid was also apprehended from his house and on the arrest both made disclosure statements and led the police party to river Hindon and pointed out the place where they had murdered the Sonu. Taking the local police along with them they recovered the dead body of Vijay @ Sonu from a place at the bank of river. The right leg of the body was missing and there was no flesh on the face. However, the body had the check shirt and the brown colour pant on it and was identified to be that of Vijay @ Sonu by his family members. No further recoveries, that is, of the missing portion of the leg and the weapon of offence could be made.

9. SI Rakesh Kumar PW-17 in his testimony states that when they reached the house of Ram Kishore @ Romi, Ram Kishore @ Romi was found present, was interrogated and he disclosed about the involvement of Rashid as well. He further states that they went to the house of Rashid and apprehended him and thereafter recorded the disclosure statements of both. A perusal of statement of SI Rakesh Kumar would reveal that before Rashid was apprehended, Ram Kishore @ Romi had already made the disclosure statement and thus the disclosure statement though recorded later on was not a joint disclosure statement so as to be attributable to Rashid as well.

10. Supreme Court in the decision reported as , (2005) 11 SCC 600 State (NCT

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of Delhi) Vs. Navjot Sandhu Alias Afsan Guru dealing with joint disclosure statements held that the same do not go out of purview of Section 27 of the Evidence Act altogether and are admissible if the information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them. It was held-

"145..... Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel."

11. As noted in the present case Ram Kishore @ Romi was arrested first, was interrogated and he disclosed the facts leading to the arrest of Rashid. Merely because the disclosure statements were reduced into writing after taking the two i.e. Ram Kishore @ Romi and Rashid to the police station together, the same would not have the attributes of a joint disclosure statement admissible under Section 27 of the Evidence Act. From the facts, it is evident that the disclosure

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statement admissible under Section 27 Evidence Act was made by Ram Kishore @ Romi and once the facts had been disclosed, subsequent disclosure statement of Rashid was not admissible under Section 27 of the Evidence Act.

12. A perusal of the record would reveal cutting and over-writing beneath the signatures of SI Rakesh Kumar on the rukka, on the Karyawahi done by him and the personal search memo of Ram Kishore @ Romi which fact has been admitted by PW-17 SI Rakesh Kumar and PW-4 HC Sunil who were working as duty officer in their cross-examination.

13. As per the post-mortem report, Dr.Pramod Kumar PW-13 found the following ante mortem injuries:

"i. Linear mark measuring about 3 c.m. x 2 c.m. in front of neck in middle with composed skin all around on cutting haematoma under skin measuring 2 cm x 1 c.m.

ii. Traumatic amputation of right leg just below knee on upper part of head of tibia and fibula sharp cut all around. Skin with composed with maggod showing lacerated skin and muscles and tissues.

Internal Examination

i. On scalp haematoma with the composition on occipital region 2 c.m. x 1 c.m.

ii. Brain liquefied with blood clots measuring 2 c.m. x 2 c.m. in occipital region."

14. The cause of death was opined to be asphyxia as a result of strangulation and the time of death was 4-5 days since the time of post- mortem.

15. A perusal of the post-mortem report would reveal that the deceased suffered a traumatic amputation of right leg just below the knee which was an ante-mortem injury. In the alleged disclosure statement of Ram Kishore @ Romi and Rashid recorded by PW-13 there is no mention whatsoever of amputation of the right leg. There is no recovery of the amputated leg or the weapon of offence used for amputation.

16. In the rukka Sukhbir Singh PW-1 stated that on the right hand of his son ''R'' was tattooed whereas in his examination-in-chief he stated that ''RKS'' was tattooed. However PW-13 Dr.Pramod Kumar found no name or monogram or tattooing engraved on the body or the skin of the deceased.

17. PW-3 Mohd.Lukman from whom a cycle was hired on May 14, 1998 from 10.20 AM to 6.00 PM in the evening identified the cycle and stated that one boy came to take the cycle. He also does not speak about the presence of Rashid.

18. From the aforesaid discussion it is evident that Rashid was not mentioned in the missing report though it was lodged nearly 24 hours after Daya Chand informed his father about seeing the deceased with Ram Kishore @ Romi and Rashid, the disclosure made by Ram Kishore @ Romi was prior to the arrest of Rashid thus it cannot be held that the recovery of the dead body was pursuant to

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joint disclosure statement. Thus Rashid is entitled to the benefit of doubt.

19. Consequently, the judgment of conviction of Rashid appellant No. 2 for the offences punishable under Section 364/302/201/34 IPC and order on sentence are set aside. The appeal is disposed of.

20. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

21. TCR be returned.

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