

Kailash

Vs

State of Uttar Pradesh

(M.M. Punchhi, K. Venkataswami JJ)

08.07.1997

JUDGMENT

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K.VENKATASWAMI,J.

1. The appellants alongwith one Shiv Kumar and Guddan were tried by the Sessions Court, Aligarh for the offences under Section 302 read with Section 34 IPC. The appellants and Guddan, in addition to the offenses mentioned above, were tried for an offence under Section 394 IPC. One of the appellants Kailash son of Prem, (second appellant) and Guddan were further tried under Section 4/25 of the Arms Act also. The trial court acquitted Shiv Kumar of the offences under Section 302 read with Section 34 but convicted him for an offences under Section 411 IPC. The appellants and guddan were convicted for the offences charged against them. Additionally the second appellant was convicted under Section 4/25 Arms Act.

2. All the accused preferred appeals to the Allahabad High Court and the High Court while maintaining the conviction quashed the sentence imposed on Shiv Kumar and Guddan on the ground that they were minors when the offence was committed and by the time the judgment was rendered by the High Court they were majors (30 years) and they could not be sent to approved school, purporting to follow the judgment of this court in Jayendra Vs. State of U.P. (AIR 1982 SC 685). Accordingly the two appellants alone have preferred these two appeals.

3. Briefly stated, the facts as presented by prosecution are as follows:-

4. On 15.5.1977 at about 2.30 p.m. Kumari Manju Rani (PW 1) leaving her mother, grand-mother (both deceased) and one younger brother in Bara Mohalla, went to the house of one Jagdish Prasad to witness the 'bedai' of Shobha, daughter of Jagdish Prasad. On her return at about 3.15 p.m. she found her house was locked from outside but the room adjacent to the courtyard was kept open. She entered the room and found her mother and grand-mother murdered. She raised an alarm and the neighbours collected there. She found that some ornaments and cash were missing. She lodged the first information report against unknown persons on 15.5.77 at Police Station Shastrigate at about 4 p.m. It is situated at a distance of 4 furlongs from her house. Her father by name Kishan Chandra (PW 2) was in the service at Meerut. On hearing the news, he came to Aligarh the next day and he submitted the list of articles stolen from the house. On the basis of the statement recorded from Manju Rani (PW 1), a panchnama was prepared and the bodies were sent for post-mortem. The investigating officer collected blood and the blood-stained articles from the spot and prepared a site plan. While investigation was in progress, one Satish Chandra (PW 8) informed Sri Niwas (PW 9) on 17.5.77 that he saw on 15.5.77 (date of occurrence) at about 3 p.m. the appellants and Guddan coming out of the house of Kishan Chandra where the incident had taken place. This information

was duly conveyed to the investigating officer. This gave some clue to the investigating officer to proceed further in the matter. After recording the statement of Satish Chandra and Sri Niwas, the investigating officer took steps to apprehend the culprits. Only on 20.5.77, they could arrest Kailash son of Kanhai (1st Appellant) at about 7 p.m. On search of Kailash, notes of one rupee for Rs. 21/- were recovered. He also noticed the shirt (Exbt. 17) worn by the said Kailash, contained blood stains. That shirt was also taken into custody. On interrogation, he disclosed the name of Shiv Kumar as one of the associates in the commission of crime. Later on, Shiv Kumar also was arrested on the same evening at 8.30 p.m. in his house and 19 currency notes of one rupee each, gold earring and a piece of gold earring were recovered from his person. Kailash son of Kanhai (1st Appellant) disclosed that one jhola and one novel of Kishan Chand (PW 2) were in his custody at the house of one Shakuntala (PW 4). Investigating officer proceeded to the house of Shankuntala alongwith the said two accused and at about 10 p.m. recoveries were made of the johla (Exbt. 12) and the novel (Exbt. 13). The novel contained blood stains. Recovery memo was prepared, statement from Shakuntala was also recorded under Section 161 of Cr.P.C. At the instance of the said Kailash and Shiv Kumar, they were taken to Agra and two witnesses namely, Noor Shah (PW 7) and Munna (not examined) accompanied the investigating officer. With their help, they searched the houses of Kailash, son of Prem (2nd Appellant) and Guddan. They were arrested on 21.5.77. On search of Kailash, son of Prem, currency notes for the value of Rs. 312/- and one gold jaimala and a gold ring were recovered. From Guddan only currency notes of value for Rs. 209/- were recovered. At the instance of Kailash, son of Prem, 33 novels were recovered, some of which contained blood stains. On further interrogation, they (2nd Appellant & Guddan) disclosed that they had sold pieces of gold bangles to one Gauri Shankar (P.W.6) and the investigating officer interrogated Gauri Shankar. Nothing was recovered from him. The investigating officer also recovered one blood-stained knife (Exbt.10) and one wrist watch (Exbt.6) and one blood-stained shirt (Exbt.9) from the house of Kailash, son of Prem and necessary recovery memo was prepared. In the house of Guddan, the accused pointed out some stack of bricks on the roof of his house and from where one blood-stained knife (Exbt.8) and one blood-stained shirt (Exbt. 11) and one lady's watch (Exbt. 1) were recovered. On the basis of the recoveries and the statements, charge-sheets were filed against the appellants.

5. The trial court in the absence of eye-witness, substantially believed the evidence of PW-8, Satish Chandra, who has clearly stated that he saw the appellants and Guddan on 15.5.77 at 3 p.m. at the place of occurrence. In addition to that, the recoveries of material objects and also the articles belonging to the deceased's family strengthened the case of prosecution. The trial court was not convinced of the defence arguments that the prosecution has not established the manner of arrest as well as recoveries as stated in the charge-sheet. According to the defence, though independent witnesses would have been available for preparing the recovery memo. Only the person who use to oblige to the police generally, has signed the recovery memo and, therefore, the same cannot be believed.

6. The trial court for valid persons given in the judgment rejected the defence case and accepted the case of the prosecution, convicted the accused as mentioned above and sentenced them to undergo imprisonment for life under Section 302/34 IPC and 5 years rigorous imprisonment under Section 394 IPC. Additionally, the 2nd appellant was sentenced under Section 4/25 of Arms Act to undergo six months rigorous imprisonment.

7. On appeal, High Court also, after going through the judgment and evidence, affirmed the conviction and sentence given by the trial court so far as the appellants are concerned.

8. Challenging the conviction and sentence as confirmed by the High Court, learned counsel

appearing for the appellants contended that the High Court failed to appreciate that the prosecution case was based on highly interested witnesses and, therefore, no conviction can be given on such evidence. It was also contended that as regards the manner and place of arrest of the accused having been challenged by the defence ought to have been established beyond doubt by producing independent witnesses. Likewise, the recoveries made were also not proved through independent witnesses. It was contended that in the absence of any eye-witness, the doubt regarding manner and place of arrest as well as recoveries should have been established by prosecution through independent witnesses alone. Failure to do so weakens the prosecution case. The case of the prosecution that the murder was for gains was challenged by the defence stating that the ornaments worn by the deceased were not touched and that was not given due importance by the Sessions Court as well as by the High Court. The attesting witness by name, Noor Shah (Pw 7), according to the learned counsel, was an obliging witness to the police and the conviction based on such evidence ought not to have been sustained by the High Court.

9. Identical arguments were placed before the Trial Court and High Court.

10. Both the Courts have repelled such arguments on well-founded reasons.

11. The High Court while repelling the contention of the defence that the murder was not for gains as the ornaments worn by the deceased were not touched, observed that the ornaments worn by the deceased were necklace and ring made of white and yellow metal and those artificial ornaments contained very little silver and were almost worth nothing. And that was the reason the ornaments were left on the body of Savitri, the deceased.

12. As we noticed earlier, the trial court mainly believed the evidence of PW-8 who saw the appellants on the day of occurrence coming out of the house of PWs 1 & 2 where the murder had taken place at about 3.00 p.m. While dealing with the veracity of PW-8's the High Court held as follows:-

"There was no reason for Satish Chandra to depose against the appellants unless it was a fact. It was also argued that there was not much acquaintance between Satish Chandra and three appellants when he had seen coming out of the house of Kishan Chandra, the scene of Crime. Even this argument is without substance. Firstly, appellants were not totally unknown to Satish Chandra. Secondly, the three appellants did not claim identification from the witness Satish Chandra during the trial or during investigation. Thirdly, recoveries of incriminating articles were made from the appellants supporting the truthfulness of the statement of Satish Chandra. Fourthly, the prosecution was not going to gain any thing by concealing the correct source of information regarding the complicity of the appellants in this crime. Hence we believe that Satish Chandra, PW-8 is a truthful witness, the trial court was justified in relying on his testimony."

13. Before us nothing more was brought to our notice to doubt the evidence given by PW-8 or to take a different view from that of the High Court.

14. Regarding the evidence of PW-9 the High Court after noticing that he was related to PW-2 found that in the absence of any material to show that PW-9 has any enmity with any of the appellants, the evidence of PW-9 cannot be brushed aside merely on the ground of relationship as generally the relation of the victim is always interested in bringing to book the real culprits. While

believing the evidence of PWs-8 & 9, the High Court was not inclined to believe the evidence of DW-1 and DW-2. the High Court found that DWs-1 & 2 were interested in the appellants and they have come to support the accused by stating that they were not arrested in the manner alleged by the prosecution. The High Court placing reliance on the recoveries, namely, Exbt. 12 & 13 and the identification of the same by Shakuntala, PW-4 an independent witness coupled with the fact that recovery of Exbt. 7, a watch, and the identification of the same by PW-2 and also the recoveries of gold earrings, Exbt. 4 & 5, identified by PW-1, came to a conclusion that the prosecution has established the case beyond doubt against the appellants.

15. After perusing the judgments of the trial court and High Court and after hearing the arguments of the counsel for the appellants and the prosecution, we are unable to accept any of the contentions of the learned counsel for the appellants to upset the conviction and consequently the sentence. Accordingly, the Appeals fail and are dismissed.