

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

Judgment Reserved on: May 13, 2016

% *Judgment Delivered on: May 17, 2016*

+ **CRL.A. 966/2001**

ABDUL SATTAR

..... Appellant

Represented by: Mr.Viraj Dattar, Mr.Vikram
Pradeep, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State with Insp.Suhaib
Farooqui, PS Jamia Nagar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Convicted for offences punishable under Sections 302 and 394 IPC Abdul Sattar challenges the impugned judgment dated December 05, 2001 and the order on sentence of even date directing him to undergo imprisonment for life and to pay a fine of ₹5000/- for offence punishable under Section 302 IPC and rigorous imprisonment for 3 years and a fine of ₹2000/- for offence punishable under Section 394 IPC.

2. The prosecution pressed 5 circumstances of which the learned Trial Court held that circumstance No.(ii) was not proved, however on the basis of circumstances No.(i), (iii), (iv) & (v) convicted Abdul Sattar for the offences noted above. The 5 circumstances on which the prosecution bases its case are:

“(i) That the deceased left with the accused Abdul Sattar on

27.10.97 and did not return thereafter.

(ii) That the deceased was seen with the accused Abdul Sattar near Canal Garh Mukteshwar.

(iii) The accused owed money to deceased Naeem Ahmed.

(iv) The motor-cycle of the deceased was recovered by the Police pursuant to his disclosing to the Police, while in custody, that he had parked it at Pehlwan Cycle Stand Meerut.

(v) That the accused handed over a helmet to one Gulfam on 29.10.97, while parking motor-cycle of deceased Naeem Ahmed at Pehlwan Cycle Stand, Meerut.”

3. Learned counsel for the appellant contends that no reliance can be placed on the version of Sattar Ali PW-1, father of the deceased Naeem Ahmed for the reason though he states that Naeem Ahmed went along with Abdul Sattar on October 27, 1997, no missing report was lodged till October 30, 1997 when the dead body was recovered. The money allegedly given by Naeem Ahmed to Abdul Sattar was around one and a half month ago, thus there was no proximate cause attributable as a motive towards Abdul Sattar. The recovery of the motor-cycle from the parking stand has not been supported by Sharif PW-10 the owner of the parking stand. Further the recovery of the motor-cycle was from an open space accessible to all. No identification mark was present on the helmet to show that the same belonged to the deceased. The chain of circumstances not being complete, the appellant is entitled to be acquitted.

4. Learned APP for the State on the other hand contends that even if the prosecution has failed to prove circumstance No.(ii) for the reason Mukand Ali PW-14 and Riyasat Ali PW-9 did not support the prosecution case Abdul Sattar is still bound to give an explanation as to how Naeem Ahmed

died once he had accompanied him from his residence on October 27, 1997. The dead body was recovered at Garh Mukteshwar whereas motor-cycle of the deceased was recovered from Meerut. This circumstance was also required to be explained by Abdul Sattar. Besides the Police officers and Sattar Ali, Shaqib Ali PW-25 has also supported the recovery of the motor-cycle of the deceased from the parking stand at Meerut at the instance of Abdul Sattar. Further the conduct of Abdul Sattar in avoiding to meet Sattar Ali the father of the deceased when he wanted to know the whereabouts of Naeem Ahmed is also relevant. Though in his statement under Section 313 Cr.P.C. the explanation of Abdul Sattar is that he did not know Naeem Ahmed, however the suggestion given by the witnesses was that there was no enmity between Abdul Sattar and Naeem Ahmed for the reason Abdul Sattar proposed marrying his sister to Naeem Ahmed. The chain of circumstances being complete Abdul Sattar is not entitled to the benefit of doubt.

5. Process of law was set into motion on October 30, 1997 when a complaint Ex.PW-1/A was lodged by Sattar Ali at PS Garh Mukteshwar, District Ghaziabad stating that his son Naeem Ahmed had money transactions with one Abdul Sattar, S/o Sayeed Khan, R/o Village Dotai, PS Garh, District Ghaziabad. Last month Abdul Sattar took a sum of ₹20,000/- from his son Naeem Ahmed on loan and his son was demanding return of the amount. On Monday October 27, 1997 around 6.30 AM Abdul Sattar took his son Naeem Ahmed to his village Dotai on the pretext that he would be returning the money. His son Naeem Ahmed had his new motor-cycle Bajaj Kawasaki with temporary No.DL-5S-TC-00028 and ₹12,000/- with him. When his son Naeem left the house with Abdul Sattar, Mohd.Saleem

and Khalid Nadeem Khan were also present and they all thought that Naeem would return back by evening. When Naeem did not return till late night he was tense and in the morning he called up at Dotai when he got the answer that Naeem had left for Delhi in the afternoon at around 1.00 PM and Abdul Sattar S/o Sayeed, R/o Village Dotai had gone to drop him. Thereafter he wanted to meet Abdul Sattar, however he did not meet him and tried to avoid. They went to trace Abdul Sattar even at Pyare Lal hospital, Meerut but he was not found even there. On October 30, 1997 in the morning when they reached village Dotai, Sher Ali, S/o Noor Mohd. informed him that one dead body was lying near the canal. They all went to see the dead body and he identified the same to be of his son Naeem Ahmed. He suspected that Sattar, S/o Sayeed Khan along with others had murdered his son and robbed his motor-cycle and ₹12,000/- on the pretext of returning the money.

6. Since the kidnapping took place at Delhi the complaint along with the other formalities was transferred to PS Srinivaspuri on the basis of which FIR No.1193/1997 under Sections 364/394/302/201 IPC was registered on November 04, 1997. Post-mortem on the body of Naeem Ahmed was conducted by Dr.Sri Ram PW-24 who found the following ante-mortem injuries on the body of the deceased:

“Ante-mortem injuries

1. *An incised wound 3 cm x 2 cm into chest cavity deep left side neck 3 cm above the clavicle outer side on exploration. Upper part of the lung was cut.*
2. *An incised wound 3 cm x 1.5 cm x muscle deep on front of neck just over left clavicle.*
3. *An incised wound 7 cm x 4 cm x muscle deep over right side chest just above right nipple.*

4. *An incised wound 2.4 cm x 1 cm x muscle deep over left side chest 5 cm medial to left nipple at 3 O' clock position.*
5. *An incised wound 2 cm x 1 cm into muscle deep on left side chest, 4 cm below left nipple, at 7 O' clock position.*
6. *Multiple incised wound 3 in number on an area of 11 cm x 9 cm, on the upper part of abdomen in middle, of the size of 4 cm x 2 cm x cavity deep 10 cm x 5 cm x cavity deep on explorasion underneath paritorium cut – visceras cut.*
7. *An incised wound 1 cm x 1 cm x muscle deep front of right arm, just above the wrist joint.*
8. *An incised wound 17 cm x 3 cm x muscle deep over right leg, front side, just below knee joint."*

7. Dr.Sri Ram exhibited the post-mortem report vide Ex.PW-11/12 and opined the cause of death to be due to shock and haemorrhagic shock because of ante-mortem injuries. Injuries No.1 and 6 were sufficient to cause death individually and all other injuries could also cause death collectively. The post-mortem was conducted on October 30, 1997 and time since death was opined to be 2-3 days.

8. In order to prove circumstance No.(i) the prosecution has examined Sattar Ali PW-1 father of the deceased, Mohd.Saleem PW-5 and Khalid Nadeem Khan PW-6. Sattar Ali deposed in sync with his complaint Ex.PW-1/A.

9. Mohd.Saleem PW-5, the younger brother of Naeem also deposed that on October 27, 1997 at about 6.30 AM Naeem had gone to village Dotai on his motor-cycle with Abdul Sattar and that his brother had to take ₹20,000/- from Abdul Sattar. He deposed that two days prior to October 27, 1997 Abdul Sattar had come to meet his brother and told him that he would pay the money to him in village Dotai. Therefore on October 27, 1997 his

brother accompanied Abdul Sattar to village Dotai to take the money. However, his brother did not come back. He also supported the version of his father to the extent of the searches made by him and the conduct of Abdul Sattar in avoiding them.

10. Khalid Nadeem Khan colleague of Naeem Ahmed also deposed that on October 27, 1997 at around 6.30 AM Naeem accompanied Abdul Sattar stating that he was going to village Dotai to realize the loan of ₹20,000/- from Abdul Sattar and at that time Mohd.Saleem and Sattar Ali were also present. He also deposed that when Naeem did not return they went to village Dotai to search Naeem and to the house of Abdul Sattar as well. At the house of Abdul Sattar they were informed that Abdul Sattar had gone to Pyare Lal Nursing Home, Meerut as his sister-in-law was under treatment. However, when they went to the hospital they did not meet Abdul Sattar. At the hospital they were informed that Abdul Sattar had gone to get medicine but Abdul Sattar was not found even at the medical store.

11. From the evidence of these three witnesses from whose cross-examination nothing material has been elicited, the prosecution has proved beyond reasonable doubt that Naeem left along with Abdul Sattar at 6.30 AM on October 27, 1997 and when he did not return back his search was made and Abdul Sattar was tried to be contacted he avoided the witnesses. Having accompanied the deceased from his house, under Section 106 of the Indian Evidence Act, the onus shifts on Abdul Sattar to explain where he parted company with the deceased, a fact especially in his knowledge.

12. The Division Bench of this Court in the decision reported as 2009 SCC Online Del 2332 Arvind @ Chhotu Vs. State culled out the various species of last seen evidence and summarized the legal position giving

examples illustratively and in Para 103(iii) it noted:

“(iii) The Single circumstance of last-seen, if of a kind, where a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last-seen.”

13. As noted above the learned Trial Court held that circumstance No.(ii) has not been proved which fact is also not disputed by learned APP for the State for the reason both Mukand Ali PW-14 and Riyasat Ali PW-19 turned hostile and did not support the case of the prosecution on the point that both Abdul Sattar and the deceased were seen together near the canal at Garh Mukteshwar on October 27, 1997.

14. As regards circumstance No.(iii) besides the witnesses noted above i.e. Sattar Ali, Mohd.Saleem and Khalid Nadeem the prosecution has also led the evidence of Mansoor Ali PW-8 who deposed that on September 12, 1997 ₹20,000/- were given by Naeem to Abdul Sattar as loan in the school in his presence. Thus, we find that the prosecution has been able to establish not only that Abdul Sattar owed ₹20,000/- to Naeem Ahmed but also that Naeem demanding back the amount for which Abdul Sattar took him to Village Dotai on Naeem's motorcycle Bajaj Kawasaki temporary number DL-55-TC-0028.

15. For proving the circumstance No.(iv) i.e. recovery of the motor-cycle of the deceased pursuant to the disclosure statement of Abdul Sattar we may note that Abdul Sattar was arrested on November 07, 1997 where-after he made a disclosure on November 08, 1997 disclosing that he had parked the motor-cycle of the deceased at Pehlwan Cycle Stand near shop No.227,

Meerut. Abdul Sattar led the Police party to the Pehlwan Cycle Stand and got recovered the motor-cycle of the deceased Bajaj Kawasaki the number whereof was mentioned by Sattar Ali in his complaint Ex.PW-1/A. No doubt, Sharif PW-10 who was running the Pehlwan Cycle Stand did not support the prosecution case to the extent that on the pointing out of Abdul Sattar motor-cycle bearing engine No.35424 and chassis No.58473 was recovered, however he admitted that the said motor-cycle was seized by the Police from his stand and the seizure memo Ex.PW-10/11 bears his signatures.

16. The fact that recovery of the motor-cycle of the deceased was at the instance of Abdul Sattar is proved from the statement of Constable Satpal PW-20, Constable Raj Kumar PW-21 and Shaqib Ali PW-25. Shaqib Ali in his deposition stated that on November 09, 1997 while he was going to his aunt's village who was residing in Meerut he met Sattar Ali of his village. Sattar Ali, his son Saleem Ali and some officials of Delhi Police were standing outside PS Railway Road, Meerut. He joined them on the request of Sattar Ali where-after they went to Pehlwan Cycle Stand at Railway Road in front of bus stand. Sharif was the owner of the cycle stand and one motor-cycle was seized by the Police. Thus circumstance No.(iv) also stands proved beyond reasonable doubt despite Sharif having not fully supported the prosecution case.

17. As regards circumstance No.(v) i.e. recovery of helmet of the deceased from one Gulfam PW-9 we note the testimony of Gulfam who stated that on October 29, 1997 Abdul Sattar handed-over to him a helmet stating that he was going to Bombay. He also had a motor-cycle which he parked at the stand. He handed-over the said helmet to the Police which was

seized vide memo Ex.PW-9/1. The objection of learned counsel for the appellant is with regard to identification of the helmet being an article of ordinary use. We may note that this is not a case of recovery from an open place and being an article ordinarily used could belong to anyone but a case where entrustment of the helmet was done by Abdul Sattar to Gulfam who in turn produced it before the Police having received the same from Abdul Sattar.

18. Besides the 4 circumstances proved by the prosecution as noted above we have already noted the conduct of the appellant in not cooperating with Sattar Ali and his family when they wanted to know the whereabouts of Naeem Ahmed which is also an incriminating evidence against the appellant.

19. Further the dead body of the deceased was found at Garh Mukteshwar whereas the motor-cycle owned by the deceased was found at Meerut at a distance of approximately 43 kms. In view of the fact that the prosecution has proved the recovery of motor-cycle from the stand at Meerut at the instance of appellant, the onus shifts to Abdul Sattar under Section 106 of the Evidence Act to explain the fact especially within his knowledge as to how the motor-cycle of Naeem Ahmed whose dead body was lying at Garh Mukteshwar reached Meerut. This onus has not been discharged by Abdul Sattar. This is also an incriminating circumstance against the appellant.

20. Learned APP has brought to our notice the explanation of Abdul Sattar under Section 313 Cr.P.C. where he denies having known Naeem Ahmed and he also points out that the suggestions given to the witnesses were that Abdul Sattar had no enmity with Naeem as he was proposing to marry his sister with Naeem. Thus, this false statement is an additional link

in the chain of circumstances.

21. Therefore, besides 4 circumstances noted by the learned Trial Court having been proved by the prosecution we also note that there are 3 more incriminating circumstances against the appellant which cumulatively complete the chain of circumstances and prove the charge of offences punishable under Section 302/394 IPC against Abdul Sattar. Thus, the impugned judgment of conviction and order on sentence are upheld.

22. The appeal is dismissed.

23. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

24. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 17, 2016
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