

(1991) 04 AHC CK 0042
In the Allahabad High Court
Case No : Criminal Appeal No. 1207 of 1983

Kalika Prasad

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 82, 83
Penal Code, 1860 (IPC) — Section 302

Citation : (1991) CriLJ 2516

Hon'ble Judges : U.K. Verma, J; Palok Basu, J

Bench : Division Bench

Advocate : Vishnu Gupta, Rakesh Kumar Varma and P.N. Tripathi, for the Appellant; D.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Kalika Prasad has filed this appeal against his conviction u/s 302, IPC. and sentence of Life Imprisonment as passed by the II Addl. Sessions Judge Nainital on 3-1-1983 in Sessions Trial No. 196 of 1981. The charge against the appellant was that sometimes in the morning of 24th March, 1981 at the Jhuggi of "A" Charge Area of Kashipur Civil Exchange 78, R.P.S. & E, Hempur, P.S. Kashipur, district Nainital, he committed murder by intentionally causing death of Km. Savitri Devi by causing an axe injury on her head and thereby committed an offence punishable u/s 302, IPC.

2. The present case is dependent upon circumstantial evidence, therefore, it has to be seen whether all the circumstances sought to be proved have been actually proved or not and then cumulatively those circumstances point out the only hypothesis of the appellant committing the murder or not.

3. Km. Savitri was the daughter of appellant's wife's sister. She has been coming to the house of her aunt (Mausi). In the Holi the appellant sent his family to his house in village and called Km. Savitri to his cottage in Hempur on the pretext that his wife was ill. P. W. 3 Sumar Singh went to the house of the

appellant on 23-3-1981 at about 8 a.m. to borrow his cycle and found the door of the house bolted from inside and the accused was absent. On enquiries the residents in the neighbourhood peeped into the house from back door and saw Km. Savitri lying dead and an axe was struck up in her head. Sumar Singh informed his Commanding Officer who sent a FIR which was entered in the General Diary report No. 21 at 9-30 a.m. P.W. 8 A. S. Sharma, S.I. went to the place of occurrence and prepared a Panchayatnama whereafter the dead body was sent for post mortem examination. P.W. 2 Dr. D.J. Joshi conducted the post mortem examination on 25-3-1981 at 11-30 a.m. and found the following injuries :--

"1. Incised wound 11 cm. x 4 cm. x brain deep over parietal and occipital region anterioposterior in direction. Brain matter coming out of the wound.

2. Incised wound 10 cm. x 1 cm. x bone deep over mid line head anterioposterior in direction, 3 cm. medial to injury No. 1.

3. Incised wound 5 cm. x 1 cm x 0.2 cm. over neck back side at base transverse in direction.

4. Linear abrasion 13 cm. x 0.5 cm. over back of the scapular region right side oblique in direction. Scab formed."

4. According to the opinion of the doctor the deceased was aged 16 years and the death had taken place about 1.1/2 days before. There was no injury on the private parts and that the injuries were sufficient in the ordinary course of nature to cause death.

5. The Investigating Officer had, however, taken out the axe, shawl, a pair of Tori and pieces of bangles as also blood stained and plain earth and prepared various memoranda Exts. Ka-2 to Ka-5. He drew a site plan also. On his return he converted the case u/s 302, IPC vide general diary No. 45. The formal investigation was taken up by S. P. Sharma who had submitted a charge sheet against the appellant.

6. The appellant denied the charge and pleaded not guilty. He stated that he had gone to his house at the relevant time. He was not present in Hempur. He further contended that witness Sumer Singh had brought Km. Savitri three or four months back and she was living with him. When he went on leave he had asked Sumar Singh to look after his residential quarter. He said that P.W. 7 Deo Karan was his tenant at Rs. 10/- per month. He did not produce any evidence in defence.

7. In order to prove the prosecution case the following witnesses were examined P.W. 1 Kishan Ram, who filed an affidavit regarding carrying of dead body for post mortem examination. P.W. 2 Dr. D.J. Joshi conducted the post mortem examination, P.W. 6 Kanthu Ram an attesting witness of memoranda and P.W. 8 A.S. Sharma, S.I. is the Investigating Officer.

8. P.W. 3 Sumer Singh, P.W. 4 Smt. Chaturu Devi P.W. 5 Birmo Devi and P.W. 7 Deo Karan are witnesses of fact who have deposed about the incidents and instances trying to connect the appellant with the crime. The learned Trial Judge has accepted their evidence and consequently held that the circumstances which have been proved through their testimony established the fact of murder of Km. Savitri by the appellant beyond reasonable doubt. Sri. P.N. Tripathi, learned counsel for the appellant has argued at great length and has placed the entire record. Sri Jagdish Tewari, learned counsel for the State has supported the version of the prosecution.

9. It may be relevant to mention here that learned trial Judge had taken note of the following circumstances emerging from the statements of witnesses produced by the prosecution as proving the guilt of the appellant. Those were (i) Motive, (ii) Deceased having been threatened by the accused, (iii) recovery of the dead body of the deceased from the house of the accused, and (iv) Abconding of accused immediately after the incident. But this is not all. In fact from the evidence produced by the prosecution three more circumstances appear. Firstly, the deceased had left the house of the appellant in the preceding night and had gone to the house of P.W. 4 Smt. Chaturu Devi wherefrom the appellant brought her back in the morning of the unfortunate day. Secondly, the appellant was seen with the deceased and had been heard saying to her "Savitri Agar Tune Meri Bat Nahin Mani to Main Tujhe Kulhari Se Mar Doonga Kisi Ko Pata Nahin Chalega".

Thirdly, the axe which was found stuck up in the head of Km. Savitri belonged to the appellant. Needless to say if these three additional circumstances are also proved from the record there would be no escape from the conclusion that it is the appellant alone who has committed the murder of Km. Savitri.

10. Crime knows no law and the criminal mind perpetrates crime thinking that his conduct is going unnoticed but in the process leaves his imprint at every nook and corner of the steps taken from which the complicity of the criminal becomes apparent.

11. The deposition of P.W. 3 Surnam Singh indicates beyond doubt that Km. Savitri had come on earlier occasion to live with the appellant's family when his wife was in family way. During Holi the appellant shifted his family to his village home and brought Km. Savitri to his house on the false pretext of illness of his wife. It is said that the appellant had an evil eye upon his niece. P.W. 5 Smt. Birmo Devi has stated that Km. Savitri had gone to her house on the preceding night at 10 p.m. complaining that the appellant wanted to molest her chastity and she was not prepared to sleep in the house with him. Consequently Smt. Birmo Devi took her to P.W. 4 Smt. Chaturu Devi and the statement of P.W. 4 Smt. Chaturu Devi is that Km. Savitri slept in her house in the preceding night. She has further said that at about 5 a.m. the appellant had come to her house and took back Km. Savitri. This part of the prosecution case is corroborated by the statement of P.W. 7 Deo Karan who is son of P.W. 4 Smt. Chaturu Devi. In his statement P.W. 7 Deo Karan has further stated that he was going to his incident.

He passed through the house of the appellant and had heard him scolding Km. Savitri that he would kill her if she did not carry out his wishes. Deo Karan has further said that when he had returned from his maternal uncle's house around 8-30 a.m. there was a crowd at the house of the appellant but the appellant was not present.

12. P.W. 3 Sumer Singh has clearly stated that when he had come to the house of the appellant for borrowing his cycle he did not find the appellant and on asking the immediate neighbours as to why the door was bolted from inside they all peeped from the back door and found Km. Savitri struck with the axe of the appellant. Sumer Singh then immediately went to his Commanding Officer who conveyed the FIR about the incident to the local police saying as follows :--

"It has been intimated that on girl has been found dead in the Jhuggi of "A" Charge Area of this Unit and some foul play is suspected. You are requested to take immediate action."

P.W. 8 A.S. Sharma, Sub Inspector, was present in the Police station at about 9-30 a.m. when the FIR was lodged. He rushed to the place of occurrence, prepared the inquest report and also prepared various memoranda relating to the recovery of blood-stained axe, blood-shawl, Tori, a wearing apparel below ankle, broken pieces of bangles and blood stained and plain plaster pieces of the room and also prepared a site plan. All this was done inside the house of the appellant. He searched the appellant who was not traceable. He took the process u/s 82/83, Cr. P.C. for securing the presence of the appellant but all attempts had failed in spite of attachment.

13. There is not a single suggestion from the side of the appellant as to what is wrong with the testimony of P.W. 3 Sumer Singh, P.W. 4 Smt. Chaturu Devi and P.W. 5 Smt. Birmo Devi and P.W. 7 Deo Karan. They are living in the nearby residential quarters and are well known to the appellant. They had no reason of deposing falsely. There was enmity persisting. In spite of long cross-examination, nothing has been brought out to discredit their testimony.

14. Learned counsel for the appellant made three specific arguments. They will be taken up one by one.

15. It is argued that injury was self-inflicted and it may be a case of suicide P.W. 2 Dr. D.J. Joshi has emphatically answered that this injury could not be a self-inflicted. The force with which the axe was hit in the skull of Km. Savitri was so tremendous that it remained stuck up in the hole which its blade had created therein. Consequently the theory of suicide is impossible.

16. The next argument is that Sumer Singh has stated that front door was broken open to enable him and other persons to get into the house. If that is so how could the appellant go away. This argument too is fallacious. Smt. Birmo Devi has said that one of the back doors was apparently closed but was not locked or bolted from inside. It was only shut. Consequently the person inside

the house could easily go out after committing assault through the back door. Moreover the breaking open was not a major engineering work but in such type of quarters a good push or forceful knock may have opened the door. Consequently this argument is rejected.

17. The last argument was that Deo Karan and Sumer Singh may have been responsible for committing the murder as the appellant has said that he had asked Sumer Singh to look after the family as he had left his house from before the incident and that Deo Karan was one of his (appellant) tenants. This is a cry in the wilderness or drowning man catching a straw to save himself. There is not an iota of evidence brought on the record to suggest that the appellant was on leave or had left his quarter earlier to the incident. Sumer Singh himself is the person who had passed the information to his Commanding Officer. His statement is fully supported by three other witnesses Smt. Chaturu Devi, Smt. Birmo Devi and Deo Karan. Therefore, this argument based on the suggestion to the witnesses and on the statement of the appellant u/s 313 Cr. P.C. is as baseless as the aforesaid two.

18. In this connection learned counsel for the appellant relied upon the case of Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, One of the circumstances relied upon by the trial Judge and the High Court in that case was that the appellant was found inside the house sleeping in his room when the deceased was found murdered in the bath-room. The Supreme Court has held that the finding of both the courts on the said circumstance was erroneous ignoring relevant factors, and therefore, came to the conclusion that the said circumstance was not proved against the appellant therein. In view of the major circumstance falling, the Supreme Court had allowed the appeal of Shanker Lal in the cited case. Therefore, the said case has no application to the facts of the present case and is distinguishable.

19. From the aforesaid circumstances it is proved beyond doubt that the appellant had motive to commit the crime. He may have developed an infatuation for her. In a planned manner he shifted his family to his village home and then brought the deceased to his house. This necessarily indicates an evil eye of the appellant on the blooming youth of Km. Savitri. But if and when Savitri objected or did not yield or resisted, the appellant in sheer frustration has put an end to her life. The going away in the night and living with the neighbours may itself have been enough disliking factor for the appellant as it was likely to undermine the appellant's character in estimation of his neighbours at least.

20. Therefore, there is not a moment's hesitation in holding that the appellant is the only person who had committed the murder of Km. Savitri as each and every circumstance has been proved beyond doubt and they are consistent only with the guilt of the appellant.

21. In view of the aforesaid discussion the conviction of the appellant u/s 302, IPC. and the sentence of imprisonment for life is upheld. The appeal lacks force

and is hereby dismissed. The appellant is in jail and will serve out the sentence awarded.