
(2018) 02 MP CK 0178
In the Madhya Pradesh High Court
Case No : 365 of 2007

Sura S/o. Lalchand Banjara

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 0178

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

Bench : Division Bench

Advocate : Ayush Choubey, Anubhav Jain

Final Decision : Dismissed

Judgement

1. Being aggrieved by the judgment of conviction and order of sentence dated 13.11.2006 passed by the Additional Sessions Judge, Burhanpur in

S.T. No.87/06, arising out of the Crime No.27/06 registered at Police Station Shahpur, district Burhanpur, by which the appellant - accused has

been convicted under Sections 302 and 201 of IPC and sentenced to imprisonment for life and fine of Rs.1000/- and RI for 3 years and fine of

Rs.500/-; in default of payment of fine, further RI for 3 years and RI for 1 year, respectively, the appellant has preferred the present appeal.

2. In brief, the prosecution case is that deceased Amrit was the sole son of the appellant having 12 acres of land in his possession, out of which, 11

acres of land was given to the deceased and his name was also got mutated in the revenue records. Thereafter, the appellant wanted the land back

from the deceased and frequently made quarrel with the deceased about the land and the appellant resided with his wife separately in the same

house with the deceased. On 17.01.2006 the deceased and his wife Geeta Bai (PW-1) had gone to the field. The deceased was fixing wooden poles around the well with the help of Sabbal and Geeta Bai (PW-1) was picking cotton at some distance in the field. After some time, the appellant / accused also came over there and sat down near in the field of chili and thereafter he came to Geeta Bai (PW- 1) and said that the deceased has fallen down into the well situated in the field. At that time, she saw that the Dhoti worn by the appellant was stained with blood and she became unconscious. After some time, she became conscious and fetched his son Uttam (PW-2) from the school with a rope. The appellant informed the Police Station Shahpur about the incident, on which Merg No.3/06 was registered and the Police reached on the spot and took out the dead body of the deceased from the well and after Merg inquest, FIR vide Ex.P/36 was registered at Crime No.27/06 for the offence under Section 302 of the IPC against unknown person. During investigation, Geeta Bai (PW-1) informed the police that when the appellant informed her that her husband has fallen down into the well, the Dhoti worn by the appellant was stained with blood. There was an injury on the person of the deceased and Sabbal was inserted in his leg towards upper side and on postmortem examination, it was also found that the deceased sustained incised wound caused by a hard and sharp object on his head, resulting fracture on the head and he died on account of the head injury. The appellant was arrested on 20.1.2006 vide arrest memo Ex.P/32 and on the basis of the information given by him, Blood stained Dhoti and an axe were seized as per seizure memo Ex.P/33. Axe was seized from the field near the well while the Dhoti was seized from the house of the appellant and the seized articles were sent to the FSL. As per the report of FSL, Ex.P/38, on the Dhoti presence of blood was not confirmed but on the axe human blood was found. After investigation was over, a charge sheet was filed against the appellant before the court of JMFC, Burhanput for the offence under Sections 302 and 201 of the IPC, who on its turn committed the case for the court of Session for trial.

3. The learned trial Court framed charges for the offence under Sections 302 and 201 of the IPC against the appellant / accused. The appellant / accused abjured his guilt and stated that he was innocent and claimed for trial.

4. Learned trial Court after trial of the case and on the basis of the evidence and material came on record, particularly the evidence of Geeta Bai

(PW-1) and considering the recovery of the blood stained Dhoti and the Axe, has convicted the appellant for the aforesaid charges and sentenced

as mentioned earlier.

5. The aforesaid finding of the trial court has been assailed on behalf of the appellant / accused on the grounds that learned trial court has not

appreciated the evidence in its right perspective and the case is based on circumstantial evidence. None of the circumstances has been proved

beyond reasonable doubt and none of the circumstances individually or with cumulative effect is sufficient to come to the conclusion that none other

than the appellant may be the culprit of the deceased. The finding of the learned trial court is based on surmises and conjectures which is not

sustainable. Hence, the prayer is made to allow the appeal and acquit the appellant from the aforesaid charges.

6. Learned Govt. Advocate appearing for the respondent / State has argued in support of the impugned judgment and stated that the finding of

conviction and sentence of the learned trial court is in accordance with law. Hence, the appeal be dismissed.

7. Having considered the contentions of learned counsel for the parties and on perusal of the record, in view of the statement of Dr. B. K. Patidar

(PW-8) and photographs of the deceased vide Ex.P/24 to P/31 which have been proved by the Photographer Bhaidas (PW-13), it is proved that

the death of the deceased was homicidal as on the head of the deceased injury caused by hard and sharp object was found resulting fracture on

head and cause of death according to the PM report Ex.P/11. Therefore, learned trial Court has not committed any error regarding finding of

nature of the death. Learned counsel for the appellant has not objected the aforesaid finding. Hence, there is no hesitation to hold that the nature of

the death of the deceased was homicidal.

8. Now the question is that whether the appellant has assailed the deceased and caused his death. In this regard the prosecution case is based first

of all on the circumstance of last seen of the appellant with the deceased. In this regard the statement of Geeta Bai (PW-1) is on record in which

she has stated that while she and the deceased had come to the field, the

appellant also came on the field behind them and was sitting in the field of Chili and thereafter, her husband (deceased) started digging pits for fixing wooden poles near the well with Sabbal and she had gone to pluck cotton in the field situated at some distance. After half an hour the appellant came to her and said that the deceased has fallen down into the well and at that time his Dhoti was stained with blood. This statement of Geeta Bai (PW-1) has also remained unimpeachable during cross-examination. Uttam (PW-2) has also stated that when he reached on the spot he also saw blood stains on the cloths of the appellant. Geeta Bai (PW-1) and Uttam (PW-2) have also stated that there had been a dispute between the appellant and the deceased with regard to the land which was given by the appellant to the deceased and the appellant was also living separately in the house. This statement has also remained unimpeachable in the cross-examination.

9. So far as the explanation of the appellant is concerned, FIR has been lodged by him which is Ex.P/36, in which it is mentioned that he was near the well before the deceased fell down into the well. He also stated about the presence of his neighbour Bandiya S/o. Bhikha and his statement has been recorded as defence witness. Bandiya (DW-1) has denied the fact that he was in the field at the time of incident. Thus, the explanation of the appellant that in the presence of Bandiya (DW-1) he saw the deceased falling down into the well appears to be false one. The aforesaid evidence beyond reasonable doubt proves the fact that the appellant was with the deceased before falling down the deceased into the well; in other words, he was lastly seen with the deceased when he was alive.

10. It is also found to be proved that on the spot the cloths of the appellant were stained with blood as narrated by Geeta Bai (PW-1) and Uttam (PW-2) and also confirmed by an independent witness Jhamu (PW- 5) who reached on the spot as a Village Kotwar and stated that the appellant on the pretext of drinking water went to the field of another neighbour where he washed out blood stains of Dhoti and came back on the spot. This conduct of the appellant also indicates his culpability and this is the reason because of which blood stains were not confirmed on the Dhoti of the appellant in the FSL report.

11. The prosecution has also relied upon another circumstance of recovery of

weapon i.e. axe on the instance of the appellant, on which, human blood was found. In this regard, investigating Officer S. R. Solanki (PW-14) has stated that during investigation the appellant was arrested as per arrest memo Ex.P/32 and on the information given by the appellant / accused, an axe was recovered from the field as per seizure memo ExP/34 and a Dhoti was seized from the appellant as per seizure memo Ex.P/35. This statement is also supported by Bhaidas (PW-13) who is an independent witness. S. R. Solanki (PW-14) has also stated that the seized weapons with other seized articles were sent to the FSL through the letters written by Superintendent of Police, Burhanpur vide Ex.P/17 and Ex.P/21, respectively and the report of the FSL is Ex.P/38. As per the FSL report, on the axe, human blood was found. The aforesaid testimony of these witnesses has also remained unimpeachable during crossexamination. There is no explanation about the aforesaid circumstances.

12. The contention of learned counsel for the appellant is that the axe has not been identified by the witnesses of the seizure before the court during the trial. Therefore, it is doubtful that the same axe which was recovered was sent for chemical examination. It is clear from the record that the axe was not produced for the purpose of identification to the seizure witnesses before the court but during cross-examination of the Investigating officer S. R. Solanki (PW-14) his statement has not been challenged saying that the seized axe was not sent to the FSL. Under Section 114 of the Evidence Act it will be presumed that the public officers have acted bona fide in accordance with law unless contrary is proved. Therefore, it will be presumed that the axe seized on the instance of the appellant was sent to the FSL. Hence, the aforesaid infirmity has no adverse effect on the case of the prosecution.

13. In view of the aforesaid discussion, it is clear that the prosecution has established the motive of the incident, last seen of the appellant with the deceased when he was alive and the appellant has also claimed that he saw the deceased falling down into the well. But, there is no explanation as to who caused the injury to the deceased. According to the medical expert the injury was not the result of falling down into the well and the same was caused by hard and sharp object and may be caused by the axe which was seized from the instance of the appellant and the stains appearing

like blood were seen on the Dhoti of the appellant / accused soon after the incident and he tried to wash out the same so the same remained

unnoticed and the recovery of the human blood stained weapon the axe. These circumstances make out a complete chain to prove the fact that

none else the appellant has assailed the deceased and caused injury, due to which, the deceased breathed his last.

14. Therefore, it is held that the prosecution has proved its case beyond reasonable doubt and learned Trial court has not committed any error in

coming to the conclusion that the appellant has committed murder of the deceased. But, so far as the concealment of the evidence by the appellant

with a view to save himself from the punishment of the offence of murder is concerned, it is not found to be proved because as per the prosecution

story, he himself disclosed the fact that the deceased has fallen down into the well. Therefore, his conviction under Section 201 of the IPC is not

sustainable.

15. Accordingly, this appeal is partly allowed. The conviction and sentence awarded under Section 201 of the IPC is hereby set-aside and he is

acquitted of the aforesaid charge. But, the conviction of the appellant awarded under Section 302 of the IPC and the sentence to imprisonment for

life along with fine with default stipulation are hereby affirmed.

16. The appellant is in jail. He is directed to undergo the entire jail sentence in accordance with law.

17. A copy of this order be sent to the trial court and the jail authorities concerned for information and necessary compliance.