
(1996) 07 MP CK 0081

In the Madhya Pradesh High Court

Case No : Criminal A. No. 1078 of 1991

Rama Rao Korku and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304, 34

Citation : (1997) J LJ 118 : (1997) 2 MPLJ 158

Hon'ble Judges : Rajeev Gupta, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; D.V. Pendharkar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.P. Gupta, J.

This appeal is directed against Judgment dated 23-12-1991 of Second Additional Sessions Judge, Baitul, whereby the appellant No. 1 was convicted for having committed an offence u/s 304 (Part-II), Indian Penal Code, and the other appellants were convicted for offence punishable u/s 304 (Part-II) read with Section 34, Indian Penal Code. The appellants were sentenced to undergo R.I. for 5 years each. They have also been convicted u/s 20, Indian Penal Code, for concealing the evidence of killing and for that they were sentenced to R.I. for two years each.

The learned trial Court found established certain allegations that in furtherance of common intention, all the three accused chased and hit the victim Sadharam with a lathi on his head on the intervening night of 28/29th March, 1991 in front of house of Ramarao. The victim died on the spot. The body was taken by these accused in a bullock cart and thrown in a jungle.

The reliance of the trial Court mainly was on 3 types of evidence i.e. (1) Eye-witness account given by P.W. 6 Shyam Rao, who is a neighbour of Ramarao

accused and who claimed to have seen the hitting by lathi by Ramarao on the person of Sadhuras when the three accused were chasing Sadhuras out of house of Ramarao. It was intervening night between 28/29th March. According to him, Ramarao had moved towards School and had threatened this witness not to divulge this fact to anybody. The second type of evidence as relied upon by the trial Court is that of witnesses P.W. 2, P.W. 9 and P.W. 10 who assert that Ramarao had made a confession before Village Panchayat gathering in which they were also present and two other Police officials were also present, that they (Ramarao and others) had beaten (Mar Diya) Sadhuras, but he (Sadhuras) was alive and food had been given to him by them. Then the Panchayat people went to forest where Ramarao lead them and the body of deceased Sadhuras was recovered. This evidence, according to learned trial Court, was a believable extra judicial confession of the accused persons. The third type of evidence which was relied upon was the medical evidence given by the Autopsy Surgeon who conducted post mortem examination on the body on 2nd April, 1991 and found that the death had occurred due to coma resulting from fracture of the skull of the deceased. He had found one injury on the skull with fracture.

I have gone through the evidence of all the witnesses examined by the prosecution and considered the reasons given by the learned trial Court in reaching its conclusion of guilt of the accused for offences punishable Under Sections 304 (Part-II) and 201, Indian Penal Code. There are certain glaring infirmities in the evidence which have not been discussed nor considered and so appear to have been overlooked by the trial Court. First is that the statement of P.W. 6 Shyamrao was recorded by Police on 2nd April when the dead body was noticed by Panchayat on 1st April. The complaint to Police was made by father of the deceased i.e. Sitaram (P.W. 3) on 1st April at about 3.15 p.m. when Sitaram (P.W.3) also came to know the death of his son and found the body in jungle while certain villagers were also present there. So, since the night of 28th March to 2nd April, 1991 this witness kept quiet and did not go to Police to inform about the incident although he was an eye-witness. This conduct of the witness puts a doubt on his testimony and the Court must be cautious in weighing his testimony and the best course is to seek corroboration and not outright rejection of such evidence.

P.W 7 Baburao has also claimed to have been a neighbour who had seen occurrence at night. He claims to have seen the accused Ramarao hitting Sadhuras with lathi, then Sadhuras fell down in a heap of chaff and the accused persons loaded his body in a bullock cart and took it away. If this witness P.W 7 had seen all this, why the witness P.W. 6 had not seen loading of the body in the bullock cart, does not find any explanation. Shyamrao P.W. 6 claims to have seen the dragging of body. This dragging was not seen by P.W. 7. P.W. 7 in cross-examination stated that he did not know who had given hit to Sadhuras. So, in one sentence he said that the accused has given the hit and in another sentence in cross-examination, he stated that he did not know who had given hit and he claims to be a neighbour of the accused Ramarao and so also he must be

neighbour of the witness P.W. 6. P.W. 6 and P.W. 7 do not speak of presence of each other when the incident took place. They only speak of themselves. P.W. 7's evidence becomes worthless when he admits that he did not know who had hit and he could not see them due to darkness. So, the testimony of P.W. 6 remains as a forlorn eye-witness which has a serious infirmity around it regarding his conduct and his version, and version of P.W. 7 are at variance regarding surrounding circumstances.

One more factor worth mentioning, which was not discussed by the learned trial Court is that according to P.W. 7, Ramarao had beaten his wife who was driven out of the house. This was not narrated by Shyamrao P.W. 6. So, they appear to have seen only certain portions of the whole act and not the rest which was not probable, if they were at scene of crime.

Now, I come to the extra judicial confession. Ramarao allegedly admitted his guilt in the presence of the other two witnesses. The biggest weakness in that evidence is provided by statement of P.W. 9 Sukhram. He deposed that Ramarao made confession that he and the other two accused had "Mardiya" Sadhuram and thrown him in the jungle. At the same time, in cross-examination he said that at that time Ramarao and two other accused were present before the Panchayat and Police had also come before the Panchayat. He said that he and others came to know about the death of Sadhuram only when the Police came and the Police disclosed who killed Sadhuram, so they came to know. Thus, the statement of the witness in this case is, that whatever Ramarao narrated before the Panchayat, he did so in the presence of some Police Officer. If police was there, the statement of Ramarao would be hit by Section 25 of Evidence Act and it will remain inadmissible evidence. P.W. 2 and P.W. 10 also speak of confession made by Ramarao before the Panchayat gathering, in which these witnesses were also present and this confession was made in the presence of other two accused who kept quiet. They however, speak nothing about it. P.W. 10 speaks that Panchayat people were called by the Police at the house of Babu Patel and goes on to say that only one Panchayat meeting was held on this topic. No explanation was asked by any party as to how long before the Police came, the Panchayat meeting was held. No explanation has come from any witnesses on record as to under what circumstances the Panchayat meeting was necessitated, if the body was first found after the confession of the accused before Panchayat. The date of Panchayat meeting or the date of confession was not disclosed. If the evidence of the father of the deceased namely Sitaram is to be accepted, then on the date he gave report to the Police i.e. 1st April, 1991, he had seen the body in the jungle and some villagers were also present and his younger brother P.W. 1 Patiram had disclosed to him that he was hearing that Sadhuram had been killed and the body was lying somewhere, but he was not certain. So, two brothers had gone to see the body in the jungle and identified that, that was the body of Sadhuram, on 1st April. If we go by this evidence, then the villagers had come to know of the body on 1st April, 1991 itself. Thereafter, there could be no occasion for the accused persons in disclosing to the Panchayat where the body was.

There is no evidence to say that the Panchayat meeting was held on 1st April or 30th March or 31st March and who collected the Panchayat people and for what purpose and why the accused were present in that Panchayat. That again brings us to the narration of P.W. 9 that the Panchayat meeting was held in the presence of Police who had brought the body as well as the accused.

For an extra judicial confession to become reliable, it must be established that it was made by the accused voluntarily and the words used by the accused should be sufficiently clearly established. It must also be established that the evidence is truthful about the extra judicial confession.

When there is vagueness in extra judicial confession and when it is not certain about the date and time of making of that confession and it is not clear why the people, before whom it was made, gathered and why the accused also gathered with them, such claim of extra judicial confession on the part of witnesses has to be viewed with serious doubt, on their veracity.

The learned trial Court did not keep into consideration these aspects of evidence and therefore, he misdirected himself in the approach of assessment of evidence about the extra judicial confession. The evidence on this aspect is required to be totally ignored and overlooked. There was no other evidence except medical evidence of the Autopsy Surgeon who examined the body on 2nd April, 1991. The Doctor found that a fracture of the skull and one injury was there. Dr. V. P. Parlula P.W. 12 was an Autopsy Surgeon. He has found only one injury i.e., lacerated wound on the right temporal region resulting in fracture of skull and one of the plate over the brain. That means there was one hit given on the deceased. He opined that the death might have occurred 4 or 5 days before the post mortem. The death must have occurred instantaneously, according to the doctor.

The question is whether the medical evidence read with the infirm testimony of P.W. 6 is sufficient to convict the accused. In my view, it was totally insufficient evidence as inherent reliance could not be placed on the testimony of P.W. 6 whose conduct deserves condemnation as he did not report to Police about the incident. He has given no reason to be so fearful of Ramarao, as not to report to Police. Sadhuram must have fallen at once after receiving this injury. P.W. 6 also says the accused dragged the body for some distance. Even then P.W. 6 was not moved and he did not give any information to anybody about it in the village. He does not say how his statement was recorded by Police on 2nd April. Whether he volunteered himself or Police traced him as an eye-witness. The investigating officer also does not disclose how he was able to reach this witness and record his statement. If we go by the testimony of Investigating Officer (P.W. 16), Shri R. P. Agrawal, Sub-Inspector, it appears that the witness Shyamrao might have volunteered himself to give his statement to the Police. Why his fear of the accused did not continue on 2nd April, is anybody's guess.

The net result is that there are such interest contradictions between the

narration given by the P.W. 6 and P.W. 7 and conduct of P.W. 6 is so unnatural with delayed statement, that conviction cannot be based on the testimony of P.W. 6 alone, and I do not find that there is sufficient corroboration to his testimony to connect the accused persons with the crime. There is no other circumstantial evidence and recovery of some money such as Rs. 200/- each from the two accused is not an incriminating evidence, as no identity of money is established with the deceased.

The net result of my above discussion is that the findings arrived at by the learned trial Court cannot be sustained. The appellants are entitled to benefit of doubt. The judgment and sentence of the learned trial Court are set aside.

The appeal is accepted accordingly and the appellant accused are ordered to be set at liberty. The surety bonds of those who are on bail shall stand discharged. Release warrant be issued for those who are in custody.