
(2017) 10 MP CK 0011
In the Madhya Pradesh High Court
Case No : 182-2006

Jalim S/o Heera Kushwah

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-10-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#) -
Punishment for murder

Citation : (2017) 10 MP CK 0011

Hon'ble Judges : R.S. Jha, Nandita Dubey

Bench : Single Bench

Advocate : Gaurav Tiwari, Ajay Shukla

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the appellant being aggrieved by the judgment dated 8.11.2005 passed by the 10 t h Additional Sessions Judge, (Fast Track) Bhopal in S.T.No. 235/04 whereby the appellant has been found guilty of an offence punishable under section 302 of the IPC and has been sentenced to life imprisonment, for life with fine of Rs.1000/- and in default thereof, to undergo further R.I. for one year. It is pertinent to note that the appellant has been found guilty of offence punishable under section 302 of the IPC on both counts in as much as he has been found guilty of committing the double murder of Radhiya Bai and Jaswant Singh.

2. The prosecution case in brief is that Man Singh PW-10 gave an intimation at police station Sukhi Sevaniya, Bhopal to the effect that while he was travelling on the road at about 11.30.AM, he saw Raghubir who was travelling in a scooter, ahead of him, hit Radhiya Bai from behind with the scooter while she was walking on the road and thereafter take out an axe and deliver several blows on her head and neck with the axe. Man Singh PW-10 further informed the police that appellant Raghubir thereafter ran to the adjoining field where the other deceased Jawant Singh was working and assaulted him also by delivering several blows with the axe on his back and neck and thereafter ran away from the spot.

Man Singh PW-10 also informed the police that the incident was also seen by Gulab Singh PW-9 and Ram Charan PW-5 but Ram Charan, who is the father of deceased Raghubir, was prevented from intervening by Santosh who was also working in the field. On receiving the aforesaid information, the police recorded a Dehati Nalsi Ex.P/19 and thereafter the criminal law was set in motion.

3. The trial Court on the basis of the statements of three eye witnesses; namely Gulab Singh PW-9, Ram Charan PW-5 and Man Singh PW-10 as well as the fact of recovery of the offending weapon i.e. the axe that was used in the commission of the offence from the accused appellant vide Ex.P/32, which has been proved by the Investigating Officer Usha Tiwari PW-14, has recorded a finding of conviction against the appellant on two counts for having committed the murder of both Radhiya Bai and Jaswant Singh.

4. The learned counsel appearing for the appellant submits that the trial Court has erred in recording a finding of conviction on the basis of the statement of Man Singh PW-10 as Man Singh in his statement has admitted the fact that he harboured animosity against the appellant on account of the fact that the appellant's father had deposed against him in a criminal case on the basis of which he had been convicted and was on bail.

5. The learned counsel for the appellant submits that from the aforesaid admission made by Man Singh PW-10 it is clear that he was an interested witness and therefore, the Court below could not have and should not have relied upon such a interested witness. The learned counsel for the appellant further states that as per the statement of Man Singh PW-10 it is also clear that he saw the incident from a distance of more than 150-200 meters and in such circumstances the possibility of the fact that he did not actually see the incident cannot be ruled out. In support of his submission the learned counsel appearing for the appellant has relied upon the decision of the Supreme Court rendered in the case of Raju alias Bal chandran and others Vs. State of Tamil Naidu (2012) 12 SCC 701.

6. The learned counsel for the appellant submits that it is also clear from a perusal of the statement of Ram Charan PW-5, who is the father of the deceased Jaswant and brother of deceased Radhiya Bai that he has stated that he was thrown down by Santosh who thereafter sat on him to prevent him from intervening and protecting his son, and in such circumstances, the possibility of the fact that Ram Charan PW-5 had actually not seen the incident cannot be ruled out and has not been considered and taken into account by the

trial Court. The learned counsel for the appellant submits that in such circumstances, the finding recorded by the trial Court is perverse and deserves to be set aside.

7. Having heard the learned counsel for the parties at length and having perused the statement of Ram Charan PW-5 Gulab Singh, PW-9 and Man Singh PW-10 who are the three eye witnesses to the incident, it is clear that all three are absolutely consistent in material particulars and have clearly stated the fact that the appellant initially assaulted Radhiya Bai and thereafter Jaswant Singh with an axe and delivered several blows on vital parts like the neck and the head. From a perusal of the statement of Dr. Arneet Arora PW-13 it is also clear that the deceased Radhiya Bai sustained 18 injuries with a sharp edged weapon and Jaswant Singh also received 10 injuries with a sharp edged weapon and that these injuries were on vital parts like the neck and the head and that both of them succumbed to the injuries inflicted upon their person. From the statement of Usha Tiwari Investigating Officer PW-14 it is established that the offending weapon i.e. the axe was recovered from the possession of the appellant on his directions vide Ex P/32.

8. From the aforesaid facts which have been properly appreciated and considered by the trial court, it is apparent that the commission of the offence by the appellant is clearly established beyond reasonable doubt and the trial Court has rightly analyzed and considered the statements of the eye-witnesses and the other facts to record a finding of guilt against the appellant.

9. It is also observed that though Man Singh PW-10 has admitted in his cross examination the fact that he was convicted on the statement of the appellant's father.

However, it is observed that the trial Court has not based its finding or conclusion only on the statement of Man Singh PW-10 but has also taken into consideration and accepted the statements of the other two-eye witnesses Ram Charan PW-5 and Gulab Singh PW-9 and that the statement of Man Singh PW-10 is absolutely consistent with the statement of Ram Charan PW-5 and Gulab Singh PW-9 and in such circumstances, we find no fault with the fact that inspite of the admission made by Man Singh PW-10 in his statement, the trial court has accepted and considered the same for holding the appellant guilty of committing the two murders.

10. In the aforesaid facts and circumstances of the case, the reliance placed by the appellant on the decision of the Supreme Court rendered in the case of Raju alias (Surpa) has no applicability as the facts of the case before the Supreme Court were totally different from the facts that are existing in the present case.

11. In the circumstances, the conviction of the appellant under section 302 of the IPC on both counts of having committed the murder of Radhiya Bai and Jaswant Singh is affirmed, confirmed and upheld and the life sentence imposed upon the appellant by the trial Court is also confirmed.

12. In view of the aforesaid, the appeal filed by the appellant is meritless and is accordingly dismissed. The appellant, who is in jail, shall remain incarcerated to undergo the remaining part of the sentence imposed upon him. The appeal is accordingly dismissed.