

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

Judgment Reserved on: 05.04.2018
Date of Decision: 21.05.2018

+ **CRL.A. 833/2015**

RAVI

..... Appellant

Through: Mr.Saurabh Kansal & Ms.Pallavi S.
Kansal, Advocates.

versus

STATE

..... Respondent

Through: Ms.Aashaa Tiwari, APP with
Inspector Virender, SHO PS
Usmanpur.

AND

+ **CRL.A. 753/2015**

LALI DEVI

..... Appellant

Through: Mr.R.P. Luthra and Mr.Sourabh
Luthra, Advocates.

versus

RAVI & ANR

..... Respondent

Through: Ms.Aashaa Tiwari, APP with
Inspector Virender, SHO PS
Usmanpur.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT OF THE COURT

1. Criminal Appeal No.833/2015 has been filed by the appellant-Ravi under Section 374(2) Cr.P.C. against the judgment of conviction dated 09.04.2015 and order on sentence dated 12.05.2015 passed by learned Additional Sessions Judge (Shahdara), Karkardooma Courts, Delhi whereby the appellant has been convicted under Section 363 IPC, and sentenced to undergo rigorous imprisonment for seven years with fine of Rs.10,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for 60 days for the offence under Section 363 IPC.

2. The other appeal bearing Criminal Appeal No.753/2015 has been filed by the complainant-Smt.Lali Devi under Section 372 Cr.P.C. against the judgment of conviction with the prayer to set aside the acquittal of the accused Ravi under Section 302 IPC.

3. Since both these appeals have been preferred against the same judgment of conviction and order on sentence, therefore, they both were heard simultaneously, and are decided together.

4. The factual matrix emerging from the record is that on the intervening night of 26/27.09.2011, the complainant Smt.Lali came to the police station and made a complaint that on 18.09.2011, at about 05.30 p.m., her son Pradeep @ Golu along with his brother Sandeep went for fishing at 5th Pushta, Yamuna Khadar, Usmanpur. Sandeep returned back without Pradeep. On 19.09.2011, her husband Mohd.Tasleem made a complaint regarding Pradeep going missing in

the police station vide DD No.16A. On inquiry from Sandeep, it was revealed by the complainant that Pradeep was lastly seen with an unknown person who was found to be a resident of Gali No.8, 3rd Pushta, Usmanpur and his name was Ravi. She gave the description of her missing son Pradeep aged about 14-15 years.

5. On the basis of complaint made by the complainant, FIR was initially registered under Section 363 IPC and its investigation was assigned to SI Vikrant Sharma. The police officials along with the complainant and Sandeep visited the house of the accused Ravi and he was apprehended on the pointing out of Sandeep. Accused confessed his guilt and disclosed that on 18.09.2011, he was with the deceased and wanted to commit unnatural act with him. Accused took Pradeep to the bushes and committed sodomy. When victim resisted and tried to raise an alarm, the accused killed him by strangulating him. Accused was arrested. On the pointing out of the accused, police visited the place of occurrence i.e. a farm in Yamuna Khadar, near 5th Pushta, New Usmanpur and recovered a number of bones with skull, scalp hair, clothes and shoes. The clothes and shoes of the deceased were identified to be that of Pradeep. The remains of the dead body were sent for postmortem and DNA test. No opinion for the cause of death was given in the postmortem report for the want of sufficient material. The DNA report established that the complainant was the biological mother of the deceased. On completion of investigation, charge sheet was filed in the Court.

6. Charge for the offence under Section 363, 377, 302 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

7. To prove its case, the prosecution had examined 20 witnesses including Smt.Lali (PW1), Sandeep (PW3) and Master Montu (PW20).

8. After completion of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which he claimed innocence and denied the entire case of the prosecution. The accused did not examine any defence witness.

9. On appreciation of evidence and material brought on record, the trial court acquitted the accused under Section 302 and 377 IPC. However, it convicted him under Section 363 IPC vide impugned judgment dated 09.04.2015 and order on sentence was passed on 12.05.2015. Feeling aggrieved of the same, the appellant/convict Ravi has preferred the instant appeal. Against his acquittal under Section 302 IPC, the complainant has preferred her appeal.

10. Argument advanced by the learned counsel for the appellant is that there is delay in lodging the FIR. The missing complaint was made on 19.09.2011, whereas the child went missing on 18.09.2011. However the FIR was registered on 27.09.2011. The said delay has not been explained. It is further submitted that PW3-Sandeep and PW20-Montu are the only witnesses to prove the offence

under Section 363 IPC. It is argued that the statement of PW20 is not reliable, as PW1 and PW2 did not mention about the presence of PW20 at the spot in their testimony. There is dispute about the age of PW3 as he had disclosed his age as 15 years, but when he was examined before the Court he told his age to be 18 years. It is submitted that PW3 and PW20 being minors are tutored witnesses. Initially, no allegation of kidnapping was made by the complainant, but it came to light only on 27.09.2011. In support of the above contentions, reliance has been placed on *Sandeep v. State (NCT of Delhi)* MANU/DE/0268/2015 in which it was observed that the prosecution case must stand on its own legs and cannot derive any strength from the weaknesses of the defence. It was further observed that the circumstances from which an inference of guilt of the accused is to be drawn, has to be proved beyond reasonable doubt and the conclusion of guilt is to be drawn from fully proved circumstances, which must be conclusive in nature.

11. On the other hand, it is argued by the learned counsel for the complainant that the bones, hair and clothes of the deceased were got recovered by the accused from the place where his dead body was allegedly dumped by him, and as per the testimony of PW3 and PW20, it was the accused who kidnapped the deceased. Thus, Section 106 of the Evidence Act would come into play and the accused is liable to be convicted for the offence under Section 302 IPC. It is submitted that the prosecution has been able to establish the complete chain of circumstances under which the deceased was taken away by

the accused, and then he committed the murder of the deceased. The deceased was lastly seen in the company of the accused-as reflected from the testimony of PW3 and PW20, and then the accused got recovered the remains of the deceased, which leads to the guilt of the accused that he had committed the murder of the deceased and is, thus, liable to be convicted under Section 302 IPC.

12. The first question to be determined in the instant case is whether the case under Section 363 IPC is made out against the appellant or not. To prove the kidnapping of the deceased by the accused, the relevant and material witnesses are PW3-Sandeep and PW20-Montu.

13. PW3 deposed that on 18th September, two years ago, at about 3.30 p.m., he along with his brother Pradeep @ Golu went to 5th Pushta, Jamuna Khadar where the accused met them. Accused told them that from early morning, he could not catch any fish. Accused asked PW3 and his brother to bring earthworm-to be used as bait. His brother Pradeep @ Golu went to a nearby field and brought the earthworm. Accused asked the deceased-brother of PW3 from where he had brought the earthworm, to which he replied that he brought the same from the field. Accused asked him to show the field. The deceased brother of PW3 moved towards the field and the accused followed him, and he took his brother somewhere in the field but neither his brother, nor the accused returned. PW3 remained sitting on the water tank waiting for his brother. He went towards the field in search of his brother after waiting for 1½ -2 hours. Accused was seen

coming from the side of forest. PW3 asked the accused where the brother of PW3 was, to which he replied that he had run away after taking Rs.10/- from him. Thereafter, PW3 went to his house and informed his parents. During cross-examination, PW3 stated that he along with his deceased brother and one small child Montu had gone to the pond.

14. PW20-Montu denied that Lali was his mother, but stated that she was like his mother. He stated that he along with his father used to reside with Sandeep (PW-3) and Lali aunty (PW-1), after death of his mother. Golu was younger brother of Sandeep. Sandeep was son of Lali aunty. They had gone to 5th Pushta but not for fishing. Golu asked a person who was fishing there as to how many fishes he had caught, and that person said that he could not catch any fish. Then, Golu brought one earthworm and gave it to that person. On this, that person asked Golu about the place from where he got the earthworm, and promised him to pay Rs.10/-. Thereafter, that person took Golu along with him towards forest and handed over his instrument to them to catch the fish. PW20 and Sandeep remained at that place for the next one and a half hour but that person with Golu did not come. PW20 and Sandeep started searching for Golu and after sometime, they found that the said person was coming from the side of forest alone. They asked him about Golu and he responded that Golu had fled away after taking Rs.10/-. Thereafter, that person also fled away and they kept on searching for Golu for quite some time and finally they both returned to their house and informed the same to

Lali aunty. PW20 correctly identified the accused Ravi as the person who had taken Golu with him.

15. From the testimony of PW3, it stands duly established that on the day of the incident, the accused has taken away Pradeep @ Golu on the allurement that he would give him Rs.10/- and to show the place from where he caught the earthworms. Testimony of PW3 has duly been corroborated by PW20-Montu. PW20 also deposed on the similar lines as PW3. He also gave almost the same narration of events regarding going to the place of incident to catch the fish with PW3 and Pradeep @ Golu; meeting of the accused at the said place; accused saying to them that he could not catch any fish since morning; bringing of an earthworm by Pradeep @ Golu; giving it to the accused; asking of the accused from Golu to show the place from where he brought the earthworm; taking away of Golu by the accused to show him the place of getting the earthworm; and, the accused being noticed coming alone from the forest area, and stating that Pradeep @ Golu going away after taking Rs.10/- from the accused. It has come in the testimony of PW1 and PW2 that their son Pradeep @ Golu went missing from 18.09.2011.

16. From a joint reading of the testimonies of PW3 and PW20, whose presence at the place of incident has duly been established, it has duly been conclusively proved on record that on the fateful day, the accused took the deceased along with him on the pretext of seeing the place from where the deceased brought the earthworm, and with the allurement that he would give him Rs.10/-.

It has come on record that the deceased was aged about 14-15 years at the time of the incident. So far the contention of the counsel for the appellant with regard to delay in lodging the FIR is concerned, the same is without any basis in view of the testimony of the witnesses PW3 and PW20 and the appellant, in our view, cannot derive any benefit from the same.

17. Thus, as discussed above, we are of the view that the prosecution has successfully established on record that on the day of the incident, accused had taken away Pradeep @ Golu from the lawful guardianship of his parents, and thus the offence committed by him falls within the definition of Section 361 IPC, punishable under Section 363 IPC. The appellant-Ravi has failed to make out any ground in support of the instant appeal. In our view, the appeal preferred by the appellant/convict Ravi has no merit and the same is, therefore, dismissed.

18. So far as the appeal of the complainant-Smt.Lali (PW-1) is concerned, we have gone through the entire evidence brought on record by the prosecution. The postmortem on the dead body of the deceased was conducted by PW17-Dr.Neha Gupta. She deposed that she had received two sealed parcels containing bundles of bones of the deceased. Those were human bones with no soft tissues. The bones consisted of one skull, one mandible, three pieces of cervical vertebrae, one scapula, one clavicle, ten ribs of either side, one humerus, one radius, one ulna, right and left femur and three pieces of pelvic bone. PW17 stated that since there were no soft tissues and

there were no injuries or fractures, therefore, no definite opinion regarding the cause of death could be given.

19. It has come on record that the DNA extracted from the remains of the dead body were analyzed in the FSL vide DNA report Ex.PW6/A. Though, this report duly proves that the DNA of the deceased matched with that of his mother i.e. Smt.Lali (PW1) and that PW1 was the biological mother of the deceased, but the medical report of the deceased does not confirm the cause of death, to make out whether it a homicidal death, a natural death, or an accidental death. In the absence of any direct evidence of the commission of murder, or the circumstantial evidence to link the accused with the murder of the deceased-and that too without the medical report, it is hardly a case to convict the accused for the commission of murder of the deceased.

20. The present case is not a case of direct evidence. Rather it is based on the circumstantial evidence. Apart from kidnapping of the deceased by the accused, there is no evidence, either direct or indirect, to link the accused with the murder of the deceased. Though it has come in evidence that the accused got the remains of the deceased recovered, the same, by itself, does not lead to admissibility of the statement that he had strangled the deceased to death. This single circumstance is not sufficient to hold that the murder of the deceased was committed by the accused. Thus, we are of the considered opinion, that the complainant/appellant Smt.Lali has failed

to make out any ground in support of her appeal to call for any interference with the impugned judgment passed by the trial court.

21. In view of the above discussion, we do not find any fault, illegality or infirmity in the impugned judgment of conviction and order on sentence. We are of the view that no ground is made out to set aside or interfere with the same. The conviction and sentence awarded to the appellant-Ravi is, therefore, upheld.

22. Consequently, both the appeals are dismissed being devoid of merit.

VIPIN SANGHI, J

P.S. TEJI, J

MAY 21, 2018