

CASE NO.:
Appeal (crl.) 510 of 1995

PETITIONER:
Arvind Prakash

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 29/11/2002

BENCH:
S. RAJENDRA BABU, P. VENKATARAMA REDDI & ARUN KUMAR.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

On the allegation that Satya Prakash, elder brother of the appellant, was murdered by Hari Shankar and Jagdish Narain prosecution was launched. However, later on Jagdish Narain was discharged while a charge was framed against Hari Shankar. Father of Jagdish Narain did the 'pairvi' in that case. In those circumstances, the appellant before us is stated to have entertained ill-will against Jagdish Narain.

On 23rd May, 1978, after attending a feast at the house of Lakshmi Narain in Nagala Saledi, when Jagdish Narain, Mukesh and Krishna Murari were returning to their homes, the appellant was standing near the Pakhar tree in front of the Bethak of Raja Beta and he fired at Jagdish Narain as a result of which Jagdish Narain fell down. Mahabir Prasad was sitting at his door and Maya Prakash, Ram Nath and the deceased were also with him. On seeing the assault they rushed towards the appellant and exclaimed "Arvind Prakash what have you done!", when the appellant ran towards the west into the 'behar' and took to his heels and later on they found Jagdish Narain dead.

On the aforesaid allegation of murdering Jagdish Narain charge was framed against the appellant under Section 302 IPC.

In the Sessions Court, nine witnesses were examined on behalf of the prosecution and several documents were also tendered in evidence. However, no defence witnesses were examined. The Trial Court considered Mahabir Prasad, PW.1, Mukesh, PW.2 and Satya Prakash, PW.4 to be eye witnesses. The Trial Court held that the death of Jagdish Narain was due to gun injuries sustained by him on 25.5.1978 in front of the Bethak of Raja Beta in Nagla Tor and the factum of his murder, was not in dispute before him. The Trial Court found that there was no motive and observed that evidence is not of strong character and as such the question of motive has to be considered especially when murder is seldom, if ever, committed with a motiveless malignity. If such a motive is set up by the prosecution and is either not proved or proved to be false it is also the circumstance against the prosecution. He noticed that the murder of Satya Prakash took place on 9.2.1977 and Jagdish Narain had been discharged on 11.8.1977 while murder of Jagdish Narain took place on 23.5.1978. Therefore, if really the appellant was upset by reason of his discharge such a long wait would not have been there. The Trial Court further analysed the evidence tendered by three witnesses. The Trial Court found that the theory of attending the feast itself may not be of much significance in the absence of any formal invitation to these persons to attend the feast and he also found that there were discrepancies in regard to the medical evidence and the oral evidence adduced before the court. On that basis, the Trial Court acquitted the appellant.

The matter was carried in appeal by State to the High Court and the

Division Bench of the High Court, after examining the matter fully and thoroughly, took a contrary view and proceeded to convict the appellant and sentenced him to undergo imprisonment for life. It is against this order that this appeal has been filed.

It is put at the forefront of the argument by the learned counsel for the appellant, that when the view taken by the Trial Court is probable on the basis of the material on record, merely because another view is possible, the High Court should not have differed from the Trial Court and proceeded to convict the appellant. In substance the contention is that when two views are possible, the view of the Trial Court acquitting the appellant should not have been upset.

We have carefully gone through the judgments of the Trial Court and the High Court as well as evidence of the three crucial witnesses. The Trial Court disbelieved the theory of attending the feast by the deceased and others on the basis that the statement given by the witnesses that a written invitation was not received and one of the witnesses stated that Nai told the persons about the invitation. The High Court examined this aspect of the matter and took note of the fact that in that part of the State, a common invitation is extended to the entire village on which names of large number of invitees are mentioned. Such invitations are also treated as written invitation. Therefore, the basis on which the Trial Court tried to disbelieve the evidence tendered by the witnesses is not correct. Secondly, the High Court examined as to why the appellant would have murdered Jagdish Narain and not Hari Shankar as the latter was the principal accused and noticed that Hari Shankar at the time of murder was still facing trial while Jagdish Narain had been set at liberty without even facing the trial. When the eye witnesses of the occurrence consistently supported the prosecution case the question of motive would have lost its importance. The High Court, after critically examining the evidence of the three witnesses, concluded that each and every reason given by the Trial Court is fallacious and found that when the deceased had reached few paces beyond the Pakhar tree, the appellant, who was behind the victim, fired a shot causing injuries on his back and thereafter considered the analysis of the Trial Court to be hair splitting and based on unsound reasoning in disbelieving the statements of witnesses about the manner of the occurrence.

Having carefully looked into various aspects of the matter, we are satisfied that the view taken by the High Court is in order and calls for no interference. The appeal, therefore, stands dismissed.