
(2018) 03 MP CK 0111

In the Madhya Pradesh High Court

Case No : CRIMINAL APPEAL NO. 814 OF 2007

Suryabhan Singh Gond @ Chhotkawa

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2)

Indian Penal Code, 1860 — Section 201, 302

Indian Evidence Act, 1872 — Section 27

Citation : (2018) 03 MP CK 0111

Hon'ble Judges : RAJEEV KUMAR DUBEY, J; SUBODH ABHYANKA, J

Bench : Division Bench

Advocate : Sushila Paliwal, Subodh Kathar

Final Decision : Dismissed

Judgement

This criminal appeal has been filed under Section 374(2) of the Code of Criminal Procedure against the judgement dated 28.02.2007 passed in

Sessions Trial No.94/2005 by the First Additional Sessions Judge, Sidhi, whereby the learned Judge, finding the appellant guilty under Section 302 and

201 of the IPC, sentenced him to undergo life imprisonment for life with fine of Rs.500/- and seven yearsâ?? rigorous imprisonment with fine of

Rs.500/- respectively, in default of payment of fine, he is further sentenced to 6 monthsâ?? R.I. on each count.

2. In brief the allegation against the appellant is that after committing murder of Mayawati he buried her dead body near a hill. Mayawati was the

daughter of Ramadheen Singh (PW-1). She got married to Rajpal Singh, the son of Vishwanath Singh (PW-4). The story of prosecution is that prior to

four years from 20.03.2005, Rajpal Singh had left the village to earn his livelihood and his wife used to live with her in-laws at Chandreha. It has come

on record that Rajpal Singh had solemnized a second marriage and subsequently, Mayawati also had extramarital relations with the present appellant

Suryabhan Singh @ Chhotkawa and on account of this relationship, she also got pregnant and was carrying six months pregnancy. On coming to know

of her pregnancy, a Panchayat meeting was called by her father-in-law Vishwanath Singh (PW-4) on 20.03.2005 in which Sarpanch Buddh Sen Singh

(PW-5), Shivnarayan Singh (PW-3), Kedar Singh (PW-7), Gopal Singh (PW-12) and others were present and when they asked Mayawati regarding

her pregnancy, she informed them that on account of her relationship with Suryabhan Singh, the accused, she had become pregnant. Mayawati told

the Panchayat that first she would go to live with her parents at village Parsohar and then she will go to reside with the accused Chhotkawa who

happened to be her paramour. She was also seen going to the appellant's house every now and then.

3. It is further the case of the prosecution that on 20.03.2005 a document Ex. P-8 was also prepared by the Panchayat noting what had transpired in

the meeting and after 2-3 days, Mayawati left for her parental home. She was last seen with the present appellant Suryabhan Singh in the market.

They were last seen together by Kedar Singh (PW-7) and Gopal Singh (PW-12) but thereafter, she was never seen by anybody and in fact she just

got vanished. Mayawati's father-in-law, complainant Vishwanath Singh (PW-4) also tried to search her but could not find her but in the meantime,

appellant Suryabhan Singh confessed to his cousin father-in-law (kakhiya Sasur) Bhagirath (PW-11) that he had committed the murder of Mayawati

by throttling her and had buried her in a Nali (a kind of open drain). On 21.05.2005 an FIR was lodged by Vishwanath Singh (PW-4) at police station

Jiyawan, which was recorded by Head Constable Deenanath Mishra (PW-13). Dehati Nalishi (Ex.P-41) and Marg Intimation (Ex.P-42) were also

recorded in this behalf and the FIR was lodged as Ex.P-44.

4. On 25.06.2005, PW-14 G.K. Tiwari, SHO Jiyawan, arrested appellant Suryabhan Singh in the presence of Buddh Sen (PW-5) and Kailash Pratap

Singh. The appellant informed them vide Ex.P-2 that he had buried the dead body of Mayawati near Arhiya Hill (Arhiya Pahadi) in a Naali and vide

Ex. P/2 the dead body of Mayawati was also recovered. A Gainti (Pickaxe) was also recovered vide Ex.P-4 at his instance in the presence of Buddh

Sen Saket (PW-5) and Gopal Singh (PW-12). The clothes which were worn by Mayawati at the time of her death were also seized along with the ornaments including silver chain and bangles. Gainti was seized vide Ex.P/3 and Ex.P/4. Vishwanath Singh (PW-4), the father-in-law of the deceased and her father Ramadheen Singh (PW-1) identified the body by her petticoat, blouse, bangles and the silver chain for which Memo Ex.P-9 was prepared. Mayawati's autopsy was conducted by Dr. A.K. Sharma (PW-2) and the forensic specialist Dr. R.P. Soni (PW-15) also examined the skeleton of Mayawati and has found that the bones were of a woman, aged between 20-25 years old having height around 5 feet and 3 inches. After investigation, the charge-sheet was filed against the present appellant and the learned Judge of the trial Court after recording the evidence found the appellant guilty and has convicted him as aforesaid.

5. Learned counsel for the appellant has submitted that the appellant has been falsely implicated as he has been convicted only on the basis of evidence of last seen together, despite the fact that such evidence could not be positively proved by the prosecution and apart from that there is no motive attributable to the present appellant to commit murder of Mayawati as there is nothing on record to show that there was any dispute between Mayawati and the present appellant and that the present appellant in any manner despised her. It is further stated that PW/11 Bhagirath to whom the alleged confession has been made by the appellant has been declared hostile and has not supported the case of the prosecution.

6. On the other hand, learned counsel for the respondent/State has submitted that no illegality has been committed by the learned Judge of the trial Court in convicting the present appellant as the prosecution has been able to prove the case against the appellant beyond reasonable doubt and the chain of events is so completed as to give rise to no other hypothesis except that of the guilt of the appellant and commission of murder of Mayawati by him.

7. Heard the learned counsel for the parties and perused the record.

8. After carefully going through the record of the case this Court finds that the appellant's involvement in the present case has been positively proved by the prosecution by corroborative evidence.

9. So far as the death of deceased Mayawati is concerned, the cause of death

could not be known, but the circumstances surrounding her death

clearly indicate that her death was homicidal in nature, as her corps was exhumed from a place near Arhiya Hill (Arhiya Pahadi). The examination of

the bones of the deceased was conducted at the office of Director of Medico-legal Institute, Govt. of Madhya Pradesh, Home Department, Gandhi

Medical College, Bhopal by Dr.R.P. Soni (PW-6), who has given the following point-wise opinion vide Ex.P/52 :-

â??(a) Bones are of human in nature.

(b) Bones belongs to same individual.

(c) Sex is female.

(d) age 20 to 25 years.

(e) Cause of death remains open. As no injury found on the available bones.

(f) Duration of death is within 2 to 4 months from the date of receipt of bones i.e. 11.7.2005 approximately.

(g) Height of the deceased is about 5â??3â?? + 1â??

Dr.R.P.Soni (PW-6) in his deposition has stated that the cause of death is kept open as there was no sign of injury on the bones.

10. The aforesaid skeleton was recovered at the instance of the present appellant on the basis of memo Ex.P-2 prepared under Section 27 of the

Evidence Act, 1872 and vide Ex.P-3 the skeleton was recovered in the presence of Buddh Sen (PW-5) and Gopal Singh (PW-12).

11. Buddh Sen (PW-5) who is an independent eye-witness has supported the case of the prosecution and has stated that deceased Mayawati was

daughter-in-law of Vishwanath Singh (PW-4) and despite the fact that her husband had left her, she became pregnant for which a Panchayat was

called by Vishwanath Singh (PW-4) in which also this witness Buddh Sen (PW-5) was present. It is further stated by him that in the aforesaid

Panchayat deceased Mayawati had informed that she became pregnant owing to her relations with appellant Suryabhan Singh Gond and she also told

the Panchayat that she does not want to live with her in-laws and would go to her matrimonial home where the appellant would come to take her and

soon afterwards it was informed by the appellant to his father-in-law's brother (Kakiya Sasur) Bhagirath (PW-11) that he had committed murder of

Mayawati and had buried near Arhiya Hill (Arhiya Pahadi). This witness has also

stated that the appellant had confessed before him and other persons that he had asked Mayawati to come alone with him leaving behind her two children, but Mayawati had insisted that she would come along with her two children which led to scuffle in which he strangled Mayawati and after committing her murder, he brought a pickaxe (Gainti) from his house and buried the body near hill. This witness has also stated that at the instance of the appellant a memo (Ex.P-2) was prepared where he had buried the dead body of Mayawati and the dead body/skeleton was recovered vide Ex.P-

3. He is a witness to Ex.P-4 which is a seizure memo of pickaxe (Gainti). The skeleton which was recovered from the spot, a Panchanama (Ex.P-6) was prepared for the same on which he has also admitted his signature. He is also a witness to the Ex.P-8, which is a Panchanama on which there was a thumb impression of deceased Mayawati and in which she had stated that she is a pregnant on account of her relations with the appellant Suryabhan Singh Gond and with whom she would live after leaving her in-law's house. He is also witness to Ex.P-9, which is the body identification memo.

12. The aforesaid memo Ex.P-9 has also been signed by Vishwanath Singh (PW-4), father-in-law of the deceased and on the basis of this memo the clothes and other articles recovered along with the body which include petticoat, blouse, neckless, bangles etc. were identified; thus the body has been positively identified by PW-5 Buddh Sen and PW4 Vishwanath Singh.

13. So far as the confession of the appellant is concerned, after careful examination of the evidence on record, this Court finds that it was made to the police and not to any of the prosecution witnesses. PW-5 Buddh Sen's testimony cannot be relied upon so far as the confession of the appellant is concerned because he has stated in his cross examination that Suryabhan did not confess to him anything. Similarly, PW-4 Vishwanath Singh has also admitted that the fact regarding confession by the appellant has not been stated by him in his statement Ex.D-1 under Section 161 of Cr.P.C. Thus, this court holds that the story of confession cannot be relied upon against the appellant.

14. Ramadheen Singh (PW-1), who is the father of deceased Mayawati. Ramadheen Singh (PW-1) happens to be a hearsay witness but he has

stated that he was present on the spot when the skeleton of his daughter was exhumed. However, no question has been asked to this witness about the identification of the deceased.

15. So far as the testimony of Vishwanath Singh (PW-4) is concerned, who is the father-in-law of the deceased has confirmed in his statement that a

Panchayat took place in the village to deal with the issue of the pregnancy of Mayawati in which she had clearly stated that the pregnancy is due to

the appellant. It is also stated that she would go with the appellant after she gets to her matrimonial home. He had initially informed the police vide his

complaint is Ex.P-12. He has also confirmed that one Bhagirath had informed in the village that Suryabhan Singh Gond had committed murder of

Mayawati and when same information was given to the police, they arrested the appellant and at his instance the body of deceased Mayawati was

exhumed. In his cross examination although this witness has been asked that in his police statement (Ex.D-3) he has not stated that Mayawati was

pregnant but a bare perusal of the statement (Ex.D-3) reveals that it is clearly stated by PW-4 Vishwanath Singh before the police that her daughter-

in-law was pregnant. Surprisingly, this witness has also not been put a single question regarding identification of the deceased and as such his

testimony assumes importance. Thus, his testimony has remained unshaken.

16. Now the only question remains is that whether the appellant was last seen together with the deceased on the date of incident or not. In this regard

Kedar Singh (PW-7) has stated that a meeting of the Panchayat took place in the village in which deceased Mayawati had stated that she would go to

her matrimonial house from where the appellant would take her, and after around three days from the date of Panchayat meeting, when he had gone

to Bazar, he saw appellant Suryabhan Singh Gond and behind him Mayawati was going and thereafter she was never seen, no suggestion has also

been made to this witness that he is lying or that he did not see the appellant and deceased together and the contradictions in his deposition are minor

in nature and are liable to be ignored.

17. Thus on the overall consideration of the evidence produced by the prosecution on record, there is no reason to disbelieve the testimony of the

prosecution witnesses specially when the body of the deceased was identified by her father and father-in-law on the basis of articles recovered along

with the dead body of Mayawati. None of these witnesses have been challenged regarding the identification of the deceased and no such suggestions

have been made which may give any indication that the appellant was not involved in the case. In his accused statement under Section 313 of Cr.P.C.

also evasive answers have been given by the appellant and in his defence he has simply stated that he does not want to say anything, he has also not

examined any witness in his defence.Â At this juncture it would be apt to refer to the Apex Court's pronouncement in the case of Dharam Deo

Yadav v. State of U.P., (2014) 5 SCC 509 the relevant paras of the same read as under:-

â??19. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the

deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of

last seen together plus other circumstances have to be looked into. Normally, last seen theory comes into play when the time gap, between the point of

time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that the possibility of any person other

than the accused being the perpetrator of the crime becomes impossible. It will be difficult in some cases to positively establish that the deceased was

last seen with the accused when there is a long gap and possibility of other persons coming in between exists. However, if the prosecution, on the

basis of reliable evidence, establishes that the missing person was seen in the company of the accused and was never seen thereafter, it is obligatory

on the part of the accused to explain the circumstances in which the missing person and the accused parted company. Reference may be madeÂ to

the judgment of this Court inÂ SahadevanÂ v. Â StateÂ . In such a situation, the proximity of time between the event of last seen together and the

recovery of the dead body or the skeleton, as the case may be, may not be of much consequence. PWs 1, 2, 3, 5, 9 and 10 have all deposed that the

accused was last seen with Diana. But, as already indicated, to record a conviction, that itself would not be sufficient and the prosecution has to

complete the chain of circumstances to bring home the guilt of the accused.

20.....The evidence of PWs 14 and 15 would indicate that they could recover the skeleton of Diana only on the basis of the disclosure

statement made by the accused that he had buried the dead body in his house. The recovery of a dead body or incriminating material from the place

pointed out by the accused, points out to three possibilities (i) that the accused himself would have concealed it; (ii) that he would

have seen somebody else concealing it, and (iii) he would have been told by another person that it was concealed there. Since the dead body

was found in the house of the accused, it is for him to explain as to how the same was found concealed in his house.

(emphasis supplied)

18. Tested on the anvil of the aforesaid dictum, the factum of last seen together is positively established in the present case as also the recovery of the

dead body of the deceased at the instance of the appellant has been positively proved by the prosecution. The manner of recovery is also important, as

the body was exhumed from a place which was within the exclusive knowledge of the appellant only. This court also finds that the appellant has not

made even a lame attempt to save his skin, and has not come out with any specific defence at all.

19. Similarly, the offence under Section 201 of IPC also stands proved as the body which was the proof of the appellant's crime was made to

disappear by the appellant by burying the same near a hill regarding which only the appellant had the knowledge. Thus, this Court is of the considered

opinion that the prosecution has been able to bring home the charge of murder against the appellant by completing the chain of events forming part of

the circumstantial evidence which gives rise to the hypothesis consistent only with the guilt of the appellant.

20. As a result, the conviction under Section 302 read with 201 of IPC is hereby confirmed and the criminal appeal stands dismissed. The appellant is

in jail, he shall serve the remaining jail sentence as awarded to him by the learned trial Court in accordance with law.