

(2018) 03 MP CK 0173
In the Madhya Pradesh High Court
Case No : CRIMINAL APPEAL 423 OF 2008

Kailash S/O Bhurji Parmar (Bheel)	Vs	APPELLANT
State Of Madhya Pradesh		RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302
Indian Evidence Act, 1872 — Section 27

Citation : (2018) 03 MP CK 0173

Hon'ble Judges : S C SHARMA, J;VIRENDER SINGH, J

Bench : Division Bench

Advocate : Yogesh Gupta, K.K. Tiwari

Final Decision : Disposed Of

Judgement

1. Aggrieved by the judgment and order dated 21.02.2008 passed in Sessions Trial No.132/07 by II Additional Sessions Judge, Jhabua, whereby the learned Trial Court has held the appellant guilty for the offence punishable under Section 302 of IPC and sentenced him for life imprisonment with fine of Rs.1000/- in default of payment of fine further to undergo rigorous imprisonment for six months, the appellant has preferred the present appeal.
2. Facts of the case in brief are that on 16.03.2007 between 6:30 to 7:00 in the evening Sitabai W/o Sevaram was found dead in her field. A wire was roped around her neck. On receiving information, the people rushed there, they found her struggling to breathe. As they loosed the wire, she succumbed on the spot. At the time of her death, she was adorning a golden nose pin/ring, silver bangles and ear drops. The matter was reported to the police stating that some unknown miscreants has murdered Sitabai by noosing wire around her neck. Police registered and investigated the case.

During investigation, the police arrested the accused, interrogated him and on his disclosure recovered a pair of anklets (kade) and a gofen, which was used to remove the anklets from the legs of the deceased, from his possession. The Police also recovered a pair of slippers from the spot, which the accused admitted as his slippers. Silver anklets were sent to the Executive Magistrate for conducting identification parade and in identification parade, son of the deceased Bhagirath (PW/3) identified them as anklets of his deceased mother. After completing other regular investigation like preparing Panchanama Lash, spot map, post mortem etc, the police filed the charge sheet.

3. The accused was charged for the offence punishable under Section 302 of IPC. He abjured his guilt. He was tried and held guilty for the offence under Section 302 of IPC and awarded life imprisonment with fine of Rs.1000/- as stated in paragraph no.1 above.

4. This appeal is preferred on the grounds that the judgment of the learned Trial Court is contrary to the law and facts. Learned trial Court has not appreciated the evidence in its right perspective. It has not considered the fact that there was no motive of murder. At the time of the incident, the deceased was wearing gold ornaments along with some silver ornaments. It is unbelievable that leaving the gold ornaments, the accused only stole silver anklets. Recovery of anklets is doubtful. Investigating Officer has admitted that the accused was in jail for some other offence and he arrested him without seeking permission from the Judicial Magistrate, and thereafter, interrogated him and recorded his statement and recovered one pair of anklets and gofen. There is no evidence that the slippers belong to the accused/appellant. The learned Trial Court did not consider that there was no eye witness in the case and circumstances putforth by the prosecution could not be established. Husband of the deceased, who had seen the deceased first lying in the field, has not been examined by the prosecution. Date of post mortem is also disputed. Two dates i.e. 17.03.2007 and 18.03.2007 are mentioned in the postmortem report. Constable Dinesh Mandloi (PW/12) has stated that no postmortem was conducted on 17.03.2007, while Dr. K.D Mandloi (PW No.13) has stated the he had conducted the postmortem on 17.03.2007. There is no evidence that the deceased was adorning silver anklets, at the time of her death, which are said to be recovered from the accused. There is no evidence to connect the gofen with the offence and

that is a very commonly available tool in almost every tribe family. Therefore, the accused is entitled for acquittal.

5. Per contra, learned counsel for the respondent/State has opposed the statement of the appellant and have stated that the ornaments which the deceased was wearing at the time of the incident were recovered from the possession of the accused, which is sufficient to relate the accused with the offence, therefore, the learned trial Court has rightly held the appellant guilty and awarded punishment. There is no scope of interference in the judgment of the learned trial Court and prayed for dismissal of the appeal.

6. We have considered rival contentions of the parties and have gone through the record.

7. It is not disputed by the appellant that on the alleged date, time and place of the incident, Sitabai was died due to aphasia resulted due to strangulation and her death was homicidal in nature, therefore, no further discussion of evidence to establish this fact is required.

8. This is a blind murder case and no direct evidence is available on record against the appellant. The only evidence produced by the prosecution is recovery of slippers from the spot, which are said to be of the accused and recovery of anklets on the disclosure of the accused, which were later identified by Bhagirath (PW/3), son of the deceased as the anklets of the deceased, which she was wearing at the time of murder.

9. Station In-charge of Police Station Raipuriya, District Jhabua BR Solanki (PW/17) has stated that during investigation of this case, he recovered a slipper from the spot. He found another slipper near the place of the incident and seized both of them vide seizure memo Ex.P/3. On 26.04.2007, he arrested the appellant vide arrest memo Ex.P/12, interrogated him and prepared memorandum under Section 27 of the Evidence Act Ex.P/8 in presence of Dhulaji (PW/10) and Bheru (PW/11). The accused disclosed that he has concealed the silver anklets stolen from the body of the deceased at Bholaghat. He took the accused with the witnesses there and recovered them from the place pointed out by the accused and seized them vide memo Ex.P/13. The accused further revealed about the gofen. He prepared a memo of this revelation Ex.P/10 and recovered that gofen from the back side of the house of the appellant and seized it vide seizure memo Ex.P/14. Mr. Solanki (PW/17) further stated that the accused admitted

that the slippers found on or near the spot belongs to him. Mr. Solanki (PW/17) has also stated that he requested the Executive

Magistrate/Tehsildar Ratanlal (PW/09) to conduct identification parade of the anklets recovered from the accused. Tehsildar Ratanlal (PW/09) has

stated that on 04.05.2007, on the request of the SHO Police Station Raipuriya, he conducted identification of silver anklets at his office. He called

Bhagirath (PW/03) by issuing notice. He also called four similar type of anklets from the market and mixed them with the anklets provided by the

police. He asked Bhagirath (PW/03) to identify his anklets, who correctly identified them. Bhagirath (PW/03) has also stated that in the office of

Tehsildar, he identified the anklets of his deceased mother. Both the witnesses have proved identification memo Ex.P/5.

10. This is the entire evidence which the prosecution has produced against the appellant and relying upon this, the learned Trial Court has reached on

the conclusion that the evidence produced by the prosecution was sufficient to link the culprit with the crime and convicted the appellant.

11. The nature of the incident and quality of the evidence of the case in hand necessitates re-appreciation of the evidence and in the interest of justice we are doing so.

12. In this case, hardly within two hours of the incident son of the deceased Ganpat (PW/01) lodged FIR Ex.P/1 at police station Raipuriya. In this

FIR, it is mentioned that at the time of the death, the deceased was adorning golden nose pin and silver bangles and ear drops. It is important to note

here that in the FIR, it is not mentioned that the deceased was wearing any silver anklets (Chandi Ka Kade) in her legs. Though in the Court

statement Ganpat (PW/01) has improved and added this fact that at the time of the incident, his mother was wearing silver anklets in her legs but no

explanation is given as to why this fact was not stated before the police at the time of filing of the FIR. The story of silver anklet starts from next day

of the incident i.e. on 17.03.2007. In their police statement, the witnesses added this fact that the deceased was wearing silver anklets in her legs but

in the absence of any plausible explanation, this improvement in the prosecution story appears suspicious.

13. The prosecution has tried to give this incident a colour of robbery with murder and has shown the motive of murder was to rob the ornaments

which the deceased was wearing at the time of incident. but surprisingly leaving all the ornaments including golden ornaments, which the deceased was adorning at the time of the incident, the culprit chose to take out only silver anklets which were more difficult to remove in comparison to other ornaments. This is surprising and unbelievable and makes the entire prosecution story doubtful.

14. I.O. B.R. Solanki (PW/17) has stated that the accused was already in jail in some other case. He arrested him from the jail, interrogated him

before Dhulaji (PW/10) and Bheru (PW/11) and on his revelation recovered silver anklets and gofen from the place pointed out by him. He proved

arrest memo Ex.P/12, memo 27 (of the Evidence Act) of anklets Ex.P/8, memo 27 of slippers Ex.P/9, memo 27 of gofen Ex.P/10, memo 27 of spot

identification Ex.P/11, seizure memo of anklets Ex.P/13 and seizure memo of gofen Ex.P/14. The prosecution has examined Dhulaji (PW/10) and

Bheru (PW/11) to support his statement. Dhulaji (PW/10) has supported his statement and stated that the accused pointed out the place and from that

place only the anklets were recovered. He also proved arrest, interrogation and seizure memos Ex.P/12,13 and 14. After supporting the prosecution

case in his examination-in-chief, Bheru (PW/11) has revealed the truth in his examination. In para 3, he has stated that nothing had been revealed by

the accused before him. In paragraph no.4, he has admitted that the police obtained their signature on all the papers at police station itself. The police

showed him the anklets at the police station itself and thereafter they proceeded towards the field taking those anklets with them. At that time Dhulaji

(PW/10) was also with them. This witness has not been declared hostile by the prosecution. Now the two statement contrary to each other are

available on record. IO B.R Solanki (PW/17) and Dhulaji (PW/10) have stated that the anklets were recovered from the place pointed out by the

accused, while Bheru (PW/11) has stated that anklets were already available at the police station and they take them with them while proceeding

towards the so-called place of recovery. The prosecution has placed reliance on both the statements but both cannot be true at the same time,

therefore, this recovery becomes seriously doubtful.

15. I.O B.R Solanki (PW/17) has stated that he made a request to Tehsildar-Ratanlal to conduct test identification of the anklets. Tehsildar Ratanlal

has stated that he conducted test identification in which son of the deceased Bhagirath (PW/03) correctly identified anklets, but in his examinationin-

chief itself Bhagirath (PW/3) has stated that the police has prepared identification memo Ex.P/5, on which he put his signature at A to A. Again this

witness has not been declared hostile and it makes the statement as well as the identification proceedings conducted by Tehsildar Ratanlal seriously

doubtful and unreliable.

16. So far as the identification of slippers that these belongs to the accused is concerned, no evidence except memorandum statement of accused

given by him before the police under Section 27 of the Evidence Act is available on record and this is settled law that any information given or

statement made before the police, which does not lead to any recovery is inadmissible in evidence. No other evidence that the slippers belong to the

accused is produced during the trial and the evidence which is produced before the trial Court is inadmissible and cannot be acted upon. Therefore,

this link is also not established.

17. Status of recovery of gofen is almost similar. Witness of seizure of gofen Bheru (PW/11) has stated that the Police persons had shown him this

gofen and he does not know as to from where it had come or they brought it. He further stated that he had not gone to the village of the accused from

where the gofen is said to be recovered. Nothing is there to show that this gofen was used in committing the crime. Therefore, this piece of evidence

also cannot be used to establish the culpability of the appellant.

18. As admitted by the I.O. B.R Solanki (P.W/17), no FSL report regarding finger print or any other scientific evidence could be produced by the

prosecution.

19. Thus in this case, all the links produced by the police since commencement and up to the end of the investigation, viz. the deceased was adorning

silver anklets in her legs, those anklets were recovered from the the accused on his disclosure and those were identified by the son of the deceased

are not established by legal and convincing evidence, which makes the entire case of the prosecution doubtful and certainly the accused is entitled for

benefits of such doubts. Learned Trial Court failed to consider all these lacunas appeared in the evidence produced by the prosecution. Therefore,

conclusion arrived at by the learned Trial Court is not sustainable in the eyes of

law.

20. Ex-consquenti, the appeal is allowed. The judgment and order passed by the learned Trial Court is set aside. The accused is acquitted from the

charges under Section 302 of IPC. Fine amount, if deposited, be refunded to the appellant. He be set at liberty forthwith, if not required in any other

case.

21. Order of the learned Trial Court regarding disposal of the property is confirmed hereby.

22. With the aforesaid, the appeal stands allowed and disposed off.