
(2018) 07 MP CK 0070

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.1023 Of 2006

Radheshyam S/O Ramlal Malviya

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374

Indian Penal Code, 1860 — Section 302

Indian Evidence Act, 1872 — Section 27

Citation : (2018) 07 MP CK 0070

Hon'ble Judges : J.K.Maheshwari, J;Prakash Shrivastava, J

Bench : Division Bench

Advocate : Ajit Kumar Tiwari, Amit Singh

Final Decision : Disposed Off

Judgement

This appeal under section 374 of the CR.P.C is arising out of the judgment dated 10.08.2006 passed by Sessions Judge, Ujjain in Sessions Trial

No.134/2006 convicting the appellant for the charge under section 302 of the IPC and sentencing him to undergo imprisonment for life with fine of

Rs.5,000/-; in default of payment of fine he was directed to undergo further simple imprisonment for six months.

2. The case of the prosecution as alleged is that accused/appellant committed murder of Sunil by means of Bakka on 24.02.2006 at Nayapura,

Badnagar, near old Pashuhat, behind Ram Tekri. It is said that on 21.11.2005 Narmadabai, the wife of the appellant, visited her maternal home at

Badnagar and thereafter she did not come back to her matrimonial home at Ratlam. On enquiry made by the appellant, an information was received

information that his wife is residing with deceased Sunil at Betma. The accused/appellant along with wife of his brother-in-law Shardabai visited

Betma and brought the deceased Sunil and Narmadabai at Japla. The accused/appellant persuaded the deceased Sunil to visit the police station and record his statement which was denied by him and also abused the accused. On the said incident some altercation took place between them, at that time the deceased made an attempt to run away towards Badnagar. The accused prevented him and asked him to leave the place only after deciding the issue after deposing in police station. On denial by the deceased, the accused assaulted by means of Bakka and cut his head from the body and reached the Police Station along with the head and weapon. He himself lodged the FIR Ex.P/34 narrating the incident and disclosed that the remaining part of the body is lying at Pashuhat whereupon Panchnama was prepared by the Sub Inspector D.R.Male (PW/14) and also recorded the memorandum of the accused. In furtherance thereto the remaining part of body of the deceased was seized and Panchnama was prepared. Thereafter the body was sent for postmortem. Dr.Devesh Pandey (PW/10) conducted the autopsy and sent his report Ex.P/24 and as per the opinion given by the doctor the cause of death is due to asphyxia and the nature of death is homicidal.

3. After completion of the investigation Challan was filed before the competent Court, however, the case was committed to the Court of Session and on committal charge under section 302 of the IPC was framed against the accused/appellant. In trial the accused/appellant abjured his guilt and put up a defence of false implication and demanded for trial.

4. Learned trial Court has relied upon the statement of the Sub Inspector D.R.Male (PW/14), the report (Ex.P/34) lodged by the accused himself, the Panchnama Ex.P/11 written for the said FIR by the accused and the seizure of the head of the deceased by Ex.P/12. As per the information given by the accused the seizure of Bakka (Ex.P/19) and remaining part of the body (Ex.P/15) were made by the Police. The trial Court observed that as per the statement of Raju (PW/2) and Parwatibai (PW/3) deceased Sunil was found absconding from his home and the wife of the accused was also not with him. Both had not reached Ratlam although departed from Badnagar. On the date of the incident the accused and the wife of his brother-in-law were at Badnagar. The accused himself lodged the report at the police station and in furtherance to the said information and

confession under section 27 of the Evidence Act the recovery of the remaining part of the body was made on his insistence and the doctor has opined

that the injuries were caused by means of Bakka which was seized from the accused.Â However, it was found that the case of death of the

deceased was due to cut down of the neck from the remaining part of the body, therefore, the trial Court has held that the prosecution has proved the

guilt of the accused beyond reasonable doubt and convicted and sentenced him as described herein above.

5. Learned amicus curiae appearing on behalf of the appellant has strenuously urged that Raju (PW/13) has not proved the FIR written by the

accused.Â The witnesses of all the memorandum and Panchnamas viz. Ex.P/11, Ex.P/12, Ex.P/13, Ex.P/14, Ex.P/15 and Ex.P/16 which were

prepared in presence of Ashok (PW/7) and Mahesh Vijayvargiya (PW/8) who have not supported the prosecution case and the prosecution has only

proved the case relying upon the testimony of the Sub Inspector D.R.Male (PW/14) who written the FIR lodged by the accused.Â It is urged that the

said FIR though written on the disclosure of the accused cannot be used against him as his admission cannot form the basis to convict the appellant

unless the prosecution establishes the case by cogent evidence beyond reasonable doubt.Â It is further urged that nothing has come on record

thereby it can be established that how the deceased was brought at Badnagar and it is nobody's case as per prosecution evidence, therefore, the

finding recorded by the trial Court proving the charge under section 302 of the IPC against the accused/appellant relying upon the said evidence is

unsustainable and it is liable to be set aside.Â It is urged that in a case of circumstantial evidence if the chain of circumstance has not been

established with motive till commission of offence by the accused the conviction as recorded by the trial Court is unsustainable.Â In support of his

contention reliance has been placed on a decision of the Apex Court in the case of S.K.Yusuf vs. State of West Bengal reported in 2011 (3) Crime 1

(SC) and prayed to set aside the impugned judgment acquitting the appellant from the said charge.

6. On the other hand, learned Public Prosecutor Shri Amit Singh submits that it is a case wherein on escaping the wife of the accused from her home

and when she was found along with deceased Sunil, the accused committed his murder and the head of the deceased was brought by him in Police

Station and lodged the FIR vide Ex.P/34.Â As per the information given by the accused himself the remaining part of the body as well as the weapon used in the commission of murder were seized which connects him in commission of the offence and prove the chain of circumstances against the accused.Â It is further urged that nothing can be gathered from the documents brought on record that the Police Inspector was having some ill-will with the accused, therefore, his testimony should not be relied upon.Â In absence of bringing any such facts, the conviction based on the documentary evidence proved by the testimony of Investigating Officer as well as the medical evidence do not warrant interference in this appeal, however, upholding the judgment of the trial Court the appeal may be dismissed.

7. After having heard learned counsel appearing for the parties and on perusal of the record in the considered opinion of this Court the accused was

having motive to commit murder of the deceased because he was residing along with his wife since last about two months prior to the date of the

alleged incident. On rescue of her by the accused and when the deceased denied to make his statement before the Police with respect to the

residence of his wife with the deceased, due to said cause using Bakka the head of the deceased was cut from the body making repeated assault.

Thereafter the accused himself along with the head of the deceased visited to the police station and lodged the FIR whereupon the seizure of the head

was made by the Police.Â As per the contents of the FIR the remaining part of the body was recovered from the place, as per the information

supplied by the accused.Â After writing the report the Panchanama was prepared vide Ex.P/11 and the head of the deceased was also seized vide

Ex.P/12.Â On registration of the offence the accused was arrested vide Ex.P/13 and as per the information regarding the remaining part of the body

memorandum (Ex.P/14) was prepared and accordingly the remaining part of the body was seized vide Ex.P/15 from the place where it was lying as

informed by the accused.Â The seizure of Bakka (vide Ex.P/19), the weapon used for the committing the murder, was also made by the police.

Indeed, it is true that the witnesses of the Panchnama and memorandum have not supported the prosecution story but by the statement of D.R.Male

(PW/14) the said said documents have been proved.Â Nothing is on record to establish that the Sub Inspector D.R.Male (PW/14) was having any ill-

will with the accused or having reason to believe that he may falsely implicate him in the offence.Â In a case in which the accused himself has brought the head of the deceased after cutting it by means of Bakka in police station along with the weapon and on which the FIR has been lodged by the Police, the statement of Sub Inspector D.R.Male cannot be discarded on the ground of suspicion as it finds support from the Panchnamas and memorandum.Â In addition to the aforesaid after seizure on the information of the accused and as per the disclosure made by him the chain of circumstance has been completed and proved.Â Â The trial Court has rightly recorded the findings that the deceased and the accused both were found at Badnagar and the wife of the accused was not trying to save him, therefore, not supported the prosecution story but simultaneously the commission of the offence by the accused has been established by the circumstances including the motive and the incident as described in the FIR which was lodged by the accused in police station by bringing the head of the deceased in police station along with the weapon used in the commission of murder which were proved by the cogent evidence, therefore, in our considered opinion the findings of conviction of the appellant recorded by the impugned judgment does not suffer from any perversity or illegality warranting interference in this appeal. The judgment relied upon the counsel for the appellant is of no help to the accused looking to the facts and circumstances of the case as discussed herein above.

8. Accordingly, this appeal being devoid of merit is hereby dismissed and the judgment passed by the trial Court is hereby affirmed.

9. At the end, it is our duty to record the words of appreciation in favour of Amicus Curiae, who assisted this Court in the disposal of this case which was pending since last 12 years and the accused is in jail, however, his assistance is acknowledged.