
(2000) 04 AHC CK 0131

Allahabad High Court

Case No: Criminal Appeal No. 2633 of 1980

Jai Prakash (in Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 27, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 201, 27, 302, 364

Citation: (2000) CriLJ 3774

Hon'ble Judges: R.R.K. Trivedi, J; M.C. Jain, J

Bench: Division Bench

Advocate: K.P. Singh, S.S. Rajput and Viresh Mishra, for the Appellant; D.G.A., for the Respondent

Final Decision: Allowed

Judgement

M.C. Jain, J.

This appeal has been preferred by the accused appellant Jai Prakash against the judgment and order dated 18-II-1980 passed by Sri S.M.A. Khusro, the then III Additional Sessions Judge, Aligarh in Sessions Trial No. 391 of 1979 convicting the accused-appellant u/s 302, I.P.C., 364, I.P.C. and 201, I.P.C. He has been awarded life imprisonment u/s 302, I.P.C. and 364, I.P.C. Five years" rigorous imprisonment has been awarded u/s 201, I.P.C. All the sentences have been ordered to run concurrently.

2. The victim of the offence was one Pappu alias Nuruddin aged about 7 years son of Allahdin PW-2. The incident took place on 21-2-1978 at about 9 a.m. in village Agsauli, Police Station Sikdndra Rao, District Aligarh. The first information report was lodged by Allahdin PW-2 on 21-2-1978 at 9.10 p.m. The distance of the village of occurrence from the Police Station was about six miles. The prosecution case, as per

the first information report and the evidence adduced, was that the accused-appellant was the next door neighbour of Allahdin PW-2. The latter had a daughter Amina PW-8 aged about 14-15 years. The accused-appellant had developed fancy for Amina and was after her. He used to follow her to achieve his purpose. She had told about it to her parents. In order to ward off him, she used to take her younger brother Pappu alias Nuruddin while going out as per the instructions of her parents. About a few days before the incident, she had gone to ease herself in a nearby field a little before sunset. She had been accompanied by her brother Nuruddin. Despite that, the accused-appellant reached the spot where she was easing herself, caught hold of her hands and tried to drag her into the field. She raised an alarm whereupon Nuruddin came there immediately from the "Mend" of the field where he was sitting while his sister was easing herself. The accused-appellant retreated after mouthing abuses for Nuruddin. This was allegedly the motive for the murder of Nuruddin by the accused-appellant.

3. In the morning of 21-2-1978 the accused-appellant was found talking with the deceased at about 9 O'clock in front of his house where he was playing. The accused-appellant allegedly took him with him and thereafter Nuruddin was not seen and his dead-body was recovered in the night from a well. Natthu Singh PW-4 had allegedly seen the same forenoon the deceased Nuruddin going on a cycle with the accused-appellant. Smt. Khatoon PW-3 mother of the victim " Nuruddin had also seen Nuruddin with the accused-appellant outside her house at about 9 a.m. She had also seen him going with him. Thereafter, only his dead-body could be recovered from a well. Amina PW-8 had also seen Nuruddin talking with the accused-appellant outside her house in the morning of the day of the incident. Allahdin PW-2 had gone to Hathras to sell iron nails and had returned home at about 5 p.m. His wife Smt. Khatoon PW-3 had then told him that Nuruddin had not been seen since morning and that the accused-appellant had taken him. He was also informed by Natthu Singh PW-4 and others that they had seen the deceased going on a cycle with the accused-appellant. He had then lodged the report the same night at 9.10 p.m.

4. The dead-body of the deceased was recovered from the well of Raja Ram the same night at the instance of the accused-appellant who had allegedly been arrested by the SI Naresh Pal Yadav PW-7 who had reached the village of the incident at about 10 p.m. Balbir PW-6 was a witness of the recovery of the dead-body of the deceased from the well at the instance of the accused-appellant and in consequence of the disclosure made by him u/s 27 of the Indian Evidence Act. The case was initially registered u/s 364, I.P.C. but was subsequently converted u/s 302, I.P.C. and Section 201, I.P.C. on the recovery of the dead-body.

5. The dead body was subjected to postmortem which was conducted on 22-2-1978 at 3 p.m. by Dr. S. K. Saxena, PW-1. The deceased was aged about 7 years and about 1 1/2 day had passed since he died. The following ante-mortem injuries were found

on his person.

1. Lacerated wound 1 1/2 x 1" x bone deep on the scalp (1) side 1/2" outer to midline. 1 1/2" above (1) eyebrow.

2. Three abrasions in an area of 2" x 2" on the (1) temple region varying from 1/4" x 1/4" to 1/2 x 2/10". Skin of hands and feet was corrugated.

6. Death had occurred due to coma and asphyxia owing to injury to brain and drowning.

7. On conclusion of investigation charge-sheet was laid against the accused-appellant who was tried before the trial Court. The prosecution examined 8 witnesses in support of its case besides relying on documentary evidence. Allahdin PW-2 was the informant and father of the deceased. He was not an eye-witness but tendered evidence regarding motive on the part of the accused-appellant for commission of this crime. Smt. Khatoon PW-3 (mother of the deceased), Natthu Singh PW-4 and Amina PW-8 (sister of the deceased) were witnesses of the deceased having been last seen in the company of the accused-appellant. Amina PW-8 was also the witness of motive on the part of accused-appellant as she was the object of the lustful intention of the accused-appellant. As mentioned earlier, SI Naresh Pal Yadav PW-7 was the Investigating Officer who had recovered the dead-body of the deceased from the well of Raja Ram at the instance of the accused-appellant whom he had arrested from his house and Balbir Singh was also the witness of the same factum of the recovery of dead-body. Dr. S. K. Saxena, PW-1 had conducted postmortem over the dead-body of the deceased and Constable Ram Kishan PW-5 had proved the Chik first information report and G.D. entries.

8. The defence was of denial. No witness was examined by the accused-appellant in his defence.

9. The trial Judge believed the prosecution case and evidence and he accordingly convicted and sentenced the accused-appellant as mentioned hereinabove. The matter is now in appeal before this Court.

10. We have heard Sri Viresh Mishra learned counsel for the accused-appellant in support of the appeal and learned A.G.A. in opposition thereof. We have also carefully gone through the evidence and material on record. It has been argued for the accused-appellant that the motive assigned by the prosecution does not fit in the situation; that the case has been built up simply on suspicion and that actually it was only an accidental death of the victim falling in the well and dying. On the other hand, learned A.G.A. has tried to support the conviction and sentence recorded by the learned trial Court.

11. We propose to examine the different aspects having regard to the evidence and attending circumstances in the discussion that follows.

12. We take up the question of motive first. It goes without saying that in the case of circumstantial evidence like the present one, motive assumes great importance. In the case at hand, the motive assigned by the prosecution against the accused-appellant was that he had cast covetous eye on the sister of the deceased, viz. Amina PW-8 who was aged about 14-15 years and he wanted to violate her person. The deceased allegedly used to accompany his sister to ward off the accused-appellant and a few days before the incident the accused-appellant had grabbed her while she was easing herself in a field and had tried to drag her to translate his design into action. The presence of the deceased at that time had allegedly annoyed him and he had gone away mouthing abuses for him. Amina PW-8 also stated that the accused-appellant wanted to marry her and repeatedly proposed her in this behalf. It is a fact that the accused-appellant was the next door neighbour of Amina PW-8. It is not at all understandable as to how could the accused-appellant achieve his purpose by murdering her brother. Instead of facilitating himself by eliminating the brother of Amina PW-8, his act was likely to produce hatred in her mind for him. So, the motive assigned by the prosecution against the accused-appellant is like a square peg in a round hole. Moreover, Smt. Khatoon PW-3 (mother of the deceased) and Amina PW-8 both stated that they saw the deceased talking with the accused-appellant in the morning of the incident outside their house. Smt. Khatoon PW-3 stated that she even saw the accused-appellant going with the victim. It would be recalled that it was allegedly a few days before that the accused-appellant had allegedly grabbed Amina PW-8 while she was easing herself in a field and had tried to drag her when her brother (deceased) had also appeared from the nearby "Mend", where he was waiting to accompany his sister after she had eased herself. Amina PW-8 had raised alarm and the deceased had started weeping. The accused-appellant had then run away after mouthing abuses for the deceased. This incident had been narrated by Amina PW-8 to her parents. This being so, it does not stand to reason that the accused-appellant would have been talking with the deceased outside his house in the morning of the incident. The earlier incident narrated above would have created breach of relations between the two and the deceased would not at all have agreed to go with the accused-appellant. At any rate, the mother of the deceased would not have allowed him to go with the deceased. Therefore, the testimony of last seen tendered by Smt. Khatoon PW-3 and Amina PW-8 is not at all convincing. Of course, Natthu Singh PW-4 also tendered evidence of the deceased having been last seen in the company of the accused-appellant, but the same is also not free from an element of doubt. He stated that the accused was taking the deceased on a cycle. However, the factum of cycle was not spoken by him to the Investigating Officer in his statement u/s 161, Cr.P.C. Nor has Smt. Khatoon PW-3 stated that the accused-appellant had taken the deceased on a cycle. The result is that the evidence of last seen produced by the prosecution is not consistent and of conclusive nature.

13. It is also not certain as to at what time the dead-body of the boy had been recovered. It is also belied that the dead-body had been recovered at the instance and pointing of the accused-appellant after his arrest by the Investigating Officer. We note that Natthu Singh PW-4 and Amina PW-8 stated that the dead body had been recovered at about 10 p.m. On the other hand, the recovery witness Balbir Singh PW-6 stated that the recovery had been made after 1.30 a.m. in the night. According to him, the Investigating Officer had arrested the accused-appellant from his house at about 1.30 a.m. in his own presence, in the presence of Pradhan Kunwar Pal and Natthu Singh PW-4 and that the accused-appellant had taken all of them to the well of Raja Ram and had got the dead-body recovered. The Investigating Officer SI Naresh Pal Yadav PW 7 also speaks of the recovery of the dead body at the Instance of accused-appellant from the well of Raja Ram after he had arrested him from his house in the night. It is the own case of the prosecution that the house of the accused-appellant is adjacent to that of the informant. The Investigating Officer is not even aware about this factum. He has stated that the house of the accused-appellant was at a distance of 150 paces from that of the informant. He has not shown the existence of his house in the site plan. The conclusion cannot be escaped that he did not at all seen the house of the accused-appellant and it cannot be accepted that he arrested him from his house. The greater possibility is that the frantic search was continuing for the missing boy right from, the time of his disappearance and his dead body had been recovered at about 10 P.M. even before the Investigating Officer reached the village. A case came to be woven against the accused-appellant on the premises of suspicion.

14. Moreover, as is clear from the postmortem report, the cause of death was coma and asphyxia due to injury to brain and drowning. Drowning being one of the causes of his death, it follows that he was alive while falling or being thrown in the well. The ante-mortem injuries found on his person described earlier indicate as if it was a case of accidental fall in the well. He had suffered a lacerated wound on the scalp left side and there were abrasions on his left temple region. Moreover, the skin of hands and feet was corrugated. Ordinarily, one would receive such injuries on an accidental fall in the well. It has come in the testimony of Allahdin PW 2 that the well in question was surrounded by crop of peas. The possibility cannot be ruled out that while playing the boy wandered towards the field in the greed of eating or plucking peas and accidentally fell in the well. The distance of the well from the house of the informant was only 2 or 3 furlongs as stated by him (Allahdin PW 2). It is also pertinent to observe that in case the accused-appellant wanted to murder the deceased, he would have done so before throwing him into the well. There could hardly be any point of just throwing a living boy in the well with the possibility of his surviving and narrating the whole incident surfacing the guilt of the accused-appellant to his detriment. We cannot be oblivious to natural and probable human conduct.

15. On examining the different aspects of the case in the light of the evidence on record and attending circumstances we are of the opinion that the judgment of conviction and sentence passed by the trial Court against the accused-appellant cannot be sustained as it is based on conjectural inferences without an in-depth analysis of the evidence and natural probabilities.

16. We accordingly allow this appeal and set aside the impugned judgment and order of conviction and sentence passed against the accused-appellant Jai Prakash. He is acquitted of the charges wherefor he had been convicted and sentenced. He is in jail. He shall be set at liberty forthwith if not wanted in any other connection.

17. Let a copy of this judgment along with record of the case be immediately sent to the Court below for needful compliance under intimation to this Court within two months positively.