
(2018) 05 MP CK 0050
In the Madhya Pradesh High Court
Case No : CRA No. 1472 OF 2008

Rohni Prasad S/O Churamani Barman	APPELLANT
Vs	
State Of Madhya Pradesh	RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Indian Evidence Act, 1872 — Section 106, 134

Citation : (2018) 05 MP CK 0050

Hon'ble Judges : S.K. GANGELE, J; ANJULI PALO, J

Bench : Division Bench

Advocate : Madan Singh, Ajay Shukla

Final Decision : Dismissed

Judgement

1. The appellant has filed this appeal against the judgment dated 09.06.2008, passed by the First Additional Judge of First Additional Session Judge,

Panna (MP) in Session Trial No. 113/2006, whereby the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to

undergo life imprisonment with fine Rs. 20,000/- and default stipulations.

2. Brief facts of the prosecution case is that in the intervening night of 31.07.2006 and 01.08.2006 in village Latoria Mohalla, Pawai, Munni Bai (since

deceased) was assaulted by her husband (appellant) and his family members for non-fulfillment of their dowry demand. Appellant inflicted blows on

her using an axe. His mother dragged Munni Bai by her hair while Munni Bai made a hue and cry. Hisabi Lodhi and Halke Lodhi witnessed the

incident. They saw Munni Bai lying dead in the room of the appellant. FIR was lodged by Lalti Bai-mother of the deceased at Police Station, Pawai.

Offence under Section 302/34 of IPC was registered against the appellant and his

family members. After completion of investigation, charge-sheet was filed before the concerned Court.

3. After committal of the case, the trial Court found that the marriage of the appellant and deceased Munni Bai was solemnized in the year 2006. All the demands of appellant were fulfilled by Lalti Bai-mother of deceased. Yet the appellant used to torture the deceased. He caused death of the deceased by inflicting blows using an axe. Munni Bai sustained fatal injuries. After committing murder of the deceased, the appellant absconded. As per the memorandum of the appellant, incriminating articles axe and his clothes were seized from his possession. Blood stains were found on his clothes. Therefore, appellant was convicted under Section 302 of the Indian Penal Code and sentenced as mentioned above. However, family members of the appellant were acquitted from the charges.

4. The findings of learned trial Court are challenged by the appellant on the grounds that the trial Court committed grave error in believing the hear-say story of the interested witnesses. Many of prosecution witnesses did not support the prosecution story. There are major contradictions, omissions and improvements in the version of the prosecution witnesses and as such they ought not to have been relied upon to base the judgment of conviction and sentence. The prosecution has failed to prove the injury report properly. In fact, the deceased was murdered by unknown terrorist. The trial Court did not properly consider this aspect. Hence, the appellant prayed for acquittal and to set aside the impugned judgment passed against him.

5. Having heard learned counsel for the parties at length and perusal of the record, the question for determination is that whether the learned trial Court erred in convicting the appellant under Section 302 of IPC.

6. It is not in dispute that the appellant is the husband of deceased Munni Bai. Their marriage was solemnized in the year 2006. Lalti Bai (PW-8) is the mother of the deceased. She deposed that she gave necessary articles as per her capability to the appellant in the marriage. He further demanded colour TV, cooler and fan from her as dowry and threatened that if his demands are not met he would kill Munni Bai. After marriage, Munni Bai (since deceased) lived with the appellant for about two months. On her 'bidai' to her paternal house, appellant demanded the aforesaid items as dowry.

Before her death, Munni Bai told Lalti Bai that, the appellant tortured her for non-

fulfillment of dowry demand. Her brother-in-law had affection towards her. Lalti Bai (PW-8) also deposed that she received a call about the illness of her daughter Munni Bai. Hisabi Lodhi and Halke Lodhi took her to Majhgavan police station from Pawai. Thereafter, Lalti Bai saw the dead body of Munni Bai in the room where she was residing with the appellant. Munni Bai had sustained several injuries including neck injuries. Hence, FIR Ex. P/24 was lodged by Lalti Bai at Police Station Pawai which was registered by G.P.Deewan (PW-11). He sent the body for postmortem.

7. Dr. Neeraj Jain (PW-12) conducted autopsy of the deceased on 01.08.2006. He found the following injuries on her body :

- (i) Incised wound of 10 x 3 cms x bonedeeep in the front side of the neck at left clevical region.
- (ii) Incised wound of 6 x 3 cms x bonedeeep on the back side of neck.
- (iii) Incised wound of 6 x 3 x 25 cms deep on the back side of neck.
- (iv) Incised would of 7 x 2 cms on the left shoulder.

8. Dr. Jain (PW-13) found that the face and palm of the deceased were yellowish in colour. All the injuries were antemortem and homicidal in nature.

He further found fracture in cervical vertebrae. All the injuries were caused by hard and sharp object. Dr. Jain opined that the deceased died due to fatal injuries on vital part of neck because of hemorrhage.

9. We find no reason to disbelieve the opinion of Dr. Jain which establish that the deceased died due to fatal injuries caused by hard and sharp object like an axe on her neck. The injuries itself sufficiently establish that the deceased was intentionally and knowingly killed by cutting her neck.

10. Inspector G.P.Deewan (PW-11) prepared spot map Ex. P/11. He collected plain and blood stained soil from the spot. He also seized a mattress and bedsheet with blood stains from the spot as per seizure memo Ex. P/15. Ex. P/1 and Ex. P/15 indicates that the deceased died in her room where she was residing with her husband. The mattress and other seized articles were sent to FSL for chemical examination. Â

11. As per the FSL report Ex. P/2, it was confirmed that blood was present on the soil recovered from the spot Article A, mattress Article C, bedsheet Article D and locket Article E. Human hair was also found on the axe recovered from the appellant. As per the FSL report Ex. P/30 the hair

of the deceased and hair found on the axe were similar in morphological and microscopic characteristic. Appellant has failed to offer any explanation

to the above facts. There is no reason to disbelieve that the deceased was murdered in the room where she was living with the appellant.

12. Buddh Singh (PW-5) is an independent witness. He deposed that after the incident, he saw the body of the deceased at her room. Her hair was

also lying there. Then he went to the forest with the police to arrest the culprit of the incident. They found the appellant in the forest. He was arrested

before Buddh Singh. The appellant failed to offer any explanation about his presence not at his house but he was present at the forest of same village.

Buddh Singh also deposed that before him, the police interrogated the appellant. He gave information about the axe and the clothes which were hidden

in the forest which was recovered from the appellant.

13. Testimony of Buddh Singh (PW-5) is duly corroborated by the testimony of K.B.L. Rajpali (PW-10). He deposed that he recovered an axe as per

the memorandum of the appellant Ex. P/13 He found blood stains on the clothes of the appellant. He sent all the articles and clothes of the appellant

for chemical analysis to the FSL. In the chemical examination, blood stains were confirmed in the clothes of the appellant. Again appellant has failed

to offer any explanation about the source of blood stains on his clothes. It is important to mention here that as per the appellant, he was not present at

his house at the time of incident, then how the blood stains were present on his clothes.

14. These circumstances are rightly considered by the learned trial Court against the appellant for drawing adverse inference against him. It is further

important to note that the appellant has admitted in his accused statement that earlier he was convicted for the murder of his first wife in Session Trial

No. 138/2002 on 14.05.2004 under Section 302 of IPC and sentence with life imprisonment. In this regard K.B.L.Rajpali (PW-10) Investigating

Officer filed a copy of crime registration register Ex. P/25 as an admitted fact, it was proved by the said entries that earlier the appellant was

sentenced for the similar crime with life imprisonment under Section 302 of IPC.

15. Pooran (PW-4) also corroborated that the body of the deceased was found in her room.

16. As per the prosecution case, deceased was murdered in the intervening night

of 31.07.2006 and 01.08.2006. The appellant pleaded a plea of alibi that at the time of incident, he was not present at the house. Some unknown persons had killed his wife. His presence during the incident at another place is not explained. This is an important link which directly connects the appellant with the crime because both husband and wife were residing together in the room where the dead body of the deceased was lying.

14. In case of State of Rajasthan Vs. Thakur Singh [(2014) 12 SCC 211], Hon'ble Supreme Court has held that in case of unnatural death of wife of accused in a room occupied only by both of them when there is no evidence of anybody else entering the room, facts relevant to cause of death being only known to accused and he has not explained them therefore, principle under Section 106 of Evidence Act is clearly applicable.

There is a strong presumption that accused murdered his wife. The Supreme Court has further held that High Court erred in not applying under Section 106 and reversing conviction of accused.

The Supreme Court has relied upon the case of Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681; Ganeshlal Vs. State of Maharashtra (1992) 3 SCC 106;

Dhyaneshwar Vs. State of Maharashtra (2007) 10 SCC 445; Jagdish Vs. State of MP (2009) 9 SCC 495 and Gian Chand Vs. State of Haryana (2013) 14 SCC 420 and held that :

“Law is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

15. It was alleged that the deceased was the second wife of the appellant. Appellant stated that he was residing at his house with his family members but he did not take the defence that the room where the dead body was found was used by his family members other than his wife. After the incident, no report was lodged by the appellant or any of his family members at the police station.

19. Learned counsel for the appellant has submitted written arguments. It is submitted by him that as no blood was found on the axe which was used

by the appellant as alleged and seized by the police, appellant cannot be convicted for the crime. Earlier, we have discussed about the FSL report Ex.

P/2 in earlier paragraphs. All the articles relates to the appellant. Appellant and his wife (deceased) used the bedsheet, mattress, etc. Further, the hair

of the deceased was found on the axe which was seized from the possession of the appellant. Therefore, the contention of learned counsel for the

appellant cannot be accepted. Further, that there is ample evidence available on record against the appellant which cannot be discarded.Â

20. Learned counsel for the appellant contended that the sereologist has failed to detect the source of blood on Article â??Aâ??, â??Câ??,

â??Dâ??, and â??Eâ??. Hence, the FSL report cannot be used to connect the appellant with the crime.

21. In similar circumstance, in case of State of Rajasthan Vs. Teja Ram & Ors. [(1999) 3 SCC 507], Honâ??ble Supreme Court has held as under :

â??Failure of the Serologist to detect the origin of the blood, due to disintegration of the serum in the meanwhile, does not mean that the blood stuck

on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to hematological changes

and piasmatic coagulation that a Serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin?

Such a guess work that blood on the other axe would have been animal blood is unrealistic and far fetched in the broad spectrum of this ease. The

effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially

conscientious mind entertains with some objectivity no benefit can be claimed by the accused.

It cannot be said that in all cases where there was failure of detecting the origin of the. blood the circumstance arising from recovery of the weapon

would stand relegated to disutility.â??

22. Further, the aforesaid principle has been held in the case of Sunil Clifford Daniel Vs. State of Punjab [(2012) 11 SCC 205] held as under ;

â??A similar issue arose for consideration by this Court in Gura Singh v. State of Rajasthan, AIR 2001 SC 330, wherein the Court, relying upon

earlier judgments of this Court, particularly in Prabhu Babaji Navie v. State of Bombay, AIR 1956 SC 51; Raghav Prapanna Tripathi v. State of U.P.,

25. In the light of discussion in the foregoing paragraphs and looking to the facts and circumstances of the case particularly the nature of crime, we

are of the considered opinion that the Trial Court has rightly convicted the appellant under Section 302 of the Indian Penal Code and awarded proper

sentence. We find no reason to interfere in the impugned judgment. We do not find any merit in this appeal. Hence, it is hereby dismissed.

26. Copy of this judgment be sent to the Court below for information and compliance alongwith its record.