

R-88

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

% Date of Decision: 25th February, 2010

+ **CRL.APPEAL NO.810/2006**

SITA RAM Appellant

Through: Mr.Mukesh Jain, Advocate

versus

STATE Respondent

Through: Ms.Richa Kapoor, 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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. With reference to the testimony of Smt.Sita Devi PW-2, the learned Trial Judge has held that the same establishes that appellant Sita Ram was seen by her in the company of Master Deepak aged 7 years at around 5:30 PM on 9.9.2003. Since the post-mortem report of Master Deepak opined that the likely time of death of the young unfortunate boy was 8:30 PM on 9.9.2003, the child being sodomized and battered to death with stones, the appellant not giving any

explanation as to when could he part company with Master Deepak, the verdict of guilt has been returned.

2. We may clarify that the likely time of death of the deceased has been referred to in the post-mortem report by recording that the likely time of death was 42 hours prior to when the post-mortem was conducted and this leads to the inference of the likely time being 8:30 PM on 9.9.2003.

3. Master Deepak being missing from his house and his absence being noticed in the late evening of 9.9.2003 finds first mention in Ex.PW-16/A; the missing person's complaint lodged by Jagdish Chand PW-1 at the local police station on 10.9.2003 at around 11:30 AM.

4. Relevant would it be to note that in the said missing person's complaint lodged at 11:30 AM on 10.9.2003, Jagdish Chand has not named anybody as a suspect. He has simply informed that his child was missing since the evening of 9.9.2003 and could not be found. The age of the boy, his features, his height and the clothes which he was wearing stand disclosed therein.

5. As deposed to by SI Anil Kumar, he was directed to investigate and recover the child. On 10.9.2003 when he and the father of the child were moving around in the area enquiring from various persons whether they had seen the

child they received information that a crowd had gathered towards theka sharab Kirti Nagar. Before that they had met a lady named Sita Devi who had told them that Sita Ram was seen by her in the company of Deepak. As they reached the place where the crowd had gathered they saw the dead body of Deepak about 50 yards away from the railway track. There were injuries on the forehead and the face.

6. Eschewing reference to the spot proceedings conducted and noting that as per the post-mortem report Ex.PW-17/A proved by Dr.Chanderkant PW-17, the post-mortem on the dead body was conducted on 11.9.2003 at 2:30 PM the child had died approximately 42 hours prior. The child was battered with a blunt object. He had also been strangulated. Injury No.13 showed tearing of the anal region clearly suggestive of the child being sodomized.

7. The FIR was registered on the basis of the rukka consisting of the statement Ex.PW-1/A made by Jagdish to SI Anil Kumar PW-21 at the spot where the dead body of the child was recovered.

8. Deposing in Court Jagdish Chand PW-1 stated that his son was missing since 9.9.2003 and he lodged the missing person's report on 10.9.2003. He was told by the children in the neighbourhood that accused was seen taking away his son

and therefore he knocked the door of the house of accused Sita Ram at 8:30 PM on 9.9.2003 and at that time he saw Sita Ram's mother washing blood stained clothes. Sita Ram did not get up as he was under intoxication of liquor. He returned to Sita Ram's house after an hour. Sita Ram told him that he had left his son on the way as he went to consume liquor. At his asking Sita Ram accompanied him to search for his son who could not be traced till 11:00 PM. When, due to darkness they came back. He lodged the report of his son being missing and raised suspicion on Sita Ram. The police assured him that the FIR would be registered and needful would be done. The next day he searched his son and finally when the dead body of his son discovered he made the statement Ex.PW-1/A.

9. Since Jagdish Chand PW-1 did not utter any word of Sita Ram having told anything to him, he was declared hostile and cross-examined by the learned APP. This is what he had to say when he was cross-examined by the learned APP: *'It is wrong to suggest that I was told by one Sita Devi that he (should read as she) saw accused Sita Ram at about 5:30/6:00 PM taking away my son Deepak. However, Sita Devi only told that one person bought bhutta from her for my son. She did not name the person who bought bhutta for my son.'*

10. Sita Devi PW-2 deposed that she used to sell corns

and on 9.9.2003 Sita Ram i.e. the accused came to her at 5:30 PM along with a boy aged 6-7 years and bought bhutta. The accused took the child towards loha mandi. The accused told her that the boy was his nephew. Next day she saw a crowd near the opposite wine shop in the jungle. She reached there and found the dead body. It was of the same child who had accompanied the accused.

11. On being cross-examined she stated that she saw the accused for the first time when he bought bhutta. That she did not know his name. That she never knew that the boy was the son of Jagdish.

12. SI Anil Kumar PW-21 has deposed that when he and the father of the child Deepak was searching for Deepak Sita Devi have told them when they reached on the bridge at Naraina Vihar Railway Station that she had seen Deepak in the company of Sita Ram and that in the course of their search they saw a crowd at some distance from the railway line and after reaching there they discovered the dead body of the child.

13. It is obvious that all the witnesses of the prosecution have contradicted each other.

14. According to SI Arun Kumar, Sita Devi had told them, much prior to when the dead body was discovered, that

she had seen Deepak in the company of Sita Ram. Meaning thereby, Sita Devi knew Deepak as well as Sita Ram.

15. But, while deposing in Court Sita Devi clearly stated that for the first time in her life she saw Sita Ram in the company of Deepak when he bought bhutta from her in the evening of 9.9.2003.

16. If this be so, how could she tell SI Anil Kumar that she had seen Deepak in the company of Sita Ram?

17. That apart, Jagdish Chand has deposed that some boys in the neighbourhood told him that they had seen his son with Sita Ram and that he went to the house of Sita Ram at 8:30 PM on 9.9.2003. Sita Ram was drunk. He claims that he saw Sita Ram's mother washing the blood stained clothes of Sita Ram. He claims to have returned after an hour and then Sita Ram having accompanied him to search for his son till 11:00 PM. He clearly denied the suggestions by the learned APP that Sita Devi had told that she had seen the accused with her son at around 5:30 PM. He clarified that Sita Devi had only said that one person had bought a bhutta for her son and that she did not name the person who bought the bhutta for his son.

18. Sita Ram's testimony is quite close to that of Sita Devi but he contradicts Sita Devi with reference to what

possibly Sita Devi told.

19. Thus the testimony of the witnesses is so mutually contradictory that we see no scope to even try and reconcile the same to identify the nugget of truth which has to be determined at a criminal trial when somewhat inchoate and mutually contradictory evidence surfaces through the mouth of the witnesses of the prosecution.

20. Last seen evidence requires complete clarity and probity of the highest order for the reason it is a circumstantial evidence wherefrom, in the absence of any explanation by the accused, with reference to the proximity of the time and place of the last seen alive, a presumption of guilt can be inferred.

21. Any taint in the purity of last seen evidence would render it unsafe to conclude that the deceased and the accused were last seen as claimed by a witness of the prosecution.

22. There is no other incriminating evidence against the appellant linking him to the crime for the reason the so-called clothes stated to have been worn by the appellant at the time of the crime were not detected with any blood, much less, human blood. Obviously, the question of the blood group being ascertained thereon and linked with the blood group of the deceased does not arise.

23. We note that as per the prosecution the appellant was absconding from the date of the crime till he was apprehended on 12.3.2004.

24. Well, inasmuch as an accused absconds due to avoiding the process of law, even an innocent person may abscond out of fear.

25. If there is some evidence to show the involvement of the accused in the commission of the crime, the absconding would be attributable to the guilty mind. If there is not, the absconding would be attributable to his making himself scare out of fear.

26. That apart, absconding is a weak piece of evidence.

27. The evidence of last seen being shaky we give the benefit of doubt to the appellant.

28. The appeal is allowed.

29. Impugned judgment and order dated 1.7.2006 convicting the appellant for the offence punishable under Section 363/377/302 IPC is set aside. The order on sentence dated 1.7.2006 is quashed.

30. Noting that the appellant is in jail we direct that copy of the present order be sent to the Superintendent Central Jail Tihar for necessary action. Needless to state the appellant shall be set free if not required in custody in any

other case.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 25, 2010
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