

Kaptan and Etc. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-29-2003

Reported in : 2004CriLJ1556

Judge : U.S. Tripathi and ;M. Chaudhary, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 364

Appeal No. : Criminal Appeal Nos. 961, 1013 and 1060 of 1981

Appellant : Kaptan and Etc.

Respondent : State of U.P.

Advocate for Def. : S.K. Misra, A.G.A.

Advocate for Pet/Ap. : P.C. Sharma and ;Rajeev Sharma, Advs.

Disposition : Appeal allowed

Judgement :

M. Chaudhary, J.

1. Criminal Appeal Nos. 961 of 1981 Kaptan v. State, 1060 of 1981 Dushasan v. State and 1013 of 1981 Jagat Pal v. State having arisen out of judgment and order dated 18th of April, 1981 passed in Sessions Trial No. 446 of 1980 State v. Jagat Pal and others by V Additional Sessions Judge Etah all the three appeals have

been heard together and are being disposed of by common judgment.

2. Accused Jagat Pal faced trial for the offence punishable Under Section 364, IPC and was held guilty of the charge levelled against him and convicted accordingly and sentenced to rigorous imprisonment for ten years thereunder. Accused Dushasan, Kaptan and Ram Pal faced trial for the offences punishable Under Sections 302 and 201 each read with Section 34, IPC and all of them were held guilty of the charge levelled against them and convicted accordingly and each of them sentenced to undergo imprisonment for life and five years rigorous imprisonment respectively thereunder.

3. Since accused Ram Pal has been reported having died, his appeal filed separately stood abated vide order 11th of September, 2003.

4. Brief facts giving rise to these appeals are that at about 3.30 p.m. on 10th of January, 1980 Anar Singh lodged an FIR at police station Etah Kotwali that his nephew Prem Pal aged about 9 years who was studying in class I had gone along with his grand father Ved Ram from Nagla Jatta to Jirsimi market but did not return back with him and that he and his father and brother searched for him here and there but in vain. It appears that the police made an entry in the general diary (Ext Ka 2) and the matter was entrusted to SI Lajja Ram Yadav for enquiry.

5. It appears that at about 12 : 15 noon on 11th of January, 1980 constable Ram Singh informed at the police station that dead body of Prem Pal, the missing boy was lying in the well of Babu Ram at village Jirsimi (Ext Ka 3). Then SI Lajja Ram Yadav who was already at village Jirsimi and to whom investigation of the crime was entrusted visited that place and got the dead body of Prem Pal removed from the well. The dead body was identified by P.W. 3 Anar Singh as that of Prem Pal. Then the investigating officer drew inquest on the dead body, prepared the inquest report (Ext Ka 5) and other necessary papers (Exts Ka 6 to Ka 8) and handed over the dead body in a sealed cover along with necessary papers to constables Ram Prakash and Mahesh Chandra for being taken for its post mortem. Then he also inspected that place and prepared its site plan map (Ext Ka 9). He also inspected the place from where Prem Pal was allegedly kidnapped and prepared its site plan map (Ext Ka 14), Then he inspected the house of accused Ram Pal where

kidnapped child Prem Pal was allegedly confined and prepared its site plan map (Ext Ka 15). It appears that the investigating officer also recorded statements of the witnesses and learnt about the complicity of accused Ram Pal, Jagat Pal, Dushasan and Kaptan in the said crime.

6. Thereafter a crime was registered against the accused above named UnderSections 364, 302 and 201 IPC (Ext Ka 4).

7. Autopsy conducted on the dead body of Prem Pal by Dr. P N Verma, the then Medical Officer District Hospital Etah on 12-1-80 at about 12.05 noon revealed that Prem Pal, the deceased was aged about 9 years and his hands and legs were tied with pieces of cloth and a piece of cloth tied around the neck and pieces of cloth inserted in the mouth which had become bloodstained. Face was cyanosed, skin of sole and palm puckered and the blood oozing from the nose. Brain and its membranes and both the lungs and pleura were found congested and stomach empty. Small intestine contained semi-digested food and faecal matter present in the large intestine. Liver, spleen and kidneys were congested. The doctor opined that the death was caused due to asphyxia as a result of suffocation (due to closure of mouth and nostrils and pressure on the neck) about 1 1/2 to 2 days ago.

8. After completing the investigation the police submitted charge sheet against the accused.

9. After framing of charge against the accused the prosecution examined Mahesh Chandra (PW-1), Rohan Lal (PW-2), Asharfi Lal (PW-5), Narendra Singh (PW-6) and Lal Ram (PW-8) in support of the circumstances on which the prosecution case rests. PW-3 Anar Singh, uncle of the deceased and the first informant proved the report informing the police at the police station Etah Kotwali that his nephew Prem Pal aged about 9 years was missing. PW-4 Ved Ram, grandfather of the deceased stated that the alleged noon he accompanied with his grandson Prem Pal, aged about 9 years had gone to Jirsimi market from where Prem Pal was missing; that he went back to Nagla Jatta thinking that he might have gone to his house and that at about 5.00 p.m. when he reached there and did not find him he went back to the market and searched for him but in vain and that 3rd day of the said incident the dead body of Prem Pal was found floating in the well of Babu

Ram situate at the outskirts of village Jirsimi. Testimony of the remaining witnesses examined by the prosecution is more or less of formal nature. PW-10 S. I. Lajja Ram who investigated the crime has proved the police papers. PW-11 Dr. P. N. Verma who conducted autopsy on the dead body of Prem Pal has proved the post mortem report. H. C. Bani Singh (PW-7) and constable Mahesh Singh (PW 9) who are formal witnesses filed affidavits.

10. The accused denied the alleged occurrence altogether stating that they were got implicated in the case falsely due to enmity and village party factions.

11. There is no direct evidence in this case against the accused and the entire prosecution case rests on circumstantial evidence, The prosecution relied upon the following circumstances : (i) Prem Pal was last seen along with Jagat Pal coming back from the Jirsimi market on 9th of January 1980 at about 4 or 4.30 p.m.; (ii) At about 5 or 5-15 p.m. on 9th of January, 1980 Jagat Pal taking Prem Pal came from the market and went to the house of accused Ram Pal where Ram Pal along with Kaptan and Dushasan was sitting at the door of his house and sighting them Ram Pal asked Jagat Pal to take the boy in the 'Kotha' and thereafter Jagat Pal taking Prem Pal went towards the 'Kotha' of Ram Pal. (iii) At about 9-10 p.m. on 11th of January, 1980 accused Ram Pal with a heavy gunny bag laden at his shoulder along with Dushasan and Kaptan was seen going from his house towards the well of Babu Ram and after a few minutes all the three returned back taking the empty gunny bag and splash in the well was heard.

12. Relying upon the circumstantial evidence furnished by the prosecution learned Additional Sessions Judge held the accused guilty of the charge levelled against them and convicted accused appellant Jagat Pal Under Section 364, IPC and accused Kaptan and Dushasan Under Sections 302 and 201 read with Section 34, IPC and sentenced them as stated above.

13. Feeling aggrieved by the impugned judgment and order the accused appellants preferred these appeals for redress.

14. We have heard learned counsel for the appellants and learned AGA for the State.

15. After going through the record of the case and the Impugned judgment we do not find ourselves in agreement with the findings recorded by the learned trial Court for the following reasons :

16. The first and the foremost point for consideration is that the prosecution has not shown any motive at all for commission of the murder of Prem Pal, an innocent boy aged about 9 years. In the case of circumstantial evidence motive is utmost important as it provides a link in the probabilities of the case.

17. Secondly, in the case of circumstantial evidence all the circumstances taken cumulatively should form a chain so complete that there should be no escape from the conclusion that within all human probability the crime was committed by the accused and none else. In our opinion the evidence led by the prosecution suffers from such intrinsic improbabilities and discrepancies which render the prosecution case unbelievable and unacceptable.

18. Taking the first circumstance, there is the testimony of PW-1 Mahesh Chandra and PW-2 Rohan Lal. It has come in evidence that the alleged noon Prem Pal, boy aged about 9 years accompanied his grandfather Ved Ram who had gone to the market to sell grain and after finishing his job he found that Prem Pal was missing and thinking that he would have gone back to his house he returned to Nagla Jatta and on reaching there at about 5.00 p.m. when he did not find Prem Pal there he again went to Jirsimi market searching him. PW-1 Mahesh Chandra stated that the alleged evening he was sitting at the chabutara of his house; that at about 4 or 4.30 p.m. The alleged evening he saw Prem Pal and Jagat Pal going together from the market towards south and that 3rd day when he learnt that the dead body of Prem Pal was found floating in the well he could know that Prem Pal was missing. He further stated that his house is situate at a distance of some 250-300 yards from the grain purchasing Centre in the market and that the alleged evening after sitting at his 'Chabutara' he went inside his house and the next morning went to Etah. In the site plan map (Ext Ka 14) it is mentioned that house of Mahesh Chandra is situate at a distance of 100 yards from the grain purchasing Centre. PW-2 Rohan Lal resident of village Ummedpur stated that at about 4.30 p.m. the alleged evening Jagat Pal along with Prem Pal came to his tailoring shop to take

his underwear from him and after taking the underwear both of them went away. He further stated that his shop is situated adjacent to the house of Mahesh Chandra at a distance of some 200 yards from the market; that that day he remained at his shop up to 6.00 p.m. and that 3rd day he learnt that Prem Pal was murdered and his dead body was found in the well. Both these witnesses were well acquainted with Ved Ram, grandfather of the deceased and his uncle Anar Singh. PW-2 Rohan Lal stated that his tailoring shop is situated at a distance of 200 yards from the market towards south. It has come in evidence that Nagla Jatta is situated at a distance of about one kilometre from Jirsimi market. Ved Ram, grandfather of the deceased stated that at about 5.00 p.m. on returning back home when he did not find his grandson Prem Pal there he went back to the Jirsimi market and searched for him there. It has also come in evidence that next day it was a talk in the market that Prem Pal, grandson of Ved Ram was missing. But neither of these two witnesses disclosed that that very day or next day they had seen Prem Pal going together with Jagat Pal that very day at about 4.30 p.m. or 5.00 p.m. that evening or the last evening.

19. Regarding the second circumstance, the prosecution examined PW-8 Lal Ram who stated that at about 5 or 5.15 p.m. the alleged evening two days prior to the recovery of the dead body of Prem Pal from the well he was returning back from Etah to his village Jirsimi and as he was passing from in front of the house of accused Ram pal he saw Ram Pal along with Kaptan and Dushasan sitting at the door of his house; that Jagat Pal and Prem Pal came from the side of the market and turned towards the house of Ram Pal that Ram Pal asked Jagat Pal to take the boy inside his 'Kotha' and then Jagat Pal and Prem Pal went towards the 'Kotha' of Ram Pal and that then he went towards his house. This witness Lala Ram admitted that after returning from Etah he was going from the market to his house and that if he goes from the market straight to his house Ram Pal's house does not fall on the way. He further admitted that there is courtyard measuring about 10 x 20 yards in front of the house of Ram Pal and after the courtyard there is a way on which he was going when he heard Ram Pal asking Jagat Pal to take the boy inside the Kotha. This witness Lala Ram stated in his examination-in-chief that at that time Ram Pal along with Kaptan and Dushasan was sitting at the door of his house, but when he was contradicted and cornered he stated that at that

time Ram Pal along with Kaptan and Dushasan was sitting on a cot at a distance of 2-4 paces from the way. Further, he stated that next day when he returned from Etah he went through the market and he heard the villagers talking there that Prem Pal was missing but he did not tell any of them that he had seen Prem Pal along with Jagat Pal at the house of Ram Pal last evening. It is against the human conduct and nature that a person of ordinary prudence on hearing that a child is missing whom he had seen with someone last evening at the house of someone by whom he was asked to be taken inside the house would not disclose that fact then and there.

20. Now coming to the last circumstance, the prosecution examined PW-5 Asharfi Lal and PW-6 Narendra Singh on the point. PW-6 Narendra Singh stated that at about 9.00 p.m. at night preceding the day the dead body of Prem Pal was recovered, after milking his cow he was standing outside his house when he saw Ram Pal lading something heavy in a gunny bag on his shoulder accompanied with Kaptan and Dushasan going towards the south and that next day the dead body of Prem Pal was found in the well of Babu Ram. PW-5 Asharfi Lal stated that at about 9-10 p.m. in the night preceding the day the dead body of Prem Pal was recovered from the well situate in the field of Babu Ram he was irrigating his field; that he saw accused Ram Pal lading a gunny bag with some load on his shoulder along with Dushasan and Kaptan coming from the side of the village and going towards the well and thereafter heard a splash from the well of Babu Ram and then saw all the three going back and Ram Pal was holding an empty gunny bag and that he recognized all the three in the light of the torch. However testimony of neither of these two witnesses appears to be convincing and trustworthy. PW-6 Narendra Singh admitted in his cross-examination that his field was used to be irrigated with the water flowing through the field of Ajuddhi who happened to be related, with accused Dushasan and that Ajuddhi closed that water channel at the instance of Dushasan since before one year of the said incident and on that account altercation had taken place between him and accused Dushasan. He further stated that his fields were also irrigated with water flowing through the field of accused Kaptan and the latter had also closed the water channel before the said incident which had resulted in hot exchange between them. In all probability this witness is no better than a got up witness. As far as the testimony of PW-5

Asharfi Lal is concerned he himself has stated that the well of Babu Ram was at a distance of about two and a half furlongs from the place where he was sitting at his field the alleged night and that he could not hear the splash in the well unless he was much attentive therefor. He also stated in his cross-examination that he did not show the place to the Investigating Officer from where he saw the accused going with a gunny bag. The Investigating Officer also has not shown in the site plan map (Ext Ka 9) the place from where this witness saw the accused going with the alleged gunny bag towards the well nor the place where the accused were seen going towards the well in the light of torch. Under these circumstances it is difficult to place reliance on the testimony of this witness as it becomes doubtful if in the dark hour he could recognize the persons going at a considerable distance in the light of torch.

21. PW-10 S. I. Lajja Ram stated that on 10th of January, 1980 it was reported at the police station that Prem Pal, nephew of Anar Singh was missing which was entered in the general diary and the matter was entrusted to him for inquiry and in that connection on 11th of January 1980 he first went to Nagla Jatta and reached there at about 10-11 a.m. and then to village Jirsimi where he got Lala Ram, Narendra and Mahesh Chandra called and talked to them about the incident and that by that since he had no knowledge about the dead body of Prem Pal. He further stated that by that time none told him that Narendra, Lala Ram and Mahesh Chandra were acquainted with the occurrence. It is incomprehensible and unintelligible as to how the Investigating Officer considered to contact Narendra, Lala Ram and Mahesh Chandra the witnesses in the very first instance without having any knowledge about the occurrence. It all goes a long way to show that the investigation in the case has been perfunctory and the circumstances have been brought on record in a very unsatisfactory and execrable manner failing to inspire confidence.

22. The circumstantial evidence in the case thus falls short of the required standard on all the material particulars. Since the learned trial Judge has failed to appreciate the evidence on the record in its true perspective the finding of conviction recorded by him against the appellants cannot be sustained. The accused are therefore held not guilty of the charge levelled against them and are

entitled to acquittal.

23. The appeals are therefore allowed and conviction and sentence recorded against the accused are hereby set aside.

24. The accused are hereby acquitted of the charge levelled against them. They are on bail. Their bail bonds are hereby discharged.

25. Certified copy of the judgment along with record of the case be transmitted to the Court below for necessary compliance under intimation to this Court within two months from today.

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