



2024 INSC 702

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2294 OF 2024

LAV KUMAR @ KANHIYA APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

The impugned judgment dated 26.10.2018 passed by the High Court of Judicature at Allahabad affirms the conviction of Lav Kumar @ Kanhiya in the chargesheets, arising out of First Information Report¹ No. 540/2011 dated 05.07.2011 for the offences punishable under Sections 364A, 302 and 201 of the Indian Penal Code, 1860², and FIR No. 582/2011 dated 05.07.2011 for the offences punishable under Section 4/25 of the Arms Act, 1959³, both registered at Police Station - Sikandra, District - Agra, Uttar Pradesh. As the two FIRs arose from the same incident, the trial court consolidated and disposed of Session Trial Case Nos. 447/2011 and 448/2011 together.

The deceased, Vivek Goyal @ Vicky/Vikky went missing on 04.07.2011 and a report of kidnapping and ransom was filed, resulting in registration of FIR No. 540/2011 on 05.07.2011. The report refers to a telephonic call received by Ranjana Gupta, who has not been examined, on her mobile phone from a person who was using the SIM

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Deepak Gujral
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- 1 For short, "FIR".
- 2 For short, "IPC".
- 3 For short, "1959 Act".

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card of the deceased, Vivek Goyal @ Vicky/Vikky. He had demanded a ransom of ₹50,00,000/- (Rupees Fifty Lakh only).

One Monu Saxena was statedly arrested on 06.07.2011 at about 11.30 p.m. on the basis of Call Detail Records⁴ of the connected mobile phones kept under surveillance. However, he was found dead in police custody and lock-up on 07.07.2011 at about 7.45 a.m.

We have examined the testimony of J.N. Asthana (PW-4), the first Investigating Officer, who arrested Monu Saxena. He accepted in his testimony that on surveillance of four mobile numbers belonging to Ranjana Gupta, Dinesh Goyal (complainant/father of the deceased), and two mobile numbers of the deceased, Vivek Goyal @ Vicky/Vikky, the name and mobile number of the appellant, Lav Kumar @ Kanhiya, came to notice on 06.07.2011. In spite of knowing the details of Lav Kumar @ Kanhiya, including the name and address of his father, Ashok Kumar Sharma, J.N.Asthana (PW-4) did not make any enquiries from him.

The second Investigating Officer, Surya Kant Dwivedi (PW-8), in his cross-examination, stated that he could not remember whether on the intervening night of 8/9 July 2011, he had received the phone call regarding recovery of the dead body of Vivek Goyal @ Vicky/Vikky (deceased) on his mobile number or landline of the police station. In fact, he accepted the suggestion that he had not even seen the dead body of Vivek Goyal @ Vicky/Vikky (deceased). Further, he had gone to the place of recovery of the dead body on the pointing out of Arun Kumar Sharma, Inspector, Police Station - New Agra, Uttar Pradesh (PW-2).

4 For short, "CDRs".

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Arun Kumar Sharma (PW-2) was not the Investigating Officer of this case. He claims that while on patrolling and search duty on 08.07.2011, he received information from an informer regarding the whereabouts of the appellant, Lav Kumar @ Kanhiya, who was wanted in FIR No. 540/2011. The informer stated that the appellant, Lav Kumar @ Kanhiya, could be arrested, if immediate action is taken. The informer identified the appellant, Lav Kumar @ Kanhiya, who was then taken into custody. The appellant, Lav Kumar @ Kanhiya, then took Arun Kumar Sharma (PW-2) to an empty shop in Nandini Building Material, Nagla Padma, Gwalior Road, Agra, Uttar Pradesh. Upon entry into the said shop, a decomposed dead body was recovered. He then made a telephone call to the father of the deceased, Vivek Goyal @ Vicky/Vikky, namely, Dinesh Kumar Goyal, who deposed as PW-1 and whose statement, we will refer to, hereinafter.

Interestingly, the panchanama of the dead body of Vivek Goyal @ Vicky/Vikky was prepared in the morning, at about 7.30 a.m. on 09.07.2011. The aforesaid exercise was undertaken by the police officers from Police Station - Sadar Bazar, Agra, Uttar Pradesh. As noticed above, the second Investigating Officer, Surya Kant Dwivedi (PW-8), who had taken over investigation from the first Investigating Officer, J.N. Asthana (PW-4), on 07.07.2011 was not informed of the developments. Prosecution did not examine any witnesses from Police Station - Sadar Bazar. The prosecution has, however, examined Naresh Kumar Goyal (PW-6), a witness to the panchanama for recovery of the dead body. He deposed that he knows Dinesh Kumar Goyal (PW-1), the father of the deceased, Vivek Goyal @ Vicky/Vikky. In the morning of

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09.07.2011, Naresh Kumar Goyal (PW-6) had travelled from his residence 12-13 kms. away to reach the place of recovery, that is, the empty shop in Nandini Building Material, Nagla Padma, Gwalior Road, Agra. This was after information was given to him by the family of Dinesh Kumar Goyal (PW-1).

It is clear from the deposition of J.N. Asthana (PW-4) that he had come to know about the mobile numbers, including the alleged possible involvement of Monu Saxena and Lav Kumar @ Kanhiya either in the evening/night of 05.07.2011 and certainly by morning hours of 06.07.2011. The arrest of Monu Saxena is accepted and admitted by the prosecution. He remained in custody for about 12 hours, if not more than that. He had suffered several injuries, including injuries on his knees. There were also injury marks on his legs.

J.N. Asthana (PW-4) was later on suspended and an FIR under Section 302 of the IPC was registered, albeit the final report has been accepted by the trial Court.

It is an accepted position that the dead body of Vivek Goyal @ Vicky/Vikky was highly decomposed, and the entire room was smelling. As per the postmortem report (marked Exhibit 'Ka.1'), Vivek Goyal @ Vicky/Vikky had died 4-5 days before the postmortem, which was conducted on 09.07.2011 at about 10.30 p.m. There is evidence that the property/building from where the dead body was recovered, was surrounded by other houses and residences. It is difficult to believe that the smell/stink emanating from the dead body, which was lying in the said property/building for 4-5 days, would have gone unnoticed.

We have already commented upon the evidentiary value and our

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doubts on the time/place of panchanama and the deposition of Naresh Kumar Goyal (PW-6). The panchanama with regard to the recovery of the dead body, which was statedly recovered shortly after the purported arrest of Lav Kumar @ Kanhiya at 10.10 p.m. on 08.07.2011, was drawn up much later in the morning at around 7.30 a.m. on 09.07.2011.

The disclosure statement resulting in the recovery of the dead body at the behest of the appellant, Lav Kumar @ Kanhiya, is highly debatable, if not a pretence. We are not satisfied in the present case that any 'disclosure' can be attributed to the appellant, Lav Kumar @ Kanhiya, leading to the recovery of the dead body of the deceased, Vivek Goyal @ Vicky/Vikky. The arrest of the appellant, Lav Kumar @ Kanhiya, by Arun Kumar Sharma (PW-2) is also debatable.

The prosecution also relies upon CDRs, for which, officers from the telecom companies, namely, Rajeev Singh Sanger and Awadh Jain, were examined as PW-9 and PW-10. However, they did not produce certificates under Section 65B of the Indian Evidence Act, 1872. Even if we are to ignore the non-production of the said certificates, the CDRs would only reveal that there were occasional conversations between the deceased, Vivek Goyal @ Vicky/Vikky and the appellant, Lav Kumar @ Kanhiya. The CDRs also reveal that Monu Saxena had used the SIM card of the deceased, Vivek Goyal @ Vicky/Vikky. However, the appellant, Lav Kumar @ Kanhiya, had not used the SIM card of the deceased, Vivek Goyal @ Vicky/Vikky.

Dinesh Kumar Goyal (PW-1), the father of the deceased, Vivek Goyal @ Vicky/Vikky, has accepted that the appellant, Lav Kumar @

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Kanhiya, had worked in his garment shop for one year. His son, Vivek Goyal @ Vicky/Vikky, was acquainted with Lav Kumar @ Kanhiya. He had also accepted that Vivek Goyal @ Vicky/Vikky may be knowing Monu Saxena. A telephone call demanding ransom was made to Dinesh Kumar Goyal (PW-1) on 06.07.2011. Further, in his cross-examination, Dinesh Kumar Goyal (PW-1) accepted that Lav Kumar @ Kanhiya had not made the said call, as he would have recognized his voice. Dinesh Kumar Goyal (PW-1), in his cross examination, accepted that Monu Saxena had made a confession or disclosure statement before the police, and he was aware of the same. About his visit to the property/building, that is, Nandani Building Material, Nagla Padma, Gwalior Road, Agra, he stated that it was dark when he visited the spot. Further, by the time he reached the spot, the body of Vivek Goyal @ Vicky/Vikky was being put in a plastic kit.

The appellant, Lav Kumar @ Kanhiya, was certainly acquainted and known to the deceased, Vivek Goyal @ Vicky/Vikky, but this would not be sufficient to convict him for the offences in question.

The police also relied upon recovery of a knife at the behest of the appellant, Lav Kumar @ Kanhiya, but the said knife was recovered at least 13-14 days after the arrest of the appellant, Lav Kumar @ Kanhiya. The said recovery would not, in any way, change our opinion about the prosecution's case.

To safely opine and affirm that the appellant, Lav Kumar @ Kanhiya, is the perpetrator, we must ensure that the chain of evidence is so complete as not to leave any reasonable ground for the conclusion consistent with his innocence and must show that in all

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human probability the act must have been done by him.⁵ As highlighted above, the prosecution version leaves significant chinks and cracks in the chain of circumstances. In view of the aforesaid position, we feel that the prosecution evidence does not establish a case beyond doubt against the appellant, Lav Kumar @ Kanhiya.

Accordingly, the impugned judgment is set aside and the appeal is allowed. The appellant, Lav Kumar @ Kanhiya, is acquitted of the charges under Sections 364A, 302 and 201 of the IPC as well as Section 4/25 of the 1959 Act.

Pending applications, if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

.....J.
(R. MAHADEVAN)

NEW DELHI;
SEPTEMBER 12, 2024.

⁵ *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.