

Abdul Qayyum Vs State of Uttar Pradesh

None

Court: Allahabad High Court

Date of Decision: April 23, 2007

Acts Referred:

Penal Code, 1860 (IPC) " Section 201, 302, 34

Hon'ble Judges: S.K. Jain, J; K.N. Sinha, J

Bench: Division Bench

Final Decision: Allowed

Judgement

K.N. Sinha and S.K. Jain, JJ.

The present appeal has been filed against the judgement and order dated 28.5.1992 passed by the IInd

Additional Sessions Judge Bijnor in session trial No. 385 of 1990, whereby appellant Abdul Qayyum was convicted for the offence under

Sections 302/34 and 201 IPC and was sentenced to under go imprisonment for life for the offence u/s 302 read with Section 34 IPC and further

convicted u/s 201 IPC and sentenced to under go one year rigorous imprisonment. Both the sentences were ordered to run concurrently.

2. The facts, as set forth in the First Information Report and emerged by the evidence, are that informant Fazalur Rahman (PW-4) lodged a report

at police station Noorpur district Bijnor on 8.3.1990 at 6.45 P.M., stating that his son Mohd. Abid had gone to school on 7.3.1990, in morning

and returned back in noon. After taking his meal, he went out to play but did not return till evening. After thorough search he was not found then a

report was lodged.

3. The investigating officer visited the village where the informant expressed suspicion against appellant Abdul Qayyum. The motive stated was that

the wife of the informant checked the appellant from committing theft. The investigating officer got information that the appellant had gone near the

pond to ease out. He immediately rushed and arrested the appellant on 9.3.1990 at 6.30 A.M.

4. It is alleged that witnesses Farooq and Ranjit Singh were also available at the pond before whom the appellant confessed the guilt and stated

about the enmity with the wife of the informant. He also confessed about burying of the dead body in his house with the help of his mother Raisa.

The police party along with the appellant and witnesses visited the house and on his pointing out the dead body of the deceased was recovered.

The recovery memo (Ext. Ka-1) was prepared on spot. The inquest report was prepared and the sealed dead body was sent for post mortem

through constable Rajendra Singh.

5. After completing the investigation, charge sheet was submitted against the appellant and one Smt. Raisa (acquitted by the trial court).

6. The case was committed to the court of Sessions Judge by the Chief Judicial Magistrate Bijnor where appellant pleaded not guilty to be

charged. No defence evidence was adduced.

7. The prosecution, in all, examined seven witnesses. PW-1 Mohd. Abrar is the witness of the fact of last seen the deceased in the company of the

accused-appellant. PW-3A. Aziz is also witness of the last seen PW-2 Ranjit Singh is the witness of the fact of arrest of the appellant and his

confession and recovery of dead body. PW-4 Fazalur Rahman is the complainant of the case and he is also witness of the fact, arrest of accused

and confession of guilt of the appellant and recovery of dead body on pointing out of the" accused. PW-5 Constable Rajendra Singh is the forma

witness in whose supurdagi dead body was sealed and necessary papers for post mortem were given to him to take dead body to the mortuary,

the took the dead body to the mortuary with necessary papers and after post mortem handed over the dead body to Mohd. Fazalur Rahman. Dr.

M.S. Patel (PW-6) conducted post mortem and prepared report (Ext. Ka-3). The following ante mortem injuries were found on the body of the

deceased:

1. Multiple abraded contusion over front and both side of neck extending up to sub mandible and right sub mandibular region but more marked

over to right side of neck.

2. Multiple abrasion in an area of 6 cm x 2 cm over middle part and left side of back, 2 cm below the angle of left scapula.

8. Sub inspector Gajendra Singh (PW-7) is the investigation officer of the case who submitted charge sheet.

9. It is a case of circumstantial evidence. It has been laid down by the Apex Court that where a case rests squarely on circumstantial evidence, the

inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the

accused or the guilt of any other person. The circumstances, from which an inference as to the guilt of the accused is drawn, have to be proved

beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

10. In the case of Padala Veera Reddy v. State of Andhra Pradesh 1990 (27) ACC 32 , the Apex Court laid down that ""When a case rests upon

circumstantial evidence, such evidence must satisfy the following tests:

1. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. The circumstances, taken cumulatively, should form e chain so complete that there is No escape from the conclusion that with in all human

probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the

guilt of the accused and such evidence should not only be consistent with the guilt of the accused but in consistent with his innocence.

11. We have to examine the instant case in the background of the aforesaid principles.

12. We have heard Shri V.M. Zaidi, learned Counsel for the appellant and the learned A.G.A. We have perused the record carefully.

13. The learned Counsel for the appellant has submitted that the appellant has been falsely implicated in this case due to enmity. The prosecution

has tried to prove the following circumstances against appellant Abdul Qayyum:

1. That deceased Mohd. Abid was last seen in the company of the appellant on 7.3.1990 by witnesses PW-1 Mohd. Abrar and PW-3A. Aziz.
2. That on pointing out of the appellant, the dead body of Mohd. Abid was recovered from his house on 9.3.1990 at 6.30 A.M. in the presence of

witness PW-2 Ranjit Singh, one Mohd. Farooq and complaint Fazalur Rahman by the police party which arrested the appellant near the pond of

the village Askaripur within the circle of police station Noorpur district Bijnor.

14. The learned Counsel for the appellant has submitted that the prosecution has utterly failed to prove both the circumstances. The witnesses

examined by the prosecution are wholly unreliable, as is clear from their depositions. The learned Counsel for the appellant has argued that as per

the statement of PW-1 Mohd. Abrar (in his cross examination), he has specifically stated that he had informed complainant Fazalur Rahman (PW-

4) on the next day in the night at 2.00 A.M., that he had seen appellant Abdul Qayyum with Mohd. Abid. Similar statement has been made by

Mohd. Aziz in his cross examination, meaning thereby, these two witnesses had informed the complainant about the fact that they had seen the

accused in the company of deceased before making of report of gumshudgi. The informant had lodged the report of gumshudgi on 8.3.1990 at

6.45 P.M. The perusal of the report suggests that he did not mention this fact in the report that these two witnesses had seen the appellant in the

company of the deceased on the previous day, i.e. on the day, when Mohd. Abid was found missing. The learned Counsel for the appellant, on the

basis of above submission, has argued that when these two witnesses stated that they had informed the complainant about the fact that they had

seen the deceased in the company of the appellant before lodging the report of gumshudgi, there was no reason why this fact was not stated in the

written report made by the complainant.

15. The learned Counsel for the appellant has also invited our attention towards the statement of PW-1 Mohd. Abrar, in which he has stated that

Mohd. Abid was following appellant Abdul Qayyum while PW-3A. Aziz stated that Mohd. Abid was followed by appellant Abdul Qayyum. On

the basis of these arguments, the learned Counsel for the appellant has submitted that the evidence of last seen is not reliable in this case.

16. The learned Counsel for the appellant has further submitted that the evidence relating to the recovery of dead body of the deceased from the

house of the appellant is also not trustworthy. The learned Counsel for the appellant has invited our attention towards the statement of PW-2 Ranjit

Singh who has deposed in his cross examination that kotha from where the dead body was recovered, has a door towards west side and there

was only one door in that kotha. The house from where the dead body was recovered, was dark and the dead body was buried about one fit

below the floor. As per the statement of the complainant (PW-4), the room, from where the dead body was recovered, was dark and the dead

body was recognised in he torch light and as per the deposition of the investigating officer (PW-7) S.I. Gajendra Singh, the place from where the

dead body was recovered, had sufficient light in which the dead body could be recognised.

17. The learned Counsel for the appellant, on the basis of the above grounds, has submitted that in fact the dead body of Mohd. Abid was found

somewhere else and the evidence, that it was recovered on pointing out of the appellant, has been cooked up by the prosecution.

18. The learned A.G.A. has submitted that from the deposition of Mohd. Abrar (PW-1) and A. Aziz (PW-3), it is fully proved that deceased

Mohd. Abid was last seen with the accused by these two witnesses and thereafter on pointing out of the appellant, the dead body of Mohd. Abid

was recovered from the house of the accused in the presence of the complainant, PW-2 Ranjit Singh and the police party and the Sessions Judge

committed No error in recording the finding that the prosecution successfully proved the aforesaid two circumstances against appellant Abdul

Qayyum.

19. We have examined the evidence in the light of the law laid down by the Apex Court and on the basis of submissions made by both the parties.

20. We find sufficient force in the submissions made by the learned Counsel for the appellant that witness Mohd. Abrar (Pw- 1) and A. Aziz (PW-

3) are unreliable witness for the reason that both these witness had specifically stated that they had informed the complainant about their witnessing

the deceased in the company of the appellant on 7.3.1990. This fact was disclosed by them to the complainant the very next day at 2 00 A.M. in

the morning. Deceased Mohd. Abid was missing from 7.3.1990 and the report was lodged on 9.3.1990, if they had told the complainant about

this fact, there was No reason for the complainant not to state this fact in the report of gumshudgi. As per the complainant, these two witnesses

told him that they had seen his son Mohd. Abid at 5.00 P.M. with Abdul Qayyum soon after making the enquiry by him. As per the statement of

Mohd. Abrar (PW-1), he was examined by the investigating officer after 15-20 days and as per the statement of A. Aziz (PW-3), he was

examined after 15-16 days. There is no evidence on record that they were not available to the investigating officer for 15-16 days. On the other

hand, it has also come in the statement of Mohd. Abrar (PW-1) that when the dead body was recovered, he was standing on the road where the

police was also present and he did not disclose this fact to the investigating officer that he had seen the appellant in the company of the deceased.

Similarly A. Aziz (PW-3) had also stated that when the dead body was recovered, he was standing outside. The crowd assembled there. The

police was also there. If this was a fact then there was No reason why they did not disclose it to the police or the complainant that they had seen

the deceased in the company of the appellant.

21. In view of the above facts, we are of the view that these two witnesses cannot be believed. They were not examined by the investigating officer

within reasonable time. One of them was examined after 15-16 days and another was examined by the police after 15-20 days. Thus, we are of

the view that these two witnesses, namely, Mohd. Abrar (PW-1) and A. Aziz (PW-3) had in fact not seen the deceased in the company of the

appellant.

22. When we examine the evidence adduced by the prosecution regarding recovery of the dead body of deceased Mohd. Abid, from the house of

the appellant, on his pointing out, we find that Ranjit Singh (PW-2) had deposed before the court that about a year earlier he had gone to ease

himself in the morning on the pond near the school about 6.30 A.M., he saw the police with Fazalur Rahman. Appellant Abdul Qayyum was also

going towards the village after easing himself. The appellant, seeing the police started running. The police arrested and interrogated him. The

accused said that he had committed mistake, he should be pardoned and thereafter the accused present in the court, confessed that he along with

his mother Raisa had committed murder of Mohd. Abid by throttling him and had been him in his house towards southern corner. The statement

was recorded by the police. The police tied Abdul Qayyum with the rope. Abdul Qayyum walked ahead of the police. Mohd. Farooq and Fazalur

Rahman followed the appellant. They went to the house of appellant Abdul Qayyum. The appellant took them into the house facing towards west.

Thereafter he took them to the southern wall and removed leaves and dug the earth with Khurpi where they saw the dead body of Mohd. Abid.

Thereafter, the dead body was taken out Necessary papers regarding recovery was prepared by the police (Ext. K-9). It has come in his cross

examination that the kotha from which the dead body was recovered, has a door towards west and that kotha has only one door. There are three

kothas in the house of Abdul Qayyum and all these three kothas have only one door. At the time of recovery of the dead body, the main gate of

the house was open and inside the house Raisa Begum and two sisters of Abdul Qayyum were also present.

23. Fazalur Rahman (PW-4) in his examination in chief, has deposed before the court that Abdul Qayyum took them to his house where the used

to tie his buffalows and by side of the wall of that house he took out the dead body of his son. It has come in the cross examination that he cannot

say as to how many rooms are there in Haveli of Abdul Qayyum and the room from where the dead body was recovered, was dark and he had

recognised the dead body in the light of torch.

24. Investigating officer Gajendra Singh (PW-7) has stated in the examination in-chief that the appellant got the dead body recovered on the

southern kotha after removing leaves. He does not know by which vehicle the dead body was taken to the hospital. He does not remember

towards which side the legs of the dead body were pointing out. The place from where the dead body was recovered had sufficient light. The

house was not locked and No body was found inside the house.

25. As per the statement of PW-2, dead body was recovered from the place near the southern wall of the house of the appellant and as per the

statement of the complainant, the dead body was recovered from the place where appellant used to tie his buffalows. According to witnesses, the

room was dark, while as per the statement of the investigating officer, the room had sufficient light.

26. It has also come out from the statement of these witnesses that the main gate of the house of the appellant was open and ladies were present in

the house. It is highly improbable that appellant will bury the dead body on his own house.

27. Motive of crime, is stated by the complainant, is that his wife used to object to the habit of the appellant of committing theft because of which

the appellant was annoyed. It is a very weak motive. It is improbable that with this motive the appellant would kidnap the son of the informant and

commit his murder.

28. Considering the facts and circumstances of the case, we are of the view that prosecution has failed to prove the first circumstance that

deceased Mohd. Abid was seen in the company of the appellant on 7.3.1990 by witnesses Mohd. Abrar and A. Aziz. The prosecution has also

tailed to prove beyond doubt that dead body of deceased Mohd. Abid was recovered from the house of the appellant on 9.3.1990 at 6.30 A.M.

from his house.

29. In view of the above, we find that the evidence adduced by the prosecution to prove the charges against the appellant does not inspire

confidence to make it the basis of conviction. Accordingly, this appeal is allowed. The judgement and order dated 28.5.1992 passed by the IInd

Additional Sessions Judge, Bijnor in Sessions Trial No. 385 of 1990 is hereby set aside. Appellant Abdul Qayyum is acquitted of the charges

levelled against him u/s 302 read with Section 34 IPC and Section 201 IPC. The appellant is in jail. He be set at liberty forthwith, if not wanted in

any case.

30. The copy of this judgement be immediately sent to the court concerned for compliance.