
(2018) 07 MP CK 0026

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.139 Of 2001

State Of Madhya Pradesh

APPELLANT

Vs

Munna

RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Indian Evidence Act, 1872 — Section 103, 106

Citation : (2018) 07 MP CK 0026

Hon'ble Judges : Ashok Kumar Joshi, J;Sanjay Yadav, J

Bench : Division Bench

Advocate : J.M. Sahani

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

(1) The State of Madhya Pradesh is in appeal against the judgment dated 24/09/1998 in Session Trial No.15/97 and Session Trial No.14/97 recording

acquittal of the respondents for the offence punishable under Sections 302, 302/34 and 201 IPC. It is pertinent to note that leave was granted only

against the acquittal of respondent no.5-Munna.

(2) The respondents were prosecuted on the allegation of having caused murder of Barsha Devi and her daughter Priyanka, aged 4 months.

(3) The prosecution was launched on the story that on 19.10.1996 Shyamlal (PW.9), Kotwar, Village Buxanpur had gone to the fields of Sultan Singh.

At about 8:00 PM, while sitting with Badam Singh, the accused Munna approached him and informed that his (Munna's) wife has died due to

immolation along-with her, his 4 months daughter has also died. Lokendra Singh (PW.6) went to the house of Munna and saw that the dead body

(charred) of Munna's wife and his daughter was lying at an open place leaving the accused Nathu Singh and his son to look after the dead bodies,

Shyamlal (PW.9) went to and lodged report at Police Station Piprai. Merg (Ex.P/12) was registered by Sub-Inspector Lokendra Singh (PW/6), who

informed the incident to the Sub-Divisional Officer, Mungawali, who started the investigation on 20/10/1996. After the inquest, the dead bodies

were sent for postmortem. As per post-mortem report Ex.P/1, Dr. K.K. Gupta (PW/1) opined the cause of death being asphyxia due to throttling. The

Medico Legal Institution at Bhopal expressed its inability to examine the body of child. The offence under Section 302/34 was registered on the report

of the Sub-Divisional Officer, Shri C.L. Bamoria on the intervening night of 19-20/10/1996 against the respondents.

(4) After completion of investigation, the charge sheet was filed. The matter was committed for trial. The charges for offence under Section 302/34,

201 IPC were framed for causing murder of Barsha Bai and Ku. Priyanka. The accused persons abjured their guilt and submitted that they are falsely

implicated because of their enmity with the parents and other relatives of the deceased.

(5) Prosecution in order to bring home the guilt, examined 11 witnesses. Of these, Bundel Singh (PW/3) and Amar Singh (PW/5) were father and

brother of the deceased. The prosecution also examined Bhola (PW/4) son (minor aged 6 years) of the deceased as eye-witness. Bundel Singh

(PW/3) and Amar Singh (PW/5) stated as to previous cruelty meted to the deceased, which led them to bring her to her maternal house and later-on

was sent back to her matrimonial house. They stated that the deceased apprehended that she will be killed in matrimonial house. The eye-witness

Bhola (PW/4) stated that the deceased, her mother and Pooja Ki Dukaria; (respondent No.2, Sarswati Bai) had complained to Munna, respondent

No.5 against her mother, the deceased; as a result whereof, the accused person had first beaten her mother, then they took her to 'Por' (Drawing

Room) then to 'Kutharia' (Small Room) from where she was taken to 'Khudia' (Cattle Shed) where she was burnt. He further stated that her sister

died because of lathi blow. And that both the mother and his sister were burnt. This witness also stated that his mother suffered constant illness and

used to fight because of that and often used to say that she will immolate herself and that after 'maarpeet' she immolated herself

(4.....esjh eka chekj jgrh FkhA chekj ds dkj.k esjh eka uhps diMs oxSjg Qsad nsrh FkhA esjs firk esjh eka dk bykt djokrs FksA chekj esa esjh

eka yMrh jgrh FkhA esjh eka ;g dgrh Fkh fd og lcls vyx jgsxh ugha rks vkx yxkdj ej tkosxhA esjh Ekka ds >xMs ds dkj.k ekjihV gksrh jgrh Fkh esjh

eka dks tku ls ugha ekjk FkkA

5- ekjihV djs ds ckn esjh eka dks xqllk vk xbZ rks og vkx yxk dj ej x;hA).

Pratap Singh (PW/7), Brajbhan Singh(PW/8), Shyamlal(PW/9), Lalaram(PW/10) were examined having witnessed the burnt body ofÂ Â Barsha

BaiÂ Â andÂ Â Ku. Priyanka.Â Dr. K. K. Gupta, (PW/1), in court statement stated that the bodies were 90-95% burnt, there were no external

injuries over the bodies. There were no carbon particles in her mouth. He further opined that on internal examination he found hyoid bone broken, but

there were no ligature mark over neck. The esophagus was congested with red coloured liquid. And the cause of death was asphyxia. The

Investigating Officer, Sub-Inspector Lokendra Singh was examined as PW/6. In his Court statement, he stated that the statement of Bhola (PW/5)

was recorded in the Police Station where he was brought by his maternal grandfather, Bundel Singh(PW/3). This witness, i.e. Lokendra Singh

(PW/6), admitted that he did not get any independent witness, having witnessed the incident.

(6) The Trial Court while not doubting that the death of Barsha Bai was homicidal; however, disbelieved the death of Ku. Priyanka being homicidal as

there was no credible evidence led by the prosecution. As to eye-witness count of Bhola (PW/4), a 6 years old child, the Trial Court found following

three reasons to disbelieve his evidence. Firstly, major contradiction of ocular evidence with the medical evidence. Whereas this eye-witness i.e.

Bhola (PW/4) stated that his mother was badly beaten, if that was so there would have been external injuries, but the post- mortem report, Ex.P/1, and

the statement ofÂ Dr. K.K. Gupta (PW/1) Â clearly revealed no external injuries over the body of the deceased Barsha Bai. Secondly, the presence

of this eye-witness at the scene of crime is doubted, as no other witnesses ever stated the presence of Bhola (PW/4) at the scene of crime. Thirdly,

prosecution failed to explain non recording of the statement of Bhola (PW/4) during investigation. Though, this fact in itself be not sufficientÂ to

disbelieve; but the fact that Bhola (PW/4) was brought by his maternal grand-

father to the Police Station add wings to the presumption of his being tutored. Even the circumstances which the police webbed in, the Trial Court found that evidence of Bundel Singh (PW/3) and Amar Singh (PW/5) father and brother of the deceased was not corroborated with any witness to establish that the deceased was subjected to cruelty since long and the doctor who was attending her illness was also not examined. As per the contention, on behalf of the appellant that since the death of Barsha Bai was at home where she was jointly living with the accused persons and the accused persons having failed to discharge the burden under Section 106 of Evidence Act, the Trial Court ought to have drawn adverse inference. The question is whether when the prosecution was failed to prove beyond reasonable doubt its case, will it be obligatory for the defence to discharge the onus.

(7) In *Sawal Das Vs. State of Bihar*, AIR 1974 SC 778, it is held:

“Learned Counsel for the appellant contended that Section 106 of the Evidence Act could not be called in aid by the prosecution because that Section applies only where a fact relating to the actual commission of the offence is within the special knowledge of the accused, such as the circumstances in which or the intention with which an accused did a particular act alleged to constitute an offence. The language of Section 106 of Evidence Act does not, in our opinion, warrant putting such a narrow construction upon it. This Court held in *Gurucharan Singh Vs. State of Punjab*, AIR 1956 SC 460 = (1956 Cri LJ 827), that “the burden of proving a plea specifically set up by an accused, which may absolve him from criminal liability, certainly lies upon him. It is a different matter that the quantum of evidence by which he may succeed in discharging his burden of creating a reasonable belief, that circumstance absolving him from criminal liability may have existed, is lower than the burden resting upon the prosecution to establish the guilt of an accused beyond reasonable doubt.”

10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof

may lie upon the accused. The crucial question in the case before us is : Has the prosecution discharged its initial or general and primary burden of proving the guilt of the appellant beyond reasonable doubt?

(8) In the case at hand as the facts revealed from record, the body of Barsha Bai and Ku. Priyanka was not inside the house but was lying in open courtyard having public access; therefore, Pratap Singh (PW/7), Brajbhan Singh (PW/8), Shyamlal (PW/9) and Lalaram (PW/10) could see the body lying outside the house.

(9) All these facts situation cumulatively led the Trial Court return the findings that the prosecution failed to establish the charge of murder and of destroying evidence, beyond reasonable doubt.

(10) The scope of interference in an appeal against acquittal is to the extent that an order suffers material irregularity, manifest error or illegality.

(11) In Muluwa S/o Binda and others Vs. The State of M.P. [AIR 1976 SC 989], it is held:-

19. It is well settled that in the absence of an material irregularity, manifest error or illegality, the High Court should not interfere with the order of acquittal, merely because it thinks, that it would, sitting as a trial Court, have taken the other view of the evidence.

(12) In Babu and others Vs. State of U.P. [AIR 1983 SC 308], it is held:-

18. If the finding reached by the trial Judge cannot be said to be unreasonable, the Appellate Court should not disturb it even if it were

possible to reach a different conclusion on the basis of the material on the record because the trial Judge has the advantage of seeing and bearing the

witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The Appellate Court, therefore, should be

slow in disturbing the finding of fact of the trial court and if two views are reasonably possible of the evidence on record, it is not expected to interfere

simply because it feels that it would have taken a different view if the case had been tried by it. This Court in State of U.P. Vs. Samman Dass, (1972)

3 SCR 58:(AIR 1972 SC 677) dealing with a similar situation laid down the following postulates (para 32 of AIR):

There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of

innocence in favour of the accused which has to be kept in mind, especially when

the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by the trial judge, the appellate court should take into account the fact that the trial judge had the advantage of looking at the demeanor of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be-or is afraid of the logical consequences, if that benefit was not given.

(13) In the case at hand since the appellant fails to establish that the findings arrived at by the trial Court suffer manifest error of law and facts, we are not inclined to cause any indulgence.

(14) Consequently, appeal fails and is dismissed.

(15) The bail bonds and surety are discharged.