

Kailash And Ors. vs State Of Uttar Pradesh on 12 September, 1978

Equivalent citations: AIR1979SC1711, 1979CRILJ1322, (1979)1SCC221, 1978(10)UJ937(SC), AIR 1979 SUPREME COURT 1711, 1978 UJ (SC) 937, 1978 SCC(CRI) 601, 1979 UJ (SC) 937, 1978 CRILR(SC&MP) 417, 1979 SCC(CRI) 601, 1979 (1) SCC 221

Bench: Y.V. Chandrachud, O. Chinnappa Reddy, R.S. Sarkaria

JUDGMENT

1. By a judgment dated 19th August, 1971, the Civil and Sessions Judge, Code, convicted the appellants Kailash and Ram Sunder, who are first cousins, under Section 302 read with Section 34 of the Penal Code and sentenced them to imprisonment for life. The charge against the appellants is that at about 1.45 PM on November 3, 1969, they, in pursuance of their common intention, committed the murder of one Mahraji by strangulating her. The order of conviction and sentence having been confirmed by the Allahabad High Court (Lucknow Bench) on April 22, 1974, the appellants have filed this appeal by special leave.

2. Shri Kohli who appears on behalf of the appellants has left hardly anything unsaid which could, with reason and profit, be said in favour of the appellants. He contends, if we may so compress his arguments, that (1) though it is alleged that the appellants were armed with a Gandasa and a Shujail, admittedly, they did not use those weapons; (2) though quite a few persons had gathered outside the room of Mahraji, the appellants were allowed to escape; (3) knowing that the appellants were inside the room and Mahraji was struggling to save her life, none of the villagers chained the room from outside; and that (4) of Subhardra (PW 3) had seen the appellants entering Mahrajirs room, it is hardly likely that they would still be inside the room when, on hearing Subbadra's abouts, the villagers ran towards the scene of offence. In a nutshell, the learned Counsel contends that the prosecution witnesses have given their evidence mechanically and have made out a typical "wooden case", which deserves to be rejected outright.

3. learned Counsel also urged that the case is essentially one of circumstantial evidence and therefore, it is necessary that the circumstances must be proved cogently and they must be consistent with one hypothesis only, namely, that the accused are guilty of the crime with which they are charged. It is urged that even assuming that the circumstances on which the prosecution relies are proved as required by law, the chain of circumstances is not so complete as to justify the compelling inference that the accused have committed the crime which is imputed to them.

4. We have considered these points with some care but we are unable to accept any one of them. The circumstance that the appellants carried weapons but did not use them is easily understandable. Mahraji was an old woman of 70, living by herself, and it was hardly necessary in order to cause her

death, to use the formidable weapons which the appellants had carried with them. The appellants probably carried the weapons with them as a measure of self protection against possible or intrusion or interception.

5. It is true that about half a dozen persons who had assembled outside Mahraji's room permitted the appellants to escape but it cannot be denied that the appellants were armed whereas the villagers who ran towards the scene of offence on hearing the shouts of Subhadra were evidently unarmed. It must also be remembered that none of them had such personal interest in the deceased Mahraji that they would risk their lives in order to prevent the appellants from assaulting her.

6. The other contentions raised by the counsel have been satisfactorily answered by the learned Sessions Judge as well as the High Court. We do not think that there is and justification on our part for taking a different view of the evidence than the one taken carefully by the two courts

7. As regards the contention that the case is one of circumstantial evidence counsel is right that no one having seen the commission of the crime we ought to be satisfied that the circumstances on which the prosecution relies leave no option but to hold that the crime imputed to the appellants has been established beyond a reasonable doubt. The circumstances which are clearly established on the evidence are (1) Mahraji was alone in her room at the time when she was done to death; (2) The appellants, armed with weapons, entered the room and chained it from inside (3) No sooner did they enter the room then Subhadra heard a gurgling noise from the room, which apparently was the result of Mahraji's strangulation; (4) A short while later, the appellants ran away from the room; and lastly, (5) when Subhadra and the other villagers entered the room they found that Mahraji was lying dead. This chain of circumstances is so complete as to leave no scope for the inference that Mahraji may have been done to death by some one other than the appellants.

8. We would like to emphasise that the First Information Report was lodged at the police station, which is about 41 miles away from the place of the incident, within an hour of the occurrence. It contains a detailed narration of the incident and refers expressly to what Subhadra saw and heard. The appellants are in terms involved as the murderers. The Investigating Officer reached the village within about three hours after the occurrence and recorded the statements of all the important witnesses, including Subhadra, on the evening of the 3rd itself.

9. It is also necessary to draw attention to the fact that several complaints were filed by Mahraji apprehending danger to her life at the hands of the appellants and their respective fathers. Ex K.a-10 is a copy of the report dated October 28, 1969 filed by Mahraji against the appellants fathers Ram Ujagar and Ram Dhani and some others under Sections 352, 304 and 300 of the Penal Code Mahraji had also filed a suit for cancellation of the sale deed executed by her in favour of the appellants fathers. Ex. Ka 11 is another complaint by Mahraji against Ram Dhani, the father of appellant Kailash and against some others. We see no doubt that the appellants, fathers were aggrieved since, though Mahraji had sold the land to them, she was disputing the execution of the sale deed by alleging that it was obtained by fraud.

10. The last of the submissions made by Mr. Kohli is that the offence cannot fall under Section 302 and would fall under Section 304 Part II of the Penal Code. We are unable to accept this submission either. Mahraji was about 70 years old and the evidence of Dr. R.C. Lal, who conducted the postmortem examination, shows that considerable force was applied by the assailants while strangulating her. Dr. Lal found that the Hyoid bone was fractured The death was caused by asphyxia and was the inevitable result of the deliberate and intentional injuries which were caused to Mahraji by the appellants. The offence therefore falls under Section 302 and not under Section 304.

11. For these reasons we uphold the order of conviction and sentence and dismiss the appeal.