

PETITIONER:
PREM PRAKASH MUNDRA

Vs.

RESPONDENT:
STATE OF RAJASTHAN AND ANR.

DATE OF JUDGMENT: 03/02/1998

BENCH:
G.T. NANAVALI, B.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NOS. 679-80 OF 1990
J U D G M E N T

Nanavati, J.

These four appeals arise out of the same judgment of the Rajasthan High Court in D.B.Criminal Reference No. 1/89 and D.B.Criminal Appeal No. 14/89. Criminal Appeal Nos. 666-67/90 are filed by the father of deceased Babloo for whose murder the respondent - Bhagirath and one Gopal were tried. The other appeals are filed by the State. In all these appeals, the acquittal of Bhagirath for the offence punishable under Section 302 IPC is called in question.

The charge against Bhagirath was that as he was removed from service by Prem Prakash Mundra, he bore a grudge against Prem Prakash and by way of revenge, he kidnapped his son Babloo on 2.9.1986 at about 6.00p.m. and subsequently killed him and buried the dead body near the Rudreshwar Mahadev temple on the river bank. It was also alleged that he committed those acts along with co-accused Gopal. The prosecution examined some witnesses to prove that they had seen Bhagirath taking Babloo on a cycle. There was no direct evidence to prove the murder.

The trial court held that the prosecution has satisfactorily established that Bhagirath had a motive to kidnap and kill Babloo and that the circumstances, namely, that he was last seen in the company of Babloo and that he had pointed out the place where the dead body of Babloo was buried were not only sufficient for convicting him under Section 364 IPC but also for his conviction under Section 302 IPC. It then awarded sentence of death. The trial court, however, held that the evidence against co-accused Gopal was not sufficient to establish his participation either in kidnapping or in the murder of Babloo. It, therefore, acquitted him.

As death sentence was awarded to Bhagirath, a reference was made by the trial court to the High Court for confirmation of the said sentence. Bhagirath also challenged his conviction under Section 364 IPC by filing an appeal. The High Court disposed of both the cases by a common judgment. The High Court agreed with the finding that

Bhagirath had a motive to commit the offence and that the circumstance that Bhagirath had pointed out the place where the dead body of Babloo was buried was not an incriminating circumstance against him as he had not stated that he had buried the dead body. The High Court, therefore, held that the trial court had committed an error in relying upon this circumstance and convicting him for the offence punishable under Section 302 IPC. Taking this view the High Court acquitted Bhagirath of the offence punishable under Section 302 IPC. His conviction under Section 364 was altered to one under Section 365. The accused had not challenged his conviction under Section 365 and we are told that he has already serve out six years imprisonment for that offence.

It was contended by the learned counsel appearing for the appellant - Prem Prakash and by the learned counsel for the State that the High Court committed an error in not placing reliance upon the circumstance that the accused had buried the dead body and that it was recovered at his instance. They submitted that the Investigating officer has categorically stated in his evidence that the accused had made a statement before him that he had buried the dead body in the river bank near the Rudreshwar Mahadev temple and there was no good reason to disbelieve him. It was also submitted that even otherwise that the fact that it was recovered at his instance ought to have been regarded as an incriminating circumstance and that circumstance along with the other circumstances ought to have been held sufficient for upholding the conviction under Section 302 IPC.

The finding that he accused had a motive to commit the offence is well supported by the evidence on record. The evidence of PW-14 Kavita, PW-15 -Gopal Bhandari, PW-19 - Bherulal, PW-20 - Ramesh Chandra and PW- 1- Rooplal has also established beyond doubt that the accused had taken away Babloo on a cycle, from the place where he was playing just by the side of his house to the room in which the accused was staying. The evidence of these witnesses further establishes that Babloo was with him till about 8.00 P.M. It was contended by the learned counsel for the appellants that these circumstances, together with absence of any explanation by the accused as to when he left Babloo, were sufficient for convicting accused Bhagirath under Section 302 IPC. I was also contended that the High Court was not justified in not placing any reliance upon the circumstance that Bhagirath had pointed out the place where Babloo's dead body was buried.

We have read the statement as recorded by the Investigating officer and also its translation. Accused has not stated therein that he had buried the dead body. The Investigating officer was, therefore, not right when he deposed that the accused had stated to him that he had buried the dead body of Babloo. The statement was not made in presence of any independent witness. The explanation of the accuse was that he had come to know about that place from the talk among Hemant, Pravin, Rajesh and Sushil who were with him in the lock-up. He also stated that he had not voluntarily taken the police to hat place but he was forcibly taken there. The Investigating officer has admitted that he had recorded statement of Rages. Therefore, it becomes doubtful that the dead body was really recovered as a result of information given by the accused. The High Court was, therefore, right in holding that only conclusion that could be drawn from the statement of the accused was that he knew that place where the dead body was buried and as he had not stated that he had buried it, he could not be connected with the offence on the basis of that circumstance.

The other two circumstances were rightly regarded as not sufficient for convicting the accused under Section 302 IPC. The material on record discloses that probably co-accused Gopal was also with him till 8.00P.M. Though PW-1 denied in his evidence that he had seen Gopal also in his evidence that he had seen Gopal also in the room of Bhagirath when he had gone there on hearing a child crying in that room, it has been brought out in his cross-examination that he had stated like that to the police. That creates a doubt regarding the circumstance that Babloo was last seen in the company of Bhagirath alone at about 8.00 P.M. on 2.9.1986. The dead body was found on the next day in the afternoon. For all these reasons, the view taken by the High Court cannot be regarded as unreasonable.

All these appeals are, therefore, dismissed.