
(2018) 07 MP CK 0219
In the Madhya Pradesh High Court
Case No : Criminal Appeal No..1056 OF 2007

Gopi @ Govind

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 394, 459

Citation : (2018) 07 MP CK 0219

Hon'ble Judges : S.K. Gangele, J;Akhil Kumar Srivastava, J

Bench : Division Bench

Advocate : Ankit Saxena, R.S.Shukla, Aditya Jain

Final Decision : Dismissed

Judgement

This appeal has been filed by the appellant against judgment dated 10.04.2007 passed in S.T.No.315/2006 by VIII Additional Sessions Judge (FTC),

Sagar convicting the appellant Under Section 302, 459 and 394 of IPC and sentenced him to undergo R.I. for life and fine of Rs.1000/- and in default

of payment of fine, further RI for three months; R.I. for ten years and fine of Rs.500/- and in default of payment of fine, further RI for three months

and R.I. for ten years and fine of Rs.500/- and in default of payment of fine, further RI for three months respectively.

2. The prosecution story, in short, is that on 29.06.2006, complainant Vipin Jain (PW2) was at his shop alongwith his father Virendra Jain (PW3). At

that time his mother-Vimla Jain was alone at home situated at Mohan Nagar Ward, Sagar. At around 5:00 PM when the complainant and his father

reached home, they found decased-Vimla Jain lying dead in the kitchen and blood all around. Her clothes were besmeared in blood. Blood was oozing

from her head and ears. Complainant called his neighbours Anil Jain and Arun

Jain who came along with other neighbours. Complainant-Vipin Jain

lodged a report (Exhibit P-5) with Police Station Moti Nagar alleging theft of ornaments worn by her mother and in furtherance thereof committal of

murder by some unknown person. On the report of the complainant, Crime No.328/2006 was registered. Merg No.35/2006 was registered as Exhibit

P-3. Dead body was sent for post mortem.

3. After due investigation by the Police, charge-sheet was filed against the accused-Gopi. Appellant abjured his guilt and pleaded innocence. He was

tried by the trial Court. The trial Court held the appellant guilty for offence punishable under Section 302, 459 and 394 of IPC and sentenced as

mentioned hereinabove.

4. Appellant has challenged the aforesaid finding of the learned Trial Court on the ground that he is innocent and has been falsely implicated in the

case. It is submitted that the case of the prosecution is totally based on circumstantial evidence. The trial Court has erred in placing reliance on the

testimony of the prosecution witnesses as there are contradictions and omissions in their statements. There is no direct evidence against the appellant.

Therefore, learned trial Court has wrongly convicted the appellant. Hence, appellant has prayed to set-aside the impugned order and he be acquitted

from the charge levelled against him.

5. Heard learned counsel for both the parties at length and perused the record.

6. Learned counsel for the State has supported the findings of the trial Court and submitted that the conviction and sentence awarded by the trial

Court is just and proper and does not warrant any interference, therefore, prayed for dismissal of the appeal.

7. The entire case is based on circumstantial evidence. Honâ??ble Supreme Court in C.Chenga Reddy vs. State of A.P. (1996) 10 SCC 193 has held

in paragraph 21 as under:

â??21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be

fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left

in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally

inconsistent with his innocence.â??

8. Dr. Sudhir Jain (PW-14) who has conducted the postmortem of deceased has stated that after examination he found two injuries on the body of deceased as under:-

(i) 2x2 cm abrasion on lower side of right elbow.

(ii) On the forehead and right side of the head up to back near right ear, colour of skin was becoming blueish.

In his opinion the above injuries were antemortem in nature and caused by hard and blunt object within 24 hours.Â The injuryÂ on the head was

grievous in nature and was the main cause for death of the deceased. He has also opined that deceased died due to coma caused by head injury and

subdural hematoma arising through the injury.Â In the cross examination, Dr. Sudhir Jain (PW-14) has categorically denied that neither due to

collusion on head this injury is possible nor it is possible by falling accidentally.Â As per the report given by this witness and opinion, death of

deceased Vimla Jain was homicidal in nature.

9. Complainant Vipin Jain (PW-2) has stated that deceased Vimla Jain was her mother.Â On 29/06/2006 when he returned at 5:00 PM in the evening

after closing his shop, he found that door of the residence was not locked from inside.Â He and his father Virendra Jain (PW-3) entered into the

house and called her mother but her mother given no reply.Â After searching her they found that in kitchen dead body of Vimla Jain was lying in a

pool of blood. Looking to this scene they shouted and called neighbours.Â On shouting neighbours Arun Jain and Anil Jain came.Â After sometime

Dr. Singhai also came.Â Report of the incident was lodged in police station vide Exhibit P/2.Â The above testimony of Vipin Jain (PW-2) is

corroborated by the testimony of his father Virendra Jain (PW-3) who was also there with him.

10. Tulsi Ram Raikwar (PW-4) has stated that at around 5 PM he also went to the house of Vipin Jain and he has also seen dead body of deceased

Vimla Jain in the kitchen.Â He has further stated that at around 2:30 PM Toshi Jain had gone to the house of Vimla Jain but Vimla Jain did not open

the door.Â On this point, another witness Toshi Jain (PW-7) has also corroborated the version of Tulsi Ram by saying that on 29/06/2006 in the

afternoon around 2:30 PM she went to the house of Vimla Jain to give salt.Â She

rang bell and stuck on the door till 15-20 minutes but there was no reply from the inside then she returned to her home.

11. Pradeep Kumar Jain (PW-15) is an important witness who has seen the accused/appellant coming from the house of Vimla Jain. He has stated that on 29/06/2006 around 2:45 PM when he was going to market from his home, there was drizzling near flour mill (atta chakki) of Anil Jain. He saw that accused Gopi @ Govind was coming outside from the house of Virendra Jain very fastly and fled away towards Itwara Bazar. In the evening he came to know that wife of Virendra Jain has been murdered. It is very important that testimony of Pradeep Kumar Jain (PW-15) on this point is unchallenged in the cross examination by the defence so it is conclusive that accused/appellant was seen just after the incident coming very fastly outside from the house of Virendra Jain and fleeing away towards Itwara Bazar.

12. Investigating Officer G.P. Mishra (PW-16) has stated that on 29/06/2006 Vipin Jain has lodged the report regarding death of her mother which was written by him vide Exhibit P/2 and on the same day he prepared the site map vide Exhibit P/4. Complainant Vipin Jain has informed vide application Exhibit P/5 that one pair of silver anklet, one gold ring and four bentex bangles are missing from his house. Investigating Officer G.P.

Mishra (PW-16) has stated in his testimony that on 4/07/2006 in front of witnesses Vimal Kumar Singhai and Rajkumar Singhai, accused has informed that articles i.e. one pair of silver anklet, one gold ring and four bentex bangles belonging to deceased are kept in his house. On this information, memorandum (Exhibit P/10) was prepared and on the basis of this memorandum, at the instance of accused, one pair of silver anklet, one gold ring, four bentex bangles, one full shirt and one pair of leather shoes containing blood stains were seized in presence of the witnesses and seizure memo

(Exhibit P/11) was prepared. The witnesses of memorandum (Exhibit P/10) and seizure (Exhibit P/11) namely Vimal Singhai (PW-10) and

Rajkumar Singhai (PW-11) have completely supported the testimony of Investigating Officer.

13. Investigating Officer G.P. Mishra (PW-16) has also testified that on the spot during investigation finger prints were taken by PW-17, FSL Mobile Unit, Sagar who has deposed that he has inspected the spot and after inspection

on gas lighter possible finger prints availability was found of which photographs were taken and compared from the model finger print of accused. After the comparison Shri L.K Dubey (PW-17) has submitted the report (Exhibit P/19) to the effect that finger print found on the gas lighter was in-fact impression of right thumb of accused/appellant Gopi @ Govind. Thus by this scientific evidence through finger print comparison, presence of accused in the house of deceased Vimla Jain is also proved.

14. Yashwant Karosia (PW-9) is a municipal counsellor who has conducted the identification proceeding of jewellery discovered at the instance of accused/appellant stated that on 7/07/2006 one sealed packet containing silver anklet, gold ring and bentex bangles was received for identification proceeding. He conducted the identification proceeding in the field of veterinary college after mixing similar items. Vipin Jain has identified the articles belonging to her mother. After such proceeding, Yashwant Karosia (PW-9) has prepared the panchnama vide Exhibit P/7 and nothing adverse could have been brought during cross examination. In this way, though jewellery which was missing from the house of deceased Vimla Jain was recovered from the appellant at his instance and those were identified by the complainant Vipin Jain. From the evidence it is also proved that accused/appellant after committing lurking house trespass and murdering Vimla Jain, robbed the articles i.e. one pair of silver anklet, one gold ring and four bentex bangles belonging to deceased.

15. Having considered the totality of the facts of the present case and the evidence available on record, we are left with no doubt that in the present case the prosecution has established beyond all reasonable doubt that it is the accused/appellant alone and nobody else who had committed the offence. Hence, we are of the view that the conviction on the appellant by the learned trial Court will not justify any interference.

16. We, therefore, in view of the above do not find any merit in the instant appeal, hence, we dismiss the appeal and confirm the impugned convictions and consequent sentences as imposed on the appellant by the trial Court.
Appeal dismissed.