

Court No. - 44

Case :- CRIMINAL APPEAL No. - 1433 of 2017

Appellant :- Ram Vilas And Another

Respondent :- State of U.P.

Counsel for Appellant :- Ashish Kumar, Dinesh Kumar Pandey, Manu Sharma, Shailendra Singh, Shweta Nishad

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Madan Pal Singh, J.

1. Heard Shri Anjani Kumar Singh along with Ms. Shweta Nishad, learned counsel for the appellant no. 2, Shri Manu Sharma along with Shri Dinesh Kumar Pandey, learned counsel for the appellant no. 1 and learned A.G.A. for the State.

2. Present criminal appeal arises from the judgment and order dated 31.01.2017 passed by Shri Yogendra Ram Gupta, learned Additional Sessions Judge, Court No. 2, Maharajganj, in S.T. No. 37 of 2001, State of U.P. Vs. Ram Vilas and Kodai, whereby the learned court below has convicted the appellants under Section 302 read with 34 IPC and sentenced them to life imprisonment; also it has imposed fine Rs. 25,000/- on each accused person, and provided for default sentence of one year in lieu thereof.

3. The appellants were on bail during the trial. They are in jail since their conviction, for over eight years.

4. The prosecution story emerged upon the FIR registered on the strength of disclosure made by the village chowkidar Jugul (P.W.-1 at the trial) at Police Station Kothibhar, Maharajganj, on 15.05.1994, disclosing that the dead body of Dharmendra (aged about 8-9 years) son of Thagai, resident of village Barwa Dwarika, was found lying in the sugarcane field of Ahmad. He also disclosed

visible injury in the neck area of the deceased.

5. On such information, the FIR was registered by the police on 15.05.1994. It is Ex.Ka-12 at the trial. Thereupon, inquest was conducted on 15.05.1994 at about 9:05 a.m. The Inquest Report is Ex.Ka-11 at the trial. The autopsy examination was conducted on the dead body of the said Dharmendra, the next day i.e. on 16.05.1994 at 03:20 p.m. by Dr. R.B. Dwivedi (P.W.-7 at the trial) at the District Hospital Gorakhpur. The Autopsy Report is Ex.Ka-1 at the trial.

6. Relevant to our discussion, the death was estimated to have been caused about two days earlier which would not be earlier to (late) afternoon on 14.05.1994. As to the injuries, the Autopsy Report recorded as under :

“(1) Incised wound on the anterior aspect of neck 10 cm x 3 cm x bone depth wound trachea esophagus by vessels of neck of the end in somewhere area wound fell spurted bleeding and and filled clotted blood wound the back of neck. Cervical vertebra can be felt through the wound cut.....(illegible)..in bone of area.

(2) abrasion in the scrotum are present in size of 3 cm x 2 cm.”

7. The cause of death was recorded as below :

“Died due to hemorrhage and shock provided by ante mortem injuries.”

8. Upon completion of investigation, charge sheet was submitted on 03.06.1994 by I.O. Saroj Kumar Singh (P.W.-9 at the trial). It is Ex.Ka-10 at the trial.

9. In such facts, upon the case being committed for trial by the Court of Sessions, following two charges came to be framed against the two accused persons :

Against accused Kodai :

“प्रथमतः, यह कि दिनांक 14.05.94 को रात में 9.00 बजे के बाद किसी समय स्थान बहद ग्राम बरवा द्वारिका में स्थित अहमद के गन्ने का खेत अन्तर्गत थाना कोठीभार जनपद महाराजगंज में सह अभियुक्तगण रामबिलास व अनिरुद्ध ने मृतक धर्मेन्द्र का हाथ-पैर पकड़ लिया तथा आपने धर्मेन्द्र का सिर पकड़ कर उसका गला रेतकर साशय उसकी हत्या कारित की। इस प्रकार आपने भा0दं0सं0 की धारा 302 के अन्तर्गत दण्डनीय अपराध किया है, जो कि इस न्यायालय के प्रसंज्ञान में है।”

Against accused Ram Vilas :

“प्रथमतः, यह कि दिनांक 14.05.94 को रात में 9.00 बजे के बाद किसी समय स्थान बहद ग्राम बरवा द्वारिका में स्थित अहमद के गन्ने के खेत अन्तर्गत थाना कोठीभार जनपद महाराजगंज में आपने सामान्य आशय के अग्रसरण में धर्मेन्द्र को ले गये और वहाँ पर आपने सह अभियुक्त अनिरुद्ध के साथ मिलकर धर्मेन्द्र का हाथ-पैर पकड़ लिया तथा सह अभियुक्त कोदई ने चाकू से धर्मेन्द्र का गला रेतकर साशय हत्या कारित की। इस प्रकार आपने भा0दं0सं0 की धारा 302/34 के अन्तर्गत दण्डनीय अपराध किया है, जो कि इस न्यायालय के प्रसंज्ञान में है।”

10. At the trial, besides the above documentary evidence, the prosecution relied on the oral evidence of 10 witnesses. In that, the village chowkidar Jugul was examined as P.W.-1. He had not seen the occurrence. He proved the discovery of the dead body made by him and the attending facts as reported by him to the police on 15.05.1994.

11. Next, Raj Mangal, village shopkeeper was examined as P.W.-2. He led evidence of last seen. In that, he narrated that on the evening of 14.05.1994, the present appellant no. 2-Kodai, the deceased-Dharmendra and one Omprakash had visited his shop to buy Ghugri (peas). At that time, another person named Aniruddh also came to his shop. After eating Ghugri (peas), they left his shop. He could not disclose where those four persons went. He also did not

prove any other fact with respect to the transactions or the conversation that may have taken place between those four persons or the time when that occurrence may have taken place. However, during his cross-examination he specified that time 5 P.M. It may be noticed here itself that he made no mention of appellant no. 1, Ram Vilas. He also maintained that the above named persons had visited his shop earlier as well, to eat *Ghugri* (peas) and that he knew nothing about the occurrence.

12. Next, Jaishree was examined as P.W.-3. He, a manual labourer, stated that 9-10 years ago a celebration had been organized near the village Temple. He denied having seen Ram Vilas, Kodai (two accused persons) and Aniruddh along with Dharmendra at that celebration. At that stage, he was declared hostile. During his cross-examination by the prosecution, he further denied having made any statement to the Investigating Officer during investigation.

13. Sudhai was examined as P.W.-4. Before taking note of his deposition, it may be noted that the deceased Dharmendra was the son of Thagai and Ishrawati. Thagai was son of Brijlal and Koylee. Brijlal pre-deceased. Thagai also died. He was survived by his mother Koylee, wife Ishrawati, son Dharmendra and sister Parwati. Parwati was married to Mangroo son of Sudhai (P.W.-4). This witness (P.W.-4) stated that the father of Thagai namely Brijlal had died earlier. After his death, Koylee lived alone. Upon the death of Thagai, his wife Ishrawati started living with Ram Vilas (appellant no. 1), in another village. In that circumstance, Koylee was taken care of by her daughter Parwati (P.W.-8).

14. He denied any acquaintance with Ram Vilas and further stated, neither he nor his daughter-in-law Parwati (P.W.-8) lived in the village where the occurrence took place. At this point, the said witness was also declared hostile.

15. During his cross-examination by the prosecution, he only stated that after the death of Thagai, his widow Ishrawati started living with Ram Vilas. He specified that he had not visited the village of Koylee for the last 2-3 years. He also denied that he had visited her home when Dharmendra died. He could not describe the age of Dharmendra at the time of his death and he denied that Koylee told him about his assailants.

16. During his further cross-examination by the defence, he stated that Koylee had sold her properties after the death of her son Thagai.

17. Next, Mangroo, the husband of Parwati was examined as P.W.-5. He is the uncle (*phupha* of the deceased-Dharmendra). He also denied any knowledge about the occurrence. He remained evasive if he had visited the paternal family of the deceased either at the time of the death of Brijlal or Thagai and he could not recall, if his wife Parwati (P.W.-8) had visited her paternal family at that time. He denied any knowledge about the quality of relationship enjoyed by his wife Parwati (P.W.-8) with her paternal family. At the same time, he maintained that his wife used to take care of his mother-in-law Koylee.

18. He denied knowledge of the whereabouts of Ishrawati but claimed that both sons of Ishrawati used to live with his mother-in-law Koylee. At that stage he was declared hostile.

19. During his cross-examination by the prosecution, he denied having performed the last rites of his mother-in-law, Koylee. In that regard, he stated that he had no occasion to perform those rites in the presence of her two grand sons including the deceased-Dharmendra. As to the agricultural and house property of his mother-in-law Koylee, he stated that the same were sold to his wife

Parwati. In turn, she sold the same. He feigned ignorance why no part of that property was inherited by the sons of Thagai.

20. During his further cross-examination by the defence, he admitted that after the death of the sons of Thagai, the right to succeed to the estate of Thagai got vested in his wife Parwati. At the same time, he further denied that he had committed the murder of Dharmendra to gain those properties.

21. Thereafter, Omprakash Nath Singh was examined as P.W.-6. He is a witness of inquest. Nothing of substance came out during his examination.

22. Next Dr. R.B. Dwivedi was examined as P.W.-7. He proved the autopsy report. The nature of injuries and the cause of death as reported in the Autopsy Report are not disputed, at present.

23. Next, Parwati, the aunt ('*bua*') of the deceased-Dharmendra was examined as P.W.-8. She proved that after the death of Thagai, his widow Ishrawati started living with Ram Vilas (appellant no. 2). According to her, those persons took care of her nephew Dharmendra (deceased). Also, upon the death of Koylee, Ram Vilas used to cultivate the agricultural land of her pre-deceased brother Thagai.

24. As to the occurrence, she first denied any knowledge as to who may have caused such occurrence but later almost in the same breath she claimed that he had been done to death by Ishrawati and Ram Vilas, motivated by the greed for the estate of Thagai. At this stage, on being questioned, she first claimed that the house property of Koylee is lying as it was but added that she had sold the agricultural land.

25. During her cross-examination, she disclosed that her father died first and her brother Thagai, later. She also admitted that after the

death of her father, his agricultural properties came to be recorded in favour of her mother Koylee under a Will. She denied having seen the occurrence. She learnt of the same at her matrimonial home. She admitted that after the death of Dharmendra, the entire properties of her mother Koylee came to be vested in her. She sold those lands to repay the loans availed by her to provide for the treatment expenses of Koylee. Last, she denied that she had caused the occurrence, for greed of the property.

26. Next, I.O. Saroj Kumar Singh was examined as P.W.-9. Nothing of substance (for the purpose of this appeal), came out during his examination. Similarly, Constable Israr Alam was examined as P.W.-10. He proved the preparation of the check FIR. Thereafter, statement under Section 313 Cr.P.C. of the accused persons were recorded. No specific question was put to either accused with respect to the evidence of last seen. In that state of the evidence, order of conviction and punishment has arisen against the accused persons.

27. Submission of learned counsel for the appellants is, there is no direct evidence of the occurrence. First, as to the circumstantial evidence, besides the solitary statement made by one of the witnesses Raj Mangal (P.W.-2) that the accused persons were last seen with the deceased (as on earlier occasions) on the evening of 14.05.1994, there is no other circumstance proven by the prosecution to complete the chain of evidence, to establish that the appellants and no other person had caused the occurrence. Second, key witnesses of fact set up by the prosecution were declared hostile by the Court. Nothing of substance emerged during their cross-examination as may allow the Court to rely on any part of their statement in support of any circumstance necessary to be established by the prosecution. Third, no recovery whatsoever was

made and no proof has arisen either of the place or time or manner of the occurrence. Moreover, there is complete absence of evidence of role assignment of any of the accused persons. Fourth, as to motive, besides the fact that it is a double edged weapon, here, on the strength of the effective cross-examination of the prosecution witnesses, namely, Mangroo (P.W.-5) and Parwati (P.W.-8), it is clearly borne out that those persons gained the estate of Koylee, upon the death of Dharmendra to the exclusion of Ishrawati. Upon the death of Brijlal, the properties devolved on his wife Koylee under a will. In any case, upon the death of his father Thagai, besides Dharmendra and Ishrawati, there was no Class-I heir available. It being admitted to those witnesses that the estate of the Koylee came to Parwati (through whatever means) and that property was sold by her, the whole premise of the prosecution allegation is inherently unbelievable. Certainly, by making allegations against the daughter-in-law of Koylee, namely Ishrawati, (mother of Dharmendra), the only possible challenge to that claim of Parwati (P.W.-8), was eliminated or in any case effectively obstructed by accusing her spouse/partner Ram Vilas.

28. On the other hand, learned A.G.A. would submit, the evidence of last seen led by Raj Mangal (P.W.-2), remains unshaken. No one else had seen the deceased alive after that time. The appellants alone had company of the deceased. He was done to death by them. To the extent that evidence has not been shaken and to the extent that no explanation has been offered by the appellants as to when they parted company of the deceased, no further proof is required.

29. Having heard learned counsel for parties and having perused the record, in the first place, we observe there is no direct evidence of the occurrence. As to the circumstantial evidence, besides the evidence of last seen referred to above, there is absolutely no

evidence led by the prosecution to prove any other circumstance. As to the evidence of last seen, Raj Mangal (P.W.-2) specified he had often seen the deceased in the company of the accused persons. He last saw them at 5 P.M on 14.05.1994. Even in that, he did not name Ram Vilas as one of the persons with whom the deceased was last seen.

30. The witness of last seen Raj Mangal (P.W.-2) clearly narrated that he had seen the appellant Kodai, Omprakash and the deceased together at 5 PM on 14.05.1994. They had come to his shop to buy *Ghugri* (peas) that they consumed and left. He also disclosed that those persons had visited his shop for that purpose, earlier as well. He did not see the appellant Ram Vilas with the deceased and he could not say where they went.

31. Thus, insofar as Ram Vilas is concerned, there is absolutely no evidence of last seen. Keeping in mind the fact that the motive (for whatever it worth be) was attributed to Ram Vilas and Ishrawati, the complete absence of evidence of last seen against Ram Vilas and there being no case of criminal conspiracy, the prosecution story begins on a figment of imagination.

32. Thus, in the first place, there is absolutely no evidence of last seen against the appellant-Ram Vilas, the person who is described to have motive to kill Dharmendra. In any case that motive is not proved. No substantive evidence arose against him that he caused the occurrence and there is no corroborative material by way of recoveries etc. to establish his involvement. Being not married to Ishrawati, he did not stand to gain any property of the deceased.

33. Insofar as the other appellants are concerned, as discussed above, though last seen with the deceased at about 5 PM on 14.05.1994 that may indicate that those accused persons were in the company of the deceased whereafter his death may have been

caused. The prosecution did not prove any fact as may remotely suggest to the Court that the fact of last seen proven by that witness was an unnatural occurrence or an occurrence such as may burden the appellants to prove any other fact in their defence. In normal occurrence such as one proved by Raj Mangal (P.W.-2) that too not against Ram Vilas (the person who is described to have motive), but against persons who had no motive namely Kodai and Omprakash, that was not sufficient to complete the chain of circumstance necessary to establish their guilt.

34. Once the said witness also proved that the presence of Kodai (appellant no. 2), Dharmendra (deceased) and Omprakash was a natural/regular occurrence where those persons used to visit his shop to consume *Ghugri* (peas) and leave thereafter, the prosecution witness himself established that the fact observed by him was one that was wholly natural in the routine followed by the deceased. Therefore, the prosecution's burden to establish the further fact as may indicate to the Court that the occurrence observed by Raj Mangal (P.W.-2) on 14.05.1994 was special, in the context of the occurrence reported, was not discharged. In the absence of any motive with the person last seen with the deceased and further in absence of Ram Vilas in that occurrence (as may have made the occurrence special, besides others), and in the absence of any recovery or any other fact proven at the trial that the appellants had caused the occurrence of death of Dharmendra, it would be presumptuous if not conjectural to hold the appellants guilty of the offence.

35. Seen in that light, no corroboration exists and no chain of evidence is seen to exist as may be complete to establish that the appellant caused the occurrence. It is not only broken but wholly incomplete. Merely because the deceased may have been seen with

some of the accused persons in the evening hours that too engaged in a wholly normal transaction of life, no presumption or proof may therefore arise that they would have caused the occurrence.

36. Then, it may be noted that the dead body of the deceased Dharmendra was discovered at about 8:30 a.m. on 15.05.1994 lying in an agricultural field. The autopsy examination took place at 3:30 p.m. next day i.e. 16.05.1994. Death was opined to have been caused about two days earlier. Thus, margin of time is shown to exist between time of last seen and the time when the death may have been caused. That circumstance remains to be tested on the strength of other material/evidence to establish any other link in the chain of circumstances. Here, no recovery of any worth has been made to establish either the time or the manner of death or the persons who may have caused such occurrence.

37. As to the motive, that is found to be completely lacking on own strength of the prosecution evidence. It is noted to be recorded that the entire estate of the grand-father of the deceased had gone to his aunt ('*bua*'), namely, Parwati (P.W.-8) after the death of his grandmother Koylee. It is also on record that that part of that estate was sold by the said Parwati (P.W.-8) for her own benefit ostensibly to pay off the loan that she may have obtained to meet the treatment expenses of her mother.

38. Whichever way the matter may be looked at, the issue of motive is completely lacking. On the contrary, a suggestion cannot be denied that the elimination of the deceased may have led to benefit being caused to the said Parwati (P.W.-8). Here, we note that in the initial allegation, according to her, Dharmendra was done to death both by Ram Vilas and Ishrawati. By naming the mother of the deceased as an accused, clear intention was expressed to deny her the right to inherit to the estate of Thagai.

39. Accordingly, the appeal is **allowed** on a benefit of doubt. The impugned judgment and order dated 31.01.2017 is **set aside**. The appellants are in jail. Let them be released forthwith unless they are wanted in any other case. All the appellants are acquitted of all the charges levelled against them.

40. Let a copy of this order be communicated to the learned trial court as also to the learned Judge who may have passed the order dated 31.01.2017 for future reference.

41. Office is directed to send back the original trial court record along with a copy of this order.

42. Let a copy of this judgement be sent to the Jail Authorities concerned for compliance.

Order Date :- 3.7.2025
SA/Prakhar

(Madan Pal Singh, J.) (S.D. Singh, J.)