

(2006) 03 MP CK 0060
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 644 of 1992

Pooranalal Kachhi

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 394

Citation : (2006) 03 MP CK 0060

Hon'ble Judges : R.K. Gupta, J;Deepak Verma, J

Bench : Division Bench

Advocate : Ahadulla Usmani, for the Appellant; R.S. Patel, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

1. On 26.7.1989 at about 2.00 P.M Sattilal, Kotwar of the village, lodged information vide Exhibit P-9 with Head Constable, Police Station Bargi, P.W-13 Balmik Pandey that in Narayanpur in river Narbada dead body of one unknown person was found floating and dead body of another person had almost sunk and only one hand was visible. On such information being received by Balmik Pandey, Marg intimations No. 32 and 33/89 were recorded.

Thereafter, Sub Inspector Sharda Prasad Tripathi alongwith other police personnel went to Narayanpur and from Narbada river took out two dead bodies of young persons. Panchayatnama of dead bodies were prepared vide Exhibit P-6 and P-7 and the same were sent for postmortem to Medical College, Jabalpur.

Postmortem was performed by P.W-18 Dr. D.K. Sakale who has proved the postmortem reports Exhibit P-17 and P-18 pertaining to the deceased persons. In the light of this, it could not be disputed that the deceased persons had met with homicidal death nor the said fact has been disputed before us. It is also established from the postmortem reports that both deceased persons had sustained penetrating, incised and chopped wounds on their person.

During investigation, Sharda Prasad Tripathi (PW-14) had collected from the scene of occurrence i.e "baadi" of Saddu Kachhi, plain and blood stained earth and similarly from other place plain and blood stained earth were collected.

2. During investigation statements of witnesses u/s 161 CrPC were recorded. It was then found that appellant Pooranlal Kachhi was last seen together with deceased Indra Kumar s/o Baijnath and Babloo @ Devendra Kumar s/o Baijnath. At his instance, on a memorandum being prepared Exhibit P-15, from an open place one "bakka", said to be the weapon of offence, was seized vide Exhibit P-16. After completion of the investigation it was found that in all 4 accused were instrumental in causing murder of Indra Kumar and Babloo @ Devendra Kumar. Thus, they were charge-sheeted for commission of offence under Sections 120B, 394, 302 and 201 IPC before Eighth Additional Sessions Judge, Jabalpur in Sessions Trial No. 467/89.

3. Vide the impugned judgment pronounced on 26.6.92, out of the four accused charged for commission of the said offences, three have been acquitted. Only the present appellant Pooranlal Kachhi has been found guilty for commission of the offences u/s 302 IPC and has been awarded Life Imprisonment. Hence, this appeal.

4. We have, accordingly, heard learned Counsel for the parties and perused the record.

5. It has not been disputed before us that the prosecution story rested wholly on circumstantial evidence. Two circumstances which have weighed with the learned trial court to have found the present appellant guilty for commission of the offence are as under:

(i) Present appellant Pooranlal Kachhi was last seen together in the company of deceased Indra Kumar and his brother Babloo @ Devendra Kumar on 24.7.89.

(ii) Recovery of weapon of offence "bakka" at the instance of this appellant from an open place.

6. Though in para-61 of the judgment learned trial court has found that independently on the strength of the aforesaid two circumstances, appellant could not have been held guilty for commission of the said offence, but in case both the aforesaid circumstances are established, then the pointer would be only at the accused and he can be held guilty for commission of the said offence.

7. Learned counsel for the appellant, Shri Ahadulla Usmani, strenuously contended that the trial court not only committed an illegality, but also fell into a grave error in holding the appellant guilty for commission of the aforesaid offence on a weak piece of evidence. It was contended that even if these two circumstances are fully established, the appellant could not have been held guilty for commission of the said offences.

On the contrary, Shri R.S. Patel, Addl. Advocate General, submitted that these

two circumstances were sufficient enough to hold the appellant guilty and the trial court committed no error in doing so.

8. Thus, looking to the rival contention put forth by the learned Counsel for the parties, we would take up the first circumstance i.e last seen together.

9. Prosecution has examined P.W. 3 Nandu, P.W-8 Basanti Bai, mother of deceased Indra Kumar and Babloo @ Devendra Kumar, P.W-9 Meera Bai @ Asharani, widow of deceased Indra Kumar and P.W-11 Baijnath, father of deceased, to establish the theory of last seen together. Out of the aforesaid witnesses, P.W-8 Basanti Bai, P.W-9 Meera Bai @ Asharani and P.W-11 Baijnath are the close relatives of the deceased. The only independent witness examined by the prosecution is P.W-3 Nandu. Police statements of P.W-3 Nandu is Exhibit D-1 and that of P.W-8 Basanti Bai, P.W-9 Meera Bai @ Asharani and P.W-11 Baijnath are Exhibits D-2, D-3 and D-5 respectively.

P.W-3 Nandu has deposed that on an information being given to him by Hukum Singh, he had gone to the house of deceased Indra Kumar and Babloo @ Devendra Kumar on 24.7.89. Indra Kumar disclosed some issue with him in a secretive manner and asked him to proceed to the "beetal shop" of Gyani Sahu. which was in the same village at a little distance. Nandu accordingly proceeded to the beetal shop of Gyani Sahu and waited for the deceased persons to come there.

He has further deposed that after sometime Pooranlal Kachhi came there and all the three of] them i.e to say deceased Indra Kumar, his brother Babloo @ Devendra Kumar and Pooranlal Kachhi went towards Jabalpur city in the bullet motorcycle which was being driven by deceased Indra Kumar.

Evidence of P.W-3 Nandu has not been fully corroborated by the evidence of P.W-8 Basanti Bai, P.W-9 Meera Bai @ Asharani and P.W-11 Baijnath. They have not deposed that Hukum Singh had gone to the house of Nandu and, thereafter, Nandu had Come a to their house and then all of them had gone to the beetal shop of Gyani Sahu. In fact prosecution should have examined Hukum Singh to prove this chain of circumstance of last seen together.

Not only this, another important independent witness to the fact of last seen together was Gyani Sahu who was running a beetal shop at village Mangela where all the 3 persons i.e present appellant, deceased Indra Kumar and Babloo @ Devendra Kumar had met and, thereafter, proceeded to Jabalpur city in the motorcycle. Prosecution has not explained as to why it has not examined Hukum Singh and Gyani Sahu to establish this fact.

Exhibit D-1 is the police statement of P. -3 Nandu. The same and his evidence recorded in the Court would show that there are several material omissions in as much as nothing was disclosed as to what was the reason of summoning him in the night through Hukum Singh when admittedly he was not taken alongwith appellant and deceased persons to Jabalpur city. He also did not state that

deceased Indra Kumar had disclosed to him that all of them are proceeding to Jabalpur. Similarly, there also appears material omissions in the police statement (Exhibit D-2) of P.W-8 Basanti Bai, (Exhibit D-3) of P.W-9 Meera Bai @ Asharani and (Exhibit D-5) P.W-11 Baijnath. Their evidence on the plea of last seen together does not inspire confidence.

Even if the prosecution story is to be believed, then also the best person to have disclosed with regard to the fact of last seen together would be Gyani Sahu, as mentioned hereinabove, who has not been examined by the prosecution.

10. Thus, in our considered opinion, the fact of last seen together has not been established against the appellant by the prosecution. Even otherwise, last seen together is a weak type of evidence and on the strength of the same, it is neither desirable nor permissible under the criminal jurisprudence to hold a person guilty for commission of an offence.

11. Now coming to the question of recovery of weapon i.e bakka from an open place. Exhibit P-15 is the memorandum said to have been prepared on the information being supplied by this appellant Pooranlal Kachhi. Seizure was made vide Exhibit P-16 from an open place. Kashiram and Parbat Singh were said to be the witnesses to seizure memo. Out of these two, only P.W-17 Kashiram has been examined. Other (sic) witness Parbat Singh, though available, has not been examined by the prosecution for the reasons best known to it. Seizure was made on 30.7.89 i.e. almost 6 days after the incident. It is also not disputed that the seizure was made from an open piece of land which was accessible to all. It has also come on record that the same was kept in the bushes which could have been seen by any passerby. Thus, the second link also does not connect the complicity of the appellant with the commission of the said offence.

12. "Bakka" and other articles seized were sent for chemical examination. Report of F.S.L and that of Serologist are Exhibit P-38 and P-39. As per the F.S.L report, human blood was found on the "bakka" but, due to its disintegration, no blood grouping could be done which finds place in the Serologist report. In absence of grouping, it could not be established that the same "bakka" was used for the commission of this offence. Thus, it could not be established that the present appellant had committed the offences of murders of Indra Kumar and Babloo @ Devendra Kumar.

13. Trial court has also recorded a finding that looking to the nature of offence and the injuries found on the body of deceased persons, the same could not have been committed by one accused alone and there must have been more than one. If this is to be believed, then on what strength of evidence available against this appellant, he has been found guilty has not been explained.

14. It is now well settled by a series of judgment of the Supreme Court that if the case is based on circumstantial evidence, then the following have to be established fully:

- (i) The circumstances from which the conclusion of guilty is to be drawn should be fully established.
- (ii) The fact so established should be consistent only with the hypothesis of the guilt of the accused.
- (iii) The circumstances should be of a conclusive nature and tendency.
- (iv) They should exclude every possible hypothesis except the one to be proved, and
- (v) 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.

There is a long distance between may be proved, must be proved and should be proved. Only on suspicion, an accused cannot be held guilty for commission of such a heinous crime. Benefit of doubt has to accrue to the appellant.

15. In the light of the aforesaid discussion, we have no hesitation to hold that the learned trial court has committed an error in holding the appellant guilty for commission of the said offence. Thus, his conviction and sentences are here set aside. The impugned judgment stands quashed. And is hereby set aside.

16. Appellant is on bail from 10.3.1995 after remaining in jail for about 51/2 years. His bail bonds shall stand discharged.