

“REPORTABLE”

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.2272 OF 2010

Gajraj

.... Appellant

Versus

State (NCT) of Delhi

.... Respondent

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. The facts, as they emerge from the judgment rendered by the Trial Court at Karkardooma in Sessions Case no.68 of 2005, decided on 21.4.2008, the judgment of High Court of Delhi in Criminal Appeal no.461 of 2008 decided on 18.3.2009, and the statement of witnesses examined during the course of prosecution of the accused-appellant herein (which have been made available to us, in the form of additional documents), reveal that on 23.7.2005 at about 6.25 p.m., a telephone call was received at Police Station Krishna Nagar, conveying information, that a dead body was lying in House No.F-9/33, Krishna Nagar, Delhi. On receipt of the aforesaid telephone call, Daily Diary no.31A was recorded at Police Station Krishna Nagar. Police officials were immediately deputed to the site. On enquiry it came to be concluded, that the dead body was that of Harish Kumar, resident of House no.303, Gagan Vihar, Delhi. The deceased Harish Kumar, had suffered bullet injuries on the left side of the

temporal region, as also, on the left side of the abdomen. Accordingly, First Information Report bearing no.297 of 2005 was registered at Police Station Krishna Nagar for offences punishable under sections 302, 452 and 380 of the Indian Penal Code on 7.1.2006. On 14.12.2007, an additional charge under section 404 of the Indian Penal Code was also framed against the accused-appellant.

2. Minakshi, the wife of the deceased, who was at Chandigarh, reached Delhi on receiving information that her husband Harish Kumar (deceased) had been murdered. She identified the body of the deceased in the mortuary. Minakshi informed the police, that her husband was also with her at Chandigarh. And that, when he left Chandigarh for Delhi, he had in his possession a licensed revolver, a mobile phone (sim) no.9871879824, as also, a sum of Rs.3 lakhs which was taken by him to Delhi, for negotiating a settlement.

3. During the course of investigation, the police was able to ascertain, that mobile phone (sim) no.9871879824 was being used on a mobile handset bearing IEMI no.35136304044030. On further investigation it was found, that the aforesaid mobile handset bearing IEMI no.35136304044030 was being used for mobile phone (sim) no.9818480558 immediately after the murder of the deceased Harish Kumar. Sim no.9818480558 was registered in the name of the accused-appellant. It is through this investigative process, that the police eventually reached the accused-appellant Gajraj Singh, son of Veer Singh, resident at 12/2, Kundan Nagar, Lakshmi Nagar, Delhi. The police recovered from the accused-appellant three mobile handsets, one of which was of

Panasonic make bearing IEMI no.35136304044030, i.e., the handset in which sim no.9871879824 was used by the deceased. The police also recovered from the accused-appellant, the licensed revolver of the deceased Harish Kumar. Complete and effective recovery was not made of the sum of Rs.3 lakhs which Minakshi (wife of the deceased Harish Kumar) had stated was in possession of the deceased, at the time he had departed Chandigarh for Delhi. The police, in order to establish that the accused-appellant was in possession of funds in excess of his earnings, referred to a deposit of Rs.9,000/- in the account of the accused-appellant in the State Bank of India, Kundan Nagar Branch, Delhi. The said deposit had been made on 25.7.2005 (the murder in question had been committed two days earlier, on 23.7.2005).

4. In order to bring home the charges, the prosecution examined a total of 29 witnesses. A perusal of the statements of the prosecution witnesses reveal, that the conviction of the accused-appellant was sought merely on circumstantial evidence, namely, the use (and possession) of mobile handset bearing IEMI no.35136304044030 on the date of murder itself, i.e., on 23.7.2005 by the accused-appellant for mobile phone (sim) no.9818480558 (which was registered in the name of the accused-appellant), the recovery of the revolver of the deceased Harish Kumar along with live and spent cartridges, as well as, the deposit of Rs.9,000/- in the account of the accused-appellant with the State Bank of India, Kundan Nagar Branch, Delhi.

5. The Additional Sessions Judge, Karkardooma, Delhi disposed of Sessions Case No.68 of 2005 on 21.4.2008. It was sought to be concluded, that the

prosecution had been able to establish its case against the accused-appellant for offences punishable under section 302 and 404 of the Indian Penal Code. The accused-appellant was, however, acquitted of the charges framed against him under sections 380 and 452 of the Indian Penal Code. Thereupon by an order dated 28.4.2008, the accused-appellant was sentenced to undergo rigorous imprisonment for life, and to pay a fine of Rs.50,000/-, for the offence punishable under section 302 of Indian Penal Code (in the event of default of payment of fine the accused-appellant was required to undergo further rigorous imprisonment for an additional period of three years). The accused was also sentenced to undergo rigorous imprisonment for three years, and to pay a fine of Rs.5,000/- for the offence punishable under section 404 of Indian Penal Code (in case of default of payment of fine, the accused-appellant was required to undergo further rigorous imprisonment for four months). The aforesaid sentences, awarded by the Trial Court, were to run concurrently.

6. Dissatisfied with the order passed by the Trial Court, the accused-appellant preferred Criminal Appeal No.461 of 2008 before the High Court of Delhi. The appeal preferred by the accused-appellant, came to be dismissed on merits, on 18.3.2009. The sentence awarded by the Trial Court was however modified, inasmuch as, in the event of non payment of fine, imposed on the accused-appellant for the offence punishable under section 302 of Indian Penal Code, the High Court reduced the period of imprisonment in lieu thereof, from three years to six months.

7. The accused-appellant has approached this Court by filing the instant appeal so as to assail the orders passed in Sessions Case No.68 of 2005 (dated 21.4.2008) and in Criminal Appeal no.461 of 2008 (dated 18.3.2009).

8. During the course of hearing, learned counsel for the accused-appellant raised three contentions. The first of the aforesaid contention was the basis of his primary emphasis. The contention advanced was, that the accused-appellant had been implicated on the basis of allegedly being in possession of mobile handset bearing IEMI No.35136304044030. In so far as the instant aspect of the matter is concerned, it was the submission of the learned counsel for the accused-appellant, that the aforesaid mobile handset with the said IEMI number, was traced by the police on the disclosure of the wife of the deceased Harish Kumar. And also because the accused-appellant was using mobile phone (sim) no.9871879824 on the aforesaid handset. Since the accused-appellant was using a mobile phone (sim) registered in his (Gajraj Singhs) name on the mobile handset of the deceased (Harish Kumar), the police was able to ascertain his identity, and thereupon reach him. The object of the learned counsel, while advancing the first contention, was to establish that the instant projection in the evidence produced by the prosecution, was to fabricate a false story to implicate the accused-appellant. According to learned counsel, discrepancy in the prosecution evidence would establish the objective of the first contention. The sole discrepancy sought to be pointed out, was based on the statement of Minakshi, the wife of the deceased Harish Kumar. Minakshi while deposing before the Trial Court as PW23, had stated that her husband had called her at around 12 noon, and thereafter, at around 3 p.m. It was sought to be asserted,

that the call details from exhibit PW25/DX reveal, that two incoming calls were received from a Chandigarh telephone, at around the time expressed by Minakshi PW23. It was pointed out, that as per the deposition of PW23, it should have been outgoing calls from mobile phone (sim) no.9871879824 (as Minakshi had claimed to have received the said two calls from her husband), yet as per Exhibit PW25/DX, these were incoming calls. Based on the aforesaid discrepancy, it was the vehement contention of the learned counsel for the accused-appellant, that the factum of tracing the accused-appellant from the mobile phone (sim) of the deceased Harish Kumar was a complete concoction at the hands of the investigating agency. It was also sought to be suggested, that if the investigating agency's theory of reaching the accused-appellant was based on the call details of mobile phone (sim) no.9871879824, the same becomes clearly unacceptable. According to learned counsel, it would be natural to infer, that the police could not have reached the accused-appellant on the basis of call details of phone no. 9871879824. And therefore, the question of recovery of the revolver, as also, the mobile handset (owned by the deceased Harish Kumar), from his possession, does not arise. It was sought to be suggested that they must have been planted on the accused-appellant to implicate him.

9. In so far as the first contention advanced at the hands of the learned counsel for the accused-appellant is concerned, learned counsel also invited our attention to the reasoning depicted in the impugned order passed by the High Court (dated 18.3.2009), wherein the accused-appellant has been linked to the incident on the basis of the following reasoning:

“26. Holding that the call record Ex.PW-22/A evidences that two calls from Chandigarh were received on the mobile number 9871879824 in the afternoon of 23.7.2005, corroborates the testimony of the wife of the deceased who was staying at Chandigarh on 23.7.2005 that she had talked to the deceased over telephone in the afternoon of 23.7.2005, which in turn establishes that the mobile number 9871879824 was being used by the deceased on the date of his death; that the call records Ex.PW-22/A and Ex.PW22/B establishes that the handset having IEMI No.350608101231170, which handset was used by the accused on a regular basis, was used by the deceased on 10th and 11th July, 2005 and that this establishes that the deceased and the accused were in touch with each other; the call record Ex.PW-22/B evidences that the handset which was used by the deceased on the date of his death was in possession of the accused soon after the death of the deceased and that the same is a strong incriminating circumstance against the accused; that the prosecution has been able to establish that the handset which was used by the deceased before his death and the revolver which was the weapon of offence were recovered at the instance of the accused.....”

It is the assertion of the learned counsel for the accused-appellant, that the accused-appellant could never have been traced on the basis of the mobile phone (sim) no.9871879824, as no call was ever made by the deceased Harish Kumar from the aforesaid mobile number to the accused-appellant. Likewise, no call was ever made by the accused-appellant from his mobile phone (sim) no.9818480558 to the deceased Harish Kumar. As such it is submitted, that the conclusions drawn by the Trial Court, as also, by the High Court, are clearly unacceptable, and deserve to be set aside.

10. We have given our thoughtful consideration to the first contention advanced at the hands of the learned counsel for the accused-appellant, as have been brought out in the foregoing two paragraphs. We are however of the view, that the submission advanced by the learned counsel for the accused-appellant

cannot be accepted, keeping in mind the evidence produced by the prosecution. Even though we are of the view, that the learned counsel for the accused-appellant is fully justified in pointing out the discrepancy referred to by him, in so far as the statement of Minakshi PW23 is concerned and the reasoning rendered by the High Court, as has been extracted hereinabove, may not be fully justified, yet we have no doubt, that the manner in which the accused-appellant came to be identified and traced, (during the course of investigation) fully establishes the veracity of the prosecution case. The evidence produced by the prosecution is based on one irrefutable fact, namely, every mobile handset has an exclusive IEMI number. No two mobile handsets have the same IEMI number. And every time a mobile handset is used for making a call, besides recording the number of the caller as well as the person called, the IEMI numbers of the handsets used are also recorded by the service provider. The aforesaid factual position has to be kept in mind while examining the prosecution evidence. The first step in the process of investigation was the receipt of information from Minakshi (the wife of deceased Harish Kumar), that the deceased was using mobile phone (sim) no.9871879824. Evidence on record indicates, that the aforesaid sim number became dead on 23.7.2005, i.e., the date on which deceased Harish Kumar came to be murdered. In the process of investigation it then emerged, that the mobile handset bearing IEMI No.35136304044030 was used with mobile phone (sim) no. 9818480558. This happened soon after the murder of Harish Kumar, on 23.7.2005 itself. The same sim was used to make calls from the same handset upto 2.8.2005. Through the statement of R.K. Singh PW22, Nodal Officer, Bharati Airtel Limited, it came to be established, that mobile phone (sim)

no.9818480558 was registered in the name of accused-appellant Gajraj Singh. It is from the use of the mobile handset bearing IEMI no.35136304044030, that the police came to trace the accused-appellant Gajraj Singh. It is only this aspect of the matter which is relevant for the purpose of present controversy. The use of Mobile handset bearing IEMI no.35136304044030 on which the accused-appellant made calls from his own registered mobile phone (sim) no.9818480558, immediately after the occurrence of the murder of deceased Harish Kumar, was a legitimate basis for the identification of the accused-appellant. The accused-appellant was arrested on 6.8.2005. The nexus of the accused-appellant with the deceased at the time of occurrence stands fully substantiated from the aforesaid sim/IEMI details. In the aforesaid sense of the matter, the discrepancy in the statement of Minakshi PW23, pointed out by the learned counsel for the accused-appellant, as also, the reasoning rendered by the High Court in the impugned judgment becomes insignificant. We are satisfied, that the process by which the accused-appellant came to be identified during the course of investigation, was legitimate and unassailable. The IEMI number of the handset, on which the accused-appellant was making calls by using a mobile phone (sim) registered in his name, being evidence of a conclusive nature, cannot be overlooked on the basis of such like minor discrepancies . In fact even a serious discrepancy in oral evidence, would have had to yield to the aforesaid scientific evidence. For the reasons recorded hereinabove, we find no merit in the first contention advanced at the hands of the learned counsel for the accused-appellant.

11. The second contention advanced at the hands of the learned counsel for the accused-appellant was, that there were only two independent witnesses associated with the recovery of the revolver, and the mobile handset bearing IEMI no.35136304044030 (belonging to deceased Harish Kumar), namely, Yuvraj PW12 and Veer Singh PW13. The said revolver and the mobile handset were, allegedly, recovered at the instance of the accused-appellant Gajraj Singh. Yuvraj, while appearing as PW12, denied having signed the recovery memo. He asserted that his signatures had been taken on blank papers, which had then been used in preparing the recovery memo. A similar statement was made by Veer Singh PW13. Pointing out to the statement made by the accused-appellant under Section 313 Cr.P.C., it was submitted, that the accused-appellant had clearly maintained, that the investigating officer(s) in the case, had intentionally and deliberately implicated the accused-appellant.

12. We have examined the second submission advanced at the hands of the learned counsel for the accused-appellant. Before evaluating the statement of Yuvraj PW12 and Veer Singh PW13, it is necessary to keep in mind their relationship with the accused-appellant. While Yuvraj PW12 is the brother of accused-appellant, Veer Singh PW13 is his father. It is apparent, that they would leave no stone unturned to ensure the acquittal of the accused-appellant. Despite the aforesaid, it is clear from the submissions advanced at the hands of the learned counsel for the accused-appellant, that neither Yuvraj PW12 nor Veer Singh PW13, disputed the veracity of their signatures on the recovery memos. It is, therefore, apparent that their signatures, on the recovery memos, were authentic. If the signatures of the brother and father of the accused-

appellant had been taken forcibly by the investigating agency, we have no doubt in our minds, that not only the accused-appellant but also his brother Yuvraj PW12 and his father Veer Singh PW13, would have raised a hue and cry. They would have made representations to the concerned authorities pointing out, that the police had obtained their signatures on blank papers. The statements of Yuvraj PW12 and Veer Singh PW13 do not reveal any such action at their hands. We have, therefore, no doubt in our minds, that they had duly affixed their signatures on the recovery memos, vide which the revolver of the deceased, as also, the mobile handset of Panasonic make bearing IEMI no.35136304044030 were recovered at the behest of accused-appellant Gajraj Singh. In view of the above, we find no merit even in the second contention advanced at the hands of the accused-appellant.

13. The third and the last contention advanced by the learned counsel for the accused-appellant was in respect of deposit of Rs.9,000/- by the accused-appellant in his account with the State Bank of India, Kundan Nagar Branch, Delhi. It was the contention of the learned counsel for the appellant-accused, that Minakshi PW23, the wife of deceased Harish Kumar had pointed out, that the deceased was having in his possession a sum of Rs.3 lakhs, when he departed Chandigarh for Delhi. The depiction of deposit of Rs.9,000/-, according to learned counsel, was a futile attempt at the hands of the prosecution to show, that the accused-appellant had deposited a part of money taken by him from deceased Harish Kumar, so as to establish his nexus with the crime. It was asserted that the prosecution could not show how the accused-appellant disposed of the balance amount.

14. It is not possible for us to accept even the third contention advanced at the hands of learned counsel for the accused-appellant. We are satisfied that the amount of Rs.9,000/-, deposited by the accused in his bank account out of the total sum of Rs.3 lakhs may not be a justifiable basis to establish, that the alleged crime was committed by the accused-appellant. But then, keeping in mind overwhelming evidence produced by the prosecution in establishing the crime, namely, the recovery of revolver of the deceased from accused-appellant along with live and spent cartridges, the recovery of mobile handset of Panasonic make bearing IEMI No.35136304044030 from the custody of the accused-appellant, and the fact that the accused-appellant was using the same soon after the murder of the deceased Harish Kumar with mobile phone (sim) no.9818480558 which was registered in the name of the accused-appellant (and that he continued to use it till his arrest), leaves no room for any doubt, that the prosecution has brought home the charges as have been found to be established against the accused-appellant, by the Trial Court as also by the High Court.

15. For the reasons recorded hereinabove we find no merit in the instant appeal and the same is accordingly dismissed.

J.

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(R.M. Lodha)

J.

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(Jagdish Singh Khehar)

New Delhi

September 22, 2011



Digital Performa

Case No. : Criminal Appeal No.2272 of 2010

Date of Decision : 22.9.2011

C.A.V. on : 14.9.2011

Cause Title : Gajraj
Versus
State (NCT) of Delhi

Coram : Hon'ble Mr. Justice R.M. Lodha
Hon'ble Mr. Justice Jagdish Singh Khehar

Judgment delivered by : Hon'ble Mr. Justice Jagdish Singh Khehar

Nature of Judgment : Reportable

JUDGMENT