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**(2008) 07 MP CK 0054**  
**In the Madhya Pradesh High Court**

Dhapu Bai and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 08-07-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 174, 374  
Penal Code, 1860 (IPC) — Section 302, 333, 342, 498A

**Citation :** (2008) ILR (MP) 3316

**Hon'ble Judges :** K.S. Chauhan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

1. Four persons were charge-sheeted and prosecuted, out of them two have been acquitted. The present appellants were also acquitted from the charges u/s 498A and 302 of I.P.C. but convicted and sentenced u/s 304-II of I.P.C. who are before us in this appeal.

2. This Criminal Appeal u/s 374(2) Cr.P.C. has been filed being aggrieved by the judgment, finding and sentence dated 21.01.1994 passed by II Additional Sessions Judge, Sehore (Camp Nasrullaganj) in Sessions Trial No. 97/1990, whereby the appellants have been convicted u/s 304-II of I.P.C. and sentenced to R.I. for 7 years.

3. The prosecution case in short is that Dhapu Bai was married with Ramesh. Appellant No. 1-Dhapu Bai is her mother-in-law and appellant No. 2-Krishna Bai is her sister-in-law. They are of not good character. Usually several persons used to visit them and stay with them. They were involved in such illegal business. They also induced her to do the same but she denied, therefore, they used to cause her marpeet. She could not tell this thing to her parents because of the threatening given by the appellants. On 04.02.1990 Moti Patel was sitting at her house. Her mother-in-law was making tea for him. She was cleaning the utensils. One bowl could not be cleaned well on this pretext her mother-in-law and sister-in-law gave her severe beating by hitting her head with the stone and inflicting

iron rod. On account of which she sustained injuries in different parts of her body. She lodged F.I.R. on 06.02.1990 at P.S. Nasrullaganj wherein Crime No. 20/1990 under Sections 342, 333 and 498A I.P.C. was registered. She was sent for medical examination to P.H.C. Nasrullaganj where she was examined by Dr. S.K.Dhoble (PW-11) who found 16 injuries on her person. He also advised for x-ray. Medical report is Ex.P/25. Since the x-ray machines of Nasrullaganj and Sehore hospitals were not in working condition, therefore, she was referred to Hamidiya Hospital, Bhopal. She died on 07.02.1990 on the way to Bhopal. Its information was given to P.S. Nasrullaganj by her father Narmada Prasad (PW-1). On the same day Marg No. 4/1990 u/s 174 Cr.P.C. was registered at P.S. Nasrullaganj. The inquest report Ex.P/2 was prepared. The postmortem examination was done by Dr. D.K.Satpathi (PW-14), Director, Medico Legal Institute, Bhopal. He found 19 injuries on her person. According to him the death was due to shock as a result of multiple injuries to the body. Injuries have been caused by hard and blunt object within 5 days to 2 weeks and duration of death within 48 hours ? 12 hours since postmortem examination. Death was homicidal in nature. Postmortem report is Ex.P/16 which contains his signature. Offence u/s 302 of I.P.C. was added. Map was prepared. The appellants were arrested. Their disclosure statements were recorded. In pursuance of their disclosure statements, weapon of offence Mogri and Saria were seized from them. Seized articles were sent to F.S.L., Sagar for chemical examination from where the report received. Statements of the witnesses were recorded. After completing the investigation, charge sheet was filed in the Court of J.M.F.C., Nasrullaganj.

4. Appellants stood charged u/s 498A and 302 of I.P.C. They denied the guilt and claimed to be tried mainly contending that they have been falsely implicated. Prosecution examined as many as 14 witnesses and appellants also examined 1 witness in defence. After appreciating the evidence, trial court acquitted them from the charge under Sections 498A and 302 of I.P.C. but convicted u/s 304-II of I.P.C. and sentenced thereunder as stated hereinabove in para No. 2 of the judgment. Being aggrieved by the judgment, finding and sentence passed by trial Court, instant appeal has been preferred on the grounds mentioned therein.

5. Shri H.S.Dubey was engaged by the appellant as his counsel but he did not appear to argue the case on the date of hearings on 26.04.2008 and 02.05.2008. The appeal is pending since 1994, therefore, Shri Sandeep Dubey has been appointed from the panel of the High Court Legal Aid Services Committee to argue the case on behalf of appellants so that the appeal may be disposed of expeditiously.

6. Shri Sandeep Dubey, learned Counsel for the appellants submitted that there is delay in lodging the report. The deceased was not in a position to lodge the report, therefore, no reliance can be placed on F.I.R. (Ex.P/12). The independent witnesses have not supported the prosecution case. No grievous injury was found on her person. There is no medical evidence that the injuries were sufficient in the ordinary course of nature to cause her death. The seizure of the weapon of

offence has also not been strictly proved. The finding of guilt is erroneous which deserves to be set aside and the appellants are entitled for acquittal.

7. On the contrary, Shri S.K. Kashyap, learned Dy.G.A. appearing on behalf of respondent/State supported the impugned judgment, finding and sentence mainly contending that deceased was severely beaten by these appellants on account of which she sustained several injuries and died. There is ample evidence against the appellants. Prosecution has proved the case beyond reasonable doubt against the appellants and trial Court has rightly convicted and sentenced them, therefore, it does not call for any interference.

8. The main point for consideration in this appeal is that whether trial Court has committed any illegality in convicting and sentencing the appellants u/s 304-II of I.P.C.?

9. The incident is of 04.02.1990 at about 7-8 p.m. in her in-laws house situate at Sarvhara Colony, Nasrullaganj. F.I.R. was lodged by deceased Dhapu Bai on 06.02.1990 at 12:15 p.m. It is borne out from the evidence of Narmada Prasad (PW-1) that on 05.02.1990 when he was going to see his elder daughter Kanchan Bai during that course he came to see Dhapu Bai also. He saw that her condition was bad. Therefore, he asked appellants to send her with him but they denied. Anyhow he managed to carry her by the jeep of Motilal Patel to village Gopalpur. Appellant No. 2 Krishna Bai also accompanied with them and after leaving deceased Dhapu Bai at Gopalpur at about 1:00 p.m. Krishna Bai returned with Motilal by the same jeep to Nasrullaganj. Since Narmada Prasad (PW-1) could not get any means of transportation to carry her to Nasrullaganj on that day, therefore, he could not bring her to Police Station Nasrullaganj to lodge the report. On 06.02.1990 he came there where Dhapu Bai herself lodged the report (Ex.P/12) which was written by B.R.Yadav (PW-9). He has clearly stated that Dhapu Bai signed this report before him. He has nowhere stated that she was not in a position to lodge the report. Delay has already been explained by Narmada Prasad (PW-1). The explanation is satisfactory. Appellant No. 2-Krishna Bai accompanied Dhapu Bai not account of any humanity but to see that Dhapu Bai should not lodge the report. She accompanied to save herself from the clutches of law. Otherwise there was no any reason to accompany her and returned back immediately by the same jeep. Therefore, the contention of the learned Counsel of appellants that there is delay in lodging the F.I.R. and she was not in a position to lodge the F.I.R. is not acceptable in the light of the prosecution evidence available on record.

10. Since F.I.R. Ex.P/12 was lodged by deceased herself, therefore, it becomes her dying declaration after her death. Her statement Ex.P/13 was also recorded by B.R.Yadav (PW-9) and this statement also becomes dying declaration after her death. On perusal of these documents it is manifestly clear that appellants caused her marpeet on account of which she sustained the injuries, therefore, the defence that the father of the deceased Dhapu Bai wanted to give her in "Natra" to other person and, therefore, he gave her beating is not acceptable in

the light of the F.I.R. (Ex.P/12) and her statement Ex.P/13. She had described in great detail the manner and method in which she was given severe beating and the cause of such beating. There is nothing to disbelieve such a dying declaration given by deceased herself.

11. Apart from her dying declaration, the prosecution has adduced the evidence regarding oral dying declaration given by deceased to several persons.

12. Narmada Prasad (PW-1) has deposed that his daughter told her that appellant used to cause her marpeet by Mogri and iron rod to involve in illegal activities with other persons who used to visit their house on and off and on declining she was given severe beating. On that day itself he saw marks of injuries on the body of his daughter. His testimony is supported by his son Bhagwan Singh (PW-6) and other witnesses Ramadhar (PW-2), Shankar Singh (PW-5), Kanchan Bai (PW-7) and Ramawtar (PW-8). These witnesses have categorically stated that they saw the injuries on the person of Dhapu Bai who told them that these injuries were caused by appellants. The testimonies of these witnesses have not been shattered in cross examination and their evidence is intact on the material particulars.

13. Dr. S.K. Dhoble (PW-11) medically examined Dhapu Bai on 06.02.1990 who found 16 injuries on her person as described in great detail in medical report Ex.P/25. He has clearly stated that these injuries would have been caused by hard and blunt object. Injury Nos. 1, 3, 4, 6, 11 to 16 were simple in nature and x-ray was advised to ascertain the nature of other injuries. Since it has been brought on record that x-ray machines of Nasrullaganj and Sehore hospitals were not in working condition, therefore, she was referred to Hamidiya Hospital, Bhopal but on the way she succumbed to injuries. Thus, xray could not have been done in these circumstances.

14. Dr.D.K.Satpathi (PW-14), Director, Medico Legal Institute, Bhopal conducted postmortem examination on 08.02.1990 and found 19 injuries on her dead body as described in great detail in postmortem report Ex.P/16. He has opined that death was due to shock as a result of cumulative effect of the injuries to the dead body. Injuries have been caused by hard and blunt object within 5 days to 2 weeks and duration of death was 48 hours ? 12 hours since postmortem examination. Death was homicidal in nature. He has deposed in his evidence that injury No. 19 was itself sufficient to cause death and the cumulative effect of the other injuries was also sufficient to cause death.

15. In the light of the this medical evidence, the argument of learned Counsel for the appellants is not tenable that the injuries were not sufficient to cause death. On the contrary, it is found that the ocular evidence adduced by prosecution has been medically corroborated. Since the deceased was having 19 injuries, therefore, it can be said that she was beaten severely. If her father has not reached their by chance then she would have died in her in-laws house on account of these injuries.

16. S.K.Shukla (PW-10) on 08.02.1990 arrested the appellants vide arrest memo Ex.P/6 and recorded their disclosure statements Ex.P/7 and Ex.P/8 and in pursuance thereof seized Mogri from appellant No. 1- Dhapu Bai vide seizure memo Ex.P/9 and iron rod from appellant No. 2-Krishna Bai vide seizure memo Ex.P/10. From his evidence, it is evidently clear that the weapons of offence were recovered at the instance of these appellants. Dr. S.K.Dhoble (PW-11) has clearly stated that injuries to Dhapu Bai would have been caused by seized article "A" Mogri and article "B" iron rod. The seized articles were also sent to F.S.L., Sagar for chemical examination from where the report received. Accordingly blood stains were found on Articles A, E1, E1, E3, E4 and E5. Likewise it is proved by Serologist report Ex.P/22 that item No. 1 Godri and item No. 2 Rajai were found stained with human blood. Thus, the prosecution case further finds support by F.S.L. Report Ex.P/22.

17. On analysis of entire evidence adduced by prosecution, it is manifestly clear that the prosecution has proved the case beyond reasonable doubt against these appellants. Trial Court has dealt with every aspect of the matter in great detail and has rightly convicted them hence no illegality, infirmity or perversity is found in such finding. The finding of guilt is hereby affirmed. Sentence being not excessive does not call for any interference. The appeal is mereitless and deserves to be dismissed.

18. Consequently, appeal fails and is dismissed accordingly. Appellants are on bail. Their bail bonds are cancelled. They be directed to surrender before C.J.M., Sehore on 08.08.2008 for serving out the remaining part of sentence.