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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
R-2A

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CRL.A. 6/2002

EBNAM ALI @ LALA KHAN

..... Appellant

Through: Ms.Inderjeet Sidhu, Advocate.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Ms.Radhika Kolluru, APP for State.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

08.01.2018

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Dr. S. Muralidhar, J.:

1. This appeal has been preferred by the accused against the judgment dated 26th September, 2001 passed by the learned Addl. Sessions Judge in Sessions Case No.56/97, arising out of FIR No.206/1997 registered at Police Station (PS) Nangloi, Delhi convicting him for offences punishable under Sections 364/34 and 302/34 IPC and the order on sentence passed on the same date whereby for the offence under Section 302/34 IPC, the Appellant was sentenced to undergo imprisonment for life and fine of Rs.500/- and in default of fine to undergo rigorous imprisonment for 50 days and for the offence under Section 364/34 IPC, the Appellant was sentenced to undergo rigorous imprisonment for seven years and fine of Rs.500/- and in default of

fine to undergo rigorous imprisonment for 50 days.

2. It must be noticed at the outset that there were two accused persons in the present case. Accused No.1 was Rajesh, who expired during the pendency of this appeal in 2006. The appeal of the accused Rajesh, Crl. A. No. 810 of 2001, therefore, abated in terms of the order dated 22nd July, 2010 passed in that appeal.

3. The present Appellant is in fact Ibne Ali although in the memo of parties in the present appeal as well as in the trial Court record it is spelt as Ebnam Ali @ Lala Khan.

Charge

4. The charge framed against the accused by the Trial Court on 22nd August, 1997 reads as under:

“Firstly, that on 16-3-96 between 11.30 a.m. to 12.30 p.m. at 47/48, Extension-II, Nangloi within the jurisdiction of PS Nangloi you both in furtherance of your common intention abducted Sat Parkash aged about 28 years in order that such person may be murdered and thereby committed an offence punishable u/s 364/34 IPC and within the cognizance of this Court.

Secondly, that on 16-3-96 after abducting Sat Parkash from the above said address you both took him in the field of Bhim in Village Jahangir Puri and there you both in furtherance of your common intention committed murder of Sat Parkash by causing

injury with bullet and dagger and thereby committed an offence punishable u/s 302/34 IPC and within the cognizance of this Court”.

5. Although the date of the incident in the charge sheet is mentioned as 16th March 1996, admittedly it is a typographical error and the date should be read as 16th March 1997.

Case of the Prosecution

6. The deceased Sat Shri Parkash was the son of Har Kishan Lal Misra (PW-14) and the brother of Hanumant Parkash (PW-13) and Jai Shri Prakash (PW-23). It has come in the evidence of PW-14 that his son (the deceased) was working in the Publication Division of Old Secretariat. PW-14 had one house at Nangloi Extension where the deceased used to stay. PW-14 and his other son reside at Brahmpuri. The deceased was hard of hearing. He often used to visit his father's house at Brahmpuri and then go back to stay at Nangloi.

7. According to PW-14, in his house at Nangloi, Mukesh @ Lala Khan (Appellant herein), Sanjay, Jai Parkash, Vinod, Raj Bahadur and Raju were tenants. The case of the prosecution is that PW-14 received a telephonic call on 18th March, 1997 at Brahmpuri, Delhi where the caller informed him that his son (the deceased) had been kidnapped. According to PW-14, the caller who disclosed his name as Rajesh, resident of village Nangloi, demanded a ransom of Rs. 5 lakhs. According to PW-14, Rajesh also informed him that his other son Hanumant Parkash (PW-13) was also confined in a room at his

house at H. No. C 47-48 Nangloi Extension. PW-14 stated that he received two more such calls, with the third being on the intervening night of 18th/19th March, 1997. According to PW-14, when he asked Rajesh not to act in haste and that he (PW-14) would meet him in the morning, Rajesh replied saying that he should meet him at the house of one Dharam Pal in Dak-khana Wali Gali near Harijan Chopal, Nangloi or near Vinod General Store, Krishna Mandir, Nangloi.

8. Instead of going to the PS straightway, PW-14 took along with him 4/5 persons first to the house of Dharam Pal where he was informed that no person named Rajesh was residing there. After that PW-14 went to Vinod General Store which was closed and then to village Nangloi to search for accused Rajesh but could not find him. He is then supposed to have visited his house at Nangloi and thereafter the PS at Nangloi where he met the duty officer who recorded his statement.

9. Admittedly, when he first gave a statement, PW-14 did not name any of the accused persons. He also did not doubt any of his tenants at Nangloi where the deceased used to stay. He only expressed the apprehension that his son (the deceased) might have been kidnapped.

Version of PW-13

10. The version of PW-13 (brother of the deceased) is that he had been asked by his brother (the deceased) to bring the clothes of the deceased and, therefore, decided to visit the house at Nangloi on 18th March, 1997 in the evening. When he reached the house at Nangloi he found the rooms lying

vacant. The deceased was not there and his room was locked. PW-13 claims that he had a key to the room and stayed there on that night. PW-13 deposed that on 18th March, 1997, at around 9/9.30 pm., the present Appellant came to the room and enquired about the deceased. PW-13 then replied that the deceased was not there and that he himself had just reached. According to PW-13, the Appellant then informed him that the Appellant had seen the deceased only on Sunday. The Appellant was having a bandage on his hand and explained to PW-13 that some persons with arms had given him a beating and asked him to vacate the room. The Appellant then left stating that he would come the next morning to assist PW-13 in finding his brother.

11. Later that night on 18th March 1997 at 11/11.30 p.m., PW-13 is stated to have heard the sound of 3/4 persons coming outside the room and calling for his brother. When he did not respond, they then called PW-13 by name and asked him to open the door. They did not disclose their purpose. PW-13 refused to open the door. They then threatened PW-13 with violence and even to break the door. They supposedly disclosed that the deceased was in their custody and then left.

12. PW-13 deposed in the Court that he could identify the voice of one of those persons as Rajesh. In his cross-examination by the learned APP, PW-13 volunteered that he could see the Appellant as well through the peep-hole in the door. In the cross-examination by the counsel for the accused, PW-13 *inter alia* stated: "I did not state before the Police that such Sat Shri Parkash was living at Nangloi". He also claimed to have enquired from the neighbours as well as the tenants on the 18th/19th March 1997 about the

deceased, but no one could tell him anything. PW-13 also claimed ignorance about any agreement entered into by the deceased regarding sale of the plot or executing documents in connection therewith.

13. The above question was posed to PW-13 in context of the case of the prosecution that one of the accused, Rajesh, was pressurizing the deceased to sell the plot at Nangloi to him whereas the said property, in fact, stood in the name of PW-14. The version of the above two witnesses PWs 13 and 14 would make it appear that even on 18th March 1997, the deceased was in the custody of the accused. However, this is completely contradicted by how the dead body of the deceased came to be discovered.

Recovery of the body of the deceased

14. This is clear from the evidence of PW-30, Sub Inspector (SI) Karan Singh, attached to the PS Jhajjar, Haryana. He deposed that on 17th March 1997, he along with HC Ramesh, Ct. Raj Kumar and Ct. Prithvi Singh, were present at Badli Chowk, Jhajjar when Jai Singh (PW-21), *chowkidar* of the village Jahangirpur informed them at about 2.50 p.m. that a dead body of an unknown person was lying in the field of one Sultan of the same village and that there were injuries on the person of the deceased. PW-30 along with the *chowkidar*, HC Ramesh and Ct. Raj Kumar then went to the spot to find the dead body. Ct. Prithvi Singh was directed to call the photographer to the spot and a site plan was prepared. PW-30 lifted the blood stained mud kept in a plastic bag which was converted into a parcel from the spot. He also recovered one ink pad, one pair of slippers, one tobacco pouch and one spectacle and got these sealed in a separate parcel. To establish identity,

personal search of the dead body was taken but nothing could be recovered.

15. An FIR No.94/1997 was registered at PS Jhajjar, Haryana. Inquest proceedings were also undertaken. The post mortem of the body of the deceased was performed by Dr. Rajender Rai (PW-24), attached to the hospital at Jhajjar. The injuries noted were one firearm wound situated on the left side in the upper part of the neck, one incised wound in front of the chest and abdomen, another incised wound on the left side of the chest in the lower part and a third incised wound going deep on the left side of the chest. All the injuries were stated to be sufficient to cause death in the ordinary course of nature.

16. PW-30 noticed that the pant worn by the deceased had the mark of 'Diamond Tailor'. On 18th March 1997, PW-30 along with HC Ramesh (PW-17) reached PS Seelampur, Delhi. Thereafter he went to the Diamond Tailor shop at Brahmpuri. The tailor there confirmed that the mark was that of his shop. He however could not identify the person for whom the pant was stitched and also could not identify the deceased.

17. PW-30 deposed that on 20th March 1997, Inspector Ombir Singh (PW-32), the Investigating Officer (IO) of the present case was posted at PS Nangloi, Delhi. PW-32 along with some other police officials reached PS Jhajjar and informed PW-30 about coming to know that one dead body of an unknown person was found in the jurisdiction of PS Jhajjar on 18th March, 1997. The dead body was thereafter shown to PW-14 and Sushil (brother of the deceased and examined as PW-7 by the Trial Court), who identified the

dead body. The dead body was then handed over to PW-14.

18. The above version of PW-30 contradicts any possibility of the accused informing PW-13 on the night of 18th March, 1997 that they had the deceased with them at that time. We only have the evidence of PW-13 in this regard. Even PW-14 could not have had any knowledge about the deceased having been taken away by the accused on 16th March, 1997.

19. Importantly, the time of death of the deceased, as noted in the post mortem report, which was prepared on 17th March, 1997 at around 4.30 p.m. was more than 12 hours but less than 36 hours earlier. Therefore, the death could have taken place in the intervening night of 16th and 17th March, 1997. This completely rules out the possibility of the deceased having been alive at any time on 18th March, 1997.

20. There was no evidence placed on record by the prosecution to conclusively prove that the Appellant herein or any of the other three so-called tenants were, in fact, tenants in the house at Nangloi. There was no document produced to that effect. Despite not finding any of the tenants at the house, PW-14 did not inform the Police in the first instance of the names of such tenants or express any apprehension of their involvement.

21. The Trial Court in the impugned judgment, after discussing the evidence of PWs 13 and 14, has come to the conclusion that the prosecution has proved beyond all reasonable doubt that “on 18th March, 1997 the deceased Satshri Parkash/Sat Parkash was in the custody of 3/4 persons and the

accused Rajesh and Lala Khan were two of those 3 /4 persons”. In coming to this conclusion, the Trial Court completely ignored the post mortem report and the evidence of PW-30, both of which conclusively show that there was no possibility of the deceased being alive on 18th March, 1997 between 11 and 11.30 p.m., much less being in the custody of any of the accused persons.

Version of PW-14

22. Interestingly, PW-14, in his cross-examination, stated that “on 21st March, 1997 I went to Police Station Nangloi to know about the progress of my case. At about 11 a.m. Insp. Ombir Singh and SI Zile Singh brought accused Lala Khan and Rajesh and had told me that these were the persons who abducted Sat Shri Parkash. Again, said police officers had asked me whether I knew Rajesh and Lala Khan, then I had replied that I knew them but they had not told that these were persons who abducted my son.”

23. It appears to the Court that PW-14 actually did not suspect the Appellant as being one of the persons who had kidnapped his son and, therefore, at no point prior to the arrest of the Appellant and his production before PW-14 by the police was he in a position to tell the police that it was the Appellant who had or may have committed the crime. There are two FIRs; one handwritten and the other a typed one. The handwritten FIR does not mention the names of the accused persons.

Last seen evidence

24. Two witnesses were produced by the prosecution to prove the

circumstance of 'last seen' i.e. the deceased was last seen in the company of the accused persons. These were: PW-4 Devinder and PW-9 Randhir Singh. PW-4 was the driver of the tempo owned by PW-9. According to the prosecution, the said tempo was hired by the accused for carrying the dead body of the deceased to the spot where it was ultimately found. However, both these witnesses turned hostile and therefore, the prosecution was unable to prove the circumstance of 'last seen' definitely.

Motive

25. As regards the motive, as already noticed, although the prosecution has tried to project that the accused Rajesh was pressurizing the deceased to sell him the property at Nangloi, the evidence itself shows that the property stood in the name of PW-14 and there was no way that the deceased could have sold or transferred the property to Rajesh. As regards the three telephone calls, the prosecution is unable to prove the making of such calls by the accused and in particular the Appellant.

Arrest

26. That only leads to the circumstances of the arrest of the accused and the consequent disclosures and recoveries at their instance. The evidence of PW-32 about the manner of arrest of the Appellant does not inspire confidence. According to him, on 20th March, 1997 he received secret information about the Appellant and Rajesh coming from the Hiren Kudana side and then organized a raiding party to arrest both the accused at the same time. His statement that he asked 15-20 persons to join the raiding party but none agreed appears to be a standard line that is deployed in all such cases.

Other grounds

27. As pointed out by the learned counsel for the Appellant, the bullet recovered from the dead body was unable to be matched and shown to have been fired from the pistol which was recovered at the instance of the accused Rajesh. The Court is not satisfied that the evidence regarding the arrest and disclosure and the recoveries could sufficiently bring home the guilt of the accused.

Conclusion

28. For all the afore-mentioned reasons, the Court is not satisfied that the prosecution has been able to prove the various circumstances beyond reasonable doubt and in any event that such circumstances do not form a complete chain which unerringly point only to the guilt of the Appellant and other accused persons and none else.

29. Accordingly, the impugned judgment and order on sentence dated 26th September, 2001 passed by the learned Addl. Sessions Judge are hereby set aside. The bail bond and the surety bond furnished by the Appellant/accused are hereby discharged. The appeal is allowed in the above terms. No order as to costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 08, 2018/ 'dc'