

Court No. - 48

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 465 of 2024

Appellant :- Vidur Kumar Shastri

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Akansha Verma,Deepak Kumar Verma

Counsel for Respondent :- G.A.

Hon'ble Siddharth,J.

Hon'ble Subhash Chandra Sharma,J.

Heard Sri Deepak Kumar Verma, learned counsel for the appellant, learned A.G.A. for the State-respondent and perused the material on record.

The present criminal appeal against the acquittal has been preferred against the judgment and order dated 26.07.2024 passed by the learned Session Judge, Hamirpur in Sessions Trial No.35 of 2019 arising out of Case Crime No.348 of 2017, Police Station Kurara, District Hamirpur by which the learned trial court has acquitted the accused respondents Arvind Kewat and Sandhya Kewat of the charges u/s 302 read with 34 I.P.C. and accused respondent Dev Singh u/s 302 read with 120B I.P.C.

In brief the informant Vidur Kumar Shastri lodged an F.I.R. on 19.12.2017 at Police Station Kurara that on 18.12.2017 at 7:00 A.M. he received an information on phone that his mother aged about 70 years had died and thereafter he came to his village and saw the dead body of his mother. On 19.12.2017 after post-mortem he came to the house where his father told him that there was rivalry with Ram Prakash S/o Babu Lal and he used to come and go through his lane in drunken state and was also used to stare at her when objected he threatened her. In the morning of 18.12.2017 when his father was going for natural call he saw that Ram Prakash was striding fast from side of his house. He went to his bed after attending natural call. In the morning he went into house and saw his wife/mother of the informant lying dead on the cot in the varandah and he informed his younger brother Abhimanyu while narrating the activities of Ram Prakash that was the reason he believed that Ram Prakash committed murder of his wife Chetkali. The case was registered u/s 302 I.P.C. and investigation

was handed over to Inspector Gulab Tripathi which was later on handed over to Inspector Sangam Mishra. On 08.01.2018 informant Vidur Kumar Shastri gave an application to S.P., Hamirpur alongwith affidavit mentioning that he was in Noida at the time of incident. On information he arrived to the house with his cousins Virendra Kumar, Brijesh Kumar, Satya Prakash, Arvind with his younger brother and sister-in-law of Arvind. Hariom and Kamlesh came there to suggest the name of Ram Prakash that was the reason he lodged the F.I.R. against him but on enquiry it was found that Ram Prakash had gone somewhere else from the village for treatment and he did not commit the murder of his mother. Due to enmity in civil litigation between them, the F.I.R. was lodged against Ram Prakash. On the basis of aforesaid affidavit the I.O. found the involvement of accused Ram Prakash to be false and then on the ground of suspicion arrested Sandhya Kewat and recorded her statement, thereafter, the names of Arvind Kewat and Dev Singh were also brought into light. Later on the investigation was handed over to Inspector Jay Kumar Singh who filed the charge sheet against all the accused persons. The I.O. also collected C.D.R. but it was not proved at all.

The learned trial court framed the charges against accused persons u/s 302 read with Section 34 and 120B I.P.C. which was explained to them but they pleaded not guilty and claimed for trial.

The prosecution examined the informant PW-1 Vidur Kumar Shastri (informant), PW-2 Gangadhar (father of the informant), PW-3 Badlu as witnesses of fact, PW-4 to PW-9 are the constable, the doctor conducting post-mortem and the Investigating Officers. The tehrir, application to S.P., Hamirpur dated 08.01.2018, affidavit of complaint of informant, chick F.I.R., G.D. post-mortem report, inquest, site plan, arrest memo of accused persons and the charge sheet were proved by the witnesses during the course of trial. In the statement u/s 313 Cr.P.C. the accused persons denied the prosecution case and told it to be false and stated that they were implicated in the case on the ground of enmity and village rivalry. No any evidence was adduced on the part of the defence.

After hearing the arguments from the prosecution and the defence learned trial court passed the judgment and order dated 26.07.2024 while acquitting the accused persons of the charges by extending benefit of doubt to them. Against this order of acquittal the present appeal has been filed by the informant Vidur Kumar Shastri.

It is submitted by learned counsel for the appellant that in this case

PW-1 who was living at Noida is son of the deceased and PW-2 Gangadhar is his father and was living in the same house where incident took place. During the course of examination before the learned trial court PW-1 the informant deposed that he came to his village from Noida on the same date where he found his mother lying dead beside the door of his house as a result he called the police on Dial-100 and requested the police for post mortem. He also deposed that he lodged the F.I.R. against Ram Prakash as he was told by his father. Later on he came to know that Ram Prakash did not commit murder of his mother that was the reason he gave an application 20ka1 to the S.P., Hamirpur. Thereafter, the case was investigated by the police in which it was found that Ram Prakash was innocent but present accused persons/respondents Arvind Kewat, Sandhya Kewat and Dev Singh were involved in commission of murder since there was illicit relation between Dev Singh and Sandhya Kewat which was seen by the deceased. The father of the informant was also examined as PW-2 who deposed before the learned trial court that deceased Chetkali caught Dev Singh and Sandhya Kewat in objectionable state that was the reason both of them committed her murder. At the time of alleged incident he was lying in the shop adjacent to the house. When he woke up in the next morning he found his wife lying dead on the cot and there was no any other person in the house. PW-3 Badlu is son-in-law of PW-2 Gangadhar and the deceased. He also deposed before the learned trial court that his father-in-law told him that Chetkali was murdered by the accused persons Dev Singh, Sandhya Kewat and Arvind Kewat. He also disclosed that there was illicit relationship between Dev Singh and Sandhya. The testimonies of PW-1, 2, & 3 clearly proves that the present respondents/accused persons were the real culprits who committed murder of the deceased Chetkali as illicit relationship between Dev Singh and Sandhya was seen by her. The F.I.R. was lodged by PW-1 on the basis of suspicion as expressed by his father PW-2. In this way, there was motive to commit murder of the deceased to Sandhya Kewat, Dev Singh and Arvind Kewat who was brother of Sandhya. The learned trial court did not consider this evidence but acquitted the accused persons without appreciating the evidence in proper way, therefore, the finding recorded by the learned trial court in the judgment and order dated 26.07.2024 is perverse and is liable to be set aside and the respondents are to be punished.

We have thoroughly perused the judgment and order passed by the learned trial court dated 26.07.2024 and the trial court record.

As per the prosecution case the deceased Chetkali, the mother of

PW-1/informant, wife of PW-2 Gangadhar and mother-in-law of PW-3 Badlu was murdered on 18.12.2017 at about 7:00 A.M. in the morning. PW-1 Vidur Kumar Shastri was living at Noida on the date of incident. The information of murder was received by him on phone at which he came to his village and found his mother dead as a result he informed the police on Dial-100 and requested the police for post-mortem. After post-mortem his father Gangadhar (PW-2) told him that his mother was murdered by Ram Prakash due to village rivalry in civil litigation. He also narrated to him that Ram Prakash was seen by him on the same morning under the influence of liquor and while going away from the place of occurrence i.e. his house and on the basis of this suspicion PW-1 lodged the F.I.R. against Ram Prakash. Before the learned trial court during the course of trial he was examined and deposed that he lodged the F.I.R. against Ram Prakash on the basis of information as given by his father Gangadhar and later on he came to know that Ram Prakash was not real culprit but they were the respondents. As a result he moved an application 20ka (1) on 08.01.2018 before the S.P., Hamirpur mentioning this fact of innocence of Ram Prakash. Therefore, the name of Ram Prakash was struck down by the I.O. and present respondents were arrested on the ground of suspicion. After recording the statement of Sandhya Kewat, Arvind Kewat and Dev Singh were also arrested and charge sheet was filed against them. In this way, PW-1 Vidur Kumar Shastri was not eye-witness of the incident but he lodged the F.I.R. as narrated by his father to him and named Ram Prakash as real culprit since he had seen him while going away from the place of incident in the same morning under the influence of liquor. Later on it came to the knowledge of the informant that Ram Prakash was not real culprit and so moved the said application to S.P., Hamirpur but there is no any mention in the application that the respondents/accused persons committed murder of his mother. The I.O. on the ground of suspicion arrested the accused Sandhya Kewat and Arvind Kewat (sister and brother) and also Dev Singh brother-in-law of Arvind Kewat and cooked story of illicit relation between Sandhya Kewat and Dev Singh though there is nothing on record to show that there was illicit relation between both of them. Even this fact was not disclosed by the father of the informant to him at the time of lodging of F.I.R. In this way, there appears no any motive with the respondents to commit murder of the deceased and where there is no any eye-witness testimony about the incident, motive becomes important which cannot be said to be well established in the present case.

PW-2 Gangadhar who is father of the informant was also

examined before the learned trial court and deposed that the accused Arvind Kewat lodged the F.I.R. against Ram Prakash through Vidur Kumar Shastri (his son) because they had enmity. The deceased Chetkali caught Dev Singh and Sandhya Kewat read handed in objectionable state so Dev Singh and Sandhya committed murder of his wife. Arvind Kewat told through phone to commit her murder.

From the statements of PW-1 & 2, it becomes clear that F.I.R. was lodged by PW-1 as incident was narrated by PW-2. PW-1 never stated that it was lodged at the instance of accused Arvind but it was at the instance of his father Gangadhar. In this way, the statement of PW-2 Gangadhar remains unsupported and there is a new story that is not corroborated with any other material on record. He also negated the story of seeing Ram Prakash while going away from his house where incident took place early in the morning on 18.12.2017. There are the major contradictions in the statement of PW-2 Gangadhar also. So far as the statement of PW-3 Badlu is concerned he is son-in-law of PW2 and the deceased. He also deposed before the learned trial court that he was told by his father-in-law about the illicit relationship between Dev Singh and Sandhya Kewat and he also told that Chetkali was murdered by Dev Singh, Sandhya Kewat and Arvind Kewat. The testimony of PW-3 Badlu is hearsay. While considering the statements of PW-1, 2 & 3 together, it appears that the F.I.R. was lodged at the instance of PW-2 who was present in the house at the time of alleged incident and he stated about the commission of murder by Ram Prakash who was exonerated during the course of investigation by the I.O. on the basis of application moved by the informant before the S.P., Hamirpur that he was innocent and his involvement was false, thereupon present respondents were arrested on the ground of suspicion by the I.O. and new story of illicit relationship between Dev Singh and Sandhya Kewat was cooked up since it was not told by PW-2 to PW-1 at any time and there is no any other material on record to show that there was illicit relationship between Dev Singh and Sandhya Kewat and both of them were seen by the deceased in objectionable state as a result she was done to death by them. From the above, it cannot be said to be proved beyond reasonable doubt that there was strong motive with the present respondents to commit murder of the deceased and they committed it. Learned trial court has considered all these facts in well manner while appreciating the evidence on record. There appears no any perversity in appreciation of evidence, therefore, the finding as recorded by the learned trial court does not require any interference by this Court but this

appeal being devoid of merit is liable to be dismissed.

Accordingly, this appeal is ***dismissed*** at the admission stage itself.

Office is directed to transmit the trial court record to the learned court concerned.

Order Date :- 17.10.2024

Ashok Gupta