

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 18th January, 2010*

+ **CRL.APPEAL NO.107/2007**

BABLOO Appellant

Through: Ms.Charu Verma, Advocate

Versus

STATE Respondent

Through: Mr.M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. Four persons were sent for trial. Two out of them; namely the appellant and co-accused Veer Pal Singh were charged for the offence of having murdered Nisha. All four accused; namely Babloo (appellant), Manoj Kumar, Tikam Singh and Veer Pal Singh were charged for the offence punishable under Section 201/34 IPC.

2. No incriminating legally admissible evidence emanating against Tikam Singh and Veer Pal Singh, they have

been acquitted. The only incriminating evidence emerging against Manoj Kumar is the recovery of the personal effects of deceased Nisha from his house pursuant to the disclosure statement of co-accused Babloo i.e. the appellant. The said incriminating evidence has obviously been found to be insufficient wherefrom the guilt of Manoj Kumar could be inferred.

3. The incriminating evidence held established against the appellant is his last seen in the company of the deceased at around 2:30 PM. His conduct when the young girl did not return home; the recovery of the dead body of the girl pursuant to the disclosure statement of the appellant and his pointing out the spot wherefrom the dead body was recovered as also his disclosure statement and his leading the police to the house of Manoj Kumar wherefrom the personal effects of the young girl were recovered.

4. At 8:30 PM on 25.1.2001, Raju PW-3 went to the police station and made a statement before the duty officer to the effect that he resides at House No.E-72B, Gali No.3, Ashok Nagar. That he was married to Sapna daughter of Santosh on 3.10.2000 and that his wife's brother Babloo i.e. the appellant was against the marriage. Today i.e. 25.1.2001 was his

birthday and it was decided that he would cut cake in the evening. Babloo came to his house on a cycle and said that his mother had desired to know as to what gift he would prefer and that the desired gift would be sent through Nisha. Nisha left with Babloo on cycle. He i.e. appellant returned at 5:00 PM and on being asked where was Nisha, informed that he had left Nisha at the corner of the street. All left to search for Nisha. Babloo accompanied them but suddenly disappeared. They had searched for Nisha who could not be traced. Her age is 9 years. She is 3'6". She is fair complexion and has a round face.

5. The duty constable made an endorsement Ex.PW-5/A under the statement afore-noted and got registered an FIR under Section 363 IPC.

6. ASI Yogender Singh PW-6 was entrusted with the job of locating Babloo. HC Umed Singh PW-5 also joined him. Both of them accompanied by Raju PW-3 i.e. Nisha's brother, went about searching for Babloo. The search took them to the house of co-accused Manoj who was Babloo's friend, and as claimed by the prosecution, Babloo i.e. the appellant was found in the vicinity of the house of Manoj and as recorded in the arrest memo Ex.PW-3/K was arrested at 1:30 in the night.

7. Brought to the police station, as claimed by the prosecution, he was interrogated by the SHO, Inspector Om Vir Singh PW-14, who recorded his disclosure statement Ex.PW-5/B in which the appellant admitted having killed Nisha and having thrown her dead body in bushes in Anand Vihar, Loni Border and hidden her personal effects in a room in the house of Manoj. He also disclosed that using a nylon rope he had strangled Nisha to death.

8. He took the police to a spot disclosed in his disclosure statement wherefrom Nisha's dead body was recovered. He took the police to the house of Manoj wherefrom the chappals, skirt, blouse as also a nylon rope were recovered.

9. At the trial Sapna PW-1, sister of the appellant, whom we note is the step sister, as also her husband Raju Goel PW-3, deposed that on 25.1.2001 the appellant came to their house and said that his mother had desired a gift to be given to Raju Goel as per wish of Raju Goel since it was Raju Goel's birthday. The appellant left their house with Nisha at around 1:30 PM stating that the gift would be sent through her. Nisha never returned home. Appellant came to their house in the evening at around 4:35 PM and on being questioned as to where Nisha was said that he had left Nisha at the corner of the street. All family

members proceeded to search for Nisha. Appellant proceeded in one direction with father of Raju Goel but disappeared. This roused the suspicion and hence Raju went to the police station and got recorded his statement Ex.PW-3/A.

10. Raju Goel PW-3 deposed same facts afore-noted and additionally deposed that the appellant was spotted near the house of Manoj and was apprehended and thereafter interrogated. The appellant made a disclosure statement pursuant where to he led the police to a spot wherefrom the dead body of his sister was recovered. That he led the police to the house of Manoj from whose house a maroon coloured skirt Ex.P-1, a pair of chappals Ex.P-7 belonging to his sister were recovered, a khes Ex.P-2, a gadda Ex.P-3, a dari Ex.P-4, a bed-sheet Ex.P-5 and a blanket Ex.P-5 were recovered and that the seizure was noted in the seizure memo Ex.PW-3/D and Ex.PW-3/E.

11. ASI Yogender Singh PW-6 deposed that after FIR was registered, he with the assistance of Raju Goel PW-3 searched and apprehended the appellant near the house of Manoj and on interrogation he i.e. appellant disclosed that he was against Raju marrying his sister and to take revenge he killed Nisha. He deposed that he took the appellant to the police station where

the SHO recorded the statement Ex.PW-5/B of the appellant wherein it was disclosed that the appellant can take the police to the spot where dead body of Nisha was thrown and personal effects of Nisha were hidden, pursuant where to he led the police to bushes near a vacant spot near Saraswati Vihar wherefrom the dead body of Nisha was recovered as recorded in the pointing out-cum-recovery memo Ex.PW-3/B. Thereafter, appellant took the police to Manoj's house wherefrom the exhibits referred to by PW-3 and as noted above were recovered as recorded in seizure memo Ex.PW-3/D and Ex.PW-3/E. He also deposed that a nylon rope Ex.P-9 was recovered along with the other exhibits at the spot.

12. Inspector Om Vir Singh PW-14 stated that after he recorded the statement Ex.PW-5/B of Babloo he sent ASI Yogender along with Babloo to verify the facts and after some time ASI Yogender informed him that the facts were correct and thereafter he went to the spot along with the crime team and photographer and prepared the pointing out as also the recovery memos.

13. Before proceeding ahead, suffice would it be to state that Om Vir Singh who is the SHO is expected to know the law. We are pained to note his testimony that after recording the

disclosure statement of the appellant he sent ASI Yogender Singh with the appellant to verify the facts and thereafter went to effect the seizures, as the veracity of the facts disclosed in the disclosure statement of the appellant were reported to be true. He ought to know that once a recovery is made of a dead body or any article, the same cannot be re-recovered. He ought to know the rules of investigation. He ought to have known that being the scribe of the recovery memos Ex.PW-3/B, Ex.PW-3/D and Ex.PW-3/E he had to be the person who seized the articles recorded in the said memos.

14. Two things may have happened. Either Om Vir Singh has taken bribe to help the appellant or he is too lazy a man and does not know how to do his job. In any case, Om Vir Singh's conduct is not worthy of that of an SHO.

15. Be that as it may, proceeding ahead, we may note that the dead body of the young girl was sent to the mortuary of GTB Hospital where Dr.Anil Kohli PW-4, conducted the post-mortem and prepared the report Ex.PW-4/A, as per which the young girl was strangled to death with the use of an object which was tightened around her neck. There were abrasion marks on her legs and foot. We note that there is no evidence of the young girl being sexually assaulted, but abrasions over

her lips, nose, legs and foot do suggest a struggle when the young girl was pinned down. It is thus not in doubt that Nisha died a homicidal death as the injuries on her person could not be self-inflicted i.e. Nisha has not committed suicide.

16. Having perused the testimony of Santosh PW-1 and Raju Goel PW-3, we note that except for such embellishments and variations as are usually found when two witnesses depose on the same facts after two years of an incident, no material contradiction, improvement or embellishment has been noted by us in the testimony of Sapna and Raju who deposed after a little over two years of the incident. The testimony of the two witnesses conclusively establishes that Nisha was taken by the appellant under the pretext of sending a gift for Raju who was to celebrate his birthday on 25.1.2001. Nisha was last seen alive in the company of the appellant at around 2:30 PM on 25.1.2001.

17. Under the circumstances, we are of the opinion, that the appellant has to satisfactorily explain what happened to the young girl and if he does not do so, it has to be under the pain of admitting guilt.

18. Recoveries of dead bodies pursuant to the disclosure statement have always been held to be highly incriminating

evidence. Save and except the embellishments in the testimony of the SHO, we find that the recovery of the dead body of Nisha has been satisfactorily proved through the testimony of PW-3 and PW-6; the recovery being pursuant to the disclosure statement of the appellant and his leading the police to the place wherefrom the dead body was recovered. We note that the seizure memo pertaining to the recovery of the dead body has been prepared by the SHO. Merely because the SHO is either a corrupt man or an incompetent police officer would be no ground for us to disbelieve the testimony of PW-3 and PW-6. Similar would be position to the recovery of the personal effects of Nisha from the room in the house of Manoj to which place the appellant took the police officers after his disclosure statement. Thus, facts not in the knowledge of the police were discovered for the first time pursuant to the disclosure statement of the appellant and the said facts directly take the appellant to the crime.

19. It assumes significance that the appellant had knowledge that Nisha was strangulated to death. He disclosed said fact to the police which was subsequently found to be true after Nisha's dead body was recovered. This is also incriminating evidence against the appellant.

20. We are not impressed with the submissions made by learned counsel for the appellant that since Manoj has been acquitted, recovery of the personal effects of Nisha from the house of Manoj gets trivialized. The reason is obvious. One piece of incriminating evidence being the only piece of evidence, in a case of circumstantial evidence, may be insufficient wherefrom the guilt of one accused can be inferred. But, along with other evidence which is incriminating, qua another co-accused, the said evidence along with the other may be sufficient wherefrom the guilt can be inferred.

21. It assumes importance that the police effected recoveries of the personal effects of Nisha from a room in the house of Manoj pursuant to the disclosure statement made by the appellant Babloo.

22. We are equally not impressed with the argument that the testimony of SHO Om Vir Singh has rendered suspect the pointing out of the place by the appellant wherefrom the dead body of Nisha was recovered as also from where the personal effects of Nisha were recovered.

23. We note that the dead body of Nisha was recovered somewhere in the late night of the intervening night of 25th and 26th January 2001. The photographs of the spot where the dead

body is lying, show with reference to the background, that it is night time.

24. In our opinion, the fact that Nisha was last seen in the company of the appellant who took Nisha stating that he would sent a gift for PW-3 through the hand of Nisha and that Nisha never came back alive; that the body of Nisha was recovered from a spot pointed out by the appellant and that personal effects of Nisha were recovered from a room, particulars whereof were disclosed by the appellant and upon the appellant leading the police to the said spot, forms a chain of circumstances wherefrom the guilt of the appellant can be inferred.

25. That no motive has been proved is neither here nor there. But we note, that there are traces of motive i.e. rancor against PW-3 which has emerged during the testimony of PW-1 who has stated that the appellant was annoyed with her marriage with PW-3.

26. It is settled law that the prosecution need not prove each and every facet of its case. If some facets of a case of the prosecution is left unproved, it would not dent the credibility of the other evidence.

27. It is often difficult for the prosecution to prove its case in the minutest details and for the said reason it has been held that the task of a Court, while ascertaining the truth, is to look to the broad probabilities of the case and if the prosecution has proved its case in the broad probabilities, that would be enough.

28. The appeal is dismissed.

29. We direct that a copy of this judgment would be sent to the Commissioner Police who would place the same in the service file of SHO Om Vir Singh. We further direct that the Commissioner Police would call for the explanation from SHO Om Vir Singh and would pass such appropriate orders or directions as he feels are required, keeping in view the conduct of SHO Om Vir Singh.

30. Copy of this order be sent to Superintendent, Central Jail, Tihar to be made available to the appellant who is still in jail.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 18, 2010

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