

Rajendra Prasad

Vs

State of U. P.

Criminal Appeal No. 472 of 1978

(K. Jagannatha Shetty, K. N. Saikia JJ)

03.01.1989

ORDER

1. The appellant - Rajendra Prasad has been convicted under Section 302 IPC and sentenced to life imprisonment for the offence of murder of Smt. Kamala Srivastava. He challenges, in this appeal by leave, the validity of the conviction.
2. It was alleged that Smt. Kamala Srivastava was done to death by strangulation in the night of October 24/25, 1972. It was a murder coupled with robbery. Her ornaments were ultimately traced from possession of the appellant and some other accused. In the trial court all the accused were acquitted except Ram Kumar who was convicted under Section 302 with a sentence of life imprisonment. There were two appeals before the High Court against the judgment of the trial court one preferred by Ram Kumar and the other by the State challenging the acquittal of Rajendra Prasad and others. The High Court dismissed the appeal of Ram Kumar while allowing the State appeal only as against Rajendra Prasad. The acquittal of the other accused was, however, maintained.
3. Before us, Rajendra Prasad is the only appellant. Ram Kumar has not appealed.
4. The question for consideration is whether the High Court was justified in reversing the acquittal of Rajendra Prasad ?
5. There is no eye-witness to the occurrence. The entire case is rested on circumstantial evidence and the recoveries made from Rajendra Prasad. The recoveries consist of articles Exs. III, VIII and XV. They were said to have been pledged with the accused called Ram Prasad under a receipt of Ex. Kha XIV for a consideration of Rs. 850. The execution of the receipt and the payment of consideration have been satisfactorily proved by the prosecution. Ram Prasad though in possession of the said articles has been acquitted. He was not even convicted under Section 411 IPC. It was held to be a bona fide commercial transaction. It was also held that Ram Prasad did not receive the articles knowing that they were stolen articles. So he got the benefit of doubt.
6. The High Court rested his conclusion solely on the evidence of pledging of the articles by Rajendra Prasad with Ram Prasad. The High Court took into consideration that Rajendra Prasad could pledge those articles because he was in possession of the same and his possession being immediately after the murder, he could be presumed to have committed the offence.
7. We could have agreed with the High Court if there is nothing else to suggest about the possession of the articles. But it is on record that Ram Gopal father of Rajendra Prasad was a goldsmith at the relevant time. It is also on record that Ram Gopal asked his son to pledge those articles. Ram Gopal

seems to have entrusted the articles to Rajendra Prasad for pledging. That has come out from the statement of Ram Prasad and also evidenced by the receipt of Ex. Kha XIV. Ex. Kha XIV which was given in favour of Ram Prasad itself indicates that the receipt was on behalf of Ram Gopal. The statement of Ram Prasad under Section 342 also goes to indicate that Rajendra Prasad brought the articles for pledging at the instance of Ram Gopal. Therefore, it appears from the record that Rajendra Prasad was not pledging the articles on his own. He appears to have carried the articles entrusted to him by his father who was admittedly a goldsmith. The trial court relying upon this evidence was of opinion that Rajendra Prasad was not guilty of the charge of murder. The High Court, apparently has overlooked this part of the material evidence.

8. The conclusion of the trial court appears to be more reasonable but not that of the High Court. When the receipt evidencing the pledging itself does not implicate the appellant, it would not be safe to base the conviction either for murder or under Section 411 of IPC.

9. In the result, we allow the appeal, set aside the conviction and sentence of the appellant and acquit him of all the charges.

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