
(2018) 02 MP CK 0177
In the Madhya Pradesh High Court
Case No : 318 of 2007

Shyamlal Baiga and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#) - Punishment for murder - Causing
disappearance of evidence of offence or giving false information to screen offender

Citation : (2018) 02 MP CK 0177

Hon'ble Judges : J.K. Maheshwari, J.P. Gupta

Bench : Division Bench

Advocate : Abhishek Tiwari, Sourabh Shrivastava

Final Decision : Allowed

Judgement

1. Being aggrieved by the judgment dated 15.1.2007 passed by X Additional Sessions Judge, Jabalpur in Sessions Trial No.178/2006 convicting

the appellants for the charge under Section 302 read with 201 of the IPC and directed to undergo R.I. for life and three years respectively with

fine of Rs.1000/- and Rs.500/- each, in default R.I. for three months and two months respectively.

2. The facts which are not in dispute in the present case is that accused Chhotelal (since acquitted) is the Sarpanch of the village and Amasso Bai is

his daughter. Tejanai Bai (PW4) is the sister of deceased Gulabi Baiga whereas Jimmi Bai (PW5) and Premlal (PW1) are his wife and son

respectively. The dead body of the deceased was found on date of incident i.e. 15.3.2006 while the head was found on 18.3.2006 at the

difference place.

3. As alleged, the case of the prosecution is that on 15.3.2006, at about 5 p.m. in the evening, the mother of Premlal alongwith Bajaria Bai reached

on the field. After coming back at about 7 p.m., it was told by her that the dead body of her husband Gulabi without head is lying near a culvert.

Premlal reached on spot alongwith mother where the dead body was lying. Buddhu Gaur has told that about 10-11 a.m. in the morning, Gulabi

was seen going towards Taparia. Thereafter, at about 3 p.m., Laxman told him that the dead body of Gulabi is lying in a culvert. Premlal and

others made an attempt to find out the head of the deceased but could not trace out, however, the information was given to the Police Station on

the next date i.e. 16.3.2006 which was registered at Crime No.24/06 under Section 302 read with 201 of the IPC. The Merg registered by R.D.

Dwivedi (PW15) is Ex.P/29. A Panchanama of the dead body was prepared by him and the body without head was sent for post mortem on

16.3.2006. The seizure of the blood stained soil were made and the statement of Premlal, Budhram, Tejanai Bai, Jimmi Bai, Bajaria Bai and

Ramailal were recorded. On 18.3.2006 accused Ramchandra, Tejilal and Shyamlal were also interrogated and as per their information Ex.P/7,

Ex.P/8 and Ex.P/9, the head of the deceased was found and the recovery of Jarkati (Sickle) was also made, thereafter, the Panchanama was

prepared. Post Mortem report (Ex.P/25) conducted by Dr. Sohanlal Pipaliya (PW14) has been received. After completing the investigation

challan was filed before the competent Court.

4. Since the offence was triable by the Court of Session, therefore, it was committed, where the charge under Section 302 read with 201 of the

IPC was framed against the present three appellants and Chhotelal. The accused persons have abjured the guilt and taken a defence of false

implication due to previous enmity and two defence witnesses Suraj Singh (DW1) and Bhaddi Singh (DW2) were also brought.

5. Learned trial Court relied upon the testimony of Laxman (PW3), who is said to be the eye-witness of the incident, however, co-relating his

testimony with the statement of Budhram (PW2) and the Investigating Officer, R.D. Dwivedi (PW15), convicted the appellants for the charge

under Section 302 read with 201 of the IPC.

6. Learned counsel for the appellants contends that the testimony of Laxman is

not of sterling character, therefore, cannot be relied upon as an eye-witness. It is said that his conduct is doubtful and as apparent from the fact that he has not disclosed the name of the accused persons to Budhram (PW2) though narrated the incident immediately. His conduct is further doubtful because he has not informed regarding the death of the deceased to the family members, though, they visited on the spot. Further his conduct is doubtful as at the time when he was preparing the country made liquor, the incident took place but he did not make any attempt to save the deceased if assaulted by accused. In addition thereto, as per the statement of Ramailal (PW8) and Jhallulal (PW13), the seizure were made in between 9 - 10 a.m., though they were arrested later on. The Court disbelieved the said testimony merely observing the fact that it is not having much relevance. The seizure is prior while the memorandum is subsequent. In such circumstances, the testimony of Laxman cannot be relied upon and in absence thereto, there is no evidence to implicate the appellants in commission of offence. In view of the foregoing, it is urged that the conviction of the appellants for the charge under Section 302 read with 201 of the IPC is unsustainable in law.

7. On the other hand, Shri Sourabh Shrivastava, learned Dy. G.A. has argued in support of the findings recorded by the trial Court. Although, during course of hearing, issue regarding seizure prior to arrest as per the statement of witnesses available on record is admitted but it is urged that it is merely a regularity and on the basis of the same, conviction of the appellants cannot be set aside. It is the contention that Laxman (PW3) is the eye-witness to the incident, merely non-disclosure of incident for 2 - 3 days would not make him doubtful to acquit the accused persons for commission of murder of the deceased, therefore, maintaining the conviction, the appeal may be dismissed.

8. After having heard learned counsel for the parties and on perusal of the facts of this case, it is apparent that the incident took place on 15.3.2006. Laxman is said to be the eye-witness to the incident, which is relied by the Court. He in his statement said that while he was preparing country made liquor, deceased Gulabi was sitting there. Three persons namely Shyamlal, Ramchandra and Tejilal came and assaulted Gulabi by means of Knife, stones and Sickle. At that time, he ran away and narrated the

incident to Budhram. His statement could have been recorded by the police after three days i.e. on 18.3.2006. During this time, he narrated the incident to Budhram without disclosing the name of any accused person in the evening, as reveal from his testimony as well as from the testimony of Budhram. Eye-witness have never made any attempt to save the deceased merely on the pretext of fear and he has also not informed to the family members of the deceased, though, they were known to each other and was staying on the field alongwith deceased at some distance for considerable long time. He has not informed the incidence to police though he must immediately informed. The defence was put regarding enmity due to election of the Panchayat. He admitted that Major Temre of Police Station, Kundam is in his relation. When a specific question was put that you yourself has murdered the deceased and the weapon and other things have been kept in the hut by you, as Budhram should not doubt you, who was also staying on the field alongwith Gulabi, however, after murder of Gulabi, you disclosed the said fact to Major Temre and being his relative in the police department, he saved you. Even having such specific defence and putting the specific question, he has not informed the police for three days, regarding the incident and after three days, he became eyewitness of the incident. Simultaneously, the seizure of the articles have been made prior to the arrest of the accused persons. The said fact would reflect from the testimony of Ramailal (PW8) and Jhallulal (PW13) co-relating with the memorandum Ex.P/7, Ex.P.8, Ex.P/9, Ex.P/10, Ex.P/11, Ex.P/12, Ex.P/13, Ex.P/14, Ex.P/15 and Ex.P/16. In such circumstances, neither the testimony of the eye-witnesses is of sterling character nor the seizure prior to arrest is justified but the trial Court without considering this vital aspect, relying upon the statement of eye-witnesses coupled with the seizure of the articles and the head of the dead body, convicted the appellants. In addition, such circumstances, one fact is also having much relevance that the weapon seized was sent for FSL examination and the report of FSL do not corroborate with the allegation of use of those weapons in commission of the offence.

9. In view of the foregoing discussion, in our considered opinion, neither the testimony of eye-witnesses is of sterling character which can be relied upon to convict the appellants nor the seizure of the articles prior to arrest is

justified. In that view of the matter, merely relying upon the testimony of Investigating Officer, who conducted the investigation and relying upon the statement of Budhram (PW2) and the seizure, conviction directed by the trial Court is wholly unsustainable in law. In fact, the prosecution has failed to prove the involvement of the appellants beyond reasonable doubt in commission of murder of deceased Gulabi. In such circumstances, the appellants deserve to be acquitted giving them benefit of doubt.

10. Accordingly, the appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside. Instead, the appellants are acquitted of the offences. The fine amount, if deposited, be refunded to them. The appellants are in custody. They shall be released forthwith if not required in any other case.

11. At the end, it is my duty to record the word of appreciation in favour of the amicus curiae who assisted the Court in the disposal of the held-up case which was pending since last about ten years, however, his assistance is hereby acknowledged. Appeal allowed.