
(2018) 03 MP CK 0114

In the Madhya Pradesh High Court

Case No : CRIMINAL APPEAL NO. 91 OF 2008

Deepak @ Punchha

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 201, 302

Citation : (2018) 03 MP CK 0114

Hon'ble Judges : R.S. JHA, J;NANDITA DUBEY, J

Bench : Division Bench

Advocate : Anand Nayak, Sudeep Deb

Final Decision : Dismissed

Judgement

This appeal has been filed by the appellants, being aggrieved by the judgment dated 13.12.2007, passed by the learned 1st Additional Sessions Judge,

Hoshangabad in S.T. No. 304/2006, whereby the appellant No.1 has been found guilty for the offence punishable under Sections 302/120-B and 201

of IPC and has been sentenced to life imprisonment with fine of Rs.100/- under Sections 302/120-B of IPC and seven years rigorous imprisonment

with fine of Rs.100/- under Section 201 of IPC with a stipulation for 3 months rigorous imprisonment in case of default for each offence, and the

appellant No.2 has been found guilty for the offence punishable under Sections 302/34, 120-B and 201 of IPC and has been sentenced to life

imprisonment with fine of Rs.100/- under Sections 302/34, 120-B of IPC and seven years rigorous imprisonment with fine of Rs.100/- under Section

201 of IPC with a stipulation for 3 months rigorous imprisonment in case of default for each offence.

2. The prosecution case, in brief, is that the appellants No.1 and 2 along with co-

accused Mukesh with a common intent conspired to kill Borunath in the night of 12.07.2006 and appellant No.2 in order to cover up the evidence and to get the insurance claim of appellant No.1's Insurance policies informed the police that the dead body is of her husband appellant No.1.

3. As per the oral report of appellant No.2 Kirti, FIR Ex.P-24 and marg intimation Ex.P-26 was recorded at 7:05 a.m. on 13.07.2006 wherein she had

asserted that her husband appellant No.1 Deepak was a police informer and on 12.07.2006 at about 9:30 p.m., one 22 years old boy came to their

house to inform that one Kripa Meena Bhaiya had called her husband. According to appellant No.2 Kirti, appellant No.1 went with the boy

and had not returned since and when she went to ease herself in the morning in the field of Mukesh Agnihotri, she saw a dead body with stab injuries

and face burnt, lying in the bushes near the fence. The appellant No.2 Kriti further asserted that she and her mother-in-law recognised the dead body

as that of her husband Deepak (appellant No.1) on the basis of black lower and sleepers lying near the body.

4. On the basis of this report, Investigating Officer, D.S. Raghuvanshi (PW-11) went to the place of occurrence and inspected the spot. He collected

blood stained earth, black lower, one pair of sleeper and a knife lying near the body from the spot. He also found a pile of dry sticks which were used

for burning the dead body. According to D.S. Raghuvanshi (PW-11), the appellant No.2 and Sushilabai, mother of appellant No.1, identified the

deceased as Deepak from the name tattooed on the wrist of the deceased and old scar on back side of the dead body, toe and the clothes lying

nearby, and also signed on the panchnama Ex.P14.

5. The body of the deceased was sent for postmortem. The postmortem was conducted at 12.15 p.m. in the afternoon of 13.07.2006. Dr. R.

Gangrade (PW-5), who conducted the autopsy, noticed antimortem multiple incised stab injuries on the lower chest, ribs, abdomen of the dead body.

Postmortem flame burn injuries were present all over the body, and post mortem incised wound on neck was also found. In the opinion of the doctor,

the death was homicidal. The doctor has further opined that these injuries were possible to come from the knife (Ex.P-20) recovered at the instance

of appellant No.1.

6. During the investigation, from the conduct of appellant No.2, the I.O. got

suspicious as the appellant No.2Â seemed too eager to know as to when she would get the insurance claim of her husband. On suspicion, the I.O. enquired further and came to know that the dead body was not of Deepak but someone else, and the murder of the deceased was committed with the intention that the body after being identified as of Deepak, Kirti (appellant No.2) as his widow and nominee would get the insurance claim. It also came to the knowledge of the I.O. that Deepak may be hiding at Goharganj in his in-law's house. Subsequently, on 15.07.2006 at 4:00 a.m. in the morning, a raid was conducted and appellant No.1 Deepak was caught sleeping at Kirti's parents' house at Goharganj, where he was identified vide Ex. P-28 as â?? Deepakâ?? by Kirti (appellant No.2), Deepak's mother Sushilabai and their neighbours. On the disclosure made by Deepak, shirt and a wrist watch of the deceased, nylon rope, petrol cane, one knife and a bottle of alcohol were also recovered vide Ex.P-5 and Ex.P-6.

7. From the photograph and the military colored shirt the deceased was identified as Borunath by his mother Mathurabai, brother Sarafat (PW-1), sister-in-law Mayabai (PW-15).

8. After completion of the investigation, the charge-sheet was submitted against Deepak, Kriti and co-accused Mukesh. The accused persons abjured their guilt and pleaded false implication.

9. The trial Court after careful scrutiny of the evidence and documents on record, recorded a finding of the guilt against the appellants No.1 and 2 and convicted and sentenced them as aforesaid, whereas the co-accused Mukesh was acquitted due to lack of evidence.

10. The contention of the learned counsel for the appellants is that the case is based on circumstantial evidence. There is no evidence to connect the appellants with the crime. It is further urged that the last seen evidence cannot be relied on as there is material contradictions and omissions in the statements of the witnesses.

11. The learned Government Advocate, on the other hand, supported the judgment and findings of the trial Court.

12. Having heard the learned counsel for the parties and on perusal of the record, it is observed that as against the appellants No.1 and 2 the case of the prosecution is that they hatched a criminal conspiracy to commit the murder of deceased Borunath in order to get the insurance claim of appellant

No.1 Deepak.

13. It is well settled that the cases where evidence is purely circumstantial, the circumstances for which the conclusion of guilt is sought to be drawn

must be fully established and such circumstantial must find the complete chain pointing to the guilt of the accused.

14. In *State of U.P. Vs. Satish*, (2005) 3 SCC 114, the Supreme Court has reiterated that there is no doubt that conviction can be based solely on

circumstantial evidence but it should be tested on the touch stone of law relating to circumstantial evidence.

Following was laid down in paragraphs 14, 15 and 16:

14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to

circumstantial evidence laid down by this Court as far back in 1952.

15. In *Hanumant Govind Nargundkar v. State of M.P.*, AIR (1952) SC 343 it was observed thus;

It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is

to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt

of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but

the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done

by the accused.

16. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR (1994) SC 1622. Therein, while dealing

with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the

prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on

circumstantial evidence must be fully established. They are:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and

not may be established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and (5) There must be a chain of evidence so complete as not to leave

any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have

been done by the accused.â??

15. It is established from the record that Kriti had lodged the report Ex.P.24 and made intimation Ex.P-26 about the murder of her husband Deepak,

despite knowing that her husband was alive. She along with Sushilabai (mother of Deepak) and his brother made a positive identification of the dead

body on the basis of name tattooed on the wrist and old scar on back of the dead body and the black lower lying nearby, as is clearly established vide

Ex.P-14. This fact is also corroborated by Gulab Nagar (PW-4), another witness of naksha panchnama. Kriti had asserted that her husband had gone

out at 9:30 p.m. in the night on 12.07.2006 with a boy who was sent by Kripam Meena and did not return in the night, and in the morning she found

the dead body of her husband lying near the bushes in the field, whereas on the raid conducted at 4:00 a.m. in the morning on 15.07.2016, Deepak was

found alive and sleeping at Goharganj at the house of Kriti's parents and identified by Kriti herself, Deepak's mother Sushilabai and the neighbours as

evident and established from Ex.P-28.

16. Chhotu (PW-9) has stated in his evidence that he was standing with the deceased outside the cinema hall when the appellant No.1 came and

offered them a job and asked them to meet him at 6:00 p.m. As Chhotu did not want the work he came back leaving the deceased, who stayed behind

and waited for appellant No.1. According to his evidence, the deceased was wearing a dark colored shirt and pant at that time. His statement is

corroborated by Mayabai (PW-15), who confirmed that her younger brother Chhotu had told her that Borunath (deceased) had gone for work with

one autowala. She also identified the shirt worn by the deceased as she used to wash his clothes. Dalchand (PW/14) also confirmed that the appellant

No.1 along with one boy had hired his auto from the Bus Stand Hoshangabad and got down at Patwari Colony at Pipariya Road.

17. Deepika (PW/10) who is a child witness has been very consistent in her testimony and could not be impeached in her cross-examination. She has

asserted that appellants No.1 and 2 were her neighbours in Hoshangabad and from her house, any activity going inside the house of the appellant was

visible. She has asserted that on the fateful night when her parents had gone to Itarsi for some work, the appellant No.1 came home with a boy, who

was similar in height and appearance to appellant No.1 and gave his clothes and food to him and thereafter went away with the boy. She has also

stated that the appellant No.1 asked her to go to her house and sleep as it was late.

18. During the investigation, it was found that the dead body was not of Deepak but identified as Borunath son of Munnalal by the Mathurabai

(mother), PW/1 Sarafat (brother) and PW-15 Mayabai (sister-inlaw), who also identified the same from the photographs and the shirt worn by the

deceased.

19. From the evidence of Chhotu (PW-9) and Deepika (PW-10), the prosecution has established that deceased was last seen alive in the company of

appellant No.1 in the evening of 12.07.2006 and at 9:30 p.m. the appellant No.1 left his house with the deceased. On the next day, the body of the

deceased was found burnt in the field and identified by appellant No.2 Kirti as that of her husband appellant No.1.

20. The most clinching evidence regarding the conspiracy is the positive identification of the dead body by the appellant No.2, despite knowing that her

husband was alive and hiding at her parent's house at Goharganj from where he was ultimately caught sleeping at 4:00 a.m. in the morning of

15.07.2006. Under the circumstances, it was for the appellant No.2 to explain the presence of her allegedly murdered/dead husband Deepak at her

parents' place. The contention of learned counsel for the appellant No.2 that she was not aware about her husband hiding at her parent's house cannot

be believed for the reason that the natural conduct of a woman who has recently become a widow and come to know about the murder/death of her

husband would be to inform her own mother to share her moment of grief, and if appellant No.1 was alive and staying at Goharganj, her mother would

have immediately informed her of the fact.

21. Apart from this, the recovery of shirt of the deceased and the blood stained knife at the instance of the appellant No.1 from his in-laws' house and

the other articles from his own house and further the identification of the shirt, as last worn by the deceased, by the deceased's brother Sarafat, sister-

in-law Mayabai and Chhotu (PW-9) and in the opinion of Dr. D.S. Raghuvanshi (PW-11) that the injuries to the deceased could have been caused by

the knife recovered at the instance of appellant No.1, clearly points to the guilt of the appellants.

22. Taking into consideration the fact that a number of insurance policies were taken by the appellant No.1 Deepak, as also proved by Sanjay Kumar

Choubey (PW-3) and the fact that the deceased was of similar built and stature as that of appellant No.1 Deepak and the circumstances preceding

and following the point of deceased having been last seen alive with theÂ appellant No.1 and the deliberate and false identification of the dead body

as Deepak by appellant No.2 despite knowing that her husband was well and alive and hiding at her parents' house are strong and incriminating

circumstances completing the chain of circumstances pointing to the guilt of the appellants with certainty.

23. It is, thus, clear that the appellants No.1 and 2 were involved in the conspiracy from its planning at the very inception and meticulously executed

the same till planting the body at the crime scene.

24. In view of the aforesaid, we are of the considered opinion that the incriminating circumstances relied upon by the prosecution against the

appellants are firmly established and form a complete chain pointing to the guilt of the appellants.

25. We find no substantial ground to interfere with the finding of guilt and the conviction of the appellants recorded by the trial Court.

26. Accordingly the appeal filed by the appellants being devoid of merits is hereby dismissed. The conviction of the appellant No.1 under Sections

302/120-B and 201 of IPC and the conviction of the appellant No.2 under Sections 302/34, 120-B and 201 of IPC are confirmed and upheld. The

appellant No.1, who is in jail shall remain incarcerated to undergo the remaining part of the jail sentence. It is informed that the appellant No.2 is on

bail since 09.07.2008. Her bail bonds stand cancelled. She be taken into custody

forthwith to undergo the remaining part of her jail sentence.