

(2018) 01 MP CK 0158
In the Madhya Pradesh High Court
Case No : 1298 of 1995

Hakim Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 147](#), [Section 323](#), [Section 148](#), [Section 149](#), [Section 306](#) - Puni

Citation : (2018) 01 MP CK 0158

Hon'ble Judges : S.K.Gangele, Anjuli Palo

Bench : Division Bench

Advocate : Madan Singh, A.N.Gupta

Final Decision : Allowed

Judgement

1. The appellant has filed this appeal against the judgment dated 08.09.1995 passed by the 2nd Addl. Sessions Judge, Damoh in Session Trial No.

47/1994 whereby the appellant has been convicted under Sections 302 of the Indian Penal Code and sentenced to undergo life imprisonment and

fine of Rs. 1000/- with default stipulations.

2. It is not in dispute that dead body of the deceased Dildar was found in the courtyard of the appellant.

3. In brief, the prosecution case is that on 02.12.1993 at about 5:45 pm in village Itwa, appellant Hakim Singh and other coaccused persons

namely Nawab Singh, Ranvir Singh, Brijbhan, Durga Singh, Khilan Singh and Govind Singh assaulted Dildar Singh (since deceased) and his family

members. Dildar Singh died due to injuries sustained by him. Complainant Dharmendra Singh (PW-7) brother of deceased Dildar Singh was

informed about the incident. He reached the spot and saw Dildar Singh dead. He lodged Dehati Nalishi ((Ex. P/9). FIR was registered against the appellant and other persons under Section 147, 148, 306, 302, 323 of the Indian Penal Code. After investigation, charge-sheet was filed against the appellant and other accused persons.

4. After committal of the case, learned Trial Court framed charges under Sections 148, 302/149 (in alternate Section 302), 323/149 (in alternate Section 323) of the IPC. Appellant and other accused persons abjured their guilt and pleaded that they are falsely implicated in the case.

5. Learned Trial Court considered the prosecution case. On the basis of circumstantial evidence, the Trial Court held the appellant guilty of committing murder of deceased Dildar Singh and convicted him under Section 302 of the IPC. Other charges were not proved against the appellant. Other accused persons were acquitted from the charges levelled against them.

6. Learned counsel for the appellant contended that the trial Court has relied upon weak type of evidence and wrongly convicted the appellant.

Therefore, he prayed to set aside the impugned judgment and conviction and he be acquitted from the charges levelled against him.

7. Learned Government Advocate has vehemently opposed the prayer of the appellant and contended that the trial Court has rightly convicted and sentenced the appellant for committing offence under Section 302 of IPC.

8. Heard learned counsel for the parties. Perused the record.

9. The question for consideration is, whether the appellant has been rightly convicted under Section 302 of IPC on the basis of circumstantial evidence.

10. Dr. P.D.Karchaiya (PW-16) who conducted the post-mortem of the deceased deposed that the deceased had sustained fatal injuries on the

vital parts of his body. The death of the deceased was homicidal in nature. The injuries were sufficient to cause death in natural course. We find

that postmortem report of deceased (Ex.P30) is unchallenged which established that the death of the deceased is homicidal in nature.

11. It is not in dispute that there is no direct evidence on record. The prosecution examined Amar Singh (PW-1), Gendarani (PW-3), Janak Dulari

(PW-4), Kallu @ Pushpendra Singh (PW-5), Kamal Singh (PW-6) and Dharmendra

Singh (PW-7) as eye-witnesses. All of them have turned

hostile. It is important to note that all these witnesses are near relatives of deceased Dildar. Some of them namely Janak Dulari(PW4), Kallu @

Pushpendra(PW5), Kamal(PW6) and Gendarani(PW3) are also injured witnesses. But they have not supported the prosecution case. Testimony

of injured witness has great evidentiary value but in the present case, the injured eye-witnesses Kamal Singh & others have not supported the

prosecution case.

12. The entire case is based on circumstantial evidence. In case of Satish Nirankari Vs. State of Rajasthan, (2017) 8 SCC 497, Hon"ble Supreme

Court relying upon the rules laid down in Sr. Alfred Wills: Wills' Circumstantial Evidence, Chapter VI has held as under:

It is now well established, by catena of judgements of this Court, that circumstantial evidence of the following character needs to be fully

established:

(i) Circumstances should be fully proved.

(ii) Circumstances should be conclusive in nature. CrI.A. No. 1074 of 2007

(iii) All the facts established should be consistent only with the hypothesis of guilt.

(iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see State vs. Dr.

Ravindra; 1992 (3) SCC 300); Chandrakant vs. State of Gujarat; (1992) 1 SCC 473. It also needs to be emphasised that what is required is not

the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion,

however grave, cannot take place of legal proof. In the case of circumstantial evidence the influence of guilt can be justified only when all the

incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.

13. It is important to note that in cases whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the

case admits. Similarly, burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability. In the present

case, no eye-witness supported prosecution case. As per the testimony of Investigating Officer N.P.Parashar, SI (PW-23), he registered Dehati

Nalishi (Ex. P/9) on the basis of telephonic information received by him from Dharmendra (PW-7) (brother of the deceased). Dehati Nalishi was

lodged on the same day within few hours of the incident.

14. Dharmendra (PW-7) deposed that at around 6-7 pm on the date of incident he returned home from Damoh. When he reached his village, he

heard hue and cry. When he reached the spot, he saw Dildar Singh who was injured and lying down. There were 8- 10 villagers present including

Amar Singh, Kanchedi, Mahesh, etc. He clearly denied that he knew who assaulted Dildar Singh. Dharmendra Singh (PW-7) also turned hostile

but the learned Trial Court considered his testimony and relied on the FIR (Ex. P/12) and Dehati Nalishi (Ex. P/9).

15. Learned Trial Court placed reliance on the facts narrated by Dharmendra Singh against the appellants and held the appellant guilty as the body

of the deceased found in his courtyard. It is important to note that Dharmendra Singh (PW-7) was not an eyewitness. He lodged Dehati Nalishi

(Ex. P/9) as per the information given by other persons to him.

16. In our considered view Dehati Nalishi and FIR which were lodged by a hearsay witness cannot be considered as an incriminating evidence

evidence against the appellant. It is a missing link as it does not complete the chain circumstantial evidence.

17. Learned Trial Court considered the memorandum of the appellant and seizure memo (Ex. P/19) as a conclusive proof against the appellant for

his conviction.

18. In case of Niranjana Rout Vs. State of Orissa, (2016) SCC Online Ori. 963, Hon"ble Supreme Court has held as under:

In Sharad Birdhichand Sarda v. State of Maharashtra (supra), it has been made clear by the Hon"ble Supreme Court that following conditions

must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully 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.

From a scanning of evidence, it is clear that most of the links are missing here to complete the chain of evidence. With regard to Section 498 A

read with Section 4 of the D.P. Act, a scanning of evidence of P.W.7, however, show that there exists enough material to convict the appellant

under Section 498 A IPC and Section 4 of the D.P. Act.

19. In the present case, in the FSL report, blood stain was found on farsa but the FSL could not specify that it was human blood, which relate the

incriminating article with the crime

20. We find that panch witness Omprakash (PW11) and Chinta Patel (PW17) of the aforesaid documents i.e. memorandum of coaccused

(Ex.P16) and seizure memo (Ex.P19) have turned hostile and did not support the prosecution case. Therefore, solely on the basis of aforesaid

seizure of incriminating article farsa and testimony of N.P.Parashar, Investigating Officer (PW-20) is not sufficient to convict the appellant on the

basis of circumstantial evidence. The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the

accused (State vs. Dr. Ravindra; 1992 (3) SCC 300); Chandrakant vs. State of Gujarat; (1992) 1 SCC 473. It also needs to be emphasised that

what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the

crime.

21. We also find that earlier charge-sheet was filed against other accused persons namely Khilan Singh, Nawab Singh, Brijbhan Singh, Ranvir

Singh, Durga and Govind Singh. Co-accused Nawab Singh, Ranveer Singh and Brajbhan Singh, these are the son of the appellant no.1-Hakim

Singh and they were residing with appellant no.1-Hakim Singh at the same house where the body of the deceased was found, but they were

acquitted by the learned Trial. Therefore, reasonable doubt is created in favour of the appellant.

22. After considering all the above evidence, we find that in the present case, all

the circumstances have not been proved against the appellant beyond reasonable doubt. There are many important links missing which create doubt in favour of the appellant. Therefore, we find this is not a fit case to convict the appellant on the basis of circumstantial evidence. Ignoring the principles of circumstantial evidence, learned Trial Court has wrongly convicted the appellant for committing murder of the deceased.

23. Consequently, the appeal filed by the appellant is allowed. The impugned judgment of conviction and sentence is hereby set aside and the

appellant is acquitted from the charges levelled against him. Appellant is on bail. His bail bond stands discharged.

24. Copy of this judgment be sent to the Court below for information and compliance alongwith its record.