

AFR

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No. 2024:AHC-LKO:19390-DB

Reserved on: 07.11.2023

Delivered on: 04.03.2024

Reserved

Case :- GOVERNMENT APPEAL No. - 1000325 of 2007

Appellant :- State of U.P.

Respondent :- Jagdamba Prasad And 3 Ors.

Counsel for Appellant :- Govt.Advocate

Counsel for Respondent :- Ghulam Mohammad Kamil, Anil
Kumar Maurya

WITH

Case :- CRIMINAL APPEAL No. - 1462 of 2007

Appellant :- Jagdamba Prasad Verma

Respondent :- State of U.P.

Counsel for Appellant :- G.M.Kamil, A.R.Siddiqui

Counsel for Respondent :- Govt.Advocate, Sanjay Kumar Yadav

AND

Case :- CRIMINAL REVISION No. - 398 of 2007

Revisionist :- Jais Ram Verma

Opposite Party :- State Of U.P. And 3 Ors.

Counsel for Revisionist :- A.R.Siddiqui, Sanjay Kumar Yadav

Counsel for Opposite Party :- G.A., G.M. Kamil

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per: Rajan Roy, J.)

(1) Heard Ms. Meera Tripathi, learned A.G.A. for the State
and Mr. Anil Kumar Maurya, learned counsel for respondents

no. 2 and 4 in Government Appeal No. 1000325 of 2007. Mr. G.M. Kamil, learned counsel for the appellant and Ms. Meera Tripathi, learned A.G.A. for the State have been heard in Criminal Appeal No. 1462 of 2007. Mr. Sanjay Kumar Yadav, learned counsel for the revisionist and Ms. Meera Tripathi, learned A.G.A. for the State have been heard in Criminal Revision No. 398 of 2007.

(2) Respondent no. 3-Sant Ram has died in Government Appeal No.1000325 of 2007 and the appeal has abated as regards him so has Revision No.398 of 2007 in so far as it relates to him.

(3) At the very outset, it needs to be mentioned that out of the four accused, three, namely, Santram, Ramdev and Ramdas have been acquitted of the charge of murdering the deceased-Rajendra Kumar Verma and trying to destroy evidence punishable under Section 302, 34 I.P.C. and Section 201 I.P.C. whereas the fourth accused, namely, Jagdamba Prasad has been convicted and sentenced to life imprisonment.

(4) The State of U.P. has filed Government Appeal No.1000325 of 2007 against acquittal of the aforesaid three persons. Jagdamba Prasad has filed Criminal Appeal No.1462 of 2007 challenging his conviction vide impugned judgment and order dated 22.06.2007 passed by Addl. District & Sessions Judge, Ambedkar Nagar in Session Trial No.102 of 2004 arising out of Case Crime No.29 of 2004, P.S.-Haswar, District-Ambedkar Nagar holding him guilty for the offence punishable under Section 302 I.P.C. and sentencing him rigorous life imprisonment and a fine of Rs.10,000/- and in default thereof, to undergo further three months' simple imprisonment. The

informant-Jais Ram Verma who is brother of the deceased has filed Criminal Revision No.398 of 2007 for setting aside acquittal of the earlier mentioned three accused and for punishing them with which they were charged.

(5) The prosecution case in nutshell is that in the night intervening 18/19.05.2004, deceased- Rajendra Kumar Verma was taken away forcibly by the accused while he was on a charpai in the grove and, by his side, his grand-father i.e. P.W.2-Ram Lakhan aged eighty years was sleeping. He was taken to the house of Jagdamba Prasad and was done to death, thereafter the body was thrown about 200 meters away near the Chak road. P.W.2 i.e. Ram Lakhan had seen the accused taking away the deceased from the grove and P.W.3 saw them throwing the body near the Chak road and running away.

(6) The distance of the police station from the scene of crime is about 10 Kms. The incident of carrying away Rajendra Kumar Verma from the grove is said to have taken place at about 10:00-10:30 P.M. The body is said to have been recovered at about 02:00-02:30 A.M. the same night and F.I.R. (Ex.Ka12) has been lodged in the morning i.e. on 19.05.2004 at 07:30 A.M. on the written tehrir of P.W.1 i.e. Jaisram Verma.

(7) Inquest was conducted between 07:30-09:00 A.M. on 19.05.2004. Post-mortem (Ex.Ka.10) was conducted on 19.05.2004 at 01:00 P.M.

(8) As per the post-mortem report, there were fifteen ante-mortem injuries on the body of the deceased and cause of death was shock and hemorrhage as a result of ante-mortem injuries.

(9) The weapon used to commit the crime i.e. two lathis and two sticks which were blood-stained were recovered from the house of Jagdamba Prasad allegedly on his pointing while he was on police custody on 19.05.2004 at 06:10 P.M. The accused-Jagdamba Prasad and Sant Ram were arrested on 19.05.2004 itself. The other accused were arrested on subsequent date.

(10) The blood stained clothes worn by the accused-Jagdamba Prasad and Santram were also recovered on 19.05.2004 itself at the same time i.e. at 06:10 P.M. The plain and blood stained soil were collected from the scene of crime on 19.05.2004. Recovery memos in this regard are Ex.Ka.7, Ex.Ka.8 and Ex.Ka.9.

(11) Chargesheet was filed against all the four accused for the aforesaid offence. The case was committed by the Magistrate to the Sessions Court and the Sessions Court framed charges against the accused persons under Section 302, 34 I.P.C. and Section 201 I.P.C. on 20.01.2005.

(12) The prosecution produced as many as eight witnesses before the trial court. P.W.1-Jaisram Verma as already stated is brother of the deceased and is the informant. P.W.2-Ram Lakhan is grandfather aged eighty years who claims to have seen the accused carrying away the deceased while he was sleeping, from the grove. P.W.3-Bisai is said to have reached the grove on hearing the shouts of P.W.1 & P.W.2 and is said to have seen the accused throwing away the body from where it was ultimately recovered. He is a neighbour of the informant. P.W.4-Yogesh Shah, P.W.6-Nandlal and P.W.7-Rajveer Singh are the three Investigating Officers of the

criminal case. P.W.5-Dr. Vivek Gupta is the Autopsy Surgeon. P.W.8-Ashok Kumar Singh is the Head Constable who made the entries in police records i.e. General Diary and lodged the F.I.R.

(13) As already stated, the trial court on a consideration of evidence before it acquitted three of the accused but convicted Jagdamba Prasad and sentenced him to life imprisonment. Jagdamba Prasad is on bail.

(14) The contention of Ms. Meera Tripathi, learned A.G.A. was that Jagdamba Prasad has rightly been convicted by the trial court but it has erred in acquitting the other three accused P.W.2- Ram Lakhan has proved the factum of Rajendra Kumar being carried away by all the four accused from the grove where he was sleeping along with P.W.2 about 10:00 - 10:30 P.M. on 18.05.2004. P.W.2 had seen him being carried away and taken to the house of Jagdamba Prasad. Thereafter, the body was recovered near the Chak road from the field of Ramchander at about 02:00-02:30 A.M. the same night. Accordingly, the F.I.R. was lodged in the morning at about 07:30 A.M. P.W.3 has clearly testified having seen all the four accused throwing away the body and running away. The body of the deceased as is evident from the post-mortem report bore fifteen ante-mortem injuries and the cause of death was shock and hemorrhage as a result thereof. The Autopsy Surgeon has proved the post-mortem report and the injuries as also cause of death mentioned therein. The lodging of the F.I.R. considering the fact that the incident took place in the night and the police station was about 10 Kms. away was prompt. The motive for the murder was the illicit relation between the

deceased and daughter of Jagdamba Prasad as has been testified by P.W.1. Therefore, the prosecution has proved its case against the accused beyond reasonable doubt but on minor discrepancies in the testimony of witnesses and purely on conjectures and surmises, trial court has acquitted the three accused while at the same time convicting Jagdamba Prasad. Therefore, the judgment of acquittal is liable to be set aside and the remaining three accused are also liable to be convicted and punished for the offence with which they have been charged.

(15) Sri Anil Kumar Maurya, learned counsel for the acquitted persons submitted that the testimony of P.W.1 to P.W.3 are unreliable in view of the inconsistencies in the same as also contradictions in their own testimonies. There are grave contradictions and inconsistencies in the prosecution case. The case has been improved from the stage of filing of F.I.R. to the recording of statement under Section 161 Cr.P.C. and even thereafter before the trial court. The F.I.R. was delayed and has been lodged after deliberation and consultation so as to falsely implicate the accused with ulterior motive and on account of prior rivalry and merely because, some of the accused were relatives or neighbours of the main accused- Jagdamba Prasad. There is no recovery of the lantern or torch which may have provided visibility for P.W.2 to see the incident in the grove. P.W.2 is an eighty years old person and as per oral testimony of the witnesses, he was unable to stand for long, therefore, it is highly unlikely that in the dark night when the incident took place, he could have seen any such incident. None of the witnesses are reliable. The accused were

roped in merely on suspicion. The trial court has rightly acquitted Santram, Ramdev and Ramdas and the said judgment of acquittal does not require any interference especially in view of the law with regard to appeal against acquittal.

(16) Learned counsel for convicted Jagdama Prasad, Sri Kamil submitted that trial court has committed a grave error in convicting Jagdama Prasad by making out a new case different from the case of the prosecution which is absolutely impermissible in law. The trial court has convicted Jagdama Prasad purely on conjectures and on an imaginary story which was not even the case of prosecution. When three persons have been acquitted on the same evidence, there is no way that the fourth i.e. Jagdamba Prasad could have been convicted based on the same evidence. His conviction is based on conjectures or suspicion. Nobody has seen commission of the crime in the house of Jagdama Prasad. There are no independent witnesses of recovery of the weapon allegedly used in commission of the crime nor of recovery of the alleged blood stained clothes from Jagdamba Prasad. Moreover, there were similar recovery from Santram but he has been acquitted while Jagdama Prasad has been convicted. Motive has also not been proved. There are grave inconsistencies and contradictions in the prosecution case and testimonies of the witnesses, all of which have been ignored while convicting Jagdama Prasad. There is no forensic report to establish that the blood allegedly found on the lathis and dandas recovered or the blood stained clothes recovered from the accused-Jagdamba Prasad and Santram were of the deceased. There is no evidence to prove the guilt of Jagdamba

Prasad yet he has been convicted. Therefore, the judgment of conviction is liable to be set aside.

(17) Sri Sanjay Kumar Yadav, learned counsel for the informant arguing in the revision for setting aside the acquittal of three other accused argued on the same lines as learned A.G.A. and for the same reasons he submitted that the acquitted persons are also liable to be convicted.

(18) As per the post-mortem report which has been proved by the Autopsy Surgeon (P.W.4), it is a case of homicide. The question is whether the accused committed the offence of murder and destruction of evidence or not.

(19) There is no memo regarding recovery of the body on record and none has been prepared by either of the three Investigating Officers.

(20) The bloodstained and plain soil allegedly collected from the scene of crime which is the house of Jagdamba Prasad, even if they were sent for forensic examination, there is no such report to prove that the said samples matched.

(21) In fact, nobody has seen the commission of murder inside the house of Jagdamba Prasad. No blood has been found in the house of Jagdamba Prasad. Investigating Officer- P.W.4 has stated that the blood had been washed off but there is no such mention in the siteplan prepared. In fact, the siteplan does not even mention the grove where the initial crime of carrying of Rajendra Kumar while he was asleep had taken place which is a grave lapse on the part of the Investigating Officer.

(22) There is no forensic report with regard to blood stained weapon recovered from the accused-Jagdamba Prasad and Santram nor is there any such report with regard to blood stained clothes recovered from the said accused. There is also no report with regard to plain and blood stained soil allegedly collected by the Investigating Officer from the scene of crime. The siteplan has been prepared by the Investigating Officer (P.W.4) on the statement of P.W.1. In the siteplan, there is no mention of grove where the initial incident, where it is said that the deceased-Rajendra Kumar was carried away by the accused while he was sleeping on a charpai and P.W.2 was sleeping by his side, took place. This is a serious lapse on the part of the Investigating Officer.

(23) The distance of the police station from the scene of crime is 10-12 Kms. The initial incident in the grove is said to have taken place at about 10:00-10:30 P.M. on 18.05.2004. The body is said to have been recovered at about 02:00-02:30 A.M. the same night but the F.I.R. has been lodged at 07:30 A.M. in the morning. In the month of May, sun rises early. There is no explanation for this delay in lodging of the F.I.R. The unexplained delay in lodging of the F.I.R. gave room for deliberation and consultation and possible false implication may be on suspicion or for other reasons. This, of course, is apart from the fact that there are inconsistencies in the prosecution evidence with regard to the police reaching the scene of crime which will be dealt with hereinafter.

(24) P.W.1-Jaisram Verma has neither seen the first incident which occurred at about 10:00-10:30 A.M. when it is alleged that the accused carried away Rajendra Kumar from the grove

towards the house of Jagdamba prasad nor has he seen commission of the crime in the house of Jagdamba Prasad nor has he seen the accused throwing away the body of the deceased near the chak road in the fields of Ramchander. His testimony is relevant only to the extent he says, on hearing the shouts of his grandfather (P.W.2) who was sleeping by the side of Rajendra Kumar (deceased) in the grove, he woke up and ran towards the grove which is situated about 200-250 meters and thereafter, he has testified that he raised an alarm whereupon other villagers woke up and they all went to the house of Jagdamba Prasad which was found to be locked and the women and children of Jagdamba Prasad family were found standing outside the house. He has stated that house of Jagdamba Prasad is about 10-15 steps from the grove. It is about 20-25 steps away from the place where the grand-father was lying on a charpai in the grove. He has stated that they reached the house of Jagdamba Prasad within two-four minutes after running from the house i.e. after running from the house to the grove and to the house of Jagdamba Prasad. Considering the distance of house of P.W.1 from the grove which is 200-250 meters, even after taking into consideration that there may be open spaces in between, considering the age of P.W.2 who is said to be eighty years at the time of commission of the crime, it is highly unlikely that the voice of P.W.2 could have reached such a distance and P.W.1 could have reached the scene of crime immediate especially as he has stated that he was asleep in his house when he heard the voice of his grandfather and on hearing such shouts he ran towards the grove.

(25) In any case, the testimony of P.W.1 is relevant only to the extent aforesaid and it does not help the prosecution's case much as he is not a witness to either of the three important incidents which took place in the said night as already referred hereinabove.

(26) As regards seeing the accused while they were running away after throwing the body P.W.1 has stated that he did not see them running away but has stated that other witnesses had seen them. He has stated that when other witnesses were shouting and telling that the accused were running away, inspite of it, he did not see them running away. P.W.1 is aged about thirty years and must have had a good eye-sight presuming that there was visibility in the night at about 02:00-02:30 A.M. In this context, we have to keep in mind that P.W.3 who claims to have seen the accused was aged about 60-61 years on the date of the incident. Apart from it, no other witness has been produced who may have seen the accused running away after throwing the body of the deceased.

(27) P.W.1 has mentioned about his suspicion on seeing the door of Jagdamba Prasad's house locked that, his brother was being kept inside. He has admitted that southern wall of Jagdamba Prasad's house did not have any roof etc yet he did not try to find out from that side as to whether his brother was being kept inside or not. He has also not spoken about hearing any voice from inside the house. This is important as according to post-mortem report there were about fifteen ante-mortem injuries and if such injuries have been inflicted upon the deceased inside the house of Jagdamba Prasad and P.W.1 along with other witnesses had reached the house of Jagdamba

Prasad within two or four minutes as claimed, then, obviously, they would have noticed something amiss.

(28) He has also not explained as to why in these circumstances, the police was not informed immediately and why the F.I.R. was lodged in the morning at 07:30 A.M. though as stated earlier, in the month of May, dawn would break early. P.W.1 has stated that the Daroga reached the village at 08:00 A.M. whereas P.W.2 says that Circle Officer reached the scene of crime in the night itself.

(29) In this context, it is relevant to mention that as per P.W.2, the police had reached the scene of crime in the night itself. He has clearly stated in his cross-examination that Circle Officer had reached the scene of crime in the night when his lantern was still lit. He has also stated that Daroga had reached 02:30 A.M. in the night of the incident. P.W.3 has also testified that Daroga had reached the scene of crime at 02:30-03:00 A.M. the same night yet the F.I.R. has been lodged at 07:30 A.M. in the morning. In this context, we may also consider the statement of P.W.8-the Head Constable who had made the requisite entries in the police records and lodged the F.I.R. in the morning that the Chowkidar-Prabhu Dayal of the village had orally intimated the police in the night itself but Inspector was out in the area. This creates a doubt on the prosecution case especially in view of the delay in lodging of the F.I.R. as already discussed, about which no explanation has been offered by the informant who submitted the written tehrir on which the F.I.R. was lodged.

(30) P.W.1 has also not given any acceptable explanation as to why if the incidents happened in such a short time and he

reached the house of Jagdamba Prasad within 2-4 minutes of hearing the shouts of his grandfather from the grove and he suspected that his brother was being held inside the house of Jagdamba and especially as he was accompanied by several other villagers 10 to 25 in numbers, no attempt was made in such an emergent situation to break the lock and enter the house or for that matter enter it from southern wall which did not have any roof, especially when, according to him, there was a motive on the part of Jagdamba Prasad on account of the alleged illicit relationship of the deceased with his daughter. No such attempt was made. Instead, he has stated that he along with the villagers tried to find out the whereabouts of his brother.

(31) There is no explanation as to why in these circumstances, he did not immediately reach to police station especially as he has stated that villagers owned motorcycle and jeep and one of them i.e. Raghunath also had a telephone and he has accepted the fact that in summers dawn breaks at about 04:00 A.M. Instead, he has stated that he went to the police station on a bicycle in the morning.

(32) P.W.1 has accepted the fact that he has not mentioned about the illicit relation between the deceased and daughter of Jagdamba in his written tehrir. He has accepted the fact that the he had not mentioned in the written tehrir / F.I.R. that the accused had carried his brother- Rajendra Kumar to the house of Jagdamba Prasad nor that this incident had been seen by his grandfather in torch light.

(33) In cross-examination, he has also stated that the distance between the house of Jagdamba where the crime of

murder is said to have been committed and the place from where the body has been recovered is 200 meters. Now, considering the sequence of events mentioned hereinabove, if the villagers and P.W.1 and P.W.3 had reached the grove within two to four minutes as claimed by P.W.1 and four to six minutes as claimed by P.W.3 and they were searching for Rajendra Kumar in various groups then one fails to understand as to when the crime was committed and when the accused had the time to throw the body 200 meters away from the scene of commission of crime and why they were not seen by anybody taking the body out from the house of Jagdamba Prasad especially as it has come in the testimony of P.W.1 and P.W.3 that when they found the house of Jagdamba Prasad locked they immediately went towards the fields where ultimately the body of the deceased was recovered. This creates a doubt on the entire prosecution case. In cross-examination, he has clearly stated that nobody had seen the accused carrying the body of the deceased and throwing it. When the witnesses shouted that the accused were running away even then he could not see where the accused were and what was the distance from where he was standing. As already stated, he is not a witness to the factum of body being carried away from the grove to Jagdamba Prasad's house nor of commission of crime at Jagdamba Prasad's house nor has he witnessed the accused throwing the body and running away near the Char road. His testimony is therefore of no significance for proving the prosecution case.

(34) P.W.2-Ram Lakhan is the grandfather who was sleeping by the side of Rajendra Kumar in the grove. He has stated that

they were sleeping at the center of the grove. The measurement of the grove has been mentioned by him as sixteen lathas from north to south. He has also stated that the grove was a *kalmi bag* and the height of the mango trees was about 10 hands. The branches were about three hands above the ground. The initial incident happened at about 10:30 P.M., according to P.W.2. In this situation with the height of trees and the branches being only three hands above the ground considering that, he is an eighty years old person whose visibility would not be very good, he claims to have seen the accused carrying away Rajendra Kumar in the night.

(35) P.W.3 who is a neighbour of P.W.2 has clearly stated that P.W.2 did not have such strength so as to chase the accused-Jadgamba. This is inconsistent with the testimony of P.W.2 that he ran a few paces after the accused although he i.e. P.W.2 has himself stated that he cannot keep standing for long which also makes his testimony suspect. Moreover, P.W.3 has stated that when he reached the grove on hearing the shouts of P.W.1, he found P.W.2- Ram Lakhan standing near the charpai in the grove whereas P.W.2 has stated that he ran a few paces towards the house of Jagdamba and was only a few paces away from it which is inconsistent especially as the said charpai was at the centre of the grove which as stated by P.W.2 measured sixteen lathas from north to south. It has come in the testimony that it was a dark night.

(36) P.W.2 though initially he has stated that he was sitting on a charpai at a short distance from Rajendra Kumar when the latter shouted but, in his cross-examination, he has stated that he was feeling sleepy and was about to sleep and it is

incorrect to say that he was sitting at the time of the incident, but immediately thereafter, he has stated that he has rightly testified in examination-in-chief that when his grandson was being carried away he was sitting. He has also stated that whatever has been stated by him today in the cross-examination i.e. 24.04.2006 was also correct, that is, he was sleeping and was also sitting. He has, however, stated that he did not see as to who was holding his grandson by the leg and who was holding his hands while carrying him away. None of them were carrying wooden sticks. Considering the age of this witness, the time of the offence and the testimony of P.W.3 and the contradiction in his own statement as to whether he was awake or sleep, it creates a reasonable doubt as to whether, in fact, he saw his grandson being carried away.

(37) In this context, he has spoken about a lantern being lit in the grove and also that he saw the said incident in torch light. However, there is no recovery of any torch.

(38) P.W.2 has further stated that he had seen the accused taking his grandson in the house of Jagdamba Prasad and also that they had not masked their faces. The accused belonged to the same village and in fact, they live nearby and if they were committing the crime in the dead of night in the grove when the grand-father was awake or was in such a position where he could be awakened, it is unlikely that they would not mask their faces and even if they did not, it is highly unlikely that they would allow the crime to be seen by the grandfather and they would in his presence while he was witnessing the incident take the body to the house of Jagdamba Prasad to commit the crime especially as house of Jagdamba Prasad is

situated barely two lathas from the place where Rajendra Kumar (deceased) and P.W.2 were on the charpai in the grove.

(39) Moreover, if P.W.2 had seen them taking Rajendra Kumar inside the house of Jagdamba Prasad from the northern door then there was all the more reason for the villagers to have broke open the lock on the house of Jagdamba Prasad to enter it, so as to prevent any crime being committed or for that matter to immediately raise an alarm and awaken other villagers especially the Pradhan or to have informed the police immediately as at least one of the villagers i.e. Raghunath had a telephone and there were others who owned motorcycles and one of them Ramu Yadav even owned a jeep as has come in the testimony of P.W.1 himself. None of this was done and the villagers including the witnesses kept looking for Rajendra Kumar in and around the village till his body was recovered at 02:00-02:30 A.M. The crime, in fact, was committed during three to four hours of the time when the villagers and the witnesses came to know about the incident and during which they were looking for Rajendra Kumar. This appears to be highly unlikely.

(40) P.W.2 has stated that it took about half an hour for the villagers to reach the grove till then he and P.W.1 did not have the courage to approach the house of Jagdamba Prasad. Now, this is not consistent with the testimony of P.W.1 who says that they reached the house of Jagdamba Prasad after first going to the grove and talking to P.W.2 within two to three minutes and P.W.3 has stated that this happened within four to six minutes. P.W. 2 has stated that about 25 villagers had reached the scene. If it was so then they could have easily

broken the lock of house of Jadgamba Prasad considering the sequence of events narrated by the witnesses. But this was not done. He has spoken about a suspicion that Rajendra must have been detained inside the house and murdered there but, this is a mere suspicion as nobody has seen this happening. Most important, in cross-examination, he has stated at one place that his grandson could not scream, therefore, there is no question of any scream being heard and they were strongly of the belief that his grandson was being held up in the house. Now, if the grandson did not scream then how P.W.2 has stated initially that he heard the shout of his grandson inside the grove, woke up and even ran a few paces behind the accused while they were carrying him away. This again is a contradiction in the testimony of P.W.2 himself. Suspicion howsoever strong cannot take the place of evidence.

(41) P.W.2 has stated that though the villagers went to the house of Jadgamba but they did not go to the house of any other accused. Now, this is inconsistent with the testimony of P.W.1.

(42) P.W.2 has stated that when all of them were looking for Rajendra they had not seen the accused-Jagdamba nor had anybody told him of having seen him. This is not consistent with the testimony of P.W.3 who has stated that the accused were running away after throwing the body and P.W.1 has stated that other witnesses had seen this though he had not.

(43) In view of the above discussion, we are of the opinion of P.W.2 is not reliable. His testimony does not inspire confidence in view of the inconsistencies and contradictions and especially in view of his age.

(44) At this stage, we take note of the fact that testimony of P.W.2 himself, who in fact was a witness to the alleged incident of Rajendra being carried away by the accused, was recorded on 04.06.2004. Being an eighty year old person, there is no evidence to the effect that he was not available at his house from the time of commission of crime till recording of his statement, as such, the statement of the Investigating Officer P.W.4 that he was not available at his house is also not acceptable. There is no explanation as to why the statement of this important witness has been recorded with such delay. This also creates a doubt on the prosecution case as it leaves scope for deliberation, consultation and false implication may be on suspicion or because of the motive being alleged.

(45) Prosecution case is not believable in view of unnatural conduct of the witnesses and other villagers in not entering the house of Jadgamba Prasad to find out whether Rajendra was being kept there or not. It appears that crime was detected only later and thereafter a story has been cooked up and that is why the F.I.R. has been lodged belatedly and the time lapse has been used to deliberate, consult and lodge the F.I.R. may be on suspicion or on account of the alleged motive of illicit relationship between the deceased and daughter of Jadgamba Prasad.

(46) P.W.3 is a neighbour of P.W.1 and P.W.2. He is a witness of body of the deceased being found and claims to have seen the accused running away after throwing it. This aspect has been dealt with earlier. There is no other witness who has spoken about having seen the accused throwing away the deceased's body and running away. P.W.1 who was present

with P.W.3 did not see it. P.W.3 has stated that house of P.W.1 is near his house but the grove is far away. He has then stated that he reached the grove on hearing the shouts of P.W.1 and not P.W.2 which is inconsistent with the testimony of P.W.1 but, even if this is ignored, the fact is that an eighty year person (P.W.2) raised an alarm in the grove situated about 200-250 meters which was heard by P.W.1 and P.W.3, who claim to have reached the grove and the house of Jagdamba Prasad within two-four or four-six minutes which in the circumstances considering that it was a night appears to be unbelievable.

(47) He has stated in his cross-examination that they i.e. the witnesses and the villagers came to know that body of Rajendra has been taken out of the house of Jagdhamba whereupon P.W.1 stated that it was useless to stand outside his house. Accordingly, they went towards the field of Ramchander using the Kharanja. They did not go anywhere else to look for Rajendra. Now, this testimony of P.W.3 is not reliable. If the time lapse between the shouts of P.W.2 and the villagers and P.W.1 and P.W.3 reaching the house of Jagdamba Prasad is only four to six minutes then how and under what circumstance they came to know that the body had already been taken out of the house has not been proved. P.W.2, on the other hand, says that though P.W.1 reached there immediately, the villagers reached the grove after half an hour. There is no explanation for these inconsistencies in the prosecution case.

(48) The testimony of P.W.3 is also intriguing that they straightaway went from the house of Jagdamba to the field of

Ramchander where ultimately the body was found and did not look anywhere else whereas the testimony of P.W.1 is something else. He has also supported the testimony of P.W.2 that they did not go to the house of other accused -Santram etc. but only went to the house of Jadgamba whereas P.W.1 has testified otherwise. It is also intriguing as to why they did not go to the house of other accused if P.W.2 had seen all the accused carrying away Rajendra from the grove.

(49) P.W.3 has stated that they were about eight to ten people looking for Rajendra and then they saw the accused running away after throwing the body of Rajendra in the field of Ramchander and that they had seen this incident from a distance of one bigha which is not far off, yet, even after an attempt to chase them, they could not catch them. As already stated, P.W.1 has denied seeing the accused at this time. There is no other witness who may have testified on the same lines. In fact, P.W.2 has also stated that nobody had told him about having seen the accused running away.

(50) Most important, the testimony of P.W.3 was recorded by the Investigating Officer on 04.06.2006 i.e. about fifteen days after the incident. In cross-examination, P.W.3 has stated that during this period, he was at his house and had not gone anywhere to attend any marriage etc. whereas the Investigating Officer has stated that he did not find P.W.3 at his house which is not acceptable in view of the testimony of P.W.3 himself. Thus, there is no explanation for delay in recording of statement of P.W.3 and it gives reasonable basis for opining that his statement was recorded subsequently after due

deliberation and consultation and that he is a tutored witness, not at all reliable.

(51) P.W.3 has feigned ignorance as to why his statement about having seen the accused while running away has not been recorded by the Investigating Officer under Section 161 Cr.P.C.

(52) Most important, P.W.3 has also spoken/ testified about the Daroga reaching the scene of crime at 02:30-03:00 A.M. in the night when the crime was committed but the F.I.R. has been lodged at 07:30 A.M. in the morning. He has accepted the fact that his testimony was recorded by the Daroga 10-15 days after the incident.

(53) Prosecution has failed to prove that murder was committed inside the house of Jagdamba Prasad. Place of occurrence has not been proved. As already stated, there is no independent witness of recovery of the weapon allegedly used in commission of the crime nor of the blood stained clothes worn by the accused. There is no forensic report to link the blood found on the aforesaid with that of the deceased. There is no forensic report regarding blood soaked soil and plain soil collected from the alleged scene of crime having matched. Ocular evidence is unreliable. Rajendra Kumar is said to have been murdered in the house of Jagdamba Prasad but there is no evidence in this regard. P.W.2 is said to have seen the accused carrying away Rajendra Kumar while he was alive from the grove towards the house of Jagdamba Prasad but in view of the discussion made hereinabove his testimony is not reliable. P.W.1 has not seen any of the three incidents which constitute the crime. P.W.3 claims to have seen the accused

throwing away the body of the deceased and running away but P.W.1 who was also present on the spot and is younger in age did not see the said incident. There is no other witness of this fact though several persons are said to have been present at that time.

(54) Moreover, at this stage, we may refer to the inquest report which was prepared in the morning and on a reading of it, we find that though there is no such requirement in law to mention the incidents which took place while committing the crime, the witnesses to the inquest, none of whom are witness of any of the incidents constituting the crime have opined that Jagdamba Prasad along with other accused had murdered the deceased inside his house at about 10:30 P.M. which is surprising as they could not have any such information.

(55) Considering the facts and evidence before us though it is a case of homicide, we are of the opinion that the prosecution has miserably failed to prove beyond reasonable doubt that the crime of murder was committed by the four accused. The trial court has rightly acquitted Santram, Ramdev and Ramdas and we see no infirmity in the judgment of the trial court acquitting these persons. The view taken by the trial court is a possible view, therefore, in view of decision of Hon'ble the Supreme Court in the case of '**State of Karnataka vs. Gopalkrishna**' (2005) 9 SCC 291; '**Sudershan Kumar vs. State of Himachal**' (2014) 15 SCC 666 & '**Dilawar Singh vs. State of Haryana**' (2015) 1 SCC 737, we see no reason to interfere with the judgment of acquittal.

(56) So far as Criminal Revision No.398 of 2007, preferred by the first informant to assail acquittal of respondents,

namely, Santram, Ramdev and Ramdas is concerned, we find it relevant to refer Section 401(3) of Cr.P.C., which deals with the power of High Court while dealing with criminal revision which challenges the acquittal of respondents and seeks conviction thereof. For ready reference it is quoted hereinbelow:-

"401. High Court's powers of revision.

(1).....

(2).....

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction."

(57) In this regard Hon'ble the Supreme Court in the case of **'Bindeshwari Prasad Singh v. State of Bihar'**, (2002) 6 SCC 650 in para no.12 has held as under :-

"12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of

evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See D. Stephens v. Nosibolla [1951 SCC 184 : AIR 1951 SC 196 : 1951 Cri LJ 510] , K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788 : (1963) 1 Cri LJ 8] , Akalu Ahir v. Ramdeo Ram [(1973) 2 SCC 583 : 1973 SCC (Cri) 903] , Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu [(1975) 4 SCC 477 : 1975 SCC (Cri) 543 : AIR 1975 SC 1854] and Mahendra Pratap Singh v. Sarju Singh [AIR 1968 SC 707 : 1968 Cri LJ 665] .)"

(58) Having regard to the provision contained in Section 401(3) Cr.P.C. and law laid down by Hon'ble the Supreme Court in **Bindeshwari Prasad Singh (supra)** coupled with the fact that in the preceding paragraphs we have held that the finding of acquittal of respondents by means of impugned judgment and order dated 22.06.2007 is based on proper appreciation of evidence which does not suffer from any infirmity or illegality. Therefore, we are of the considered opinion that the criminal revision also lacks merits, which deserves to be dismissed.

(59) As regards conviction of Jagdamba Prasad, on a reading of judgment of the trial court we find that a cryptic discussion is there in this regard towards the end. After having discarded every evidence, the trial court for the reasons best known to it has all of a sudden opined that on account of prior illicit relation between the deceased and the daughter of Jagdamba Prasad, as he was sleeping in the grove situated nearby the house of Jagdamba Prasad, the deceased-Rajendra entered the house of Jagdamba Prasad to meet his daughter

but his entry and presence was detected and Jagdamba Prasad caught him. Being infuriated, Jagdamba Prasad struck Rajendra Kumar with lathis and wooden sticks and injured him. Jagdamba Prasad throttled the deceased with the use of wooden stick resulting in his death sometime in the night and threw the body in the field of Ramchander. It has then opined that it is a case of circumstantial evidence. We can only say that the trial court has imagined a story which was not even suggested by the prosecution much less proved. This was never the case of the prosecution. Not much discussion is required to demonstrate the apparent error committed by the trial court while convicting Jagdamba Prasad. His conviction is based purely on conjecture and surmises which cannot take the place of evidence. Such conjectural findings cannot be the basis for his conviction.

(60) We are thus of the opinion that conviction of Jagdamba Prasad is perverse and is liable to be set aside. The judgment of the trial court so far as it convicts appellant-Jagdamba Prasad and sentences him to life imprisonment and imposes other sentence is liable to be set aside. It is accordingly set aside. The remaining part of the judgment, that is, so far as it acquits the other accused, is sustained.

(61) Jagdamba Prasad-the appellant is also acquitted of the charge framed against him. The appellant- Jagdamba Prasad is on bail. Bail bonds submitted earlier are cancelled and sureties are discharged. The appellant-Jagdamba Prasad is directed to file personal bond and two sureties in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure within six weeks.

(62) In view of the above discussion, the appeal of the State bearing Government Appeal No.1000325 of 2007 is dismissed. The appeal of the appellant-Jagdamba Prasad bearing Criminal Appeal No.1462 of 2007 is allowed. The revision of the informant bearing Criminal Revision No.398 of 2007 is dismissed.

(63) Let lower court record along with a copy of this judgment be sent to learned trial court for its information and necessary compliance.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :- 04.03.2024

Shanu/-