

Murari Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-16-2001

Reported in : 2001CriLJ2831

Judge : J.C. Gupta and ;M.A. Khan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 147, 149, 201, 302 and 364

Appeal No. : Criminal Appeal No. 1919 of 1993

Appellant : Murari Lal

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Brahan Singh, ;N.K. Sharma and ;Mohan Chanora, Advs.

Disposition : Appeal allowed

Judgement :

M.A. Khan, J.

1. The above noted two criminal appeals arise out of the same judgment and order dated 3-11-1993 passed by Sri Jagdish IVth Additional Sessions Judge, Moradabad in Sessions Trial No. 82 of 1986 thereby convicting Sub-Inspector

Murari Lal Sharma of the offence punishable under Section 364/120B, I.P.C. and sentencing him to undergo R.I. for a period of ten years and further convicting him under Section 302/120B, I.P.C. and sentencing to undergo imprisonment for life and further convicting Sri Sharma of the offence punishable under Section 201, I.P.C. read with Section 120B, I.P.C. and sentencing him to undergo R.I. for a period of five years and further convicting him under Section 120B, I.P.C. and sentencing to undergo R.I. for a period of five years.

2. The appellants Chhatrapal, Kripal, Ranvir, Vijay Beer Singh, Harpal, Bhoorey Tyagi and Smt. Ramawati have also been held guilty of the offence punishable under Section 147, I.P.C. 364, I.P.C. read with Section 149, I.P.C., under Section 302, I.P.C. read with Section 149, I.P.C. and under Section 201, I.P.C. read with Section 149, I.P.C. and sentencing them to undergo imprisonment for a period of one year each under Section 147, I.P.C, ten years each under Section 364/149, I.P.C, imprisonment for life under Section 302/149, I.P.C. and for a period of five years under Section 201/149, I.P.C. All the sentences were made to run concurrently. Since both the appeals arise out of the same judgment and order, they are being disposed of by this single judgment.

3. One Bhagwan Singh Jat was married to Smt. Ramawati the real mother of accused appellant Chhatrapal. The aforesaid Ramawati was the resident of village Karolla and out of the wedlock of Sri Bhagwan Singh and Ramawati three daughters and one son Chhatrapal were born. After about 20 years of his first marriage with Smt. Ramawati, Bhagwan Singh aforesaid got himself remarried with a Harijan lady Smt. Phoolwati. There were protests over this marriage by the persons of community and the family members of the Bhagwan Singh. However, Bhagwan Singh did not care for those protests and objections and in protest the first wife Smt. Ramawati started living separately from her husband Bhagwan Singh and her son Chhatrapal started living with her. Second wife Smt. Phoolwati had also been living separately along with her husband Bhagwan Singh and out of that wedlock two sons Veera and Jaiveer were born. Bhagwan Singh had 80-90 bighas of land which was in possession of the appellant Chhatrapal the son born out of the wedlock of Bagwan Singh and Ramwati. Chhatrapal appellant was not providing necessary living facility to his second mother and her two sons and

about three years prior to the present occurrence Bhagwan Singh had disappeared from the village in mysterious circumstances. His two other sons in the meantime had moved an application about the disappearance of Bhagwan Singh and the appellant Chhatrapal had also lodged a report on 16-3-1983 about the disappearance of Bhagwan Singh and a case at the police station was registered. When Smt. Phoolwati the second wife of Bhagwan Singh contacted higher authorities including the District Magistrate, the official machinery came to her rescue and persuaded Chhatrapal appellant to part with some land and give it to Smt. Phoolwati so that she along with her two sons may earn their livelihood. The prosecution story further is that the appellant Chhatrapal had not been having cordial relations with Smt. Phoolwati and wanted to get rid of her and her two sons Veera and Jaiveer so that he may get the entire land of his father Bhagwan Singh. It is said that on 3-9-1985 Sri Murari Lal Sharma went to the village and arrested Smt. Phoolwati on the basis of F.I.R. lodged by the appellant Chhatrapal regarding the disappearance of his father Bhagwan Singh. Smt. Phoolwati called upon the Sub-Inspector to carry her two sons also with him or to laid over two sons to the Pradhan of the village so that the two sons may remain safe. Sub-Inspector however, did not agree and in the same night between 2/3 September, 1985 in village Faridpur Gadiya within the circle of police station Bachhraun District Moradabad the accused persons in prosecution of the common object of their unlawful assembly kidnapped Veera Singh aged 14-15 and Jaiveer Singh aged 11-12 years sons of Smt. Phoolwati while the two sons were inside the house of Phoolwati who was already carried away by Sub-Inspector Sri Sharma appellant. It is said that the accused persons entered into the house of Smt. Phoolwati and tied them with the bed sheets and then took them away from the scene of the occurrence to some unknown place in a tractor trolley belonging to one of the accused appellants. Jaipal Singh resident of Gadiya, lodged a report of kidnapping of Veera and Jaiveer at the police station Bachhraun and a case against unknown persons was registered. The police started investigation in the case and abandoned tractor was found of which a memo Ext. Ka-3 was prepared. After completing necessary formalities an investigation charge sheet was submitted against the appellants.

4. The appellants pleaded not guilty to the charges framed against them and claimed to be tried. Their defence is that they have falsely implicated due to enmity.

5. In support of its case the prosecution examined eleven witnesses in all. There Jai Pal Singh P.W. 1, Smt. Phoolwati P.W. 2, Rajveer Singh P.W. 3, Mahabir P.W. 4, Narendra Kumar Rastogi S.O. P.W. 5, Mahendra Singh P.W. 6, Chhotey P.W. 7, Mehdi Hasan P.W. 8, Raghubar Singh P.W. 9, Davendra Sharma P.W. 10 and Satya Pal Tyagi P.W. 11. The defence examined no witness and instead some documentary evidence has been adduced. The learned lower Court believed the prosecution theory, convicted the appellants and sentenced them as above. Feeling aggrieved by the said judgment and order, the present appellants have filed appeals.

6. We have heard learned counsel for the parties at length and we have gone through the record and we find that the learned lower Court was not justified in holding that the prosecution has succeeded in proving the guilt against the accused appellants.

7. The only evidence which has been adduced against appellant Sub-Inspector Murari Lal is that he conspired in commission of murder of Veera and Jaiveer Singh sons of Bhagwan Singh and with the other appellants and by the said act of conspiracy, the murder of Veera and Jaiveer Singh were committed. Jaipal Singh P.W. 1 has stated on oath that on 2-9-1985 Murari Lal Sharma Sub-Inspector came to the village and arrested Smt. Bhoolwati in connection with the murder of her husband Bhagwan Singh. Smt. Phoolwati had protested on her arrest and wanted that her sons be given in the surety of the Pradhan as she feared and apprehended danger to the life of her two sons in her absence. However, Murari Lal Sub-Inspector did not agree and took away Smt. Phoolwati from the village to the police station and she was sent to jail from the police station. It is said that in the same night Veera and Jaiveer Singh were abducted as they were left alone in their house without the care of their mother Smt. Phoolwati. This is the only evidence available on record on the basis of which it has been submitted from the side of the prosecution that the Sub-Inspector conspired with the other appellants so as to help the other appellants in the commission of murder of the two sons of

the Phoolwati.

8. We have considered this evidence on record and we find that Murari Lal Sharma, Sub-Inspector acted in the discharge of his official duty as an F.I.R. was lodged by appellant Chhatrapal about the kidnapping of his father Bhagwan Singh and Smt. Phoolwati was named in the F.I.R. The aforesaid case was registered at the police station and investigation of that case was entrusted to Sri Murari Lal Sharma, Sub-Inspector appellant. The case was registered at the police station at Case Crime No. 261 of 1985. Clearly therefore, Sri Sharma, the appellant, acted in the discharge of his duty and had lawfully arrested Smt. Phoolwati and was carried to the police station for the purpose of interrogation and was subsequently sent to jail. There is absolutely no evidence on record to show that Murari Lal Sharma had any talks with other appellants or that he had prior knowledge of this fact that in case Smt. Phoolwati is arrested, her two sons shall be abducted on that very night. In fact there is absolutely no reliable evidence on record showing that appellant Murari Lal Sharma, Sub-Inspector had hatched any conspiracy, with the other appellants. Therefore the conviction recorded against Murari Lal Sharma appellant cannot be sustained.

9. As regards the other appellants we may observe that there was a strong motive with Chhatrapal and others for committing the crime and do away with the two sons of Smt. Phoolwati the complainant and mother of the two missing sons had an equal motive to nominate the appellant falsely or under suspicion because of the disappearance of her two sons in her absence since motive cuts both ways we have to examine the evidence minutely with all care and caution.

10. It has been submitted by the learned counsel for the State that the appellant Chhatrapal is son of Bhagwan Singh born out of the wedlock of Bhagwan Singh and Ramwati and this Chhatrapal appellant himself first got rid of his father Bhagwan Singh after he had married a Harijan lady Phoolwati against the wishes of Chhatrapal and then in order to take the entire land of Bhagwan Singh, Chhatrapal appellant with the help of other relations who are also the appellants in this case, kidnapped the two sons of Phoolwati. This is no doubt true that there was a motive with Chhatrapal to commit the crime as after commission of murders

of the two sons of Phoolwati, he would have been the sole beneficiary of the estate of Bhagwan Singh as his whereabouts were not known. However, there must be some reliable evidence on record to show that the murders of the two sons of Phoolwati was done by Chhatrapal or other appellants. In the absence of corpus delicti and other evidence regarding the fact of death of the two sons of the complainant, the charge of the offence of murder cannot be substantiated. In any view of the matter, even in respect of charge of kidnapping the evidence adduced in this case does not inspire confidence. Jaipal Singh P.W. 1 is the first informant and he lodged the report Ext. Ka-4 of the occurrence at the police station and in that report he had simply stated that in the night between 2/3-9-1985 some persons had kidnapped Veera and Jaiveer Singh, sons of Bhagwan Singh. These names of appellants have not been mentioned in this F.I.R. as kidnappers or the murderers. P.W. 3 Rajveer Singh and P.W. 4 Mahabir have admitted in their statements on oath that before departure of Sri Jaipal Singh to the police station from the village in the morning, they have told Jaipal Singh the names of the accused persons as kidnappers. However, even then Jaipal Singh has not named any accused in the F.I.R. and the only presumption which can be drawn is that by the time the F.I.R. was lodged at the police station, no witness had in fact seen or identified the real culprits.

11. It is also admitted case of the prosecution that the occurrence had taken place in the dead hours of the night. Rajveer Singh P.W. 3 and Mahabir P.W. 4 themselves have admitted in their cross-examination that the occurrence had taken place after midnight and it was a dark night. The only source of light which has been available at the time of alleged occurrence was the light of torches which were allegedly held by Rajveer Singh P.W. 3 and Mahabir P.W. 4. These witnesses have admitted in their cross-examination that the cells of their torches were very weak on the relevant night and they were not providing sufficient light in the courtyard of the house of Smt. Phoolwati where her two sons were allegedly sleeping in the night. Thus the source of the light on the scene of occurrence was wholly insufficient and there was in fact no light at all in the house of Smt. Phoolwati where her two sons were allegedly lying at the time of their alleged kidnapping and the witnesses have absolutely no occasion to see and identify the culprits. Mahabir P.W. 4 has stated on oath that on the fateful night at about 1 a.m.,

he was sleeping inside his house and due to cold, he was asleep inside the room. We heard some sound and woke up and saw the occurrence from the roof of his house and by flashing his torch cells of which were very weak. Similar is the statement of Rajveer Singh P.W 3 who stated that he heard some sounds at about midnight. He woke up and it took almost half an hour for him to reach near the house of Smt. Phoolwati and there he saw appellants packing the two sons of Smt. Phoolwati. This evidence adduced by the two witnesses is wholly unreliable and does not at all inspire confidence particularly when it was according to the own admission of these witnesses a dark night and the torches were not providing sufficient light. These two witnesses have also said that they met Jaipal Singh first informant before he went to the police station and had told him the names of the appellants as the assailants. However, the F.I.R. is silent on this point. There is thus absolutely no convincing and reliable evidence on record showing that the eye-witnesses had the occasion to see and identify the culprits in that dark night and the evidence adduced by the prosecution in this case is neither reliable nor convincing and the learned lower Court was not justified in placing reliance on such evidence. The learned lower Court has thus erred in convicting the appellants for the offence with which they stand charged.

12. The two appeals as such deserve to be allowed. The judgment and order dated 3-11-1993 passed by the lower Court are hereby set aside. The appellants are held not guilty of the offences punishable under Section 147, I.P.C. under Section 364 read with Section 149, I.P.C, under Section 302 read with Section 149, I.P.C. under Section 201 read with Section 149, I.P.C. and also under Section 120B, I.P.C. The appellants are acquitted of all the charges framed against them. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.