
(2013) 02 MP CK 0123

In the Madhya Pradesh High Court

Case No : Criminal A. No. 1393 of 2002

Lakkhu @ Lakhanlal Gond

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2013) ILR (MP) 934

Hon'ble Judges : Vimla Jain, J; Rakesh Saxena, J

Bench : Division Bench

Advocate : Durgesh Gupta, for the Appellant; Amit Pandey, P.L., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Saxena, J.—Appellant has filed this appeal against the judgment dated 26th June 2002, passed by First Additional Sessions Judge, Damoh, in Sessions Trial No. 75/2000 convicting him u/s 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs. 2000/-. In short, the prosecution case is that in the night intervening between 24th and 25th February, 2000 Hallebbhai the deceased, slept in the back side room of his house. In the morning, at about 7.00 am, when his elder brother Deo Singh opened the door of the room, he found Hallebbhai lying dead on the cot. There were injuries on his neck. Deo Singh went and informed to his father Girdhari, who was staying at his field. Girdhari and his wife reached at the room where the dead body of Hallebbhai was lying. They found that a small portable black and white TV and Rs. 2000/- which were kept in the room were stolen. Girdhari went to police station, Jabera and lodged first information report (Ex. P/1) at 11.00 am. Inspector S.K. Jain (PW-8), after recording the first information report, went at the place of occurrence, prepared spot map (Ex. P/17) and conducted inquest. After recording inquest memorandum (Ex. P/4), he sent the dead body for postmortem examination to Primary Health Centre, Jabera. Assistant Surgeon Dr.

K.C. Koshta (PW-12) conducted postmortem examination and found injuries on the body of deceased caused by some sharp edged weapon.

2. On 7.3.2000, three accused persons viz. Lakkhu (appellant), Guddu @ Ganesh, and Harchat Gaud were arrested. On the information given by appellant, a wrist watch, axe and clothes were recovered. Broken pieces of a television were also recovered from a Talaiya on the information given by the accused persons. Wrist watch and the pieces of TV were identified by Girdhari (PW-1) and Deo Singh (PW-2). After completion of investigation, charge sheet was filed and the case was committed for trial.

3. On charges being framed, accused persons abjured their guilt and pleaded false implication in the case. Upon trial, after appreciating the evidence on record learned Additional Sessions Judge held appellant Lakkhu guilty and convicted and sentenced him as mentioned above. However, finding the evidence insufficient against accused Harchat and Guddu ? Ganesh learned trial judge acquitted them. Aggrieved by his conviction and sentence, appellant Lakkhu @ Lakhanlal has filed this appeal.

4. Learned counsel for the appellant submitted that the learned trial judge misappreciated the evidence and erred in holding the appellant guilty. The identification of recovered property was improper and illegal. It was not established that the property, allegedly recovered on the information of appellant, belonged to deceased. As such the conviction of the appellant was illegal and deserved to be set aside. On the other hand, learned counsel for the State supported the impugned judgment of conviction and submitted that the evidence adduced by the prosecution was correctly appreciated. Appellant was rightly convicted.

5. We have heard the learned counsel for the parties and perused the impugned judgment and the evidence on record carefully.

6. It has not been disputed by the learned counsel for the appellant that the deceased died of a homicidal death. The dead body of deceased was seen by Girdhari (PW-1) and Deo Singh (PW-2), respectively, the father and brother of deceased. Girdhari lodged the report (Ex. P/1) about the death of deceased. After conducting inquest, investigating officer S.K. Jain (PW-8) sent the body of deceased for postmortem examination. On examination of the body, Dr. K.C. Koshta (PW-12) found following injuries on it:

1. Incised wound 6" x 4" extending from the bone of chin to the cervical bone of neck, Mandible was crushed and the bone of vertebral column was cut. Respiratory tract, trachea and main blood vessels of the neck were cut.

2. Incised wound 2" x 1/8" x 1/2" on right jaw.

3. Incised wound 3" x 1/2" x bone deep on lower neck.

In the opinion of doctor, the cause of death of deceased was excessive

hemorrhage due to injuries on the neck, respiratory tract, trachea and large blood vessels of the neck. The injuries were ante-mortem and homicidal in nature.

From the aforesaid evidence it stood established that deceased met with a homicidal death.

7. Now the question before us is whether it was appellant who caused the homicidal death of deceased. There being no direct evidence, the case rests on the circumstantial evidence of recovery of the incriminating articles from the possession of the appellant. Learned counsel for the appellant submitted that it was not established by the prosecution evidence that the articles recovered from the possession of appellant belonged to, or were in possession of the deceased at the time of his death and that the identification of the articles was improper and unreliable.

8. Investigating officer S.K. Jain (PW-8) deposed that on 7.3.2000 in the presence of two witnesses appellant gave information about a TV, axe, a watch and the clothes which he had worn at the time of occurrence. He recorded the said information in the memorandum (Ex. P/6) and, on the same day, at the instance of appellant, he seized a Seiko wrist watch, an axe with blood stains, a jeans and a yellow T-shirt having blood stains vide seizure memo Ex. P/9. On the same day, on the information given by all the three accused persons, he recovered broken pieces of a black and white TV from a Talaiya vide seizure memo Ex. P/12. Clothes and axe seized from the possession of the appellant were sent to FSL, Sagar. As per FSL report (Ex. P/21) and serology report, the clothes and the axe were found to be stained with human blood.

9. Independent witnesses of memorandum and recovery of the aforesaid articles from the possession of appellant viz. Komal Singh (PW-5) and Harlal (PW-6) did not support the prosecution case. They were declared hostile. But, in our opinion, the evidence of investigating officer S.K. Jain (PW-8), who recovered the aforesaid articles, cannot be doubted in this regard in the absence of any grudge on his part against the appellant.

10. Recovered articles were identified by Girdhari (PW-1) and Deo Singh (PW-2) in the test identification conducted by Surat Singh, the Block President of village Jabera. Learned counsel for the appellant urged that the evidence of identification conducted during investigation cannot be accepted since Surat Singh, who conducted the test identification parade (Ex. P/2), was not examined in the court. In the absence of the evidence of Surat Singh, the evidence of identification was inadmissible. We find substance in the submission made by learned counsel for the appellant. Apart from it, in our opinion, the identification of property, allegedly recovered from the possession of appellant, suffers with number of other infirmities also. The Seiko wrist watch, which is alleged to have been recovered from the possession of the appellant, was not mentioned by Girdhari(PW-1) to have been lost or missing in the first information report (Ex.

P/1) lodged by him. Girdhari as well as Deo Singh (PW-2), who participated in the test identification admitted that such type of watch could be available in any body's house. Similar is the case with the broken pieces of TV which are said to have been recovered from Talaiya at the instance of all the accused persons. Since the information about the discovery of pieces of television was given first in time by the appellant, the recovery of it was attributed to appellant. From the evidence of Girdhari (PW-1) it is revealed that only one set of pieces of broken TV were put up for test identification whereas the mixed article was a working TV set. According to him, he identified the watch because no other watch was kept for identification. Apart from it, these articles were shown to him in the police station before the test identification parade was conducted.

11. Girdhari (PW-1) admitted that he had no knowledge about the articles which had been stolen. He could know about the articles only when the accused persons were arrested. Deo Singh (PW-2) stated that a TV, two tape recorders and a wrist watch, which the deceased had been wearing, were not found in the room. He also admitted that before the test identification proceedings he had gone to police station and thereafter he went to Block Office where the test identification was conducted. He stated that the TV which was missing from the room of deceased was of big size and he could not say of which company it was. He expressed his ignorance about the company of the wrist watch also. Deo Singh (PW-2) also stated that there was only one wrist watch and broken pieces of TV. It is true that both the aforesaid witnesses identified the aforesaid articles in the court, but, in our opinion, the evidence of identification of articles cannot be held credit worthy. It does not appear probable that a person, who comes from a rural background can identify the broken pieces of TV set especially when he did not know the name of company which manufactured the said TV and in the absence of any specific mark of identification. Similar is the position with respect to wrist watch. In these circumstances, we are of the opinion that learned trial judge misappreciated the evidence and committed error in accepting the evidence of identification of property allegedly recovered from the possession of the appellant.

12. Next comes the recovery of the axe and the clothes from the appellant which were found to have stains of human blood. The T-shirt was found to be stained with "B" group of blood. Admittedly no report about the blood group of deceased was made available. In the absence of the comparison of blood group of deceased with the blood group of stains found on the articles recovered from the possession of the appellant no incriminating inference could be drawn against the appellant. It could merely be a corroborating piece of evidence when there is other clinching evidence against the appellant connecting him with the crime. In absence of such evidence, the appellant cannot be held to be the perpetrator of crime solely on the basis of human blood being found on the articles recovered from him.

13. For the aforesaid reasons, we are of the considered opinion that the

circumstances sought to be proved by the prosecution against the appellant were not established by cogent and convincing evidence. Suspicion howsoever strong cannot take place of proof. Accordingly, the conviction and sentence awarded to appellant u/s 302 of the Indian Penal Code is set aside. He is acquitted. He be released forthwith, if not required in any other case. Appeal allowed.