
(2005) 01 MP CK 0060

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1575 of 1995

Bullu alias Janki

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 381

Citation : (2005) 3 MPHT 257

Hon'ble Judges : Shahi Kant Kulshreshtha, J; S.R. Waghmare, J

Bench : Division Bench

Advocate : Durgesh Gupta, for the Appellant; S.K. Rai, Government Advocate and Public Prosecutor, for the Respondent

Judgement

S.K. Kulshreshtha, J.—This appeal is directed against the judgment dated 16th August, 1995 of the learned Sessions Judge, Satna in S.T. No. 193/94 by which he has convicted the appellant of the charge under Sections 302 and 381 of the IPC and sentenced him to imprisonment for life and Rs. 1000/- fine and imprisonment for 2 years and Rs. 500/- fine, respectively, thereunder. The judgment also directs further sentence of 6 months on failure to pay fine of Rs. 1000/- and one month on failure to pay fine of Rs. 500/-.

2. The evidence in the case is circumstantial. According to the case of the prosecution, on 15-7-1994, accused had been engaged as domestic servant by the deceased Dulari in her house in Rajendra Nagar, Satna. Her son P.W. 7 Pushpendra Singh had gone out to Bombay while her grand-son had gone to his aunt's place. On 17th July, 1994 in the morning, P.W. 2 Thribhuvan Singh was informed that the door of the house of deceased Dulari was closed and inside the house her dead body was lying. He immediately rushed to the police station and alongwith P.W. 13 B.R. Bagri reached the spot. He noticed that there was an injury on her head and she was lying on the floor. Inquest report Ex. P-2 was prepared and body was sent for post-mortem examination. According to the opinion of the autopsy surgeon, the cause of death was shock due to excessive

hemorrhage on account of injury (head injury) and injury to brain. The death was homicidal in nature.

3. It was noticed that the stone and the knife used in causing injury was lying on the spot and accordingly all the articles lying on the spot, connected with the offence, were seized. Search was made for the accused but he could not be traced out till 23-9-1994. Upon arrest of the accused, he gave information about his having kept one gold ring concealed in a bag and the same was recovered from him after his arrest on 23-9-94. It was on the basis of this recovery and the other evidence that the prosecution contended before the Trial Court that the accused was engaged as her domestic servant in the house and was last seen with the deceased and after her demise, a ring was recovered from the accused belonging to P.W. 7 Pushpendra Singh, son of the deceased, and, therefore, the accused was guilty of having committed the murder of Dulari and committed theft of the said gold ring.

4. The accused denied having committed any offence. The learned Judge, however, found the accused guilty of the offences and convicted and sentenced him as stated hereinabove.

5. Learned Counsel for the appellant, Ms. Durgesh Gupta, has submitted that if the motive of the accused in causing death of Dulari had been to commit theft in the house as alleged by the prosecution, the accused would have taken the ornaments worn by the deceased. However, though deceased was found wearing a gold chain in her neck, tops in her ears and nose-pin in her nose, yet nothing was taken away which shows that it is after two months when the accused was arrested, the ring was planted and showed as recovered from him to weave the case against him. Learned State Counsel, per contra, submits that the accused, after the incident, had absconded and could be apprehended on 23-9-94 only and immediately thereafter, on the basis of the information furnished by him, the stolen property was recovered from his possession and since he alone could have committed the said offence, he has rightly been convicted by the Trial Court.

6. The homicidal death of Dulari has not been controverted before us. What has been stated before us is that even if the prosecution evidence is believed in totality, no offence is made out against the accused.

7. The factual matrix on which the prosecution has centered its case is that the accused was kept as a domestic servant in the house in which Dulari was alone on the date on which she was murdered, the accused was seen in that house, the accused had absconded thereafter and that recovery of stolen property was made from the accused immediately upon his arrest. Insofar as the motive for the said crime is concerned, it is on the basis of the recovery of a gold ring from the possession of the accused stated to be belonging to P.W. 7 Pushpendra Singh that it is contended that the accused, after murdering Dulari, decamped with the ring and absconded. As admitted by P.W. 7 Pushpendra Singh, this ring was made only a few days before his departure to Bombay on 28-6-94 containing

initial "P". He had kept it in an almirah. If the matter is examined from another perspective, it would reveal that nothing else was taken from the almirah and although Dulari was wearing a gold chain, tops and nose-pin made of gold, none of these articles was taken by the accused. Thus, it does not appeal to us that motive to commit murder was for committing theft in the house.

8. As far as the allegation of last seen together is concerned, which is based on the evidence of P.W. 8 Narendra singh, who had merely seen this boy having meals in the house. This does not, however imply that others did not have access to the place of the incident. There is no clinching evidence to suggest that apart from the accused, none had access to the place of the incident.

9. From the recovery of the stolen property Article "A" also no inference can be drawn as it was after more than two months that this recovery has been made. Thus, conviction of the accused for offence u/s 302 of the IPC can not be sustained.

10. In the result, this appeal partly succeeds. The conviction of the appellant u/s 302 of the IPC and sentence of imprisonment for life and fine of Rs. 1000/- thereunder is set aside. The conviction of the appellant u/s 381 of the IPC and sentence of R.I. for 2 years and fine of Rs. 500/- is, however, maintained. The accused is in jail. If the accused has completed the sentence now maintained by this judgment, he be released forthwith.