

Jai Parkash Vs. the State

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Court : Delhi

Decided On : Jan-15-1981

Reported in : 1981CriLJ1340; 19(1981)DLT234

Judge : R.N. Aggarwal and; D.R. Khanna, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 41 of 1978

Appellant : Jai Parkash

Respondent : The State

Advocate for Pet/Ap. : A. Ahlawat and; D.C. Mathur, Advs

Judgement :

D.R. Khanna, J.

(1) Jai Prakash of village Milakpur, Najafgarh, Delhi, stands convicted by the Court of Additional Sessions Judge, Delhi, under section 302 of the Indian Penal Code, and sentenced to undergo imprisonment for life.

(2) The prosecution case as stated on record, brings out that Chander Bhan (P.W. 2) had two brothers, named, Birkha and Bhim Singh. His wife Smt. Ram Piari was the victim of the incident in the present case, and was killed. They have one

daughter Miss Bala (P.W. 1)Birkha's family lives in the same house in which Chander Bhan resides. Smt. Kalawati (P.W. 3) is the wife of Birkha, while Ishwar Singh (P.W. 6) and Miss Omwati (P.W. 4) aged 18 years, are their son and daughter. Jai Prakash appellant is the son of the third brother Bhim Singh. He resides in a different house in the same village. His father had died earlier, while his mother is alive. .

(3) According to Ishwar Singh (P.W. 6), about 10 or 15 days before 10.2.1977, Jai Prakash had asked Ghander Bhan to lift his heap of cow-dung cakes from a Gitwar in the village and Chander Bhan promised to do so. P.W. 1 Bala aged 16 years, who is the daughter of Ghander Bhan, next deposed that she along with her mother had at about 12 noon on 10.2.1977, gone to that Gitwar for preparing cow-dung cakes. Jai Prakash then came there and asked them to remove the heap of cow-dung saying that the Gitwar belonged to him. Ram Piari replied that she would remove the same. Jai Prakash then left. This incident was not considered by both of them of any significance as to be mentioned to Chander Bhan or other members of the family. However, on the same evening at about 6 P.M. Jai Prakash came to their house with an iron rod in his hand. Ram Piari, Kalawati, Bala, Chander Bhan and Ram Piari's brother Munshi Ram Public Witness Public Witness . 7 happened to be present there. Jai Prakash then shouted that he had set heap of cow- dung lying in the Gitwar on fire, and they should remove the fodder from there. He also abused Ram Piari to which she protested. There was some altercation, and Jai Prakash then attempted to give blow with the iron rod to Ram Piari. She, however, retreated and entered the room in the house, and closed the shutters of the door. Jai Prakash struck iron rod blows on the shutter and pushed the door which gave way. He than struck iron rod blows on Ram Piari's chest, neck and waist, resulting in bleeding. Ram Piari fell down and died there. Jai Prakash then threw the rod in the court-yard and tried to escape in the lane outside. Ghander Bhan (P.W. 2) and Munshi Ram (P.W. 7) who were sitting in the same room then chased and caught hold of Jai Prakash. Ram Piari then was put on a cot.

(4) Soon thereafter, Ishwar Singh (P.W. 6) came there and on learning that Jai Prakash had killed his aunt with the iron rod, went to the house of the Pradhan

Ghand Ram (P.W. 8) and told him what had happened. Chand Ram then went to the police station, which was said to be 10/12 kilometers away, in a bus and reported the matter to the police. The police then reached the spot and conducted the investigation.

(5) The post mortem on the body of Ram Piari was conducted by Dr. Bharat Singh, Police Surgeon (P.W. 14), and he found 5 wounds. One of them was a lacerated on the right side neck i' away from the mid line and 1.' above the medial and of right clavity. Size of the wound was 3/4x2/10'x There was bluish discolouration of skin around the wound. This injury, according to him, was sufficient in the ordinary course of nature to cause death which itself was due to haemorrhage and shock resulting from injuries. There were two lacerated wounds over the medial quadrant of right and outer quadrant of left breast, and one wound over the left lumber area and still another over the left iliaccrest.

(6) The iron rod which Jai Prakash had used in the assault, measured 3 ft. and 10", and had a sharp point on one side. It was smeared with blood which on examination later was found to be human.

(7) Jai Prakash in his statement under section 313 of the Code of Criminal Procedure denied the allegations against him, and rather stated that he had come back from his fields and was taking meals at about 8 or 8.30 P.M. when the police came and took him away to the house of Pradhan. He pleaded innocence, and also led one witness in defense who deposed that on the day of incident at about 5.50 P.M. he had seen Chander Bhan taking liquor and quarrelling with his wife. The latter was trying to snatch the bottle from his hand, while Chander Bhan pushed her away and picked up an iron rod with which he gave blows on her. Ram Piari than died at the spot. This incident was seen by him from the top of his house. He admitted that Kalawati, Bala and Omwati were present in the court-yard of the Chander Bhan's house. This version narrated by this witness was not put to any of the prosecution witnesses in cross-examination.

(8) The prosecution case has been proved on record by five eye-witnesses, namely, Bala (P.W. 1) daughter of the deceased, Chander Bhan (P.W. 2) husband of the deceased and whose statement constitute the First Information Report in

the present case, Smt. Kalawati (P.W. 3) and her daughter Omwati (P.W. 4) and Munshi Ram (P.W. 7), brother of Ram Piari. They have duly testified how Jai Prakash came with an iron rod and first picked up quarrel with Ram Piari about the cow-dung lying in the Gitwar, and then attacked her with iron rod killing her there and then. There is nothing in their evidence which can be considered as materially discrepant or variant from what the prosecution, has set up. The learned Additional Sessions Judge has believed their testimony) and we do not find any circumstance which should discredit them. None of them is shown to carry any ulterior objective for falsely implicating Jai Prakash. Kalawati and Omwati though residing in the same house where Ram Piari resided, are equidistant relations of Jai Prakash. They have been unequivocal in implicating him in the crime.

(9) From the side of the appellant, Mrs. Avnish Ahlawat, has assailed their testimony on the ground that they could not have witnessed the actual assault on Ram Piari as that took place inside the room while they were in the court-yard. The site-plan prepared of the scene of occurrence has been referred to in order to show that a wall in the court-yard intervened. It has also been contended that it seemed highly unusual that Jai Prakash, a lad of 17 years, went into the house of Chander Bhan, picked up quarrel with his wife and then gave her iron rod blows, while as many as six persons were present there. Both Chander Bhan and Munshi Ram were better built than him, and it was not acceptable that they would not have come to the rescue of Ram Piari and saved her from the assault. This is all the more so when both of them were sitting in the same room in which Ram Piari had escaped to save herself from the attack. Reference has also been made to several other discrepancies as to who had accompanied Chand Ram, Pradhan (P.W. 8) when he went to report the matter to the police, and where the statements of the witnesses were recorded by the police. Some stated that Ishwar Singh had also accompanied the Pradhan to the police station, and some others mentioned that the statements of the witnesses were recorded at Pradhan's house or the police station. All these circumstances, it is pleaded, cast a doubt on the prosecution case, and Jai Prakash who is the oldest male member of a deceased's brother's family, has been attempted to be falsely implicated for his not giving up his claims over the Gitwar which he asserts belongs to him. Both Ghander Bhan and Munshi Ram were said to be taking liquor inside the room where the assault took place,

and this fact was duly confronted to the prosecution witnesses though they denied the same. Chander Bhan was said to be in the habit of beating his wife, and it seemed that he had himself killed Ram Piari and then involved Jai Prakash.

(10) Chander Bhan has given the Explanation that it was out of fear that he and Munshi Ram did not try to come to the rescue of Ram Piari, or put pressure on the door from inside so that Jai Prakash did not succeed in opening that. This, however, had not been mentioned by him in his police statement. Munshi Ram on his part explained that they had no suspicion that Jai Prakash would use iron rod for beating Ram Piari. It was only when he had started striking blows with that rod on the shutter that he asked Chander Bhan that Jai Prakash was up-to some mischief, and they should catch hold of him. They then got up from the cot where they were sitting, but Jai Prakash in the meanwhile pushed open the door and gave blows on Ram Piari before they reached there. No alarm was raised by any one before Ram Piari was so assaulted. Be that as it may, it must be said that both these persons either showed extreme lethargy and indifference when they found Ram Piari in danger, or were sheerly rendered imbecile by cowardice. They made no genuine attempt to come to the rescue of Ram Piari, an old lady who was being single handedly assaulted by a young boy aged 17 years with a mere iron rod. After all some altercation and abuses had earlier been exchanged, and they could see Ram Piari rushing in the room and closing the shutters of the door in order to save herself from the attack by Jai Prakash.

(11) In any case, although their this conduct has called for deprecation, still the testimony of the eye-witnesses as to the manner in which Ram Piari was killed, does not call for rejection. As already noted above, the evidence of the five eye-witnesses who are otherwise not shown to be motivated to falsely implicate Jai Prakash, or allow the real culprit to go scot free, cannot be ignored. In fact, the narration given by them brings out coherence in material particulars and leaves little doubt that it was Jai Prakash who had come there with the iron rod and assaulted and killed Ram Piari, an old lady. It must be said that Jai Prakash though a young boy of 17 years, appeared to be too head strong and desperate and was unmindful of what he was doing towards a lady who was his aunt.

(12) So far as the contention that Kalawati and her daughter could not see the actual assault, even if it be assumed that the actual assault could not be seen by them because of the intervention of the wall, they had seen Jai Prakash picking up quarrel with Ram Piari in the court-yard and then pursuing her with the iron rod, and pushing open the door. What followed thereafter was too obvious.

(13) Munshi Ram would not have supported the prosecution case in case Ghander Bhan had killed Ram Piari. His affinity would surely have been with his sister in case she was killed by her husband instead of coming to his rescue. So much be said of Bala.

(14) About the other discrepancies as to who had gone to the police station, where the statements of the witnesses were recorded by the police and whether Bala was taken to the police station for recording her statement, they need not be given much significance as they do not, in any manner, render the version brought on record of the actual incident doubtful.

(15) Another corroboration available of the conduct of the appellant which proceeded the actual incident, is from the evidence of Chand Kaur (P.W. 5) who has her Gitwar adjoining the Gitwar about which the appellant had objected to the deceased placing her cow-dung cakes. She has stated that on the day of occurrence at 5.30 P.M., the appellant came there and set on fire the cow-dung cakes in the Gitwar of Ghander Bhan. She told him that he should not have done so but he threatened that in case she said anything, he would put her in the burning fire. He was then carrying an iron rod. Later this witness learnt that Ram Piari had been murdered.

(16) Chand Ram Pradhan (P.W. 8) has mentioned in his statement that he had been informed by Ishwar Singh that Gandhi, son of Bhima, had killed the wife of Chander Bhan. In the information which he conveyed of this incident at the police station) there was) however, a clarification that Jai Prakash alias Gandhi, son of Bhim SIngh, had assaulted Ram Piari with an iron rod.- This had been recorded at 7.30 P.M. Thus Gandhi whom he was referring in his testimony, was none else but Jai Prakash appellant.

(17) With this state of evidence on record, we do not find any circumstance which should discredit the evidence of the eye-witnesses when they deposed that it was the appellant who had come with an iron rod on the fateful evening, and killed Ram Piari. Their presence in the house was natural, and the accused in his defense evidence has also not disputed the presence of Munshi Ram. The assessment of the evidence) thereforee, by the learned Additional Sessions Judge in the present case in holding the accused guilty of the offence of murder under section 302 of the Indian Penal Code, does not call for interference. The nature of blows with the iron rod given by the appellant proved fatal there, and then. The rod had sharp end on one side, and the appellant used that to full effect. Ram Piari was an old lady, and the nature of injury No. I on her neck, according to the doctor who carried out the post-mortem, was sufficient in the ordinary course to cause death. We, thereforee, do not see how the gravity of the offence, in any manner, has been lessened simply because the appellant had used the iron rod.

(18) We have already observed above about the conduct of Ghander Bhan and Munshi Ram in not promptly coming to the rescue of Ram Piari when the accused attacked her. It as well seems that the act of the actual assault was sudden and took one or two minutes before the others could perceive what was going to happen. This to an extent explains why Munshi Ram who was otherwise better built than the appellant, did not take adequate defensive steps.

(19) We, thereforee, do not find any force in this appeal, and are constrained to reject it. The conviction and sentence of the appellant are maintained. .It has been unfortunate that this young man of about 17 years of age whose father is dead and who has to support his widow mother and younger brothers and sisters, has to spend the best part of his life in jail. We have observed above that he appeared to be quite head strong and desperate type of person who was unmindful of what he was doing to his old aunt. The crime committed has been of gravenature, and we do not see how appellant can escape the consequence which has now be fallen him. A copy of this order be sent to the accused in jail.