
(1974) 03 AHC CK 0037
In the Allahabad High Court

Tondi and Others	Vs	APPELLANT
The State of U.P.		RESPONDENT

Date of Decision : 13-03-1974

Acts Referred:

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

Citation : (1975) AWC 174 : (1975) CriLJ 950

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.N. Bakshi, J.—The appellants Tondi, Ram Chandra and Piarey have been convicted by III Additional Sessions Judge, Shahjahanpur u/s 364, IPC Tondi and Ramchandra have been sentenced to eight years R. I. and Pyare has been sentenced to four years R. I.

2. Briefly stated, the prosecution case is that the deceased Parasram was an unmarried man. His brother-in-law is one Rameshwar Dayal. Rameshwar Dayal is a resident of village Kherakia, police station Bisalpur, district Pilibhit. Parasram had gone to attend the marriage of Rameshwar Dayal's son on 9-6-1969. On the morning of 11-6-1969, Parasram is alleged to have left Pakaria on the return of the Bafat. While leaving Pakaria, he is said to have informed that he was going to Bisalpur to meet the accused persons.

3. The case for the prosecution is that the accused had induced Parasram by representing to him that they would get him married. The prosecution case further is that Rs. 1,000/- were required for this marriage which was collected by the deceased Parasram partly from his sister Smt. Badamo (P. W. 11) and partly from his sister-in-law Shanti Devi (P. W. 10). In the morning of 11-6-1969 he left Pakaria. Puttu Lai (P, W. 3) is claimed to have seen the victim Parasram at Bisalpur bus-stand at about 11 a. m, on 11-6-1969. He was accompanied by the accused. Thereafter, the case for the prosecution is that Parasram proceeded on

his way to Bisalpur. In the evening Nanhey (P. W. 9) while travelling by train to Tisua happened to travel by the same compartment in which the victim was travelling with the accused. He made enquiries from the deceased who disclosed that he was proceeding for his marriage which had been arranged, by the accused-appellants. Thereafter Parasram did not return to his village.

4. It appears that the dead body of Parasram was found in village Piprauli on 12-6-1969, On receiving this information, Chowkidar Mulaim (P. W. 1) went there to verify the same. He subsequently came to the police station and lodged the present report Ex. ka. 1 at 4.10 p.m. on 12-6-1969. S. I, Shiva Kumar Sharma on receiving this information went to the spot to get the body identified. Having failed in this, he prepared a Panchayat-nama of the body and sent the same for post-mortem examination. The body had been subsequently identified to be that of Parasram.

5. The post-mortem examination of the dead body of Parasram was conducted by Dr. Mahesh Chandra on 13-6-1969 at 4.45 p.m. The post-mortem disclosed that the deceased was 35 years of age and that he died about two days prior to the post-mortem examination. He had six incised ante-mortal injuries besides one contusion. There was an incised wound 22 cm. X 3.5 cm. X tissue deep over left side to front of neck due to which arteries, veins, trachea and oesophagus had been cut. There was another wound on the neck and several other wounds at various parts of the-1 body. The incised wounds had been caused by some sharp eclair weapon and the contusions by some blunt weapon.

6. The accused appellants denied then- guilt and they ascribed their implication due to enmity as Tondi had appeared as a witness against the prosecution winesses.

7. The prosecution in support of Its case examined 18 witnesses namely Mulaim (P. W. 1), Chandra Sen (P. W. 2) Puttu Lai (P. W. 3), Tula Ram (P. W. 4), Abdullah Khan .(P. W. 5) Mahipat Singh* (P. W. 6), Bankey Lai IE. W. 7), Dr. Mahesh Chandra (P. W. 8), Nanhey Lai (P. W. 9), Shanti Devi (P. W. 10), Smt. Badamo (P. W. 11), Manmohan Bahal (P. W. 12). Rameshwar Dayal (P. W. 13), R. N. Misra (P. W. 14), Bachchan Lai (P. W. 15), Behari Lai (P. W. 16), Firanga (P. W. 17) and S, O. Shiva Kumar Sharma (P. W. 18).

8. These witnesses have been produced to depose with regard to the various circumstances on the basis of which the charge u/s 302, Indian Penal Code had been framed. It may be said at the outset that there is no direct evidence in this case which hinges solely upon circumstantial evidence. The case for the prosecution is that Parasram (P, W, 13) had gone to attend the marriage of the son of Rameshwar on 8-6-, 1969. After the celebration of the marriage, it is said that on 11-6-1969 Parasram told Rameshwar, that he is going to meet the accused at Bisalpur. He did not however disclose the purpose of his visit to Bisalpur. This is evident from the .statement of Rameshwar (P, W. 13). Shanti Devi (P. W. 10) and Smt. Badamo (P. W. 11) have been produced in support of

the prosecution case that the victim collected a sum of Rs. 900/- for the purpose of his marriage. Smt. Badamo is the sister of the deceased. It appears that she only advanced Rs. 200/- , to him. Thereafter Smt, Shanti Devi who is the sister-in-law of the deceased by village relationship claims to have advanced another Rs. 700/- to the victim. This was done -on 27-5-1969. Thereafter, the prosecution has led evidence of Puttu Lai (P. W. 3) to show that the deceased along with the accused appellants was seen at Bisalpur bus station at about 10.11 a. m. on 11-6-1969. It is rather strange that Parasram did not disclose the purpose of his visit to his brother-in-law Rameshwaf and his uncle Bachchu as has come in their evidence. Nanhey Lai (P. W. 9) says that the victim did make this disclosure to him when he boarded the train in the same compartment on his way from Shahjahanpur to Tiswa. Nanhey Lai (P. W. 9) has stated that he only knew the accused about a month or two before the alleged incident. He is not a relation of the family nor was he invited to the Barat of Rameshwar. It does not stand to reason why this disclosure in these circumstances be made by the victim Parasram to Nanhey Lai. The witnesses whom I have referred to above have deposed with regard to the above mentioned circumstances. Thereafter Parasram did not return to his village and his dead body was found by Mulaim Chowkidar on 12-6-1969.

9. The court below after considering the entire evidence on the record referred to above arrived at the following finding with respect to the charge u/s 302, Indian Penal Code:?

"In these circumstances the prosecution story that Parasram was actually killed by them is not free from doubt. I must say that the prosecution sorry produced strong suspicion against the acced-appellants and it is very probable that he was. killed by them or some of them but in my opinion it is not sufficient to hold them guilty under the law. I am of the opinion that they are entitled to the benefit of doubt."

10. I am in agreement with tried finding arrived at by the court below that the prosecution has failed to lead convincing evidence to show that the accused-appellants were responsible for the crime in question.

11. The question, therefore, arises whether the evidence on record is sufficient to warrant a conviction u/s 364, I.P.C. Section 364, I.P.C. runs as follows:?

"Whether kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for lifeand shall also be liable to fine."

12. After a careful scrutiny of the evidence on the record I do not find any reliable evidence to show that Parasram was abducted so that he might be murdered. The prosecution case as mentioned above is to the effect that Parasram was deceived to the extent that a marriage was proposed to be settled by the accused-appellants. It was on this representation that he made arrangements for funds and thereafter proceeded for a marriage. To establish a

charge of abduction in order to murder, when the case is one of abduction by deceitful means, it is not enough for the prosecution merely to prove certain circumstances under which the abducted person was induced to go, nor even to prove a misrepresentation. The prosecution has to prove firstly that there was a misrepresentation and secondly, that that particular misrepresentation was a plan to murder and thirdly that it was the plan by which the abducted person was himself deceived and was induced to go. From a careful scrutiny of the evidence on record, I find that there is no evidence to indicate that the alleged misrepresentation was the result of a plan to murder Parasram. In the absence of reliable evidence on this question, I am of the opinion that the appellant cannot be held guilty of the charge u/s 364, Indian Penal Code. In this very connection reference may be made to a decision reported in *Upendra Nath Ghosh v. Emperor* AIR 1940 Cal 361. In that case it has been held that:

"To establish an offence punishable u/s 364 it must be proved that the person charged with the offence had the intention at the time of the abduction that the person abducted would be murdered or would be so disposed of as to be put in danger of being murdered." I am in respectful agreement with the decision of the Calcutta case. There is again nothing on the record to indicate that the accused-appellants had the intention at the time they made a so-called deceitful misrepresentation that Parasram should be murdered or would be so disposed of as to be in danger of being murdered. In this view of the matter, it is not possible to uphold the conviction of the accused-appellants.

13. This appeal is accordingly allowed. The conviction of the accused-appellants Tondi, Ramchandra and Piarey (for the offence for which they have been barged and the sentence imposed upon them thereunder are hereby set aside. The appellants are on bail. They need not surrender and their bail bonds are hereby discharged.