

Nathu Garam

Vs

State of U. P.

Criminal Appeal No. 327 of 1977

(V. D. Tulzapurkar, O. Chinnappa Reddy JJ)

17.10.1978

JUDGMENT

TULZAPURKAR, J. -

1. This appeal by special leave is directed against the judgment and order of the Allahabad High Court dated August 10, 1976 (in Criminal Appeal No. 50 of 1976 and Reference No. 9 of 1976) upholding the conviction of the appellant under Section 302 I.P.C. and confirming the sentence of death awarded to him by the Third Additional Sessions Judge, Pilibhit of March 20, 1976 in Sessions Trial No. A-9 of 1975.
2. The prosecution case, briefly stated, was that on April 10, 1975 at about 8 or 9 a.m. Km. Hazrati, since deceased, aged about 14 years took food for her brother Kadir Baksh (PW 1) to the field of Sarpanch Shyam Behari (PW 4) in village Imalia, where he had gone along with others to cut wheat crop. After serving food to her brother Hazrati started returning to the village with the utensils (Tiffin Carrier, Lota, Glass, etc.) but she did not reach home. When Kadir Baksh returned home in the village at about on, he was informed by his mother that Hazrati had not come back, whereupon Kadir Baksh (PW 1) alongwith Sarpanch Shyam Behari Lal (PW 4), Sabhapati Shyam Behari Lal (PW 11) and others undertook a search for Hazrati first in various fields; they also made enquiries in the several houses in the village. At bout 5.00 p.m. the search party came near the house of the appellant who was found sitting in the front door of his house but on being questioned regarding Hazrati's whereabouts he ran away, whereupon the search party entered the house of the appellant and found the dead body of Hazrati lying in a corner with bleeding injuries and her clothes (Salwar, Kurta, Orhni. etc.) soaked in blood, her salwar being loose and having slipped down up to her knees. The utensils (Tiffin Carrier, Lota, Glass, etc.) were also lying there. The search party also noticed a "lungi, a stone and spear (fodder cutting spear) each stained with blood lying in the room. Leaving his companions to watch the dead body, Kadir Baksh (PW 1) walked the distance of about 4 miles and lodged his report at Barkhera Police Station at 7.00 p.m. on the same day. On receiving the report the Station Officer Bhushan Singh (PW 6) recorded the statement of Kadir Baksh and reached the place of occurrence at about 8.00 p.m. but as it was dark and no gas light could be procured from the village he posted a guard at the place of occurrence for the overnight and undertook the investigation on the following day. After preparing inquest report he took samples of blood-stained earth and plain earth from the room, took charge of the blood-stained spear, the blood-stained stone, the blood-stained 'Lungi' as well as the blood-stained 'Dupata' of the deceased ad the several utensils under different Panchnamas and obtained Chemical Analyser's report which showed that the stone, the spear, and the clothes of the deceased had blood-stains on them but neither the 'Lungi' of the appellant nor the clothes of the deceased had any seminal stains. He arranged to send the dead body along with necessary papers to Pilibhit for post-mortem examination and Dr.

Gangwar (PW 5) who did the autopsy on April 12, 1975 at 9.30 p.m. noticed in all seen injuries - three incised wounds, three abrasions and one punctured wound-all ante mortem out of which the major one was "incised clean-cut wound on the neck 22 cm. X 3 cm. soft structure on front of neck 3 cm. below chin" which had resulted in the trachea, bronchi and esophagus begin cut and in his opinion the injuries on her body were sufficient in the ordinary course of nature to cause death. He also opined that the incised wounds on the neck and the lower and upper lips could be caused by the spear while the abrasions on two shoulders and back could be caused by friction and the punctured wound on the right arm could be caused with the point of the fodder-cutting spear. As regards genitals he did not find any sign of violence. The Station Officer (PW 6) also recorded the statement of witnesses on April 11, 1975. In spite of search the appellant-accused could not be traced. It appears that on May 5, 1975 the accused surrendered himself before the Committing Magistrate at Pilibhit and was then taken into custody. On completing the investigation he submitted the charge-sheet against the appellant on May 28, 1975. After holding the preliminary inquiry the appellant was committed to the Court of Sessions to stand his trial for offences under Sections 302 and 201 I.P.C.

3. The appellant abjured guilt and disputed the circumstantial evidence connecting him with the crime, contending that he had been falsely implicated in the case on mere suspicion.

4. At the trial the prosecution led oral evidence of 11 witnesses out of whom 5 witnesses were material, namely, Kadir Baksh, the deceased's brother (PW 1), Nathu Lal (PW 2), Duli Ram (PW 3), Sarpanch Shyam Behari Lal (PW 4) and Sabhapati Shyam Behari Lal (PW 11) who deposed to the several incriminating circumstances. The medical evidence was furnished by Dr. Gangwar (PW 5) as detailed above. The steps taken during the investigation were deposed to by the Station Officer Bhushan Singh (PW 6).

5. On an appreciation of the entire material on record the Sessions Court as also the High Court took the view that the prosecution had satisfactorily established the following facts and incriminating circumstances against the appellant-accused :

(1) That on April 10, 1975 at 8 or 9 a.m. Hazrati left her house with meals for her brother Kadir Baksh (PW 1) who was working in the field of Sarpanch Shyam Behari Lal (PW 4) - evidence of Kadir Baksh (PW 1).

(2) That after serving food to her brother she started with the utensils on her return journey at about 10.00 a.m. - evidence of PW 1 and PW 4. (3) That at about 11.00 a.m. she was seen entering the house of the appellant along with the appellant-the evidence of Nathu Lal (PW 2).

(4) That the appellant was at his house at 3 or 4 p.m. on that day with the door of his house bolted from inside-evidence of Duli Ram (PW 3).

(5) That at about 5.00 p.m. when the search party reached the house of the appellant he was found sitting at the threshold of his house and when questioned about Hazrati, he ran away-evidence of PW 1, PW 4 and PW 11.

(6) That the dead body of Hazrati was found lying in an injured condition behind the Kutia in the house and that the utensils (Tiffin Carrier, Lota, Glass, etc.) were recovered from there.

(7) That from the house apart from the blood-stained clothes of the deceased, a

'Lungi', a spear and a stone stained with blood were recovered by the police in the presence of Panchas.

(8) That the appellant was all along staying in the said house where the body of Hazrati was found in the aforesaid circumstances.

6. Relying on aforesaid circumstantial evidence, the Sessions Court convicted the appellant both under Sections 302 and 201 I.P.C. but the High Court in appeal upheld his conviction under Section 302 and confirmed the death sentence but quashed the conviction and sentence imposed upon him under Section 201 I.P.C. on the ground that the mere fact that the body of the deceased was lying behind the Kutia in the house of the appellant could not lead to the inference that he had caused the disappearance of the evidence of murder.

7. It cannot be disputed, nor was it disputed by counsel for the appellant before us, that the aforesaid incriminating circumstances taken with the medical evidence of Dr. Gangwar (PW 5) and the Chemical Analyser's Report (Ex. Xa-20) would constitute the necessary links in the chain of circumstantial evidence leading to the only inference that it was the appellant and none else who was responsible for the murder of Kumari Hazrati. But counsel for the appellant disputed that the circumstances at Nos. 3, 4, 5 and 8 had been established beyond doubt by the prosecution and submitted that if these important links in the chain particularly those at 3, 4 and 8 were missing then the connection, of the appellant with the crime could not be said to have been established.

8. At the outset it may be stated that all the five material witnesses, namely, Kadir Baksh (PW 1), Nathu Lal (PW 2), Duli Ram (PW 3), Sarpanch Shyam Behari Lal (PW 4), Sabhapati Shyam Behari Lal (PW 11) as well as the appellant are residents of village Imaliya and knew each other very well. Secondly, apart from Kadir Baksh (PW 1) who happened to be the brother of the deceased, none of the other four witnesses is related or interested in Kadir Baksh or his deceased sister Hazrati and as such were rightly regarded as independent witnesses by the High Court and even Kadir Baksh's evidence could not be viewed with distrust merely on the ground that he was the brother of the deceased. Thirdly it had not been suggested that any of these material witnesses had any enmity or strained relations with the appellant with the result that none of them had any reason to implicate the appellant falsely. Fourthly, the first information report was lodged by Kadir Baksh (PW 1) within two hours of the discovery of his sister's dead body and therein the entire story and the names of several villagers including Sarpanch Shyam Behari Lal (PW 4) and Sabhapati Shyam Behari Lal (PW 11) who constituted the search party have been mentioned. It is in this background that we will have to consider the evidence of the material witnesses who have deposed to one or the other of the aforesaid incriminating circumstances.

9. As regards the circumstances at No. 3 above, the deceased being last seen with the appellant, entering the house of the appellant along with him at about 11.00 a.m. on the fateful day, there is the evidence of Nathu Lal (PW 2). According to him on that day at 11.00 a.m. accompanied by one Dildar he was going to his brother-in-law's place Kanakor when he saw deceased Hazrati going along with the appellant up to the front door of the latter's house and entering the same. Counsel for the appellant pointed out that it was elicited in his cross-examination that he was a prosecution witness in a gambling case and relying on this fact it was urged that the witness should be regarded as a person of the police and, therefore, his evidence should not be accepted. It is not possible to accept this contention; simply because the witness happened to be a prosecution witness in a gambling case, it cannot be said that he is a person of the police or that his evidence that he saw deceased Hazrati and appellant entering the house of the appellant at about 11.00 a.m. on the day in

question should be rejected. The witness's house is just at a distance of 10 to 15 paces from the house of the appellant and according to him he had come out of his house at that time for going to his brother-in-law's place at Kanakor, seven miles from his village and he had seen the deceased going with the appellant in the latter's house. He returned to Imaliya from Kanakor the next day and learnt about the murder whereupon he told every body what he had seen on the previous day; his statement was also recorded immediately. There is no reason why the evidence of this witness should not be accepted.

10. As regards the appellant being in his house with the door bolted from inside at 3 or 4 p.m. on the day of the incident, the evidence is that of Duli Ram (PW 3). According to him on that day at about 3 or 4 p.m. he had gone to the house of the appellant to borrow a spade but found the door of the appellant bolted from inside and, therefore, he asked for the spade from outside but the appellant said that he was not free at that time and would give the spade later. The witness thereafter stated that on that day after sunset, he had seen the body of the deceased lying inside the house of the appellant. The only reason why the counsel for the appellant wanted us to reject the evidence of this witness was that the witness had not stated why he did not go to the house of the appellant to borrow the spade gain nor whether he procured the spade from else where. We do not think that for these reasons the evidence of this witness should be rejected, more so when he was not questioned nor was he given any opportunity to give his explanation in that behalf.

11. Counsel for the appellant next contended that the fact that the appellant had run away from his house on being questioned about Hazrati was not satisfactorily proved and in that behalf he pointed out that out of the three witnesses who deposed to that fact, one, namely, Sarpanch Shyam Behari Lal (PW 4) had stated in his cross-examination that the appellant did not try to run away. If the relevant portion of this witness's cross-examination on the point is read, it will appear clear that he had not contradicted himself in cross-examination as suggested but that the said evidence pertained to an earlier stage in his cross-examination. All that he stated was that when the search party was at a distance of 10 to 12 paces from the front door of the house of the appellant they saw him sitting and the appellant did not try to run away. The answer in the cross-examination, therefore, clearly refers to the earlier stage in point of time when the search party first noticed him from a distance of 10 to 12 paces and does not detract from his evidence in chief to the effect that when the appellant was questioned regarding the whereabouts of Hazrati he ran away. All the three witnesses, therefore, consistently deposed to the circumstance that when the appellant who was found sitting in front of his house, was questioned regarding Hazrati, he ran away. This circumstance, therefore, in our view, has been clinchingly established by the prosecution, and though by itself not so incriminating, would be so when considered along with other circumstances.

12. Counsel then urged that the prosecution had failed to establish that the house in which the dead body was found belong to the appellant or that he was alone staying therein. He urged that the appellant's case that he was staying with his father and uncle should have been accepted. He pointed out that the sale deed of the house in question from its previous owners Om Prakash and his mother in favour of the appellant had not satisfactorily been proved by the prosecution and, therefore, since the appellant's connection with the house had not been established, the finding of the dead body in that house was hardly incriminating against the appellant. It is true that the prosecution produced a certified copy of the registered sale deed as Ex. Ka-21 on record but in respect thereof the procedure of Section 294 of the Criminal Procedure Code was not strictly followed but what would be of importance is not the ownership of the house but the fact that the house was at the material time in exclusive occupation or possession of the appellant. There is ample evidence on record to show that the appellant was in exclusive occupation or possession of the house for the past several months

before the day of the occurrence and actually on the day of the occurrence he was found sitting just outside the front door of the house at about 5.00 p.m. and that his 'Lungi' was also found inside the house. Kadir Baksh (PW 1) has categorically stated that the houses of the appellant's father and uncle, though adjoining are separate from the house in question, that each house is separate one and that the appellant has been living in the house in question all along - separate from his father and uncle - for the past 5 or 6 years. Duli Ram (PW 3) has asserted that the father and uncle of the appellant used to live in separate houses, that the appellant was living in the house for about 3 or 4 months before the occurrence. This evidence clearly shows that the appellant was all alone residing in the house in which the dead body of Hazrati was found and that he was not staying with his father or uncle. In our view, therefore, the circumstances that the house in which the dead body of Hazrati was found in an injured condition on April 10, 1975 was in the exclusive occupation and possession of the appellant has been satisfactorily established.

13. It is, therefore, not possible to accept the contention of the counsel for the appellant that the important links in the chain of circumstantial evidence are missing or have not been proved by the prosecution. It is clear that the cumulative effect of all the facts and circumstances enumerated above and which have been established by the prosecution quite satisfactorily would lead to the only inference that it was the appellant who was responsible for the murder of deceased Hazrati. In our view, the trial Court was right in drawing the inference that the appellant, a bachelor of 28 years living all alone must have lured the girl into his house on some pretext or another and tried to criminally assault her but because of resistance his attempt failed and thereupon he killed her. Both the Courts below were perfectly justified in convicting the appellant under Section 302 I.P.C.

14. As regards the sentence, counsel for the appellant urged that the lesser punishment should have been awarded but we do not find any extenuating or mitigating circumstances justifying the lesser punishment. The question of sentence has been elaborately discussed by the Sessions Judge and the High Court has confirmed his view and we see no reason to take a different view on the question of sentence.

15. The appeal is, therefore, dismissed and the conviction and the sentence are confirmed.

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