

(2006) 11 DEL CK 0007

Delhi High Court

Case No: Criminal Appeal No"s. 812 of 2000 and 32 of 2001

Mohd. Mehboob @ Munna

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision: Nov. 7, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2007) 93 DRJ 398

Hon'ble Judges: R.S. Sodhi, J; P.K. Bhasin, J

Bench: Division Bench

Advocate: M.L. Yadav, for the Appellant; V.K. Raina, Mohd. Furkan, Ravinder Chadha, APP and Jagdish Prasad, for the Respondent

Judgement

R.S. Sodhi, J.

Criminal appeals No. 812/2000 and 3272001 seek to challenge the judgment and order of the Sessions Judge in Session Case No. 196/98, FIR No. 21/98 Police Station Sarojini Nagar whereby the learned Judge vide his judgment dated 1st November, 2000 has held the appellants guilty for an offence u/s 302 IPC r/w Section 34 IPC. Further by order dated 3rd November, 2000 sentenced the appellants to undergo life imprisonment together with the fine of Rs. 1,000/- each and in default to undergo simple imprisonment for three months each.

2. The facts of the case are that the deceased Subhash aged about 17 years was alleged to have been taken away by Munna and Furkan, the appellants herein, on the night of 24th January, 1998 from the jhuggi of PW-1 Ram Kali for the purpose of meeting call of nature. The dead body of Subhash was recovered on the following morning by PW-1 Ram Kali, who informed the police upon which the Investigating Office]" PW-14 Mir Singh reached the spot and began investigation He recorded the statement of PW-1 Ram Kali, which became the FIR. In her deposition she stated that

Munna and Furkan had been demanding money from Subhash and had also threatened him with dire consequences about 10 days prior to the occurrence. She also stated that at about 10.30 p.m. Munna and Furkan came to her jhuggi and took Subhash with them on the pretext of going to toilet. She goes on to say that Subhash did not come back on that night and she presumes that he has slept with friends". She further deposed that on the following morning when she went to answer the call of nature she found the dead body of Subhash. According to her there were stab wounds on the stomach of Subhash. She identified the body. In cross-examination the witness denied the suggestion that accused Munna was residing at Muzaffarnagar.

3. The prosecution to further strengthen the case examined PW-2, Jagdish, who deposed that on 25th January, 1998 accused Munna and Furkan had come to their house at 10.30 p.m. and taken Subhash with them on the pretext of going to toilet. He further deposed that Subhash did not return that evening and the following morning his dead body was found in jungle. He also deposed to the effect that a quarrel had taken place between Subhash on one side and Munna and Furkan on the other side regarding some money. Further PW-3 Har Nath, who is the father of the deceased, deposed to the effect that on 25th January, 1998 at 10.30 p.m. Munna and Furkan had taken Subhash with them and thereafter Subhash did not return.

4. It is available from the material on record that on 26th January, 1998. Munna and Furkan were taken into custody and they made disclosure statements to the effect that the jersey which was worn by Furkan at the time of incident was concealed along with the shirt worn by Munna in the jungle adjacent to the jhuggies. They also made a disclosure to the effect that a knife which was used in the crime was concealed by them and could be got recovered. Since the disclosure was made in the evening around 8.30 p.m., the police took the accused persons who led the police party to the place where they had concealed the knife. It is in evidence of the Investigating Officer that the disclosure statement was first made by Furkan which was later on endorsed by Munna. The recovery effected on 26th January, 1998 of knife at the instance of Furkan after digging the earth, was deposited in the malkhana on the same night and on the following morning the accused led the police party and got recovered the blood stained clothes which were also deposited in the malkhana on the same day. The blood stained clothes together with the clothes of the deceased and the knife were sent for examination to the CFSL which opined that the blood stained jersey and the t-shirt had stains of blood group "B" which was of the deceased. As regards the knife, grouping could not be ascertained but human blood was detected. In the statement u/s 313 Cr.P.C. the accused has denied the incident and claimed that they were not present in Delhi but were in Muzaffarnagar. But no evidence to this effect was led.

5. The trial court after evaluation of the ocular evidence as also the scientific evidence came to the conclusion that the chain of circumstances had been so closely

linked that there was no hypothesis available other than the guilt of the accused. We have reappraised the material on record and find that the circumstances which linked the accused to the crime are, (a) that there was a dispute between the accused and the deceased over the question of money which was demanded by the accused-from the deceased who had also threatened to kill him if the money was not repaid, (b) there is evidence to show that the deceased Subhash was last seen with the accused persons at about 10.30 p.m. on 24th January, 1998, (c) there is also evidence on record to show that the dead body of Subhash was recovered in the morning of 25th January, 1998, (d) there is also an evidence to show that both the accused persons were found missing from their jhuggies from 25th January, 1998 onwards, (e) the blood stained clothes P-3 and P-4 belonging to the accused persons were stained with the blood group "B" which blood group was of the deceased, (f) the knife got recovered by Furkan Ex.P-5 was stained by human blood (g) there is also material on record to suggest that the accused took up a positive stand that they were not present in Delhi on the fateful day but were at Muzaffarnagar. This stand of their was not substantiate. Therefore, taking the circumstances as a whole, we find that the chain is complete which leads to no other hypothesis but that which establishes the guilt of the accused. Even taking the extreme case for the sake of testing arguments the recoveries are not believed even then there is no escaping from the fact that the deceased was in the company of the accused persons at 10.30 p.m. on 24th January, 1998 and there is no explanation whatsoever offered by the accused persons as to what has happened to the deceased thereafter.

6. The evidence of PW-1, PW-2 and PW-3 positively established the case of the prosecution that the deceased was taken away by the accused persons at 10.30 p.m. on 24th January, 1998 from the jhuggi of PW-1 and that there was enmity between the accused and the deceased on account of money. This having being positively established it squarely leaves the accused to show as to where and at what time they parted company if at all. In the absence of any explanation it can safely be assumed that the accused have done away with the deceased.

7. In view of the above discussions, we find that there is no infirmity in the evaluation of material by the trial Court and affirm the same. Consequently, criminal appeal Nos. 812/2000 and 32/2001 are dismissed. Convict Munna, who was admitted to bail vide order Dated 12th May, 2004, shall be taken into custody to serve out the remaining portion of sentence.