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IN THE HIGH COURT OF DELHI

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Date of Decision : July 9, 2009.

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CRL. APPEAL No.34/2001

SATYAWAN ...Appellant
Through : Mr.M.L.Yadav, Amicus Curiae.

versus

STATE ...Respondent
Through : Mr.Pawan Sharma, APP.

CRL. APPEAL No.765/2000

KAMESHWAR TIWARI ...Appellant
Through : Mr.M.L.Yadav, Amicus Curiae.

versus

STATE ...Respondent
Through : Mr.Pawan Sharma, APP.

CRL. APPEAL No.770/2000

SATISH KUMAR ...Appellant
Through : Mr.M.L.Yadav, Advocate.

versus

STATE ...Respondent
Through : Mr.Pawan Sharma, APP.

CRL. APPEAL No.780/2000

RAMESH KUMAR ...Appellant
Through : Mr.M.L.Yadav, Amicus Curiae.

versus

STATE ...Respondent
Through : Mr.Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. At the outset we must record our anguish at the clumsy judgment written by the learned Trial Judge which is challenged before us. Without any discussion or appreciation of the evidence; after simply noting the evidence on record, a cryptic finding has been returned that the prosecution has successfully proved its case.

2. Four accused i.e. the appellants were sent for trial pertaining to FIR No.218/1987 PS Adarsh Nagar, under Section 302/386/363/364/120-B IPC. While penning the judgment, ignoring the fact that there are four accused and the law that where there are more than one accused, incriminating evidence held established against each accused needs to be succinctly stated, we find that the learned Trial Judge has not done so.

3. We get no clue for any reasons from the impugned decision, and therefore, we are unable to follow the conventional route to be followed in appeals, requiring the Appellate Court to state as to what reasons have been recorded by the learned Trial Judge, and if the Appellate Court were to disagree with the said reasons, to bring out the point

of disagreement and thereafter give reasons in support of the conclusions reached by the Appellate Court.

4. In a serious offence, where the minimum punishment prescribed, is of imprisonment for life and even sentence of death can be imposed, it is expected from the learned Trial Judges to be vigilant and to record, with clarity, the reasons for their decision.

5. It all commenced when Master Narender @Bonny, a student of second standard in D.B.C. School, Gali Mandir Wali, Village Azad Pur went missing from near his house at around 5:00 PM. The child had returned from school at 01:00 PM and went out to play marbles with his friends. His parents searched for him and could not locate the child. Hanuman Singh, the father of the young child, went to the police station in the night of the date of the incident which happened to be 1.12.1987 and reported that his child was missing. DD No.19-A was recorded at 10:10 PM about the child being missing.

6. The next morning, the mother of the child, Smt.Maya Devi, noted an envelope Ex.PW-3/F on top of a television set in her house. The original address of the addressee was scored off and the name of her husband was written thereafter. On opening the same, she found a letter Ex.PW-3/A addressed to her husband stating that their child was in the custody of the sender of the letter and unless ransom in sum of Rs.60,000/- was paid, there could be danger.

The place where ransom was to be delivered was disclosed, being the bus stand at Naniwalee Bagh. It was directed that the money be put inside a bag and be left at a cement platform at the bus stand. It was cautioned that after the bag is left at the spot directed, the person delivering the bag should not look back.

7. The father of the child i.e. Hanuman Singh, dutifully informed the police and handed over the ransom note and the envelope to the investigating officer who seized the same vide memo Ex.PW-3/B and immediately got registered an FIR for the offence of kidnapping.

8. Relevant would it be to note that the envelope contained a printing thereon which indicated that a marriage invitation card was enclosed in the envelope and was got printed by Desh Raj PW-12, whose daughter Suresh was to be married on 2.12.1987.

9. Unfortunately for the prosecution, the raiding party which took position near the bus stand at Naniwalee Bagh where the ransom amount was to be delivered managed to apprehend some boys at the bus stand, found itself in a blind alley, for the reason, it appears that one out of the said boys named Lokeshwar innocently picked up the bag. The interrogation of the said boys revealed their innocence and the investigation was left at a standstill.

10. Before the investigation could proceed further, on 4.12.1987, the dead body of Narender was noted by Suresh PW-6. He reported to the police that he had seen the dead body of a child near the house of one Khacheru in Azadpur. The police seized the body which was identified by his parents as that of Narender @Bonny. The body was sent for post-mortem and as per post-mortem report Mark 'A' it was recorded that the skull was battered with a blunt object; there being as many as twelve injuries on the temple and the skull area. The cause of death was shock due to injuries to the brain. The blood stained clothes of the deceased and his blood sample was seized by the investigating officer after the post mortem was over.

11. The investigating officer and his team questioned all the young boys of the locality who used to play on the street. Success was met when Kale PW-4 a resident of House No.247 Azadpur disclosed to the investigating officer that on 1.12.1987 he i.e. Kale, Narender @Bonny and the appellants Satish Kumar and Satyawar had played marbles on the street. Thereafter, they all went to the house of appellant Satish and played marbles there as well. He i.e. Kale left. Appellants Satish and Satyawar as also Narender stayed back.

12. The investigating officer summoned Satyawar on 7.12.1987 and interrogated him and recorded his statement Ex.PW-1/A. Satyawar confessed and disclosed that he along

with Satish, Ramesh and Kameshwar Tiwari had conspired to kidnap Narender and demand ransom. He disclosed that since they learnt that the police was searching for the child i.e. Narender, all of them decided to kill Narender and that Narender was killed by hitting him repeatedly on the head with a brick. He disclosed the place to be the house of the grandmother of Satish. He volunteered to point out the exact spot in the house.

13. Satish was apprehended thereafter on 7.12.1987 and even he admitted his involvement and disclosed the place i.e. the house of his grandmother in which even he used to reside, as the place where Narender was killed. He admitted that the ransom note was written by him and disclosed that he had torn the sheet from his notebook and that he could get the notebook recovered. He also disclosed that he had used an old pyjama to create a head pad when he removed the body of Narender on his head, to be disposed of outside. He volunteered to get recovered the said pyjama.

14. Thereafter, Satyawar and Satish led the police to the house of the grandmother of Satish, where Satyawar pointed out a tand (loft) where the deceased was killed and from within the tand he produced a brick which was stained with blood. The brick Ex.P-1 was seized vide seizure memo Ex.PW-1/D. The walls of the tand were found to be stained with blood. The investigating officer removed a portion of the

cement concrete of the wall containing blood and seized the same as recorded in the seizure memo Ex.PW-1/E. Satish pointed out the place from where a blood stained pyjama Ex.P-2 was recovered. He also produced a notebook Ex.P-3 from the house, which was seized. A ball pen Ex.P-4 stated to have been used by Satish to write the ransom note was also produced by him which was seized. The seizure of said articles stands recorded in the seizure memo Ex.PW-1/C.

15. Appellants Ramesh and Kameshwar were apprehended and confessed to have participated in the crime. Relevant would it be to note that nothing was recovered pursuant to their disclosure/confessional statements, and hence no part thereof is admissible in evidence, and hence we do not note the same.

16. While in custody, the investigation officer took specimen writings sample of appellant Satish on eight sheets. The same, along with the ransom note and the register Ex.P-2 produced by Satish from the house of his grandmother were sent to a handwriting expert who gave an opinion, vide report Ex.PW-16/G, to the effect, that the author of the specimen writings S-1 to S-8 was the same who had authored the writings A-1 to A-19 in the register Ex.P-2 as also was the same who had authored the ransom note Ex.PW-3/A.

17. The clothes recovered from the dead body of the child i.e. Narender, his blood sample as also the pyjama Ex.P-

2, the brick Ex.P-1 stained with blood as also the cement concrete which was lifted from the tand and was stained with blood were sent for serological examination and vide report Ex.PW-16/F, it was opined that the blood group of the deceased was 'B' and that human blood of group 'B' was detected on the pyjama, the cement concrete lifted from the tand and the brick.

18. At the trial, the investigating officer deposed to the information received by him in the form of disclosure statements of appellants Satyawan and Satish and proved the recoveries pursuant thereto. The seizure of the brick, the pyjama and cement concrete from the tand have not been disputed. The report of the handwriting expert was proved. The post-mortem report of the deceased was proved. Since no submissions have been urged pertaining thereto the question which would arise for consideration would be what is the evidentiary value of said recoveries and what is the incriminating nature thereof.

19. Unfortunately for the prosecution Kale PW-4 turned hostile and disowned having told the police that he had last seen the deceased in the company of the appellants.

20. Ram Avtar PW-1 deposed about his nephew i.e. son of his brother being missing and his involvement in the investigation. He proved the various recovery memos to which he was a witness.

21. Hanuman Singh PW-2 proved the missing person report lodged by him as also the various recoveries effected in his presence. He identified the various objects which were recovered. The mother of the unfortunate child, namely Maya Devi PW-11, deposed that her son had left the house on 1.12.1987 at around 4:00 PM to play and that since he did not return back, a missing person's complaint was lodged. She deposed that the next morning i.e. on 2.12.1987, at around 6:00 AM she saw the envelope Ex.PW-3/F on the television set which contained the letter Ex.PW-3/A.

22. At the outset it may be noted that there is just no admissible evidence against appellant Kameshwar Tiwari. It appears that the learned Trial Judge has held him guilty on the basis of his confessional statement, qua which, at the trial, the learned Trial Judge wrongly permitted the investigating officer to extensively depose qua the same. Thus, appellant Kameshwar Tiwari is entitled to be acquitted.

23. Qua appellant Ramesh, the only evidence is the testimony of Desh Raj PW-12 and his son Balbir Singh PW-10, who have deposed that the envelope Ex.PW-3/F containing the name of Desh Raj Pradhan was printed along with many such envelopes when the marriage of Suresh i.e. the daughter of Desh Raj was solemnized and invitation cards were distributed and that Hanuman Singh i.e. the father of the deceased was not an invitee. Their evidence further establishes that an

invitation was extended to Shri Chand, father of appellant Ramesh. Thus, the only incriminating evidence against Ramesh is the fact that the envelope in question i.e. Ex.PW-3/F was possibly addressed to his father. We may hasten to add that the name and address of the addressee on Ex.PW-3/F has been defaced and cannot be read, meaning thereby, there is indirect evidence of the said envelope being the one in which the invitation card was delivered to his father.

24. The other evidence against Ramesh is his confessional statement recorded by the investigating officer and wrongly permitted to be proved during the testimony of the investigating officer. The same is inadmissible evidence. Thus, the only evidence worthy of being considered is the envelope Ex.PW-3/F.

25. In a case of circumstantial evidence, law requires chain of circumstances to be complete wherefrom an inference of guilt can be drawn and presumption of innocence ruled out.

26. Anybody could have used the envelope. The marriage of the daughter of PW-12 was solemnized on 2.12.1987. The invitation card was obviously sent prior thereto. People do throw away the envelopes containing invitation cards on the day the invitation is received. Anybody could have picked up the envelope and used the same. Thus, the sole evidence that the envelope Ex.PW-3/F could possibly be the one in which an invitation was extended to the father of

Ramesh is insufficient evidence wherefrom an inference of guilt can be drawn against Ramesh.

27. We ignore the part of the report of the handwriting expert wherein he has opined that the specimen writings S-1 to S-8 of Satish matched the writing on the ransom note Ex.PW-3/A, for the reason, the investigating officer took the specimen writings in violation of the provisions of the Identification of Prisoners Act 1920 and also contrary to the law that specimen writing for purposes of expert opinion can be directed to be taken under orders of the Court where the trial is pending as held authoritatively in various judicial pronouncements being: AIR 1980 SC 791 State of U.P. vs. Rambabu Mishra and 1994 (5) SCC 152 Sukhwinder Singh & Ors. vs. State of Punjab.

28. But, we take into account the report of the handwriting expert i.e. Ex.PW-16/G, insofar it opines that the writing on the ransom note is in the same hand as are the writings A-1 to A-19 in the register Ex.P-2 which was produced by the appellant Suresh from within the house of his grandmother. The register Ex.P-2 contains the name of Satish on the cover. Having produced the register from within the house of his grandmother in which even Satish was residing and Satish not having disclaimed that somebody else was the author of writings A-1 to A-19, the inevitable conclusion has to be that Satish has authored the writings A-1 to A-19 and in this

manner it is highly incriminating evidence that the writing on the ransom note Ex.PW-3/A is by the same person who has penned the writings A-1 to A-19 i.e. Satish.

29. The second incriminating evidence against Satish is the recovery of the pyjama Ex.P-2 at his instance and pursuant to his disclosure statement, which pyjama was opined vide report Ex.PW-16/F to be stained with human blood of the same group as that of the deceased.

30. The third incriminating evidence against Satish is the proof of the fact, through the testimony of Maya Devi PW-11, that in the intervening night of 1st and 2nd December 1987, Satish visited their house and enquired about her husband and that the following morning at about 6:30 AM she saw the envelope Ex.PW-3/F on top of the television set in her house which contained the ransom note Ex.PW-3/A. The said evidence establishes that Satish was the one who surreptitiously managed to deliver the ransom note in the house.

31. In this connection, it is important to note that the deceased was a resident of village Azad Pur. Even Satish is a resident of said village and the bonhomie amongst the villagers is well known. They visit each other's house more freely than the city bred. That the family of Narender was troubled and was searching for him in the night, gave an opportunity to Satish to act as a sympathizer, and enter the

house to query about the whereabouts of the father of Narender and while so doing surreptitiously put the ransom note on top of the television.

32. The fourth circumstance is the fact that the tand where the crime was stated to have been committed and in respect whereof it stands established that indeed, the crime was committed in the tand, is the house belonging to the grandmother of Satish and the fact that even Satish used to reside with his grandmother. We shall be dealing with the proof that the crime was committed in the tand while dealing with circumstances against Satyawar.

33. The four said incriminating circumstances unerringly point towards the guilt of Satish and are complete circumstances wherefrom the chain is complete to infer the guilt.

34. Qua appellant Satyawar, the incriminating evidence is his disclosure statement pursuant whereunto the police gained knowledge for the first time about the tand in the house of the grandmother of Satish. From within the tand, a blood stained brick was recovered on the pointing out of Satyawar. The walls of the tand were stained with blood and the cement concrete sample seized and as recorded in the seizure memo Ex.PW-1/E were found to be stained with human blood of the same blood group as that of the deceased. It is settled law, as held in the decision reported as 2005 (7) SCC 714

A.N.Venkatesh & Anr. vs. State of Karnataka, that where on the pointing out of an accused to a place, not known to the police, a dead body is recovered; said evidence is incriminating evidence. Similarly, a dead body may not be recovered, but a place may be discovered and from the place an object may be recovered which is linked to the deceased or the cause of his death. Said evidence is incriminating evidence.

35. The fact that Satyawar knew the place where the deceased was killed, which place has been proved to be the place of the crime through the medium of recovery of a blood stained brick from the said place and recovery of the blood of the deceased from the said place; in the absence of any explanation by Satyawar as to how he acquired knowledge of the crime being committed at the said place, we hold that said evidence is sufficient wherefrom the guilt of Satyawar can be inferred.

36. All appeals stand disposed of by the following directions:-

- (i) Criminal Appeal No.780/2000 and Criminal Appeal No.765/2000 filed by appellants Ramesh and Kameshwar Tiwari are allowed. Their conviction as held for the various offences by the learned Trial Judge is set aside. They are acquitted of all charges

framed against them. Being on bail, their bail bonds and surety bonds are discharged.

- (ii) Criminal Appeal No.770/2000 and Criminal Appeal No.34/2001 filed by appellants Satish and Satyawar are dismissed. Being admitted to bail, their bail bonds and surety bonds are cancelled. They are directed to surrender and undergo the sentence imposed upon them which, needless to state is to undergo imprisonment for life.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

July 9, 2009
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