

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

Reserved on : 13.03.2012

Decided on : 13.04.2012

+ **CRL.A. 84/2011, CRL.M. (BAIL) 103/2011**

RAVINDER RATHI

..... Appellant

Through: Mr. V.P. Singh Bidhuri with
Mr. Ajit Singh Bidhuri, Advocates.

versus

STATE OF DELHI

..... Respondent

Through: Ms. Richa Kapoor, APP.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. The Appellant impugns a judgment and order dated 24.11.2010 in S.C. No. 14/2008 by which he was convicted for the offence punishable under Sections 302 and 201 IPC. The Appellant was sentenced to undergo life imprisonment and to pay a fine of ₹10,000/-; in default of payment of fine, he was to further undergo simple imprisonment for one month. The Appellant was also sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of ₹ 2000/-; in default of payment of fine to further undergo simple imprisonment for one month.

2. The prosecution case in brief is that on 30.06.2008 the complainant, Ajit Singh (who deposed as PW-1 during the trial) went to P.S Timarpur and lodged a missing person report in respect of his son Devender Singh (the deceased). He again went to the Police Station on 1.07.2008 along with Boota

Singh (PW-4) and got FIR No. 327/2008 registered (Ex.PW-3/A). He stated that the accused Ravinder Rathi, and two other persons, i.e. Guddu and Chotu had hired his son's taxi (Indica car bearing No.DL-3CW-0870) for going to Bulandshahr and that his son had not returned since then. On the statement of the complainant a case under Sections 365/34 IPC was registered. During investigation, the address of accused Ravinder Rathi was traced to Circular Road, Sonia Vihar and on reaching there, it was found that the appellant, Ravinder Rathi was missing for many days. On 02.07.2008 on the basis of the secret information and on the pointing out of Boota Singh, Ravinder was arrested from Yamuna Pusta, Sonia Vihar. He made a disclosure statement and confessed his guilt. He stated that he murdered Devender after stopping the vehicle on the pretext of urinating in the field at a distance of 700-800 meters from the main road, in a semi metalled road near Kharanja, leading to Dholi village. On 29.06.2008 the dead body of deceased Devender was recovered from the field of village Kroli, Bullandshahr, UP by Vijay Bahdur (PW-23); one handkerchief and a belt were also found with the dead body. The accused pointed out the place of occurrence. The IO after completion of investigation filed a chargesheet and charge was framed against the accused persons under Sections 365/302/201/392/34 IPC. The accused pleaded not guilty and claimed trial.

3. The prosecution, to prove its case examined 32 witnesses and relied on various exhibits. The witnesses vital to the prosecution case are PW-1 Ajit Singh, PW-4 Boota Singh, PW-7 Shankar Lal, PW-8 Chhotu, PW-9 Guddu and PW-13 Dharampal Singh. After considering these testimonies and other materials, including exhibits produced during the trial, the impugned judgment convicted the Appellant as charged.

4. The counsel for the appellant submitted that the prosecution failed to prove its case and the witnesses relied upon by the prosecution are all family members/friends of the deceased. They are interested witnesses and therefore cannot be relied upon. The counsel further submitted that the case at hand lacks motive and the prosecution was unable to prove the complete chain of circumstances against the accused. The Appellant's counsel further pointed out that there are material contradictions in the deposition of the witnesses. It was argued, by the counsel for the appellant, that PW-4 in his deposition claimed to reaching Connaught Place on 28.06.2008 at about 6 AM and leaving with Chotu and Guddu and further to picking up the accused Ravinder Rathi from Nanaksar Gurudwara at about 7 AM. However PW-7, 8 and 9 had all stated that accused Ravinder Rathi met them at Sonia Vihar and he reached Connaught Place with them and from there the three of them left for Mathura in PW-4's taxi. There is also a discrepancy regarding the time. PW-4 stated that they left for Mathura at about 7 AM and returned to Delhi at about 01:30 PM whereas PW-7,8 and 9 stated that the three passengers left for Mathura at about 9 AM and returned to Delhi at about 3/4 PM.

5. Learned Counsel for the Appellant further urged that the statements of PW-8 and 9 cannot be relied upon as they were recorded much later, i.e. more than a month after the incident. The police got to know that they had accompanied the accused to Timarpur taxi stand on 01.07.2008. Yet the police did not record their statements under Section 161 Cr.P.C till 02.08.2008 i.e. one month later. This raised serious doubts regarding the reliability of PW-8 and 9's statements. Furthermore the statement of PW-13 Dharampal who spoke to the deceased on the night of 28.06.2008 was also recorded late on 19.09.2008.

6. It was submitted that the sole basis for the Appellant's conviction was the so-called "last seen" circumstance. Here, learned counsel stressed that in fact PW-8

and PW-9 could not be regarded as “last seen” witnesses; no one had seen them alighting at the place claimed by them. The Appellant had accompanied them earlier to Mathura, and they were also in the taxi of the deceased. The prosecution did not explain under what circumstances, their statements were recorded more than five weeks after the incident. The testimony of PW-4 proved that all three, i.e. the accused as well as the two witnesses had left together for Bulandshahr in the deceased’s car. Under these circumstances, the prosecution’s silence as to why no attempt was made to record the statement of PW-8 and PW-9 for more than a month after learning about these facts, pointed the needle of suspicion at them. In fact their statements were recorded after the accused was arrested. It was also urged that the prosecution neither alleged, nor proved any motive on the part of the Appellant, to murder the deceased. This cast grave doubts on its version.

7. The Learned APP submitted that the prosecution proved its case against the accused beyond reasonable doubt and that there was no material discrepancy in the testimony of the material witnesses. The APP submitted that PW-1, 4, 8 and 9 all saw the deceased last alive in the company of the accused Ravinder Rathi. Further submitted the APP, the accused pointed out the place where he murdered the deceased (the dead-body had already been recovered by PW-23 on 29.06.2008). This was a very material and incriminating circumstance, which was correctly taken into consideration by the Trial Court.

8. The APP argued that the post mortem had established the time of death to be within one hour after the time when the deceased had spoken to his relatives; that call was traced, and the details were proved in accordance with law. Denying that the testimony of PW-8 and PW-9 were not relevant, it was submitted that even if PW-4’s testimony were to be taken as the last seen circumstance, the accused owed an explanation to the Court as to when the deceased had left his taxi, and whether

he was in the company of anyone else. His special knowledge about what transpired between him, and the deceased, and possibly between PW-8 and PW-9 was within his peculiar knowledge. He however, did not give any explanation at all. Therefore, the Trial Court was justified in returning his guilt, on the basis of the materials made available to it, and on the basis of the testimony of witnesses. It was also argued that the Appellant has not substantiated any substantial or compelling reasons why the impugned judgment is in error to such an extent that it has to be interfered with. It was contended that the appeal is devoid of merits, and should therefore, be dismissed.

9. PW-1 Ajit Singh, is the complainant and deceased's father. He deposed to running a taxi stand at Timar Pur and that on 28.06.2008 Boota Singh (PW-4) went to his taxi stand at about 2 PM in an Indica Car No. DL-3CAF-6692, along with three passengers and informed him that they wanted to go to Bullandshahr and would return by the evening. He further stated that one passenger, i.e. the Appellant told him that they would return in the evening after meeting his sister who had given birth to a baby. He did not have a conversation with the other two passengers sitting in the car. Boota Singh told him that he had taken the boys in the morning to Palval, Haryana and he asked PW-1 to arrange a taxi for them. The deceased Devender took the three passengers in Indica no. DL-3CW-0870 to Bulandshahr; they left the taxi stand at about 2 PM. He further deposed that his son did not return in the evening and he received a call from the deceased at about 08:45 PM stating that he would return the next day. The deceased told him that the passengers were refusing to return and wanted to visit their village. The deceased did not return the whole of the next day. On the third day of the deceased not returning PW-1 called Boota Singh and the latter took him to Connaught Place and made him meet Shanker Lal (PW-7) who disclosed the identity of the three

passengers; he also told them that Chotu and Guddu were his brothers-in-law and Ravinder Rathi (the accused) was their friend.

10. In the cross-examination he stated that Boota Singh accompanied him to the PS on 30.06.2008 but he could not remember whether Boota Singh's statement was recorded by the police or not. He further stated that whatever was known to him was written in his application to the police on 30.06.2008. He could not remember whether he had mentioned about Boota Singh having taken the passengers to Palval in his written application. He admitted that he could not recollect whether he had told the police in his written complaint or any other statement to the police that at about 08:45 PM on 28.06.2008 his son had informed him telephonically that he would return the next day; call was received on his mobile no. 9871556033. He further stated that he had told the police in his statement that Boota Singh had taken him to meet Shanker in Connaught Place. He admitted that he tried calling his son's mobile no. 9211274161 but it was switched off.

11. PW-4 Boota Singh, Taxi driver, deposed that on the 28th of a month in the summer of 2008 he was told by his brother Amarjit that Shanker (PW-7) had booked a taxi and asked him (PW-4) to reach the Tribune office at Connaught Place. He reached that place at 6 AM in his Indica bearing no. DL-3C-AF-669. PW-7 met him and sent his two brothers-in-law, Guddu and Chotu with him. They first went to Nanksar Gurudwara, near Sonia Vihar (as Guddu had telephonically talked to someone and had asked him to reach the Gurudwara). They reached there at about 7 AM and picked up the Appellant and left for Palval. From Palval they picked up PW-7's daughter and returned with her to Delhi; PW-7 reached near Delhi Gate traffic light and took his daughter, paid PW-4 Rs.1500/- and left. PW-4 further deposed that thereafter, the accused said that he wanted to go to

Bullandshahr. The witness refused to go, as he had another booking. He further deposed to calling Harminder Singh and Babbu but both were on duty. As he was not able to arrange another taxi for the accused, he told him that he would drop him at ISBT bus stand. But when they reached Lal Qila, the deceased called and informed him that Babbu had told him that there were passengers with him. PW-4 further deposed that he dropped the three passengers at Timarpur taxi stand where he met the deceased. The three passengers and the deceased left for Bullandshahr in the latter's taxi (No. DL-3CW-0870). He deposed to receiving a phone call from Ajit Singh (father of the deceased) after three days informing him that his son had not returned; PW-7 gave them a telephone No. of an old person living at the accused's house. He further stated that Sucha Singh (PW-2) accompanied him to Connaught Place and from there PW-2 made a call to the old man at Ravinder Rathi's house who informed them that the house was locked. Thereafter they went to Chotu and Guddu's house where Chotu told them that he was not aware of Ravinder Rathi's house. He further deposed that PW-1 made a complaint to the police on 30.06.2008 about his missing son. He further stated that he and PW-2 went to Yamna Pusta, Sonia Vihar and identified the accused; the latter was arrested in his presence.

12. In his cross-examination he stated that his statement was recorded by the police on 01.07.2008 and 02.07.2008. He admitted that he had not told the police in his statement that Guddu had telephoned someone and asked him to come to Gurudwara Nanaksar. He further stated that they returned to Delhi at about 01:30 PM on 28.06.2008 and he dropped the three passengers at Timarpur taxi stand at about 2 PM.

13. PW-7 Shanker Lal deposed that on 28.06.2008 at about 08:30 AM Guddu and Chotu reached CP along with the accused Ravinder Rathi to pick up his

daughter from Manigarhi, Mathura. All these three persons went in Boota Singh's taxi at about 9:00AM and at about 4:00PM all the four persons returned to his office, with his daughter Pinki; he had paid the hire charges to taxi driver Boota Singh and then they left his office immediately and his daughter stayed back with him. He further deposed that on 30.07.2008 Boota Singh came to his office along with 3-4 persons and asked about the accused; he gave the Chotu and Guddu's address. On 02.08.2008 he was called to Police Station, Timarpur, when his statement was recorded and later he became aware from Boota Singh's brother in law, Amarjit Singh, that the Appellant had murdered the taxi driver who had taken them.

14. PW8 Chotu deposed that on 28.06.2008 his brother in law Shanker Lal telephoned him in the morning and requested him to bring his daughter from Mathura; he and Guddu reached at Sonia Vihar in an Auto where accused Ravinder Rathi met them; he knew the appellant, since he was working as a conductor in a jeep of which he was a driver; the appellant asked him where they were going, and when they informed him that they were going to Mathura, he too sat with them and they then reached Connaught Place, where Shanker Lal (PW-7) alongwith his wife met them and he arranged one Indica Car no.6692. He along with Guddu and the appellant went to Mathura; they picked up PW-7's daughter and returned to Connaught Place at about 3:30/4:00 PM; Shanker Lal's daughter got off there. He also deposed that the Appellant asked PW-4 whether he could hire the car to go to Bulandshahr, to which PW-4 Boota Singh showed his inability and assured him that he would arrange another taxi; all of them sat in Boota's car, and went to Timarpur taxi stand, when he arranged another car, No.0870 for the Appellant. The witness and Guddu got down on the way at Sonia Vihar. The deceased, and the appellant left then to go to

Bulandshahr. In his cross-examination he stated that they met the accused alone at Nanaksar, Sonia Vihar on 28.06.2008 at about 08:00/8:30 AM and due to his friendship with them he accompanied them to Mathura. He further stated that the daughter of Shanker Lal got down from the car near Irvin Hospital and Shanker Lal paid the taxi driver Rs.1700/1800. He further stated that they reached Timarpur taxi stand at about 04:00 PM and at that time only one taxi was stationed there.

15. PW9 Guddu has deposed that on 28.06.2008 he and Chotu hired an auto and reached at Pusta, Sonia Vihar where the appellant joined them; they reached at Connaught Place where Shankar had arranged one car for going to Mathura and they left at about 9:00AM for Mathura and returned to Delhi at about 3:00 PM/4:00 PM along with Shanker Lal's daughter; Shanker Lal's daughter got down at Connaught Place. The appellant asked the taxi driver to go to Bullandshahr as he wanted to visit his sister's house but taxi driver refused to go and assured the appellant that he would arrange another taxi to take him to Bulandshahr. All of them reached Timarpur taxi stand and hired another taxi for the appellant. He further deposed to sitting in the taxi, No. 0870 along with Chotu and getting down at Sonia Vihar traffic light. The appellant went with the driver to Bulandshahr. He further stated that the driver of vehicle no. 6692 i.e. Boota Singh and 5-6 others had gone to his house and inquired regarding the accused's whereabouts. He further stated that he and those persons reached Sonia Vihar and met the appellant's parents at his house. They told them that they would let them know when the accused returned home. He further stated that his statement was recorded on 02.08.2008.

16. In his cross-examination he stated that when they reached Timarpur taxi stand there were 8-10 taxis. He admitted that PW-8 had called the accused by

making a telephone call on his mobile and had asked him to accompany them to Mathura.

17. PW-13 Dharampal Singh deposed that on the night of 28.06.2008 at about 10:00 PM when he reached the taxi stand, he asked PW-1 about the deceased's whereabouts to which he replied that the deceased had taken 3-4 passengers to Bulandshahar. He further deposed that at about 10:15 PM, he called the deceased on his mobile No. 9211274161 from his mobile no. 9873118745. The deceased informed him that he was present on the road of Anoop Shahar at Bullandshahar and that the passengers had gone to the tea stall and they were taking liquor there and he was sitting in the taxi. The deceased further informed him that he would be back in the morning. PW-13's statement was recorded on 19.09.2008.

18. From the above analysis, it is apparent that PW-7 had hired PW-4's taxi, to fetch his daughter, from Mathura. PW-8 and PW-9 were his brothers-in-law. By their account, the Appellant was picked up from near Nanaksar Gurdwara; he accompanied them in the morning journey. It is evident that he was their friend. When returning from Mathura, the accused asked PW-4 whether he could hire the taxi to go the same day to Bulandshahr; the former refused, as he had another engagement, but promised to help in hiring the vehicle. That is how the deceased's car was hired. Now the testimony of PW-4 about having seen the deceased last with the appellant also reveals that the other two individuals, i.e. PW-8 and PW-9 left the Timar Pur taxi stand in the afternoon. This is corroborated by PW-1 and PW-12. Here, there is a small discrepancy; PW-1 claims to have seen his son with the accused and three others, and PW-4 claims that he got the taxi arranged. The same claim is made by PW-12, the taxi stand owner. However, the deceased's father, PW-1 is silent about this.

19. The curious part of the entire prosecution story is that soon after the deceased went missing, all efforts were made to trace the appellant. Neither PW-4, nor PW-1 nor indeed PW-7, or for that matter, any of the police officers and constables who deposed in the case, mention having questioned, or even interviewed PW-8 and PW-9. The prosecution case concededly is that these two individuals had invited the appellant to join them when they went to fetch PW-7's daughter from Mathura, on the day the deceased went missing. Further, PW-4 deposed that the accused wanted to hire his vehicle to go to Bulandshahr. Neither PW-8 nor PW-9 were asked by any witness or the police what their relationship was with the accused. These two witnesses were not even joined during the police efforts to trace the accused. To cap it all, their statements were recorded nearly five weeks after the deceased went missing, i.e. on 2-8-2008.

20. The court's concern at the late recording of these two witnesses' statement is not a matter of mere formality; the omission, in this Court's opinion goes into the heart of the matter. If indeed PW-8 and PW-9 had invited the appellant to join them to go to Mathura, the most logical thing for the police would have been to find out who they were, and record their version, as they would then have been the witnesses for the "last seen" circumstance. It is unclear whether these individuals were missing, or were available; the IO's testimony, and even that of the other police witnesses, gives no assistance on this score. The Court is expected to accept the version – recorded as late as on 2-8-2008 by these two witnesses – that they got off somewhere in Sonia Vihar, and the accused went ahead with the deceased. PW-1 and PW-4's evidence clarifies that they were in fact with the accused when he left for Bulandshahr. This omission to join them in the investigation, and direct the course of inquiry reasonably early, through that direction, casts suspicion about their role, since there is no corroboration to their statements of having got off when

the appellant went with the deceased to Bulandshahr. This suspicion gets hardened by the fact that the statements of these witnesses were recorded after an inordinate delay; they could conveniently vouchsafe each other for having got off somewhere in Sonia Vihar.

21. There is a body of case law (*Keshav Gangaram Navge v State of Maharashtra* 1971 (1) SCC 513; *Phoolchand v State of Rajasthan* 1974 (4) SCC 405; *Maruti Rama Naik v. State of Maharashtra*, (2003) 10 SCC 670 and *Jagjit Singh v. State of Punjab* (2005) 3 SCC 689) that if an important witness's statement is recorded after a delay, that becomes an unreliable piece of evidence. In *Maruti Rama Naik*, it was held that:

“Though this witness. PW-3, is an injured witness, we find it difficult to place reliance on his evidence not only because of the omissions mentioned hereinabove but also because of the fact that his statement was recorded a day later when the investigating officer had ample opportunity to record the said statement on the day of the incident itself. The explanation given in regard to this unwarranted delay is that this witness was injured, and had to be taken to Bombay and brought back to Panvel for treatment. Taking into account the nature of injuries suffered by this witness and the opportunity investigating officer had to record his statement, we think this explanation given by the prosecution is not convincing.”

22. Apart from the serious infirmity which attaches itself to the prosecution story regarding the unreliability of the “last seen” evidence of PW-8 and PW-9 and the possibility of their culpability in the offence – (since no attempt was made to contact them, or record their statement, or even join them in the investigation before 2-8-2008, as a result of which the Court is left guessing whether they were available at all), another grave lacunae in the prosecution story is the complete silence about the appellant's identification. Concededly, the appellant was arrested in the first week of July, 2008. A TIP by PW-4 (who had occasion to see him for over 7 hours) and PW-12, as well as PW-7 would have lent assurance to the fact

that indeed he had accompanied the deceased, and hired the car, as alleged. Even here, the absence of PW-8 and PW-9 becomes glaring.

23. As far as the recoveries are concerned, we notice that all – i.e. blood stained earth, “pointing out” etc are intrinsically weak links, some of which (particularly the “pointing out”) cannot be looked into by the Court, by virtue of the injunction in Section 25 Evidence Act, which is not relieved in such circumstances, unless an article is found, or a fact discovered. Having already obtained information about where the body lay, the “pointing out” (of the place by the accused) could not have been a “fact discovered by the police as a result of the statement of the accused. As regards the recovery of the vehicle, the Trial Court has acquitted the co-accused, at whose behest it was recorded and seized.

24. In view of the above reasoning, this Court is of the opinion that the findings and conclusions of the Trial Court cannot be sustained. They are accordingly set aside. The Appellant shall be released forthwith unless required in any other case. Cr. A. 84/2011 is accordingly allowed. The pending application also stand disposed of.

**S. RAVINDRA BHAT
(JUDGE)**

April 13, 2012

**S.P. GARG
(JUDGE)**