

(2019) 02 MP CK 0088

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 669 Of 2010

Rampramod Gond S/O Ramu Singh Gond

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 374(2)

Code of Criminal Procedure, 1973 — Section 201, 302, 363, 364

Evidence Act, 1872 — Section 27

Citation : (2019) 02 MP CK 0088

Hon'ble Judges : Huluvadi G. Ramesh, J;C.V. Sirpurkar, J

Bench : Division Bench

Advocate : Manish Awasthi, Shamin Ahmad Khan

Final Decision : Dismissed

Judgement

C.V. Sirpurkar J

1. This criminal appeal against conviction filed under Section 374 (2) of the Code of Criminal Procedure by accused/appellant Rampramod Gond is directed against the judgment dated 15.03.2010 passed by the Court of learned Additional Judge to the Court of I Additional Sessions Judge, Shahdol, in Sessions Trial No. 47/2008; whereby, accused Rampramod Gond was convicted and sentenced as hereunder:

OFFENCES

CONVICTION

Section 302 of the Indian Penal Code

Rigorous imprisonment for life and fine

in the sum of Rs.500/-. Rigorous

imprisonment for 5 months in default of

payment of fine.

Section 201 of the Indian Penal Code

Rigorous imprisonment for 3 years and

fine in the sum of Rs.200/-. Rigorous

imprisonment for 2 months in default of

payment of fine.

Section 364 of the Indian Penal Code

Rigorous imprisonment for 7 years and

fine in the sum of Rs.300/-. Rigorous

imprisonment for 3 months in default of

payment of fine.

All substantive sentences were to run concurrently.

2. The prosecution case before the trial Court may briefly be stated thus: Deceased Santoshi was a 3 years old innocent girl. Her father Ramlal worked in Surat (Gujarat). She lived with her mother Chanda Bai (PW-6) and 8 years old elder sister Babiya (PW-4). She used to attend Anganwadi school along with her elder sister Babiya. Accused Rampramod worked as a cook in Anganwadi Centre. At about 10:00 p.m. on 29.11.2007, deceased Santoshi had gone along with Babiya (PW-4) to Anganwadi school. At around 3:00 p.m., she felt sleepy; whereon, accused Pramod took her on his bicycle on the pretext of dropping her at her home. However, accused Rampramod took her to the jungle, where he killed her by hurling her on the ground and beating her. After that, he wrapped the dead body of the deceased in a piece of cloth and brought it to his house; whereafter, he fled from his house. At around 5:00 p.m. the same day, when Chanda Bai (PW-6), mother of the deceased, returned from the field, her elder daughter Babiya (PW-4) informed her that accused Rampramod had taken Santoshi with him on a bicycle. Whereon, Chandabai searched for the deceased in the village. Ultimately, she discovered dead body of deceased Santoshi in the house of the accused lying on a cot. Morgue report of the incident was lodged by Shobhitlal (PW-7), brother-in-law (Devar) of Chanda Bai (PW-6). After morgue inquiry, the first information report was lodged against accused Rampramod. During investigation, on the disclosure statement made by him, the clothes of the deceased as well as accused Rampramod and his bicycle were recovered from his possession. A charge sheet in the matter was filed.

3. The trial Court framed a charge under Sections 363, 364, 302 and 201 of the Indian Penal Code. After the trial, the trial Court recorded the findings to the effect that it was proved on the basis of the statement of PW-4 Babiya that the accused had snatched away Santoshi from her hands and had taken her away on

a bicycle. It was also proved beyond reasonable doubt on the basis of the statements of Jugan Bai (PW-11) that the appellant killed deceased by hurling her on the ground and by beating her. On the strength of the statement of Ramtahal Singh (PW-3), it was proved that accused Rampramod brought back the dead body of the deceased from the place of incident to his house. Chanda Bai (PW-6), the mother of the deceased and other relatives have deposed that they had seen the dead body of the deceased lying on a cot in the house of Rampramod. On the basis of aforesaid evidence, the accused was convicted and sentenced as herein-above stated.

4. Learned counsel for the appellant has assailed the impugned judgment mainly on the ground that the trial Court had failed to appreciate and evaluate the prosecution evidence in proper perspective. Glaring discrepancies in prosecution evidence were glossed over. The trial Court had totally ignored the defence evidence which tended to exonerate the appellant. It has been submitted that Babiya is a child witness aged only 8 years. Moreover, there were material contradictions in her statement; therefore, her testimony was not reliable. Jugan Bai (PW-11), who is said to have witnessed the incident, was not acquainted with the appellant since before the date of the incident, yet no identification parade was conducted during investigation. No blood stains were found either on the bicycle, or on clothes of the accused or deceased. Moreover, the appellant had no motive to kill a three years old innocent girl, who went to school along with his own children. It has further been contended that it appears highly improbable that any person in his right mind would bring the dead body of deceased child back to his house after having killed her in jungle. As such, the prosecution case is inherently improbable. Learned trial Court failed to give benefit of aforesaid doubts to the appellant; therefore, it has been prayed that the appellant be acquitted extending the benefit of doubt to him.

5. Learned Government Advocate for the respondent/State on the other hand has supported the impugned judgment.

6. On perusal of record and due consideration of the rival contentions, the Court is of the view that this Criminal Appeal against conviction must fail for the reasons hereinafter stated:

7. A perusal of the impugned judgment reveals that the conviction is based mainly upon the statements of Babiya (PW-4), 8 years old sister of the deceased, Chanda Bai (PW-6), mother of the deceased, Ramtahal Singh (PW-3) and Jugan Bai (PW-11). Babiya (PW-4) has stated that she studied with deceased Santoshi in Anganwadi school. For lower classes, the school used to close at 2:00 p.m. and for upper classes, it used to close at about 4:00 p.m.. Santoshi had to stay till 4:00 p.m. because Babiya's Classes were up to 4:00 p.m. Appellant Rampramod @ Khabdu worked as cook in the Anganwadi Centre and used to prepare Dalia for children.

8. Babiya (PW-4) has further stated that at around 4:00 p.m. on the date of the

incident, appellant Khabdu snatched deceased Santoshi away from her and took her towards jungle on the carrier of his bicycle. At that time, her mother had gone to the field to work. At around 5:00 p.m. the same day when her mother returned from the field, she told her that appellant Khabdu had taken Santoshi towards the jungle. In this regard, Chanda Bai (PW-6) has stated that when she returned from the field, Santoshi was not at home. Her elder sister Babiya, who was at home, told her that appellant Khabdu had snatched Santoshi from her hands and had taken her; whereafter, she started to look for Santoshi. Santoshi was discovered in the house of appellant Khabdu. She was lying dead. There were blue and yellow injury marks on her back.

9. Jugan Bai (PW-11) has stated that on the date of the incident, she had gone to jungle to graze her goats. She saw appellant Rampramod hurling a small girl on the ground and strangulating her. The girl was crying and weeping. She was terrified; therefore, she ran away. On her way back, she met Mohelal and Rajkumar. She disclosed the incident to them. At night, she learnt that appellant Khabdu had killed Chanda Bai's daughter.

10. Ramtahal Singh (PW-4) has stated that on the date of the incident he had seen accused Rampramod carrying something wrapped in a piece of cloth in his hand from the jungle to his house. He was intermittently placing the parcel being carried by him on the ground.

11. A perusal of the statements of aforesaid four witnesses reveals that Babiya (PW-4) had seen the accused snatching the deceased and taking her to jungle. Jugan Bai (PW-11) had actually seen the appellant throwing the deceased on the ground and strangulating her. Ramtahal Singh (PW-3) had seen the appellant carrying the dead body of the deceased from the place of the incident back to his house and Chanda Bai (PW-6) and Babiya (PW-4) had seen the dead body of the deceased lying on a cot in the house of the appellant.

12. Now the question arises whether the statements of aforesaid four witnesses are reliable? and if yes, to what extent?

13. It is true that Babiya, who was 8 years old, is a child witness. Thus, the Court will have to ensure before her statements can be believed that she was not tutored or was using her imagination at the time of deposition. Only in the last paragraph of her deposition (paragraph no.9) a suggestion has been thrown at her in the most casual manner that she was giving the statement as tutored by her family members; however, this suggestion had been denied by her. In any case, there is no indication in her deposition that she had been tutored in any manner. Her statement is totally in conformity with the prosecution case. Though, there are certain discrepancies, they are minor in nature. For example, in her statement under Section 161 of the Code of Criminal Procedure, she had stated that the appellant had taken the deceased by making her sit in front of the bicycle; whereas, in the Court she has stated that he had taken on the carrier of the bicycle. There is also discrepancy with regard to the clothes on the

dead body of the deceased; however, these discrepancies are peripheral in nature and do not dent the prosecution case at all.

14. Likewise, Babiya (PW-4) has admitted in her cross-examination that when Santoshi was snatched away by the appellant from her lap she did not raise an alarm. She also did not disclose the incident to Samaylal and Ogin nor did she complain to the wife and children of the appellant though, the children of the appellant also studied in Anganwadi school. However, it may be noted that Babiya was only 8 years old. She has stated in paragraph no.4 of her deposition that teachers in Anganwadi used to leave at about 2 p.m. By the time the appellant had taken Santoshi, the school had already been closed and everybody had gone home. Moreover, in all probability, the appellant had taken the deceased from Babiya but had not actually snatched her away; therefore, this witness had no cause for raising an alarm or complaining to anyone. When her mother returned home at about 5:00 p.m. she told her that appellant Rampramod had taken the deceased. There was nothing unnatural in aforesaid conduct of witness Babiya. Therefore, the Court does not find any infirmity in her deposition so as to disbelieve her.

15. Coming to the statement of Jugan Bai (PW-11), it may be noted that she has clearly admitted in paragraph no.4 that she did not know the name of the deceased on the date of the incident though, the appellant used to visit her locality sometime. It is true that in such circumstances, the Investigating Officer ought to have arranged identification parade, which he had failed to do. However, this witness had identified the appellant in the dock, which is substantive piece of evidence. She had no reason to falsely implicate the appellant in such a serious matter. Therefore, it would not be appropriate to disbelieve her statement on account of a mistake committed by the Investigating Officer. Moreover, Rajkumar (PW-10) has stated that on her way back from jungle on the date of incident, Jugan Bai had disclosed to him that in the jungle a man was beating a small girl; whereon Rajkumar Singh had gone to the spot but had found no one. Thereafter, he learnt that his brother-in-law Ramlal's daughter had been killed by Rampramod and Santoshi's body was lying in the house of Rampramod; whereon, he had gone to Rampramod's house and had seen the dead body of deceased lying there.

16. This brings us to the statement of Ramtahal Singh (PW-3). This witness had seen the appellant carrying something in his hands and intermittently placing it on the ground; though, probably at that time he did not realize that what was being carried by the appellant, was in fact the dead body of deceased Santoshi. This witness also had no axe to grind against the appellant; therefore, his statement shifts burden of explaining as to what was being carried by him from the place of incident to his house wrapped in clothes, upon the appellant. The appellant has clearly failed to discharge this burden.

17. So far as statement of Chanda Bai (PW-6) is concerned, she, her mother-in-law Faguni Bai (PW-5) and her brother-in-law (Devar) Shobhit Lal (PW-7) had

visited the house of the appellant on the date of the incident at night. They had seen dead body of deceased Santoshi lying on a cot. There were injury marks on her dead body. It may again be noted that they had no previous enmity with the appellant and as such had no motive to falsely implicate the appellant. This is a damning circumstance which ought to have been explained by the appellant; however, no explanation is forthcoming from the defence in this regard.

18. It is true that the witnesses of the disclosure statement allegedly made by the appellant under Section 27 of the Evidence Act and recovery of articles pursuant thereto, have turned hostile. As such, the memorandum under Section 27 of the Evidence Act and discovery of facts, have not been properly proved; however, the prosecution case is based upon the direct evidence of aforesaid four witnesses. Therefore, failure of the prosecution to prove recovery of blood stained articles does not affect the prosecution case.

19. It is also true that no motive has been proved by the prosecution; however, the case of the prosecution is based upon aforesaid direct evidence. Therefore, failure to prove motive on the part of the appellant becomes immaterial.

20. It is also true that the appellant seemingly had no reason to bring back the dead body to his house; however, probably he suspected that the incident was witnessed by others; therefore, he was trying to conceal the dead body. At any rate, the prosecution is not obliged to explain every circumstance even those which are within exclusive knowledge of the appellant.

21. As far as defence witnesses are concerned, in the opinion of this Court, no weightage can be attached to their statements because though, Assistant Teacher Vinod Kumar (DW-1) has stated that on the date of the incident, the appellant had not gone to the school; however, no attendance register had been produced in order to prove that he was absent on the date of the incident. Moreover, in a village, a cook in a school can visit the school even while he had not reported for duty on that date. Leela Bai (DW-2) has stated that at 2:30 p.m. on the date of the incident, she had dropped Santoshi back to her home because on that date Babiya had not gone to school. However, in paragraph no.8 of her statement she has accepted the suggestion that on the date of the incident Babiya had gone to the school. This witness had also not produced the attendance register in order to prove that on the date of the incident Babiya had not gone to the school. In these circumstances, the statements of defence witnesses cannot be relied upon.

22. On the basis of foregoing discussion, this Court is of the view that the trial Court committed no illegality, irregularity or impropriety in placing reliance upon the statements of prosecution witnesses Babiya (PW-4), Chanda Bai (PW-6), Jugan Bai (PW-11) and Ramtahal Singh (PW-3) and in holding on the basis of their statements that appellant Rampramod @ Khabdu had committed murder of deceased Santoshi after kidnapping her from her sister Babiya. The prosecution had also succeeded in proving that the appellant had destroyed the evidence by

removing the dead body of the deceased from the place of the incident and taking the same to his house. Thus, there is no ground for interfering with the impugned judgment of conviction and sentence imposed upon the appellant.

23. Consequently, this appeal against conviction fails. The impugned judgment passed by the learned Additional Judge to the Court of I Additional Sessions Judge, Shahdol in Sessions Trial No. 47/2008 convicting and sentencing appellant Rampramod Gond as herein-above stated, is affirmed.