

(2013) 08 DEL CK 0122
In the Delhi High Court
Case No : Criminal L.P. 238 of 2012

State	Vs	APPELLANT
Sanjay @ Khallu		RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 302, 34, 365

Citation : (2013) 3 JCC 2268

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : Sunil Sharma, app, for the Appellant;

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.

Crl. M.A. No. 5787/2012 (condonation of 53 days delay)

1. In view of the averments made in the application, the delay of 53 days in filing the leave to appeal is condoned. Application is allowed.

CRL. L.P. 238/2012

The State has filed the present leave to appeal to assail the judgment dated 16.12.2011 vide which the learned Additional Sessions Judge had acquitted the respondent of the charged offence under Sections 302/201/34 Indian Penal Code (IPC).

2. The version of the prosecution was unfolded in the first DD which was recorded in the local police station at the Lodhi Colony on 02.4.2002 at about 6.30 PM which was to the effect that one Rajesh aged 38 years, 5 feet 2 inches in height had left his house on 01.4.2002 in an esteem vehicle accompanied by his neighbor Binnu aged approximately 27 years and they have since then not returned. In spite of efforts to locate them they could not be located. On

03.4.2002 Jagbir Singh also lodged a missing report about his son Binnu who had allegedly accompanied the deceased Rajesh. An FIR u/s 365 of the IPC was accordingly registered.

3. On 02.4.2002 on the Jaipur highway an unidentified dead body was found lying opposite the Himachal Dhaba on the roadside. The clothes of the deceased were preserved and photographs were taken. Later on this dead body was identified to be that of Rajesh by his brother.

4. The post mortem of the dead body revealed that death had taken place on the night of 02.4.2002 which would be approximately the time which as per the version of the prosecution was the time on which the murder of the deceased was committed.

5. The role of two accused persons had surfaced; the primary accused was Virender @ Binnu; his role had surfaced in the version of the parents of the deceased. The father of the deceased was Hari Shanker (PW-13) and as per his version his son Rajesh was last seen in the company of Virender @ Binnu who had boarded his son's car and left the house together. Further version of the father is that on the same day when he along with his wife had gone to purchase vegetables at about 8.00-8.30 PM at the railway gate they saw their son sitting in the car along with Virender @ Binnu; the present respondent Sanjay @ Khallu was standing on the road and in front of him he also sat on the back seat of the car and since then his son is not traceable. The same version was corroborated by his wife Smt. Meera Devi (PW-15).

6. In the course of the trial accused Virender @ Binnu expired.

7. The court had noted that this is a case of circumstantial evidence. The only circumstance alleged and sought to be proved by the prosecution against the respondent was the circumstance of last seen which had emanated in the versions of the parents of the victim who had been examined as PW-13 and PW-15. This was admittedly the sole circumstance which the prosecution had sought to project against the present respondent. The court had rightly noted that in a case of circumstantial evidence all the links in the chain must stand complete before the conviction of a person can be ordered. While discussing the theory of last seen and relying upon the judgment of the Supreme Court reported as Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, it had noted that where a single circumstance of last seen is projected, the court must look for some kind of corroboration. Adverting to the facts of the instant case the court had noted that there were discrepant versions given by PW-13 and PW-15 even on the evidence of last seen. There were substantial improvements in the said versions. DD No. 16A (Ex. PW-3/A) had been recorded at 6.30 PM on the statement of PW-13 wherein noticeably there was no mention in the said document that when PW-13 along with his wife PW-15 had gone to purchase vegetables at 8.30 PM on 01.4.2002 he had last seen his deceased son in the company of Virender @ Binnu; at that time they had seen the present

respondent Sanjay @ Khallu sitting on the back seat of the car. This was rightly noted by the court to be a substantial improvement on oath in court; there appears to be no explanation whatsoever as to why this version did not emanate in the first statement recorded of PW-13 pursuant to which DD No. 16A had been recorded, if the father and mother of the victim had seen Sanjay @ Khallu also in the company of their son along with Virender @ Binnu, this would have been a material fact which should have been mentioned in the first statement recorded on 02.4.2002, clearly evidenced that this was an improvement made by PW-13 and PW-15 on oath in court.

8. The discussion in this regard reads as under:

17. DD No. 16A EX. PW3/A dated 02.04.2002 at 6.30 pm. recorded by HC Krishan Singh (PW3) finds no mention of version of PW13 of he with his wife having gone to buy vegetables, noticed the car at the railway crossing, found Sanjay standing there waiting for the car and upon opening the rear door having entered the car and seated there, where the deceased Rajesh was driving the car, being on driver seat and accused Virender @Binnu being besides him on the front seat. There is also no mention in EX. PW3/A that deceased Rajesh at that place had told his mother PW15 that he would return within 10 minutes. Sanjay (PW14), the brother of deceased Rajesh elicited in the course of his cross-examination that on 02.04.2002, he with his father PW13 and mother PW15 had gone to PS for lodging the missing report for missing of deceased Rajesh. The sole lodged missing report qua deceased Rajesh is EX. PW3/A which is dated 02.04.2002. As per PW14, the said missing report was recorded whatever was stated by his father and then by the side of his father, his mother PW15 was also there. I advert to the testimony of Smt. Meera Devi (PW15). PW15 deposed that on 02.04.2002, her husband PW13 had gone to PS to lodge the missing report but she (PW15) had not gone to PS that day. PW15 also does not speak of PW14 having accompanied her husband (PW13) to lodge the missing report on 02.04.2002 to PS. Also PW15 testified that when they had reached the railway crossing on 01.04.2002 and had found car of her son already there, at that place, they did not have any conversation with their son. Even PW15 stated that she had not seen accused Sanjay getting inside the car. PW15 further clarified that accused Sanjay did not sit in the car in her presence but accused Sanjay was standing nearby car and the door of the car was open.

18. ASI Attar Singh (PW24) testified that he was marked DD No. 16A EX. PW3/A on 02.04.2002 recorded qua missing of deceased Rajesh and also DD No. 4A, EX. PW4/A dated 03.04.2002 recorded qua missing of accused Virender, PW24 also testified that after recording the statement EX. PW20/A of Sh. Jagvir Singh (PW20), father of accused Virender, on 07.04.2002 he made endorsement EX. PW24/A, got the FIR No. 95/02 registered at PS Lodhi Colony u/s 365 IPC. Also PW24 inter alia testified that on 16.04.2002 he had handed over the case file to second Investigating Officer SI Hullas Giri (PW33) and till the investigation remained with him, he was not aware of accused Sanjay since name of accused

Sanjay had not come in the statement of any of witness till investigation remained with him (PW24). Afore statement on oath of PW24 puts a question mark over statement u/s 161 Cr.P.C. dated 07.04.2002 of Smt. Meera Devi (PW15) purported to be recorded by ASI Attar Singh (PW24), which incorporates the fact of Sanjay having boarded the back seat of car at Sewa Nagar crossing and said Sanjay and previously known to PW15, said Sanjay was residing in Kotla. if that was so, such statement was given by PW15 on 07.04.2002 to Investigating Officer and so then the officers of investigating agency were in knowledge of said Sanjay having boarded the car of deceased at the railway crossing on the night of 01.04.2002; even said Sanjay was claimed to be known to PW15 and a resident of Kotla. How could then, accused Virender put chillies in the eyes of officers of investigating agency more particularly ASI Attar Singh (PW24) by making a false disclosure on 15.04.2002 of involvement of one Lachhu in the crime and the officers of investigating agency proceeding forth in that direction without in any way inquiring or investigating the role of Sanjay, the suspect as per statement of Smt. Meera Devi (PW15) on 07.04.2002 to IO. When all facts presented in the prosecution case inter alia including DD No. 16A EX. PW3/A, DD No. 4A EX. PW4/A are read in conjunction then the total effect of the material placed on record reveals that the parents of deceased viz. PW13 and PW15, for the first time in the court attributed the fact of accused Sanjay having been last seen with deceased Rajesh having boarded the car of deceased Rajesh, accused Virender sitting therein at the stated railway crossing, if such facts actually happened qua accused Sanjay having been last seen in the company of deceased Rajesh on the night of 01.04.2002 then it remains not explained as to what prevented Sh. Hari Shankar (PW13), father of deceased Rajesh to mention all these facts in DD No. 16A lodged in the evening of 02.04.2002 nearly 22 hours later to missing of his son Rajesh. When PW13 could mention of accused Binnu having accompanied his son, deceased Rajesh before he went missing in the night of 02.04.2002, then in all probability, a father of a missing son would report in complete details all facts, if any other person was last seen in the company of deceased, if it so actually happened. In DD No. 16A dated 02.04.2002 EX. PW3/A, there is no whisper of Sanjay or his boarding the car of deceased Rajesh in the night of 01.04.2002 at stated railway crossing or in fact PW13 with PW15 going to such railway crossing. The above discussions put reliability, trustworthiness and credibility of PW13 and PW15 qua accused Sanjay having been last seen in the company of deceased or having boarded the car of deceased as alleged, under the realm of doubt. The elicited improvements in the versions of PW13 and PW15 for having last seen accused Sanjay in the company of deceased Rajesh in the night of 01.04.2002 and having boarded the car of deceased Rajesh at the said railway crossing, when read alongwith the contradictions interse the versions of PW13, PW14 and PW15, elicited above make the testimonies of PW13 and PW15 unreliable so far as they pertain to accused Sanjay having boarded the car of deceased Rajesh at the stated railway crossing or the accused Sanjay having been last seen in the company of deceased Rajesh as alleged. Aforesaid infirmities, elicited contradictions in

testimonies of PWs 13, 14 and 15 go to the root of the matter to check and shake the basic version and core of the prosecution case. The testimonies of PW13 and PW15 qua fact of accused Sanjay having been last seen in the company of deceased Rajesh as alleged, are not free from blemishes. Per contra, they suffer from patent contradictions, severe infirmities, interse which projects the parents of the deceased to be under tremendous pressure to name the arrayed accused Sanjay as having been last seen in the company of deceased Rajesh. Shaken testimonies of PW13 and PW15 lack credence to base the convention of accused Sanjay on them.

9. Being substantial improvements, these versions of PW-13 & PW-15 had been ignored and rightly so. As already noted supra, this was the only circumstance which had been projected against the respondent. This circumstance has not withstood the test of scrutiny. There being no other evidence against the respondent, the trial court had rightly acquitted him. No case has been made out by the State to grant leave to appeal. Leave to appeal is accordingly dismissed.