
(2018) 01 MP CK 0079
In the Madhya Pradesh High Court
Case No : 702 of 1995

Damma S/o Chimma Ahirwar	Vs	APPELLANT
State of Madhya Pradesh		RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 374\(2\)](#) - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for murder

Citation : (2018) 01 MP CK 0079

Hon'ble Judges : S.K. Gangele, Anurag Shrivastava

Bench : Division Bench

Advocate : Satish Chaturvedi, Ajay Tamrakar

Final Decision : Allowed

Judgement

1. This appeal under Section 374(2) of Cr.P.C. has been preferred by the appellant/accused against the judgment and conviction dated 15th

February, 1995, passed by Sessions Judge Tikamgarh (M.P.) in S.T. No.33/1994, whereby the appellant/accused has been convicted for

commission of offences punishable under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life.

2. The case of prosecution in brief is that the appellant Damma and deceased Gambhir Yadav were resident of village Kainwar. Damma had

agreed to sell his land to Gambhir and received the sale consideration in advance with promise to execute the sale deed soon. On repeated request

of Gambhir, on 17.01.1994 appellant called the deceased for execution of sale deed at Registry Office, Tikamgarh (M.P.). Deceased went to

Registry Office and waited for appellant but he did not turn up. Than deceased

returned home and met appellant. They both were seen sitting in front of house of appellant in the evening and thereafter near a public pond. Next day morning the dead body of deceased Gambhir was found lying near the pond. The uncle of deceased namely Chhote Lal lodged the report at Police Out post Bada Gaon, Police Station Budera. The police registered FIR (Ex.P/1) and Marg intimation (Ex-P/15) and initiated the inquest. Investigating Officer B.S. Parihar (PW-11) SHO, Police Station Budera visited village Kainwar on 18.01.1994 and prepared panchnama of dead body (Ex.P/2), spot map (Ex.P/10) and seized the plain earth and red earth from the spot vide seizure memo (Ex.P/4). The dead body was sent for postmortem. Doctor found multiple incised wound on head, neck and face of the deceased, which resulted into his death. During investigation the appellant was taken into custody and interrogated thereafter blood stained axe and cloth were recovered and seized at the instance of appellant. The seized property were sent to FSL. The statement of witnesses were recorded and after completion of investigation charge-sheet has been filed before the Court.

3. The appellant has been charged for commission of offence punishable under Section 302 of IPC. He abjured guilt and pleaded innocence. The prosecution has examined eleven witnesses, whereas appellant has adduced no evidence in his defence.

4. The trial Court on appreciation of evidence arrived at the conclusion that the appellant had enmity with the deceased. The deceased was compelling him to execute sale deed, which appellant wanted to avoid. Therefore, appellant committed murder of deceased. The trial Court held appellant guilty for commission of offence under Section 302 of IPC and sentenced as mentioned hereinabove.

5. It is submitted by the learned counsel for the appellant that there is no eye witness to the incident. Some unknown person might have killed the deceased. There is no reliable evidence of last seen. It is not proved that there was human blood on axe and cloth seized from the appellant. The circumstances as alleged by the prosecution against appellant are not established beyond reasonable doubt. The trial Court has committed illegality in convicting the appellant.

6. Heard arguments and perused the record.

7. It is not disputed that on 18.01.1994 morning the dead body of deceased Gambhir was found lying near a public pond situated at village

Kainwar. The uncle of deceased Chhote Lal Yadav lodged the report (Ex.P/1) at Police Out post, Bada Gaon. Investigating Officer B.S. Parihar

(PW-11) visited the scene of occurrence, prepared the panchnama of dead body (Ex.P/2) and sent the body for postmortem. These facts are

verified by the Chhote Lal (PW-1), Sheikh Habib, ASI (PW-12) and B.S. Parihar (PW-11).

8. Dr. Anurag Jain (PW-8) deposed that on 19.01.1994 at Primary Health Centre, Bada Gaon, at about 10:00 O" clock in the morning he had

conducted a postmortem of dead body of deceased and found following injuries:-

i. Incised wound 10 X 4 X 2 1/2"" from mid of mandible at front of neck from just below the right ear to left ear. The spine and muscle of lower

limb including whole skin and muscle over mandible is cutted from body. Mandible cutted at its mid and separated with each other. All muscles of

wound, veins, arteries thyroid gland are cutted. The 4, 5 and 6 vertibra were also cutted.

ii. Incised wound 3 1/2 X 1 X 1/2"" from mid of forehead between both eyes lashes upto maxillary sinus of right side of cheek with nose cutted and

maxillary sinus cutted and fracture of frontal bone.

iii. Contusion with incised wound 3 X 2"" on left hand with fracture of humerous bone.

It is opined by the doctor that the injuries were caused by hard and sharp object within 24 to 36 hours of postmortem. The injuries are homicidal.

The cause of death is result of excessive loss of blood by injuries No.i and ii. The statement of doctor remained unchallenged in cross-examination

and also supported by postmortem report (Ex.P/9). Thus, relying upon the statement of doctor, it is proved that the deceased had sustained

injuries at the time of incident and his death is homicidal.

9. Now the question arises whether the appellant had caused injuries to the deceased. There is no eye witness to the incident. The case of

prosecution rests upon circumstantial evidence. It is now well settled that the circumstance from which the conclusion of guilt is to be drawn should

be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events

must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with this innocence.

10. The following circumstances has been suggested by the prosecution against the appellant:-

i. Appellant was keeping enmity with the deceased because deceased was compelling him to execute the sale deed of his land in favour of deceased.

ii. The deceased was last seen with the appellant.

iii. The blood stained axe and cloths have been seized at the instance of appellant.

Circumstance No.i.

11. Mani Ram (PW-6) deposed that deceased Gambhir was his elder brother. He had purchased 3 1/2 acre land of appellant Damma. He had

already paid Rs.40,000/- against the sale consideration to Damma. On 17.01.1994 Gambhir went to Tikamgarh for registration of sale deed, but

Damma did not arrive there for execution of sale deed. In police statement (Ex.D/5) this witness has mentioned that Gambhir had given only

Rs.17,000/- to Damma against sale consideration Rs.70,000/-. Therefore, in view of this contradiction we cannot believe that deceased had paid

full sell consideration to appellant. Another witness Ram Bagas (PW-9) also deposed that appellant was selling his land to deceased Gambhir.

Deceased had already paid him entire sell amount. This witness did not specify how much amount deceased had paid to Damma. Therefore, it is

not proved that the deceased had paid the full sale consideration of land to Damma. There is no evidence on record to establish that appellant had

refused to execute the sale deed in favour of deceased. On the date of incident i.e. 17.01.1994 the appellant and deceased were seen sitting

together. There is no evidence of any quarrel between them. Therefore, we cannot infer any enmity between appellant and deceased. It is also not

found proved that Damma was avoiding to execute sale deed in favour of deceased.

Circumstance No.ii

12. Mani Ram (PW-6) deposed that on 17.01.1994 at around 08:00 O" clock in the night he had seen appellant Damma and deceased Gambhir

sitting near house of Nathu, which is situated near the house of Damma. This fact is also verified by witness Prem (PW-4) who had seen them

sitting near the house of Damma. Gilasiya Bai (PW-7) had also seen appellant and deceased sitting in front of her house. Thus from above evidence

it is found that on 17.01.1994 at around 07:30 - 08:00 pm in the night, appellant and deceased have been found sitting near the house of Damma.

Thereafter what happened to deceased and where he had gone is not known. The dead body of deceased was found at a public pond situated

outside the village. The house of Damma is situated in the village. The scene of occurrence where dead body was found is far from the house of

Damma where the deceased was last seen. No one had seen the appellant Damma going towards the scene of occurrence or coming from there.

He was not seen with the deceased near the scene of occurrence. To establish the circumstance of last seen together, it is necessary to prove that

deceased and appellant were seen near the scene of occurrence at the time of occurrence. Thus, it is not proved beyond reasonable doubt that

appellant was last seen with the deceased near the scene of occurrence.

Circumstance No.iii.

13. The Investigation Officer B.S. Parihar (PW-11) deposed that he had recovered the axe article-A and a shirt article-B at the instance of

appellant. The axe and shirt were sent for chemical examination to FSL. The FSL report (Ex.P/13) shows that there was blood stains found on axe

and shirt. It is not clear whether the blood stains were of the human blood or not ? The blood group is also not detected. Therefore, it cannot be

said that the deceased was killed by the same axe, which is recovered from the house of appellant.

14. In view of above discussion it is found that the circumstances as alleged by the prosecution against the appellant are not proved beyond

reasonable doubt. The trial Court on erroneous appreciation of evidence has wrongly relied upon the circumstances and held the appellant guilty

for commission of murder of the deceased. The charge of offence under Section 302 of IPC is not proved beyond reasonable doubt.

15. Consequently, the appeal is allowed. The sentence and conviction awarded by the trial Court under Section 302 of IPC to appellant is set-

aside and he is acquitted of charge of aforesaid offence. His bail bond stands

discharged.