

(2012) 09 AHC CK 0290
In the Allahabad High Court
Case No : Criminal Appeal No. 2677 of 2009

Tara Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2013) 1 ACR 525 : (2012) 11 ADJ 53 : (2013) 1 ALJ 641

Hon'ble Judges : Ramesh Sinha, J; Arun Tandon, J

Bench : Division Bench

Advocate : R.P. Mishra, Arvind Kumar Singh and Anil Raghav, for the Appellant; Brijesh Sahai, Sarvesh Kumar and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Arvind Kumar Singh, learned counsel for appellant Nos. 1 and 2, Tara Chand and Vinod, Sri R.P. Mishra, learned counsel for appellant No. 3 Suresh @ Lile, Sri Sarvesh Kumar, Advocate holding brief of Sri Brijesh Sahai, learned counsel on behalf of the informant and learned Additional Government Advocate for the State-respondent. The present criminal appeal is directed against the judgment and order of the Additional District and Sessions Judge (FTC), Ghaziabad dated 1st May, 2009 passed in Sessions Trial No. 1083 of 2002 (State v. Tara Chand and others) under Sections 364, 302 and u/s 201 of the Indian Penal Code, Police Station, Bhojpur, District Ghaziabad.

2. Under the impugned judgment, appellant No. 1 Tara Chand has been convicted of an offence u/s 364 of the Indian Penal Code and has been sentenced with rigorous imprisonment of 10 years with fine of Rs. 2000/-, in case of default a further imprisonment of one month. He, alongwith appellant Nos. 2 and 3, Vinod and Suresh @ Lile, has also been convicted of an offence u/s 302/ 34 of the Indian Penal Code and has been sentenced with life imprisonment with fine

of Rs. 5000/- each, in case of default, a further imprisonment of two months. They have also been convicted of an offence u/s 201/34 of the Indian Penal Code and have been sentenced with 5 years rigorous imprisonment with fine of Rs. 1000/-, in case of default a further imprisonment of 15 days. The sentences have been directed to run concurrently.

3. Prosecution stories, as reflected from the records of the present criminal appeal, are as follows:

On 11th July, 2002, one Rakesh filed a report about his son, namely, Manoj having gone missing with the Police Station Link Road, District Ghaziabad. It was stated that his son, who was 11 years of age, had gone somewhere without informing him on 9th July, 2002 at 5:30 p.m. He made search of his son but could not trace him. On 29th July, 2002, a first information report was lodged by Rakesh on the information given by one Jagdish resident of Murad Nagar, stating therein that his son Manoj, who had gone missing since 9th July, 2002 and qua him a report was lodged on 11 July, 2002, that Manoj was last seen with Tarachand, Suresh @ Lile, Nawab and Vinod resident of village Bhadaula at Muradnagar Bus Stand at around 8:00 p.m. on 9th July, 2002. It was reported that aforesaid persons have abducted the son of informant with an intention to kill him, as nearly five months ago, there was a quarrel with Tara Chand and he had threatened the informant.

4. In pursuance to the said first information report, Case Crime No. 184 of 2002 was registered at Police Station Link Road, Ghaziabad, u/s 364 of the Indian Penal Code against the accused-appellants.

The investigation was done by Senior Sub-Inspector, Sangram Singh, P.W. 11. During investigation, the statement of the informant was recorded u/s 161 of the Criminal procedure Code. The appellants were apprehended by Sub-Inspector Jaspal Singh, P.W. 6 on 30th July, 2002 and on their pointing out, the dead body of Manoj is stated to have been recovered from a pit covered by bushes at the side of canal situate in village and Police Station Parkshatgadh, Meerut. The inquest of the dead body was prepared by Head Constable Ram Dutt Sharma, P.W.-7. Post-mortem was performed by Dr. P.K. Bansal, P.W. 9 and it was reported that since the dead body was only a skeleton, it was not possible to ascertain the cause of death. The recovered skeleton was sent to Forensic Science Laboratory, Agra. The Assistant Director of the Forensic Science Laboratory, Agra, vide his report dated 9th April, 2004, opined that the skeleton was of a human being and the cause of the death could not be ascertained. After investigation, charge-sheet was submitted against the accused-appellants under Sections 364, 302 and 201 of the Indian Penal Code. The trial Court framed charges against the accused-appellants for the said offence.

5. The prosecution, in support of its case produced, the informant Rakesh, who was examined as P.W. 1, he proved the application, on the basis whereof first information report was lodged, Bijendra, was examined as P.W. 2, neighbour of

the informant, who was also the scribe of the first information report, Jagdish Prasad, sister's husband/brother-in-law (Behnoi) of the informant, who had given the information about the deceased Manoj being last seen with Tara Chand and other accused on 9th July, 2002 at Moradnagar Bus Stand at around 8:00 p.m. was examined as P.W. 3, Preetam Rana, resident of same village, who is stated to have last seen deceased Manoj with Tara Chand on 9th July, 2002 at around 5:30 p.m. at Mamta Bazar Gali was examined as P.W. 4, Ved Pal, an independent witness, was examined as P.W. 5 but he turned hostile, Jas Pal Singh, Sub-Inspector, who arrested the accused and had prepared the recovery memo of the dead body was examined as P.W. 6, Ram Dutt Sharma, Head constable, who proved the chik first information report was examined as P.W. 7, Smt. Jagresh, who is stated to be real aunt of the deceased and was residing in the same house with the informant, was examined as P.W. 8. She deposed that she had informed Rakesh that she had last seen Manoj with Tara Chand on 9th July, 2002 at around 6:00 p.m. at the road crossing. Dr. P.K. Bansal, who performed the postmortem of the dead body was examined as P.W. 9, Satyaveer, who was uncle of the deceased and one of the witness of the inquest, was examined as P.W. 10. Senior Sub-Inspector, Sangram Singh, the Investigating Officer was examined as P.W. 11.

Application/missing report made by the informant dated 11th July, 2002 qua his son Manoj being missing was marked as Exhibit Ka-1. The first information report lodged by the informant dated 29th July, 2002 was marked as Exhibit Ka-2. Recovery memo of the dead body was marked as Exhibit Ka-3. Chik first information report was marked as Exhibit Ka-4. Photo-stat copy of the G.D. was marked as Exhibit Ka-5. Photo stat copy of medical report after post-mortem was marked as Exhibit Ka-6. Attested/certified inquest report was marked as Exhibit Ka-7. Site plan pertaining to the recovery of the dead body was marked as Exhibit Ka-8. Site plan pertaining to the place of occurrence was marked as Exhibit Ka-9. Charge-sheet was marked as Exhibit Ka-10.

The statements of the accused-appellants were recorded u/s 313 of the Criminal Procedure Code by the trial Court. They denied the charges as levelled against them. It was their case that they have been falsely implicated sought trial.

Pradhan of the village, Ram Bahadur was examined as D.W. 1 from the side of defence.

6. The Additional District and Sessions Judge, on the basis of the statements made by P.W. 3 Jagdish Prasad, P.W. 4 Preetam Rana and P.W. 8 Smt. Jagresh recorded that son of informant Manoj was last seen on 9th July, 2002 with Tara Chand and further that his dead body had been recovered from the side of the canal on pointing out by Tara Chand and other co-accused. From the report of the Forensic Science Laboratory, Agra, it was established that the skeleton was of a human being. It has also been recorded that the dead body was identified by the informant with reference to a Baniyan, which was tied around the neck of the skeleton and the hairs on the skull. The learned Additional District and Sessions

Judge has also recorded that the motive of the killing of Manoj was also established by the prosecution, as it was specifically submitted that nearly five months ago, Tara Chand had threatened the informant, as a tussle had taken place between the sister of Tara Chand, who is wife of informant's brother and wife of informant earlier. It is on the aforesaid findings that the Additional District & Sessions Judge came to a conclusion that the appellant No. 1 Tara Chand was guilty of offences under Sections 364, 302/34, 201/34 of the Indian Penal Code. He has, accordingly, sentenced him for the said offences. Appellant Nos. 2 and 3, Vinod and Suresh @ Lile have also been found guilty of offences under Sections 302/34, 201/34 of the Indian Penal Code and have been sentenced accordingly, as noticed above.

7. Challenging the judgment so passed by the Additional District & Sessions Judge, learned counsel for the appellants points out that there are manifest errors in the judgment and order of the Additional District & Sessions Judge. From the statement made by P.W. 3 Jagdish Prasad, brother in law (Behnoi) of P.W. 1 Rakesh informant, it was apparently clear that he had specifically stated that he did not know accused, Suresh @ Lile, Nawab and Vinod and that he knew Tara Chand only. The first information report qua the son of informant Manoj being last seen with Tara Chand, Suresh @ Lile, Nawab and Vinod, is based on information given by P.W. 3, Jagdish Prasad to the informant. It is, therefore, his case that when Jagdish did not know accused, Suresh @ Lile, Nawab and Vinod, how he could have disclosed their identity to the informant about the Manoj being last seen with them on 9th July, 2002. Therefore, the entire story as disclosed in the first information report is false. It is then contended that from the statement of P.W. 8 Smt. Jagresh, it is apparently clear that she claimed to have last seen Manoj with Tara Chand appellant No. 1 on 9th July, 2002 at around 6:00 p.m. at the crossing, when she was laying cow-dung, yet for 20 days, she did not inform the father of the child, about the said fact, although she was admittedly residing in the same house, as was the real aunt of the deceased. It is, therefore, contended that the conduct of Smt. Jagresh, as reflected, is completely unnatural. Therefore, her statement could not have been relied upon. It is then submitted that what was recovered and is stated to be the dead body of Manoj, was only a skeleton. From the postmortem report as well as from the evidence of the Doctor, who performed the post-mortem report, namely, Dr. P.K. Bansal, P.W. 9, it was established that the cause of death of Manoj could not be ascertained and that further as to whether the dead body was of a male or female also could not be ascertained. Lastly, the period, since when the dead body was lying in the pit covered by bushes at the side of canal could also not be ascertained. He, therefore, submits that merely because a dead body had been recovered on pointing out by Tara Chand and other co-accused except Suresh and because the skeleton is stated to be of a human being, it cannot be said that the same is of the missing child-deceased, Manoj. He points out that identification of the dead body with reference to the baniyan said to be tied around the neck of skeleton and on the basis of hairs on the skeleton, is too

weak an identification to be accepted for establishing beyond reasonable doubt that Manoj has been done to death by the accused. It is the case of the appellants that from the entire evidence led by the prosecution, it has nowhere been established as to whether the skeleton was that of a young boy of 11 years or of any full grown human being. He therefore, submits that there is a basic lacuna in the entire case of the prosecution for the purposes of establishing that the skeleton recovered was that of Manoj. According to the appellants, the prosecution has not been able to establish beyond reasonable doubt that the appellants had committed any offence for which they could be charged.

8. On behalf of the informant as well as on behalf of the State, it is contended that the deceased was last seen with Tara Chand, as is established from the statements made by P.W. 3, Jagdish, P.W. 4 Preetam Rana and P.W. 8 Smt. Jagresh. The motive of the murder of the child Manoj was also established and that the dead body had been recovered on pointing out by Tara Chand and other co-accused except Suresh. It was sufficient to establish the guilt of the accused. Moreover there is evidence u/s 27 of the Indian Evidence Act 1872 against the accused.

9. We have considered the submissions made by the learned counsel for the parties and have gone through the records of the present criminal appeal.

At the very outset, we may record that there is absolutely no evidence on record, which could lead to the conclusion that the skeleton, which had been recovered, was that of young boy of 11 years of age and further from the statement made by P.W. 9 Dr. P.K. Bansal, who performed the Post-mortem, it was clear that it cannot be said with certainty as to whether the dead body was of a male or of a female. We are of the considered opinion that in absence of such identification of dead body, it cannot be said that the dead body was that of Manoj without reasonable doubt. In this background alone, we are of the considered opinion that offence under Sections 302/ 34 and 201 of the Indian Penal Code cannot be said to have been made out against the accused.

10. Now coming to the issue of offence u/s 364 said to have been established against Tara Chand, we find that it is beyond comprehension of a reasonable man that Smt. Jagresh P.W. 8, who was residing in the same house with the informant and is real aunt of the missing child Manoj, will not disclose to the informant that missing child was last seen with Tara Chand who had admittedly threatened the informant with dire consequences earlier and further that tussle has taken place between the ladies of the same family. Further in the first information report lodged on 29th July, 2002, the informant had mentioned that his brother-in-law Jagdish had informed that he had last seen Manoj with Tara Chand, Suresh, Nawab and Vinod at the bus-stand at Murad Nagar on 9th July, 2002. The witness, Jagdish in his statement as P.W. 3 admitted that he did not know Suresh, Nawab and Vinod earlier. Therefore, the appellants appear to be justified in contending that name of the accused has been inserted in the first information report after due thought and deliberation because of animosity between the

informant and the appellant.

11. The Apex Court in the case of State of Maharashtra Vs. Annappa Bandu Kavatage, , has held that before a Court can act on circumstantial evidence, the circumstances proved must be complete and of a conclusive nature, so as to be fully inconsistent with the innocence of the accused and are not explainable on any other hypothesis except the guilt of the accused. In the facts of the present case, there is sufficient interval between the death of the boy and the recovery of the body, which was only a skeleton, the link in the chain of the circumstantial evidence does not appear to be fully complete. Hence, the conviction of the appellants by the trial Court is bad in the eyes of law and is not sustainable.

In the facts and circumstances of the case, we are of the considered opinion that the prosecution has failed to bring home charges against the appellants beyond reasonable doubt.

The impugned judgment and order passed by the Additional District and Sessions Judge dated 1st May, 2009 cannot be legally sustained and is hereby quashed. All the appellants are acquitted of the charges levelled against them. Appellants, Tara Chand and Vinod who are stated to be in jail are directed to be released forthwith unless they wanted in any other cases.

The present criminal appeal is allowed.