

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S). 268 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CRIMINAL) NO.2089/2016]**

STATE OF UTTAR PRADESH . . . APPELLANT(S)

VERSUS

MAHIPAL . . . RESPONDENT(S)

ORDER

1. We have heard the learned counsels for the parties.
2. Leave granted.
3. The accused respondent has been convicted, inter alia, under [Section 302 IPC](#) by the learned trial Court by its judgment and order dated 18th November, 2014 and sentence of death was imposed. In appeal, the conviction of the accused Signature Not Verified Digitally signed by VINOD LAKHINA Date: 2018.02.15 17:49:29 IST Reason: respondent was reversed and he has been acquitted of all the charges levelled. Aggrieved, the State of Uttar Pradesh is in appeal before us.
4. The case of the prosecution is that one Zoraver had bequeathed certain immovable properties to one Sushila, the grandmother of the two deceased children, namely, Vikesh and Jitender aged 6 and 7 years respectively. The accused respondent who happened to be the nephew of Zoraver did not approve of the bequeath and nursed a grievance in this regard. On 9th January, 2013, the two children, namely, Vikesh son of Vidya Ram (PW-1) and Jitender son of Brijesh (PW-2) disappeared and were not found despite a vigorous search. On 11th January, 2013, PW-1 – Vidya Ram received phone-calls from a Mobile No.7895848163 demanding ransom. Subsequent phone-calls were made from the aforesaid Mobile No.7895848163 giving different instructions. This aroused the suspicion of the family members of the two missing children who filed a subsequent report before the Police on 11th January, 2013 indicating their suspicion that it is the accused respondent who may be responsible for the disappearance of the children. Pursuant thereto the accused respondent was arrested on 19th January, 2013, as claimed by the witnesses; and on 22nd January, 2013, as claimed by the prosecution.
5. On 22nd January, 2013, certain recoveries were made including one SIM card of Airtel Company bearing no.7895848163 from one of the rooms of the house of the accused respondent. The dead-bodies of the two children were recovered from three feet (3 ft.) underneath the ground where they were buried. The spot of recovery happen to be within the compound of the accused respondent.
6. The learned trial Court held the aforesaid circumstances to be proved and piecing the same together came to the conclusion that the accused respondent is responsible for the crime. Accordingly, the conviction and the sentence imposed.

7. The High Court, in appeal, reversed the said finding. The broad grounds on which the High Court thought it proper to do so are as follows:

Firstly, the High Court held that if the accused respondent nursed a grievance with regard to the property that was bequeathed, the murder of the two children would not have benefitted him to get the property in any manner. In fact, the High Court went on to hold that the accused respondent would have got the property only if the entire line of the descendants is to be wiped out.

So far as the recovery of the SIM card from one of the rooms of the house of the accused respondent is concerned, the High Court thought it proper to pay regard to the fact that the said SIM card did not belong to the accused respondent.

Insofar as the recovery of dead-bodies of two children are concerned, the High Court relied on the evidence of PW-3 – Sher Singh to the effect that the recovery memo was not read out to him. The High Court further took the view that the prosecution case of ransom calls on 11th January, 2013 did not appear to be logical in a situation where the two children were already dead on 9th January, 2013. The High Court also took into account certain statements made by the witnesses with regard to Police torture of the accused respondent to arrive at the conclusion that the statement leading to the recovery was obtained under duress and, therefore, ought not to have been relied on.

8. We have considered the matter. We have taken note of the evidence of PWs-1, 3 and 5 (Panch witnesses) and also the evidence of the Investigating Officer. We have read and considered the statement of the accused respondent recorded under [Section 313](#) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”).

9. Whether the accused respondent would have inherited the property following the death of the children is an issue that was not raised by the prosecution in the trial against the accused respondent. The specific case of the prosecution, in fact, was that because of the bequeathing of the property in favour of Sushila, the grandmother of the deceased children, the accused respondent had entertained a strong grudge against the family and the act of disappearance of the children and their death was to wreck vengeance on the family. Motive for the crime, therefore, appears to have been proved and established against the accused respondent on the testimony of PW-1 who has categorically stated about the said fact.

10. So far as the recovery of the SIM card is concerned, the learned counsel for the accused respondent has vehemently urged that the prosecution has not proved the call details in respect of Mobile No.7895848163. That apart, the fact that the number of the mobile was written on the SIM card is something which cannot be accepted.

11. We have considered the said argument advanced by the learned counsel for the accused respondent. PW-1 is clear and categorical in asserting that several phone-calls were received from the aforesaid Mobile No.7895848163 demanding ransom and conveying instructions from time to time. It is on that basis that suspicion of the complainant(s) and family members with regard to the involvement of the accused respondent was raised which was duly intimated to the Police. The fact that the SIM card did not belong to the accused respondent, a fact relied upon by the High Court in coming to its impugned finding, in our considered view, is altogether irrelevant. What is relevant is that the SIM card was recovered from one of the rooms of the house of the accused respondent with regard to which he failed to offer any satisfactory explanation. Proof of calls from a Mobile phone can be established on the basis of oral evidence if such oral evidence is to be accepted by the Court. In the present case, we find no reason to disbelieve PW-1 with regard to the receipt of phone calls from the aforesaid Mobile No.7895848163.

12. Insofar as the recovery of the dead bodies of the two children are concerned, we have perused the evidence of Pws-1, 3 and 5. All the witnesses in their examination-in-chief have categorically stated that the recovery memo was prepared on the spot and that they have signed it voluntarily. A different version appearing in the cross-examination of PW-1 and PW-3 cannot detract from what was deposed by the aforesaid witnesses in their examination- in-chief. If the dead bodies are recovered from three feet (3 ft.) under the

earth from the compound of the house of the accused respondent, the accused respondent cannot afford to remain silent. No explanation is forthcoming in the statement of the accused recorded under [Section 313 Cr.P.C.](#)

13. The fact that ransom calls were made after 9th January, 2013 on which date the two children murdered, as it now appears, will make no significant change to the situation. Making of ransom calls after the person abducted is put to death is a common feature in cases of the kind the Court is confronted with. The aforesaid fact cannot certainly go to the benefit of the accused respondent. The finding of the High Court with regard to torture of the accused respondent leading to his consequential statement resulting in the recovery of the dead bodies of the children cannot have our approval inasmuch as it is the prosecution case that the accused had been arrested on 22nd January, 2013 and the recoveries were made on the same day. That apart, at no point of time, including in his statement under [Section 313 Cr.P.C.](#), the accused respondent had even whispered about any Police torture leading to the making of the statement resulting in recovery of the dead bodies of the children.

14. For the aforesaid reasons, we cannot concur with the views expressed by the High Court in the order under challenge. Rather, we are of the view that it is the trial Court which was correct in convicting the accused respondent, inter alia, under [Section 302 IPC](#). We, accordingly, affirm the aforesaid conviction but alter the sentence of death to one of life imprisonment as the present, in our considered view, is not one of rarest of the rare cases for invocation of the death penalty.

15. Accordingly, we allow the appeal; set aside the order of the High Court; and restore the order of conviction of the learned trial Court with the sentence of life imprisonment. The accused respondent shall surrender forthwith to serve out the sentence failing which he will be taken into custody.

.....,J.

(RANJAN GOGOI),J.

(R. BANUMATHI)

NEW DELHI
FEBRUARY 13, 2018

ITEM NO.10

COURT NO.3

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 2089/2016 (ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 18-08-2015 IN CC NO. 1637/2015 PASSED BY THE HIGH COURT OF JUDICATURE AT ALLAHABAD) THE STATE OF UTTAR PRADESH PETITIONER(S) VERSUS MAHIPAL RESPONDENT(S) (FOR EXEMPTION FROM FILING O.T. ON IA 4735/2016) Date : 13-02-2018 This petition was called on for hearing today. CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI HON'BLE MRS. JUSTICE R. BANUMATHI For Petitioner(s) Mr. P.N. Mishra, Sr. Adv.

Mr. Ankur Prakash, AOR For Respondent(s) Mr. V.K. Garg, Sr. Adv.

Mr. Sagar Saxena, Adv.

Ms. Noopur Dubey, Adv.

Ms. Anu Gupta, AOR Mr. Nishant Ahmed, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

The accused respondent shall surrender forthwith to serve out the sentence failing which he will be taken into custody.

[VINOD LAKHINA]
AR-cum-PS

[TAPAN KUMAR CHAKRABORTY]
BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]