
(2018) 04 MP CK 0106
In the Madhya Pradesh High Court
Case No : Cr.A. No. 1418 OF 1995

Laxman & Another

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2018) 04 MP CK 0106

Hon'ble Judges : S.K. GANGELE, J; ANJULI PALO, J

Bench : Division Bench

Advocate : Siddharth Sharma, Aditya Jain

Final Decision : Allowed

Judgement

Appellants have filed this appeal against the judgment dated 07.10.1995 passed in Sessions trial No.15/1990. Four persons were prosecuted for

commission of offence of murder by the trial Court. The Trial Court has acquitted one of the accused Kishori. The prosecution of the appellants was

initiated on the basis of a private complaint filed by the widow of deceased Ladkuwar Bai.

2. The trial Court has held the appellants guilty for commission of offence punishable under Section 302/34 of IPC and awarded sentence of life

imprisonment and fine amount of Rs.1000/-.

3. Prosecution story in brief is that one of the accused Swami Prasad was brother-in-law (nandoi) of the wife of the deceased. Swami Prasad used

to visit the residence of wife of the deceased and along with other accused persons. At one time when Swami Prasad came to the house of the

deceased and was eating food, being served by the wife of the deceased, he had

catch hold the hand of the wife of the deceased. It is alleged that Swami Prasad had some relation ship with the wife of the deceased. On 26.06.1986 accused Kishori came to the house of the deceased. He had taken the deceased with him on the ground that accounts of fertilizer purchased from the shop of Chandi Sahu was to be settled. The deceased did not return back in the night. On the next day, i.e. 27.06.1986 wife of the deceased received information that the dead body of the deceased was lying near Chanaiya well. She went on the spot. Her Jeth (elder brother of her husband) Mohanlal lodged report at police station. Thereafter, the report was registered at the police station. The police registered criminal offence against Kishori and Sarman. Subsequently, wife of the deceased filed a private complaint against four accused persons and the Trial Court registered offence against the present appellants for commission of offence punishable under Section 302/34 of IPC because the police registered the offence against Kishori and his son only. The trial Court after trial acquitted accused Kishori from the charge and convicted three accused persons Laxman, Gullu and Swami Prasad.

4. Learned counsel for the appellants has submitted that the trial Court has committed an error in law in holding that the prosecution has proved the charge against the appellants beyond reasonable doubt. The trial Court treated the statement of Ladkuwar Bai (PW-1) as extra judicial confession which is against the law. He has further submitted that trial Court has further committed an error in law in holding that there is an evidence against the appellants of last seen together. The learned trial Court did not consider the fact that the evidence of the witnesses was recorded before the Magistrate, after delay of near about six months and police after investigation does not find any case against the appellant.

5. In support of his contentions the learned counsel for the appellants has relied on the judgments of the Apex Court in the case of Kala Alias Chandrakala Vs. State Through Inspector of Police [(2016) 9 SCC 337], State of Rajasthan Vs. Raja Ram [(2003) 8 SCC 180], Podyami Sukada Vs. State of M.P. (now Chhattisgarh) [AIR 2010 SCC 2997], Jodhan Vs. State of Madhya Pradesh [(2015) 11 SCC 52] and Rambraksh Alias Jalim Vs. State of Chhattisgarh [2016 (12) SCC 251].

6. Learned counsel for the State has submitted that the trial Court has

appreciated the evidence properly. The appellants made confession before the wife of the deceased. Apart from this, there is last seen together evidence against the appellants. There was motive to kill the deceased. Hence, the Trial Court has rightly held the appellants guilty for commission of offence of murder beyond reasonable doubt.

7. Undisputed facts of the case are that there is no recovery of incriminating material or any weapon from the possession of the appellants. The police after investigation did not find evidence against the appellants to make them accused. The appellants were tried on the basis of private complaint filed by the wife of the deceased.

8. Ladkuwar Bai (PW-1) is the wife of the deceased. She deposed that accused Swami Prasad is my brother-in-law. Sister of my husband/deceased

Thakur Das was married to accused Swami Prasad. Kishori is a resident of my village. Laxman present appellant is a resident of my village, Kapasi.

Accused Gullu is the brother-in-law of accused Kishori. One day before the incident, Kishori along with her son came to my house. Both had taken

my husband/deceased out from the house. They told him that we had to settle the account of Chandu Sahu in regard of purchase of fertilizer. At

around 11.00 o'clock in the morning my husband left the house. He did not return back up to the evening in night. On the next day in the morning

my family members searched my husband/deceased and one resident of village told my maternal uncle that the dead body of my husband was lying

near Chaniy well. I went to the place of the incident. She further deposed that one day accused Swami Prasad who is my relative came to my house.

I was serving meal to him and at that time he catch hold my hand. I subsequently told the same to my husband. Thereafter, my husband complained

accused Swami Prasad about the incident. He told my husband that within eight days either he would be alive or my husband would be alive.

9. There are contradictions and omissions in the statement of this accused. In paragraph-9 she deposed that after one and an half months of the death

of my husband when I was at my field accused/present appellant Gullu came into the room and catch hold my hand. Both the accused persons Gullu

and Laxman told me that I did not give any evidence against Swami Prasad and if I would give any evidence against Swami Prasad, I would face the

same fate as of Thakur Das/Deceased. If you want to nourish your children do

not give evidence against Swami Prasad. I cried and thereafter my Devar (brother-in-law) came there, I told him about the act then accused Gullu and Laxman ran away near a Nala. We lodged a report at the police station (Ex.P/1).

10. Before dealing with the other evidence, we would like to consider this aspect of the evidence of Ladkuwar Bai (PW-1) because the trial Court

treated the aforesaid evidence as extra judicial confession of accused/appellants and convicted the appellants on the basis of treating the aforesaid

statement of Ladkuwar Bai (PW-1) as extra judicial confession of the appellants.

11. The Honâ??ble Apex Court in the case of Kala Alias Chandrakala Vs. State Through Inspector of Police (2016) 9 SCC 337 has held as

under in regard to extra judicial confession :-

â??8. In Sahadevan and Anr. v. State of Tamil Nadu (2012) 6 SCC 403, it has been observed that extra-judicial confession is weak piece of

evidence. Before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. In

Balwinder Singh v. State of Punjab 1995 Supp (4) SCC 259, it has been observed that extra-judicial confession requires great deal of care and caution

before acceptance. There should be no suspicious circumstances surrounding it. In Pakkirisamy v. State of Tamil Nadu (1997) 8 SCC 158 it has been

observed that there has to be independent corroboration for placing any reliance upon extra-judicial confession. In Kavita v. State of Tamil Nadu

(1998) 6 SCC 108 it has been observed that reliability of the same depends upon the veracity of the witnesses to whom it is made. Similar view has

been expressed in State of Rajasthan v. Raja Ram (2003) 8 SCC 180, in which this Court has further observed that witness must be unbiased and not

even remotely inimical to the accused. In Alope Nath Dutta v. State of West Bengal (2007) 12 SCC 230 it has been observed that the main features of

confession are required to be verified. In Sansar Chand v. State of Rajasthan (2010) 10 SCC 604 it has been observed that extra-judicial confession

should be corroborated by some other material on record. In Rameshbhai Chandubhai Rathod v. State of Gujarat (2009) 5 SCC 740 it has been

observed that in the case of retracted confession it is unsafe for the Court to rely on it. In Vijay Shankar v. State of Haryana (2015) 12 SCC 644 this

Court has followed the decision in Sahadevan (supra).

9. In the circumstances of the case, the confession made to Susheela, PW.4 does not inspire evidence. She was not having good relationship with

accused and is not corroborated by other evidence on record, hence, it would not be safe to act upon it in the facts and circumstances of the case.

The extrajudicial confession made to police is admissible only with respect to the recoveries made of the moped as well as a piece of nylon saree,

pursuant to the information, which articles are not proved to be connected with offence.â??

12. The Honâ??ble Apex Court further in the case of Podyami Sukada Vs. State of M.P. (now Chhattisgarh) AIR 2010 SCC 2997 has held as under

in regard to extra judicial confession :-

â??10. Evidentiary value of extra judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not

contemplate that the evidence of an extra judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction

can be based solely on extrajudicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts

and circumstances of each case.â??

13. The Apex Court in the case of State of Rajasthan Vs. Raja Ram [(2003) 8 SCC 180] has held that if extra judicial confession is voluntary and true

and made in fit state of mind, can be relied by the Court, if the evidence about the confession comes from the mouth of a witness who appears to be

unbiased not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a

motive for attributing an untruthful statement to the accused.

14. In the present case Ladkuwar Bai (PW-1) is the wife of the deceased. Her statement about the extra judicial confession was recorded by the

Judicial Magistrate when she filed a private complaint near about after a period of six months. She is an interested witness and she has a motive that

the accused be punished.

15. The Apex Court in the case of Jodhan Vs. State of Madhya Pradesh [(2015) 11 SCC 52] has held as under in regard to the evidentiary value of

evidence of related witness.

â??26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is

found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought

to be rejected. That apart, when a witness has a motive or makes false implication, the Court before relying upon his testimony should seek

corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives

and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has

been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in

their evidence warranting to treat the same as improbable or untrustworthy??

The Apex Court has clearly held that testimony of an interested witness if after careful scrutiny is found as unreliable and improbable or suspicious

it ought to be rejected. In our opinion, the evidence of Ladkuwar Bai (PW1) in regard to extra-judicial confession has to be rejected because

Ladkuwar Bai (PW1) is the wife of the deceased. She did not tell the aforesaid fact to the police immediately after the incident. She deposed the

same facts after the delay of 4-5 months to the Magistrate. The act of the appellants as narrated by Ladkuwar Bai (PW1) is also against the human

nature. Accused persons generally do not make any extra-judicial confession or confess before the wife of the deceased. Hence, in our opinion the

trial Court has committed an error in placing reliance on the statement of Ladkuwar Bai (PW1) in regard to extra-judicial confession.

16. The trial Court has also held that there is a last seen evidence and on the basis of circumstantial evidence. The evidence produced by the

prosecution in this regard is sufficient to hold the appellants guilty for commission of offence of murder beyond reasonable doubt.

The Hon'ble Supreme Court in the case of Rambraksh Alias Jalim Vs. State of Chhattisgarh [2016 (12) SCC 251] has held as under about the

last seen theory :-

12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the

deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play

where the time gap, between the point of time when the accused and the

deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

13. In a similar fact situation this Court in the case of Krishnan v. State of Tamil Nadu [(2014) 12 SCC 279, held as follows:

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp

(2) SCC 372) “31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of

deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the

appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of

circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis

alone can be founded.”

22. This Court in Bodhraj v. State of J&K (2002) 8 SCC45) held that:

“31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive

and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible.”

It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased

were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at

Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire

service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the

accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In *Jaswant Gir v. State of Punjab* (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence,

the appellant cannot be convicted solely on the basis of "last seen together" even if version of the prosecution witness in this regard is believed.

17. Lachhi (PW4) deposed that he was working as cleaner on a bus. It was plying from Khargupura to Naugaon. One day before the death of

deceased-Thakur Das, I had seen him alongwith Laxman, Kishori, Gullu and Sarman. They were eating Namkin. I asked Thakur Das "do you want to

come to your house?" He did not reply. Kishori and Sarman replied that we are going to Kapasi. Subsequently, I came to know from the villagers

that appellants had killed the deceased. In his cross-examination, he admitted the fact that after three days I was called by police and I narrated the

fact to Darogaji. He further admitted in his cross-examination that in his police statement (Ex.D-1) this fact has been mentioned that he told the

names of Thakur Das and Kishori. He further deposed that I told the police the names of five persons, however this fact has not been mentioned by

the police in his statement. Statement of this witness in a proceeding initiated on a private complaint lodged by the wife of the deceased was recorded

after a period of 5 months. Hence the part of the statement that the present appellants were also there, is an improvement. He further denied that

wife of the deceased Ladkuwar Bai (PW1) was living with his uncle.

18. Manak (PW10) is another witness of last seen. He deposed that before one day of death of deceased Thakur Das I went to Palera and when I

was returning from Palera at Gilotha Nala I met with four persons alongwith Thakur Das. These persons were sitting at the Nala and next day I came

to know that Thakur Das was died. In his cross-examination, he deposed that he did not tell this fact to anybody. Police came to the village after death

of Thakur Das. However, I did not tell this fact to the police. Police did not call me neither I went to the police. After 6 months of the death of

deceased Thakur Das, I gave an statement before the Court of Jatara and for the first time I deposed the same facts. There is delay of 6 months in

recording statement of the aforesaid witness. He further admitted in Para-7 in his deposition that Pyaribai is my wife and she is real sister of deceased

Thakur Das. Hence he is an interested witness.

19. Ghanshyam (PW17) is another witness of last seen. He deposed that I had

gone alongwith Deshraj in the forest field to search an ox. We reached Barana and stayed there in night. At around 2 oâ??clock in the night when we were passing, dead body of the deceased was lying and there was a bullock cart. Gullu was driving the bullock cart and Sarman was sitting in the bullock cart. Laxman and Kishori were walking alongwith the bullock cart. I asked from these persons, where you had gone in such a night? They told me that you do your work and drive the bullock cart.Â

Thereafter I came to my house. On the next day morning, I came to know that Thakur DasÂ was died. In his cross-examination, he admitted the fact that he is making the statement for the first time before the Court and he did not tell the aforesaid facts to anybody till his statement was recorded before the Magistrate. It means he made the statement after a period near about 6 months. He further admitted that he is father-in-law of Ladkuwar Bai (PW1)Â wife of deceased. From the evidence of aforesaid witnesses to whom the trial Court has placed reliance to prove the fact of last seen against the appellant. It is clear that the evidence of these witnesses was recorded after a considerable delay.

20. The Honâ??ble Supreme Court in the case of Harbeer Singh Vs. Sheeshpal and Ors. [(2016) 16 SCC 418] has held as under in regard to delay in recording statements of witnesses :-

â??17. However, Ganesh Bhavan Patel Vs. State Of Maharashtra, (1978) 4 SCC 371, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also Balakrushna Swain Vs. State Of Orissa, (1971) 3 SCC 192; Maruti Rama Naik Vs. State of Maharashtra, (2003) 10 SCC 670 and Jagjit Singh Vs. State of Punjab, (2005) 3 SCC 68]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case.â??

21. Considering the aforesaid principle of law of last seen as held by the Honâ??ble Supreme Court that the evidence of last seen is a weak type of evidence and the fact that there is delay in recording the statements of witnesses who deposed about the act of the appellants and the fact that they

are interested witnesses, in our opinion, it is not safe to place reliance on the evidence on the aforesaid witnesses to hold the appellants guilty beyond reasonable doubt. Apart from this, Investigating Officer, Arun Kumar Saxena (PW-20) in Para-5 of his cross-examination has admitted that after investigation, I did not find that present appellants were involved with the crime and they had committed the offence because in the report and statements of witnesses names of these appellants were not mentioned in regard to commission of offence. On the basis of aforesaid analysis and principle of law laid down by the Apex Court and evidence on record, in our opinion the Trial Court has committed an error of law in holding that evidence led by the prosecution is sufficient to prove the appellants guilty for commission of offence of murder. It is cardinal principle of criminal jurisprudence that guilt of accused must be proved beyond all reasonable doubt. The burden of proving its case beyond reasonable doubt lies on the prosecution. It never shifts.

22. Consequently the appeal filed by the appellants is allowed. The appellants are acquitted from the charges. The judgment of the trial Court is hereby set aside. The appellants are on bail. Their bail bonds are discharged.

23. Before parting with the case, we appreciate the assistance provided by the learned amicus curiae.

24. A copy of the judgment be sent to the trial Court for necessary compliance.