

(2020) 07 MP CK 0054

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 3108 Of 2020

Sagar Pandey And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Code Of Criminal Procedure, 1973 — Section 389(1)

Citation : (2020) 07 MP CK 0054

Hon'ble Judges : Rajendra Kumar Srivastava, J; Sujoy Paul, J

Bench : Division Bench

Advocate : Sankalp Kochar, Piyush Bhatnagar

Final Decision : Disposed Of

Judgement

Heard on I.A.No.6070/2020, the first bail application filed under section 389 (1) of Cr.P.C. for suspension of sentence and grant of bail on behalf of

appellants - Sagar Pandey and Ashish Shukla.

The appellants have been convicted for offences under Sections 302 and 201 read with Section 34 of Indian Penal Code and sentenced to undergo

R.I. for life and three years respectively with fine of Rs. 1,000/- each, with default stipulations.

Learned counsel for the appellants submits that both the appellants have been falsely implicated by the prosecution. There was no clinching evidence

to connect the appellants with the crime. It is a case of circumstantial evidence. Indisputably, as per prosecution story, there was no eye-witness to

the incident. The appellant - Sagar is connected with the crime by stating that he and Ashish Shukla were last seen with the deceased. As per

prosecution story, the appellants - Sagar Pandey and Ashish Shukla took the

deceased from his house and thereafter the deceased did not return, then a Gum Insaan was recorded on 18.10.2017 by Ram Kishore Shukla.

By taking this Court to the statement of Awadh Kishore Shukla (PW-2) (uncle of the deceased) and Ram Kishore Shukla (PW-8) (father of the

deceased), it is urged that both of them while lodging report in the police station did not inform the police that it was Sagar who took the deceased with

them. Indeed, they informed that deceased left the house by stating that he is going to market to consume 'Gutka'. Had it been the correct story that

the present appellants had taken the deceased with them, as a genuine response and reflection said two witnesses should have deposed and mentioned

it in their original report before the police. The ""last seen theory"" was subsequently developed and it is an afterthought which caused a serious dent on the story of the prosecution.

In addition, Shri Sankalp Kochar, learned counsel for the appellants urged that vehicle which is allegedly used for commission of crime was not

registered in the name of Sagar Pandey. There is no clinching evidence to connect Sagar Pandey with the said Jeep. Merely because a cash-memo

for purchase of tyres of vehicle was produced, it does not link the present appellant Sagar with the vehicle. So far seizure of shoe and FSL report

based thereupon is concerned, it is argued that shoe was allegedly recovered after 11 days from the date of incident. The seizure memo shows that it

is recovered from a different place than the place where incident had taken place. It is not satisfactorily and beyond reasonable doubt established that

shoe was of the present appellant. The appellants were on bail during trial.

By placing reliance on the judgment of the Apex Court in the case of Shanker Vs. State of Madhya Pradesh, (2018) 15 SCC 725 it is submitted that

the complete chain is not established and therefore, there are no satisfactory circumstantial evidence on the strength of which the appellants could

have been held guilty.

Learned panel lawyer for the respondent/State opposed the said application and drew the attention of this Court on the statement relating to last seen

by Awadh Kishore Shukla (PW-2) and Ram Kishore Shukla (PW-8). He urged that one shoe which was recovered from the place of incident was

sent to FSL along with another shoe which was recovered from appellant - Sagar Pandey. As per the expert opinion, both the shoes appear to be of

same pair. Hence, the Court below has not committed any error of law in convicting the appellants.

We have heard both the parties on this aspect.

Prima facie, it appears that in original Gum Insaan and complaint, Awadh Kishore Shukla (PW-2) and father of the deceased Ram Kishore Shukla

(PW-8) did not mention that deceased left the house with the appellant Sagar. On the contrary, they categorically stated that deceased went on his

own to market to consume 'Gutka'. Apart from this, prima facie it appears that recovery of shoe was after more than 10 days and place of recovery is

not prima facie matching with the place of incident/scene of crime. These are two major aspects on the strength of which Court below has convicted

the present appellants.

Considering the aforesaid backdrop and without expressing any opinion upon the merits of the case, we deem it proper to suspend the remaining jail

sentence of the appellants namely; Sagar Pandey and Ashish Shukla. We do so for yet another reason that final hearing of this matter in near future

in this Covid-19 era is not possible.

Accordingly, I.A.No.6070/2020 is allowed and the remaining jail sentence of appellants is suspended. It is directed that appellants Sagar Pandey

and Ashish Shukla be enlarged on bail on their furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each and one

solvent surety each in the like amount to the satisfaction of the trial court for their appearance before the trial Court Lavkushnagar, Chhattarpur on

22.12.2020 and on such other dates as are given to them by the trial court in this regard, till final disposal of this appeal or until otherwise directed by

this Court in this regard.

Certified copy as per rules.

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