
(1996) 01 MP CK 0032

In the Madhya Pradesh High Court

Case No : Criminal A. No. 1070 of 1986

Smt. Haribai and Another

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (1996) CriLJ 2143 : (1996) ILR (MP) 165

Hon'ble Judges : Rajeev Gupta, J; R.P. Awasthy, J

Bench : Division Bench

Advocate : S.L. Kochar, for the Appellant; Dilip Naik, Dy. Ad. Com., for the Respondent

Final Decision : Allowed

Judgement

R.P. Awasthy, J.—It is an appeal against the finding of holding the accused appellants guilty for committing offences punishable u/s 302 and 307, read with Section 34 of the IPC, and sentencing them each to imprisonment for life and rigorous imprisonment for 5 years respectively. Jail sentences awarded to both of the accused appellants have been ordered to run concurrently.

2. Prosecution case is that relations between Hari Bai and her husband, Bhaiyalal, were not cordial and therefore, Hari Bai was staying in her parents house, at village Sadwa. A Panchayat was thereafter convened and Bhaiyalal executed an agreement (Ex-P/I), that he would not ill-treat his wife, Hari Bai, and that Hari Bai would be brought by his uncle Mohania (PW/1), to the house of Bhaiyalal. In terms of the said agreement, Hari Bai was brought to the house of Bhaiyalal only about eight days earlier than 17-3-85, which is the date of the present incident.

3. According to Prosecution Bhaiyalal and Kallu Bai had gone to do manual labour in village Panagar, Police Station Bijawar, where they used to reside. Father of Bhaiyalal viz., Ratua had gone, on 17-3-85, to village Gulganj and had returned on the same date. Hari Bai served meals to Ratua and Kallu Bai (PW/2), in the

evening, on 17-3-85. After doing manual labour Bhaiyalal (PW/14) also returned to his house and meal was served to him also. On taking dal, Kallu Bai started vomitting. Bhaiyalal also found that the taste of the said dal was bitter. Thereupon he did not eat the said dal and complained that the taste of the said dal was bitter. Co-accused Milla Bai took the bowl in which the said dal was served to Bhaiyalal and threw it at the place where utensils were washed in the house of Bhaiyalal. Soon thereafter Bhaiyalal also started feeling giddy. He complained that Hari Bai had mixed some poisonous substance in his meals.

4. On hearing the complaint that Hari Bai had mixed some poisonous substance in the food served to Bhaiyalal, Mohania (PW/I) came to the house of Bhaiyalal. He found that Ratua was sitting idle in his house and Bhaiyalal as well as Kallu Bai were vomitting. Butter milk was administered to Bhaiyalal and Kallu Bai, so that they may vomit and if any poisonous substance might have been administered to them, it may come out of their abdomen. After many vomits, Kallu Bai as well as Bhaiyalal gained consciousness. However, nothing was given to Ratua as he was saying that Bhaiyalal and Kallu Bai we're unnecessarily complaining against his daughter-in-law, Hari Bai, and that he had also consumed the said dal, but did not find anything unusual about it.

5. After Kallu Bai (PW/2) and Bhaiyalal (PW/ 14) gaining consciousness and getting cured, Mohania (PW/1) left the house of Bhaiyalal. Thereafter, Bhaiyalal, Kallu Bai and Ratua slept in their house.

6. When on the next day Bhaiyalal got up, he found that Ratua, who used to get up earlier than him, had not got up. Thereupon he felt the pulse of Ratua and found that he was already dead. Thereupon, Bhaiyalal and Mohania went to Police outpost Pipat. where Mohania lodged FIR (Ex-P/6).

7. After recording the said FIR (Ex-P/6), Parkhat Singh (PW/10), who was posted as incharge of Police out -post Pipat, came to the house of Bhaiyalal on 18-3-85. He prepared Map (EX-P/9), of the spot. He also seized the earth of the place, where Bhaiyalal had vomitted, as per seizure memo Ex-P/16. Milla Bai showed the place where she had thrown the said dal which was served to Bhaiyalal, and from that place the said dal was seized as per seizure memo Ex-P/ 11. Hari Bai discovered that the poisonous substance was kept on the container, meant for storing grains in her house. The said information given by Hari Bai was recorded as per Memo (EX-P/12), and the said poisonous substance was seized as per seizure memo Ex-P-14. The earthen vessel in which dal was cooked, was seized as per seizure memo (Ex-P-15).

8. Earlier than this incident, Bhaiyalal had presented one sari to his wife, Hari Bai, about 2 days prior to this incident. Hari bai told Bhaiyalal that since rats cut and spoil her clothes, he might bring some rhodenticide, for killing the said rats. Bhaiyalal had purchased the said rhodenticide from the shop of Sureshchand (PW/13), and had given it to Hari Bai.

9. The dead body of Ratua was sent for autopsy to District Hospital, Chhatarpur

where Dr. Harchandani performed post-mortem examination on the dead body of Ratua. He did not find any external injury on the said dead body and, therefore, he could not give any opinion regarding the exact cause of the death of Ratua. However, he found that liver, spleen and kidneys of Ratua were congested. He also found that both the lungs of Ratua were also congested. Viscera of Ratua was preserved and was sent for chemical examination to Chemical Examiner, Sagar. As per report (EX-P/21), of the Chemical Examiner, rhodenticide was found in the viscera of Ratua as well as in the dal, and the packet seized at the instance of Hari Bai.

10. After completion of investigation, a report u/s 173 Cr.P.C, was filed against both of the accused. Both of them denied the allegations levelled against them and pleaded not guilty. Hari Bai has stated in her defence that Bhaiyalal had illicit relations with Kallu Bai (PW/2) and, therefore, he has falsely implicated her in the present case. She has further stated in her defence that she had seen Bhaiyalal and Kallu Bai in compromising position and, therefore, Bhaiyalal used to beat her. Same defence has been taken by Milla Bai, who happens to be the sister of Hari Bai.

11. After recording evidence in the case, the trial court held the accused appellants guilty and sentenced them, as detailed above.

12. It has been argued for the accused appellants that there is no evidence available on record, as to who had cooked the dal and had mixed poison in it. Bhaiyalal (PW/14) has categorically admitted in his statement that at the time of the incident, apart from the accused appellants, there were three other ladies also, who were present in his house. Therefore, it is not known as to who had cooked the said dal. Poison was mixed with the said dal at the time of cooking it and not at the time of serving it and that is why poison was found in the cooked dal. which had remained in the earthen pot seized by Parkhat Singh (PW/10) as per seizure memo (EX-P/15). There is no evidence to the effect that the poison, which was mixed in the said dal, was in the exclusive possession of either of the two appellants. Therefore, in the present case, which is based on circumstantial evidence, the probability cannot be ruled out that the said dal was cooked by some other lady, who was also admittedly present in the house of Bhaiyalal, on the date of the incident. Consequently, this hypothesis can also be not ruled out that the said dal was served to Kallu Bai (PW/2) and Ratua by Hari Bai without knowing that poison was mixed in the said dal. In any case there is no evidence to indicate as to who out of the two accused appellants mixed the said poison in the said dal and, therefore, both of the accused appellants are entitled to get benefit of doubt and are entitled to be acquitted of the charges framed against them.

13. In reply, it has been argued for the respondent/State that only Hari Bai had the motive to commit murder of Bhaiyalal. No other lady, present in the house of Bhaiyalal, had any motive to commit his murder. Moreover, from the testimony given by Ratan Lal (PW/9), it appears that the room in which there was the

earthen container, on which the poisonous rhodenticide was found kept, was in the exclusive possession of Bhaiyalal, Ratua, Hari Bai and Milla Bai. Hira (PW/11) had deposed that when he had come to the house of Bhaiyalal, he had found that Bhaiyalal and Kallu Bai were vomiting and Ratua was sitting idle, in his house. On being inquired, Hari Bai and Milla Bai had stated that the said rhodenticide was mixed in the dal, served to Bhaiyalal. Thereupon he had asked that if such dal was served to Bhaiyalal alone, why Kallu Bai was also vomiting. Thereupon Hari Bai and Milla Bai had said that if anybody out of the said three would die, they would suffer the consequences of the same. Thus from the testimony given by Hira (PW/II), it appears that both of the accused appellants had confessed that it were they, who had mixed poison in the said dal, and from the testimony given by Ratan Lai (PW/9). it is established that the said poison was in the exclusive possession of these two ladies. Therefore, the trial court has not committed any error in holding that the accused appellants had mixed the said poisonous substance in the said dal, and served it to Ratua, Kallu Bai and Bhaiyalal. Therefore, the finding given by the trial court and the sentence awarded by it, it has been argued, is fully justified.

14. Regarding the cases which are based on circumstantial evidence alone, the law is well settled that the circumstances appearing against the accused should be first established by the prosecution, and the said circumstances should form such a complete chain so as to exclude every hypothesis of innocence of the accused and should be of conclusive nature, as to be totally incompatible with the innocence of the accused. In the present case, the link as to who cooked the meals on the relevant date is missing. Thereafter there is no evidence also to the effect that the poisonous substance was in the exclusive possession of either of the two accused. Firstly, the said poisonous substance was found kept on the earthen container, in the room in occupation of Bhaiyalal. Therefore, the probability cannot be ruled out that the person, who cooked the dal and mixed poison therein, placed the said poisonous substance on the earthen container, which was there in the room of Bhaiyalal. Further, even if we assume that the said room was in the exclusive possession of Bhaiyalal, Ratua and these two ladies, then also it cannot be said as to who out of the said two ladies was in exclusive possession of the poisonous substance. In our opinion, for completing the chain the fact as to who had prepared the said dal was very material. But the prosecution did not collect evidence to indicate that on the date of the incident, meal including the said dal was prepared by either both of the said ladies or any one of them. Therefore, merely on the basis of the fact that the said dal was served by Hari Bai to Ratua and Kallu Bai, it cannot be inferred that poison was mixed by either both, or any one of the said two ladies.

15. Regarding motive, Bhaiyalal (PW/14) himself has deposed in para number 6, of his statement, that he had no quarrel with Hari Bai. Consequently, on the basis of the contents of the deed of agreement, it cannot be said with any amount of certainty that only Hari Bai, or for that matter, her sister Milla Bai had the motive to commit the murder of Bhaiyalal.

16. Regarding the testimony given by Hira (PW/ 11), it has to be seen that he has admitted in para number 5 of his deposition, that no conversation took place between him and the accused appellants. In para number 1 of his deposition, he has deposed that the persons who were present there had inquired from the accused as to why they had mixed poison in the dal. However, no person who allegedly made the said curry has either been examined or has deposed that he or she had put such a question to the accused appellants. On the other hand Kallu Bai (PW/2) has deposed that in spite of her repeatedly asking the accused, they did not tell anything. Therefore, the testimony given by Hira (PW/11) is not of any help to the prosecution. Further, there is no evidence to indicate as to who out of the said two ladies had mixed poison in the said dal. Therefore, from the circumstances established in the present case, only very grave suspicion arises against both of the accused appellants, that they might have had mixed poison in the dal, which was served to Ratua, Kallu Bai and Bhaiyalal. However, the said circumstances do not totally exclude the hypothesis of innocence of the accused appellants. Consequently, in our opinion the accused appellants are entitled to get benefit of doubt and on benefit of doubt being given to them, they are held not guilty and are acquitted of the charges framed against them.

17. In the result, the present appeal is allowed and the finding of holding the accused appellants guilty is set aside, and on being given benefit of doubt, both of the accused appellants are held not guilty and are acquitted of the charges framed against them.

18. Both of the accused appellants are on bail and they are directed to appear in the Court of C.J.M. Chhatarpur, on 29-2-96, to know the result of the appeal preferred by them.