

Kailash

Vs

State of U.P.

Criminal Appeal No. 405 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

21.02.1992

JUDGMENT

1. The sole appellant in this case is convicted by the trial Court under S. 302, I.P.C. and sentenced to undergo imprisonment for life. His appeal was dismissed by the High Court. In this appeal arising out of special leave granted by this court it is submitted by the learned counsel for the appellant that the case entirely rests on the circumstantial evidence and that the chain of that circumstantial evidence is not complete and at any rate one main circumstance namely the retracted extra-judicial confession relied upon by both the Courts below does not stand scrutiny and the evidence of P.W. 10 who speaks about the extra-judicial confession is highly untrustworthy.

2. Deceased Ram Milan was a resident of village Satgharas, hamlet of warraiwa within the limits of Tulsipur Police Station Distt. Gonda. P.W. 4 is the widow of the deceased. The accused also belonged to the same place and it is alleged that he was inimical towards the deceased. On the intervening night of 26th and 27th April, 1973 the deceased was sleeping in the varandah of his house and his wife Smt. Butane was sleeping inside the house. On hearing some noise she came out and found that her husband was having an injury on the neck and he was speechless. Immediately he was shifted to the hospital but he succumbed to his injury on the way. A report was lodged at the Police Station to the effect that some unknown person had committed the murder. The autopsy of dead body was conducted by the Doctor, P.W. 8 and he found the serious injury on the neck and he opined that death was due to shock and haemorrhage. According to the prosecution, on 15th May, 1973 the Investigating Officer came to know that the accused had approached P.W. 10 and had made a confession. He rushed to the house of P.W. 10 and after enquiring he searched for the accused and found him to be absconding. He was arrested on 16th May, 1973 and at his instance a Gandasa was recovered and the clothes worn by him at the time of occurrence were also seized. They were sent to the Chemical Examiner and the Chemical Examiner did not find any blood on his clothes and he also found that the blood on the Gandasa was disintegrated. The prosecution in support of its evidence examined 11 witnesses.

3. The case rests entirely on circumstantial evidence and the circumstances relied upon by the prosecution are as follows:

1) that the appellant had motive for committing the murder of the deceased;

2) that he had made extra-judicial confession of his guilt before P.W. 10 on 15-5-1973;

3) that on his pointing out the Gandasa was recovered from his house which was supposed to be stained with blood; and

4) that the appellant had absconded after that.

4. It can be seen that the second circumstance, namely, the extra-judicial confession is the main circumstance on which the prosecution case hinges P.W. 10 speaks about the extra-judicial confession. He belongs to village Gugauli Khurd within the limits of the same police station. The village of the accused is situated at about one mile from there. He deposed that 18 to 20 days after the murder the accused came to him at about 5.30 p.m. and he was looking depressed and sad and he stated that he had committed a blunder that he had murdered the deceased and after that he had gone to his brother in Punjab and that P.W. 10 is a man of influence in the area and that he should save him. On that very night the Investigating Officer came to him and enquired and he informed him what has happened. This is all the evidence about the so-called extra-judicial confession. In the cross-examination P.W. 10 admitted that a case under S. 307 was instituted against him in the same Police Station and 8 or 10 months back the case was thrown out because it was a false case and final report in that case was also filed by the police.

5. We have carefully gone through the evidence of P.W. 10. We find that the same does not inspire confidence. It is also stated by this witness that the accused, might have opposed his brother in the elections. Be that as it may, we do not find any reason as to why the accused after 20 days should go to P.W. 10 who himself is an accused in another case and make a confession. The suggestion made by the defence that P.W. 10 was deposing at the instance of police is not without force. This circumstance is of doubtful nature and if this circumstance is not to be taken into consideration. Then on the basis of other circumstances even if they are accepted, the case against the accused does not stand established. In the case of circumstantial evidence all the circumstances should be established by independent evidence and they should form a complete chain bringing home the guilt to the accused without giving room to any other hypothesis. In this case we find many missing links. The appeal, is therefore allowed. The conviction and sentence of the appellant are set aside. He is on bail. His bail bonds stand cancelled. Appeal allowed.

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