
(2005) 03 MP CK 0063
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 433 of 1996

Pramod Kumar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 3 MPHT 160

Hon'ble Judges : Deepak Verma, J;A.K. Awasthy, J

Bench : Division Bench

Advocate : Vivek Singh, for the Appellant; Girish Desai, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

A.K. Awasthy, J.—Appellant-accused has preferred the appeal against the judgment and order dated 10th May, 1996 in Sessions Trial No. 517/1990 delivered by learned XIIth Additional Sessions Judge, Indore, of his conviction and sentence u/s 302 of IPC for the imprisonment of life and fine of Rs. 500.00 and in default, RI of three months.

2. The admitted facts of the case are that deceased Sanjay was the son and Kanhaiyalal (P.W. 2) is the brother of accused Pramod Kumar. That the accused with his brother Kanhaiyalal (P.W. 2), his wife, deceased and other sons were living together in a house situated at Malharganj, Indore.

3. The prosecution case is that on 30-8-1990 at about 10.00 p.m. the accused has asked his son Sanjay to commit the murder of his uncle because he was having the illicit relations with his mother. That when Sanjay refused to commit the murder, the accused provided him two Celphose Tablets. That after taking Celphose Tablets the deceased felt restlessness and he inflicted a blow on the neck of his father, i.e., accused by the knife and thereafter he went to the Police Station where at 12.30 in the night report Ex. P-1 was lodged by Sanjay to ASI

Dharamsingh Kushwaha (P.W. 1). That on the next day Sanjay succumbed to the tablets consumed by him. That on 31-8-1990 the post-mortem was conducted by Dr. Ravindra Jain (P.W. 4) and in the viscera report Ex. P-2 it was opined that it contained the aluminium phosphide known as "Celphose". The Investigating Officer Anoop Mishra (P.W. 6) recorded the statement of Kanhaiyalal (P.W. 2) and after usual investigation, the charge-sheet was filed against the accused.

4. The accused has abjured the guilt and denied the allegations of the prosecution witnesses and pleaded his false implication. No witness in defence was examined.

5. The appellant has assailed the conviction on the ground that the prosecution case is not supported by eye witnesses nor there is circumstances to prove the accused has administered the Celphose Tablets to his son Sanjay and as such the accused should be acquitted.

6. Kanhaiyalal (P.W. 2) has further stated that his mother and the accused told him that Sanju has inflicted the knife blow on the neck of the accused and he has run away. Kanhaiyalal (P.W. 2) has not stated a single word about the allegation that the Celphose Tablets were given by the accused to Sanjay. He was declared hostile. Now only evidence against appellant is report Ex. P-1 lodged by the deceased.

7. ASI Dharamsingh Kushwaha (P.W. 1) has stated that Sanjay reported that his father gave knife to him and asked him to murder his uncle and when he refused to obey his father, he gave him the Celphose Tablets and after taking the Celphose Tablets he became restless and inflicted the knife blow on the neck of his father. This report was lodged within two hours of the incident. The report Ex. P-1, it appears, was lodged by the deceased probably to defend himself from the crime of causing the injury on the neck of his father. The deceased has not disclosed to his mother or any of his family members or neighbours that his father has administered the Celphose Tablets to him. Sanjay has not given any explanation of causing the knife injury to his father. The police during investigation has not seized the Celphose tablets from the possession of the accused. It is unnatural and improbable that the father will ask his son to cause the murder and on his refusal poison will be administered by him to kill his son. It is not clear that why Sanjay has not refused to consume the poisonous tablets given to him. No sane man will consume poison so easily. The motive of crime is ridiculous. The story narrated by the deceased in the report Ex. P-1 is highly suspicious and unnatural. It will be unsafe to rely on such uncorroborated report Ex. P-1. This possibility can not be ruled out that the accused in order to save himself from his act of causing the knife blow on the neck of his father had rushed to police station and narrated concocted and cooked up the false story therein. It appears that the deceased after inflicting the injury on the neck of his father had taken the Celphose Tablets out of repentance and remorse.

8. In the backdrop of the aforesaid factual aspects highlighted as above, it is not

safe to hold the accused guilty of causing the murder. Suspicion, howsoever, grave can not take place of the proof. The burden always remain on the prosecution to prove the case beyond reasonable doubt. There is long distance between "may be true" to "must be true" and the prosecution is required to prove the case to the hilt. The accused in the circumstances of the case is entitled to get the benefit of doubt.

9. The appeal is allowed. The conviction and sentence are hereby set aside and the accused is acquitted. The appellant is on bail. His bail and bonds are discharged.