
(2007) 07 MP CK 0013
In the Madhya Pradesh High Court

Pooran

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 12-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 302

Citation : (2007) 3 MPHT 498

Hon'ble Judges : Sheela Khanna, J;A.K. Gohil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Gohil, J.—This criminal appeal has been filed u/s 374, Cr.PC against the judgment dated 6-7-1994 of conviction u/s 302, IPC and sentenced to life imprisonment in Sessions Trial No. 207/91 passed by Sessions Judge, Morena.

2. Prosecution story in brief is as under:

That the deceased Chhutta was an employee of appellant from his childhood. About 2 years before the alleged incident, deceased Chhutta left the job and started service in Batasha shop of one Rajesh Jain (P.W. 2). On 13-7-1991 at about 9 or 9.30 p.m. when the deceased was taking meal with his mother Bibbo and brother Ballu at his house, the appellant along with co-accused Teetu alias Murari, his brother and Veerendra his brother-in-law came to the house of the deceased and asked the deceased to accompany them to the house of Rajaram of Village Chhade. Thereafter deceased went along with them and thereafter he was done to death sometime in the same night. It was alleged that the deceased Chhutta was last seen in the company of appellant and co-accused persons. On 14-7-1991 one Shankar (P.W. 16) had seen a dead body, which was lying inside the Mandi courtyard at Jaura and he reported the matter to the police. The face of the dead body was badly crushed and he could not identify the dead body. Thereafter police reached at the spot and saw the dead body. It was identified as per Exh. P-I and was found as dead body of deceased Chhutta. On the merg

intimation the matter was investigated, FIR was lodged and Crime No. 200/91 was registered. One chappal stated to be of accused Pooran was seized near the dead body. His chaddi having blood stains was also seized. After arrest he was interrogated. On the basis of information, memo was prepared and at the instance of accused Pooran his clothes, which he was wearing, were also recovered and seized. After investigation challan was filed against four accused persons. All the accused persons abjured their guilt. Prosecution examined as many as 16 witnesses.

3. Trial Court vide impugned judgment dated 6-7-1995 in Para 26 of the judgment found that the prosecution was successful to establish the following circumstances to prove the guilt against the only accused/appellant Pooran and acquitted the three accused persons as no incriminating circumstances were found against them:

(i) Deceased Chhutta's leaving of long service, from the joint venture of accused Pooran and Murari and starting his own business just nearby in competition thereby giving a set back to the former's business.

(ii) Accused Pooran's threat to the deceased for stopping his own business and joining his old service, lest he should suffer the doom.

(iii) On the fateful night accused person's coming to the house of deceased and taking him along with them.

(iv) The deceased was last seen only a few hours before the incident in the company of accused persons.

(v) Accused Pooran's chappal found near the dead body.

(vi) Accused Pooran after the incident was found having teeth bite injuries besides other injuries which could he sustained in scuffle with other persons and that too at the same time when the incident had taken place.

(vii) At the time of arrest accused Pooran was wearing chaddi having blood stains.

(viii) Information given by accused Pooran led to discovery of his blood stained clothes, hidden in the earth, in the sugarcane field.

(ix) The recovered blood stained shirt's two buttons of front side were found torn, which could happen in a scuffle.

As per the finding recorded from Para 31, the evidence against the accused Veerendra and Murari alias Teetu was found very scanty and evidence against accused Ram Autar was solitary version of Susaiya (P.W. 3) and it was found that the circumstantial evidence is contrary and uncorroborated as other witnesses do not lend support and the Trial Court acquitted the three accused persons and only convicted the appellant as evidence of last seen including the motive and six other circumstances as stated above were found proved against the appellant. The Trial Court found him guilty for offence u/s 302, IPC and sentenced him to

suffer life imprisonment, against which the appellant has filed this appeal.

4. We have heard Shri Atul Gupta, learned Counsel for the appellant and Shri C.S. Dixit, learned Govt. Advocate for the respondent State. Shri Gupta submitted that even if there is some evidence available against the appellant about last seen and motive, the other evidence is neither reliable nor can lead affirmatively to that conclusion that it is only the appellant, who committed the offence. The chain of circumstances is not complete. There is no evidence of presence of appellant Pooran's chappal near the body, it was only identified in the Court and not at the time of identification such an evidence is missing in Exh. P-21, which is the document of identification. The injuries received by the appellant Pooran are of after the incident and they were caused by the police officer, as is clear from the evidence of Rasso (P.W. 11) that he was being beaten by Daroga in police custody and this finding of the Trial Court is contrary to the evidence that Pooran was found wearing chaddi having blood stains at the time of arrest. He was arrested on 14-7-1991 after two and half hours, as he was seen in the company of the deceased in the night at about 9 or 9.30 p.m. He further submitted that so far as the recovery of the blood stained clothes hidden in the earth is concerned, it is not at all reliable as the one witness of the recovery memo has not been examined and another witness Liyakay at Ali (P.W. 15) has not supported the prosecution story and more so there is no report of the blood group found on the clothes of the appellant. It was further argued that the finding recorded by the Trial Court about the torn of two buttons of shirt lead to scuffle between them is also not reliable as no buttons were recovered or seized from the spot. Therefore, it was argued that there is no convincing evidence against the appellant and he has been convicted only on the basis of suspicion. Even the evidence of motive by itself is not sufficient to convict the appellant. He placed reliance of decision in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, , State of Goa v. Sanjay Thakran and Anr. (2007) 2 SCC 162 and Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, and ultimately submitted that the appeal is liable to be allowed and conviction is also liable to be set aside and accused be acquitted.

5. In reply Shri Dixit, learned Counsel for the State vehemently argued and supported the judgment and finding recorded by the Trial Court and submitted that the appeal has no merit and liable to be dismissed.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the evidence and the finding recorded by the Court below. Ballu (P.W. 1), who is brother of the deceased, Rajesh Jain (P.W. 2), has not supported the prosecution and was declared hostile. Susaiya alias Shamshad (P.W. 8), Bibbo (P.W. 10) mother of the deceased, and Rasso (P.W. 11) are the witnesses of last seen and motive. They all have stated that previously Chhutta was working at the shop of Pooran, who was involved in manufacturing Batasha. In the cross-examination there are variations that when the deceased left the shop of Pooran. It has come in evidence that this period is from six months to

two to three years. There is also no dispute that after leaving shop Chhutta has started working with one Rajesh Jain (P.W. 2), Ballu (P.W. 1), brother of the deceased and Bibbo (P.W. 10), mother of the deceased, have also stated that since there was competition in manufacturing Batasha between Rajesh and Pooran and Chhutta was instrument in preparing Batasha, therefore Pooran used to threaten Chhutta that he will kill him but both the aforesaid witnesses have admitted in cross-examination that they had not lodged any report about the aforesaid threat at the police station. During the course of arguments, it was pointed out that there is omission of this fact in the statement of Bibbo (P.W. 10). Omission was recorded in Para 7 of her statement that the same was not found in her case diary statement (Exh. P-3) though it has been mentioned that threat was given but it has not been mentioned that threat was given to kill him, nor there is mention about the payment of one lac rupee to Chhutta by Pooran for leaving the job from the shop of Rajesh and there is also clear omission in the case diary statement of Ballu (P.W. 1) about the same. From the aforesaid omissions in the aforesaid two statements, though the Trial Court has found that the evidence of motive is available on record, but we find that the aforesaid evidence is not of clinching nature. In the case of State of Madhya Pradesh and Others Vs. Paltan Mallah and Others etc., it has been held that the motive by itself is not sufficient to prove the guilt of the accused. There must be complete chain of circumstances to lead this conclusion that affirmative evidence is available against the appellant, which leads to this conclusion that the accused alone is responsible for committing such an offence.

7. We have considered this aspect of the matter as well as evidence pertaining to the other circumstances that the chappal which was found near the dead body of the accused was of Pooran. It is not in dispute that three chappals (sleepers) were seized from the spot, out of which it was alleged that two chappals (one pair) were belonging to the deceased and one chappal was of the accused Pooran. The aforesaid chappals were put to identification to Ballu Khan, who is the brother of the deceased and Rajesh Jain, another Batasha shopkeeper with whom the deceased was working had not identified the aforesaid chappal in the identification parade conducted by Naib Tehsildar Bhagwanlal Gupta (P.W. 12), and in the identification memo (Exh. P-21) it is specifically mentioned that two chappals were identified as belonging to the deceased but third chappal was not identified. Though in the Court statement Ballu (P.W. 1) has stated that the third chappal belongs to Pooran, but Rajesh has not supported this version and was declared hostile. Therefore, according to us there is no clear cut evidence against the appellant that third chappal, which was recovered and seized from the spot, was of appellant Pooran. From the aforesaid evidence we are not satisfied that this circumstance is found proved against the appellant and therefore the finding recorded by the Trial Court on this ground appears to be erroneous.

8. The next circumstance on which the Trial Court placed reliance was of the injuries received by Pooran. Pooran was arrested on the next date, i.e., on 14-7-1991 in the night at 11.00 p.m. In the arrest memo (Exh. P-19) it has been

mentioned that seven injuries were found on the body of the appellant when he was arrested. This evidence is supported by the witnesses of the arrest memo, i.e., Rasso (P.W. 11) and Rambhajan Singh (P.W. 13), but Rasso (P.W. 11) in Para 15 of his cross-examination has admitted that he had seen at the Police Station, Ramvaran Singh Baishya, SI TI and SDOP were present and one Constable was beating Pooran at 11.45 in the night, though Pooran was saying that he has not killed anybody. This statement of Rasso (P.W. 11) is sufficient to demolish the prosecution story that there was scuffle between the appellant with somebody, may be with the deceased and he received injuries in that incident. Rambhajan Singh (P.W. 13), who is another witness of arrest memo of Pooran, in Para 13 of his cross-examination has admitted that he is not aware that when the police had arrested Pooran, from which place and on which date. He has further admitted that police had called him twice-thrice at police station and had obtained his signatures on the Panchnama and other documents. He has also admitted that in number of cases he has been cited as a witness by the police being journalist. His evidence is quite doubtful and has demolished the truthfulness of the prosecution case. His evidence is not at all reliable so far as the documents and his signatures on Exhs. P-5, P-15, P-17 and P-18 are concerned. In Para 13 he has admitted that on all these documents he has signed at police station including the spot map on second day after recovering the dead body and on the saying of his friend Ballu. Therefore, the evidence of Rambhajan Singh (P.W. 13) proves the concoction of the case by the prosecution against appellant, so far as the injuries on the body of appellant is concerned at the time of arrest. The appellant was referred for medical examination, which was conducted by Dr. Ashok Kumar Gupta (P.W. 5) and he found as many as 10 injuries on the body of the appellant. They were caused by hard and blunt object within 24 hours from the date of his examination and all the injuries are simple in nature. Doctor has advised for X-ray of injury Nos. 1 and 2 and even after X-ray report (Exh. P-8) no bony injury was found. Doctor has admitted this position that on scuffle if a person will fall again and again on earth, he will receive injury Nos. 1 to 10 and injury No. 10 can be received by teeth biting. In Para 24, he has admitted that injury Nos. 1 to 10 may be caused by "Danda" and there is no reliable evidence on record that there was any scuffle between the appellant and the deceased. Dr. Ashok Kumar Gupta (P.W. 5) had also performed the autopsy of the dead body and has found as many as 9 injuries on the body of the deceased, out of which four injuries were of incised wounds : (i) on left side of forehead just above left eye brow, (ii) on right side of forehead just above right eye brow, (iii) on right side of face near the outer end of right eye, (iv) on the left side of chin. The other injury was lacerated wound on the right parieto occipital region of head and two lacerated wounds were also on the right parieto frontal region of head and on left parieto frontal region of head just above the left ear. The face was found crushed. He had also seen linear fracture of left parietal bone and there was sub dural hematoma was also found in the brain in the left side. All the injuries were ante mortem and were caused by sharp edged weapon as well as by hard and blunt object. He has further admitted in Para 18 that while

performing post mortem he had seen the teeth of the deceased and he has found that the deceased was not having two upper central incisor teeth and one lateral incisor teeth. In Para 26 doctor has admitted that the deceased may receive injury Nos. 6, 7 and 8 by falling on the stone or earth or by throwing of stone, but those injuries may not come from a single blow. Injury Nos. 6, 7 and 8 may come by repeated blows. This medical evidence shows that there may be number of assailants. The injuries which were received by the deceased, particularly injury Nos. 5 to 9, may come from scuffle with many persons but certainly there is no evidence on record that Pooran was having any teeth biting injury or the aforesaid injury was caused in any scuffle by the deceased. From the evidence of Rasso (P.W. 11) that the appellant Pooran was beaten by the police has raised a serious doubt that the injuries were received in the incident. Therefore, we found that the evidence is not of clinching nature so far as this circumstance of scuffle and injuries of the appellants is concerned.

9. Trial Court has found that at the time of arrest accused Pooran was wearing chaddi having blood stains and at the instance of appellant Pooran blood stained clothes hidden in the earth were recovered from the sugarcane field, but two things are very material; that the aforesaid chaddi was seized by seizure memo Exh. P-20. Rambhajan Sing (P.W. 13) has not supported the aforesaid recovery of chaddi including the evidence of seizure memos (Exhs. P-25 and P-27). Prosecution has not proved the memorandum as well as the seizure of chaddi. One Liyakat Khan (P.W. 14) has not supported the prosecution and Matadin one of the witness was not examined. Even if it is found that chaddi was of Pooran and at his instance the blood stained clothes of Pooran were recovered and seized by the police and they were referred for chemical examination, but the prosecution has not produced any chemical examination report nor it has been proved that any blood stains were found on the cloth and what was their blood group. From the memo (Exh. P-20) it appears that chaddi was seized after the arrest, which also goes to show that first he was beaten at the police station and thereafter his blood stains chaddi was seized by the police. Therefore, in the absence of corroborative evidence, we do not find that this circumstance is also of any incriminating nature providing any proof to the Court to draw conclusion against the appellant.

10. The last circumstance which was found proved by the Trial Court was of the recovery of a shirt two buttons of which were found torn. There is no evidence that any of the button was found on the spot or they were torn in the aforesaid scuffle, which has been made a ground by the prosecution. In the absence of any corroborative evidence of recovery of buttons from spot, no such inference can be drawn. This also does not lead to any conclusion.

11. In the case of Sharad v. State of Maharashtra (supra), Hon"ble Supreme Court has clearly laid down the various principles and conditions which must be fulfilled before a case against the accused based on circumstantial evidence can be said to be fully established. As per the aforesaid judgment, the following

essential conditions and circumstances must be satisfied:

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" 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,
- (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,
- (6) Various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (7) The said circumstances point to the guilt of the accused with reasonable definiteness, and
- (8) The circumstance is in proximity to the time and situation.

12. Hon"ble the Supreme Court has clearly held that it is well established that prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any

infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

13. Again in the case of Ramreddy Rajeshkhanna Reddy (supra), it has been held in placing reliance on the judgment in the cases of Anil Kumar Singh v. State of Bihar : (2003)9SCC67 and Reddy Sampath Kumar Vs. State of Andhra Pradesh, :

It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however, grave may be, cannot be substitute for a proof and the Courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.

In the aforesaid case Hon"ble Supreme Court has also considered the last seen theory and held that-

The last seen theory, furthermore, comes into play, where the time-gap between the point of time when the accused and the deceased were last seen alive and 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. Even in such a case Courts should look for some corroboration. [Held in the case of State of U.P. Vs. Satish, .

The Court has also considered the question of motive and has held that-

It is, furthermore, well-known that motive by itself is not sufficient to prove the guilt See State of Madhya Pradesh and Others Vs. Paltan Mallah and Others etc., .

14. After hearing the parties and on perusal of the evidence we found that there is a time gap when the person was last seen in the company of appellant Pooran, which is around 9 to 9.30 p.m. and the dead body of the deceased was found in the courtyard of Mandi in the next morning between 5.30 to 6 a.m. by Shankar (P.W. 16). There is time gap of ten hours between this period. Duration of death is 24 hours from the time of post mortem. Post mortem was performed on 14-7-1991 at 4.10 p.m. Dr. Ashok Kumar Gupta (P.W. 5) has stated that he has found semi digested food in the stomach of the deceased and as per his opinion he must have consumed food six hours before his death. If we take into consideration this evidence, it means the time of death must be around between 2 to 3 a.m. in the night and there is clear cut gap of 6 hours from the evidence of last seen. Trial Court has acquitted the other accused persons. Prosecution has also examined one Ganesh Kumar (P.W. 9). The deceased was his neighbour. He has only stated that he had seen the deceased was talking with the appellant Pooran. He was passing through the road, but he was unable to show that what was the time and he had not seen the other persons in the company of Chhutta, therefore the Court has granted benefit of doubt to the remaining three accused persons. There is one more lacuna in the prosecution story that when the dead body was found inside the Mandi courtyard, then why the Mandi Choukidar or other employees or shop keepers of the Mandi courtyard were not examined to throw light on the incident. Therefore, even if we place some reliance on the evidence of last seen that at the last deceased was seen in the company of the appellant, that itself is not sufficient to lead to this conclusion that he is a person, who is responsible for the incident in the absence of any other incriminating circumstances. The other circumstances, which had been relied upon by the Trial Court in Para 26 of its judgment are not found proved by reliable evidence therefore, it cannot be held that reliable and clinching evidence is available on record to prove all other circumstances, which leads to this conclusion that it is the only appellant, who has committed the offence.

15. We are not impressed by the other circumstances; like motive, recovery of chaddi of the appellant from the spot or recovery of blood stained clothes,

recovery of shirt with two buttons torn or the injuries on the body of the appellant leads to the firm conclusion that it is the only appellant, who has committed the offence.

16. It is the case based on circumstantial evidence. The findings recorded by the Trial Court are not based on any reliable, conclusive and clinching evidence against the appellant. All other circumstances only raises a serious doubt so far as the finding of the Trial Court are concerned. Thus, we are of the view that there is no reliable, clinching, incriminating and corroborative evidence against the appellant that it is the only appellant, who has committed the offence. The injuries on the dead body of the deceased itself raises a doubt that the injury is not caused by one person. Thus, we find that the findings recorded by the Court below are contrary to the evidence on record and they do not lead to any firm conclusion. Thus, this appeal deserves to be allowed. The appellant is also entitled for benefit of doubt.

17. Consequently, this appeal is allowed. Conviction of appellant is set aside. He is acquitted from the charges. He is on bail. His bail bonds are discharged.