

(2014) 06 MP CK 0074
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 2152/2011

The State of Madhya Pradesh

APPELLANT

Vs

Mukhiya Patel

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 304-B

Citation : (2014) 06 MP CK 0074

Hon'ble Judges : N.K. Gupta, J;Ajit Singh, J

Bench : Division Bench

Advocate : S.K. Kashyap, Government Advocate, Advocate for the Appellant;
Ashok Tiwari, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.K. Gupta, J.—Heard on admission.

2. By the present application, the State has sought for grant of leave to appeal against the judgment dated 26.11.2010 passed by the Additional Sessions Judge, Panna in ST No. 130/2009 whereby the respondents were acquitted from the charges of offence punishable under Sections 302 and 201 of IPC.

3. The prosecution case, in short, is that on 5.5.2009 in the night between 8:00 PM to 6:00 AM in the morning the deceased Rajabai Patel sustained burn injuries and thereafter she was declared dead. An intimation was given to the police and on investigation it was found that Rajabai Patel died due to throttling and thereafter she was burnt and the burn injuries of postmortem nature. When interrogation took place, it was found that respondent Mukhiya Patel, husband of the deceased went in the night for arrangement of some generator system in a marriage and when he came in the night, he saw the deceased in objectionable position with one Mukesh @ Kaladhari. After viewing the respondent Mukhiya Patel, Mukesh @ Kaladhari ran away and thereafter Mukhiya Patel throttled his wife and she was burnt thereafter. After due investigation the charge sheet was

filed.

4. After considering the prosecution evidence and submissions made by the learned counsel for the appellant-State, it appears from the P.M. report that the deceased was killed by throttling and thereafter some kerosene was poured upon her and her body was set on fire. All such activities were done in her room itself. Under such circumstances, suspicion arises against her husband Mukhiya Patel and his relative Raju Patel. However, the prosecution evidence was not sufficient to establish the presence of respondent Raju Patel at the time of incident. It is possible that offence committed with the deceased Rajabai Patel could not be done by a single person, but it was for the prosecution to prove that it was the respondent Raju Patel who helped the main culprit.

5. So far as the evidence against the respondent Mukhiya Patel is concerned, there is no ocular evidence against him. Shanti Bai (PW-2) and Laxmi Bai (PW-3) have stated that in that night when the incident took place, respondent Mukhiya Patel was not in his house. He went to operate the generator affixed in the marriage ceremony in other house. Chandra Kishore (PW-4) in whose house the marriage was arranged, has accepted that he saw respondent Mukhiya Patel till 1:00 AM in the night at the marriage venue. It was not established that the respondent Mukhiya Patel saw his wife in an objectionable position with Mukesh @ Kaladhari. Mukesh @ Kaladhari (PW-15) was examined and he turned hostile. Pratap Patel (PW-7), father of the deceased has created a new story in his statement that the deceased was being tortured for dowry demand, whereas no such allegation was made in his case diary statement, and therefore no charge of Section 304-B of IPC was framed against any of the respondent. He gave a statement that her sister Adhuri Bai (PW-5) had told him that prior to the incident a quarrel took place between the deceased Rajabai Patel and her husband Mukhiya Patel. However, Adhuri Bai (PW-5) is examined, who did not support the allegation made by her brother Pratap Patel.

6. Pratap Patel (PW-7) in para 11 of his statement has accepted that till the death of Rajabai Patel, there was no strained relation between the deceased Rajabai Patel and her husband Mukhiya Patel. He made such allegation on the basis of suspicion, and therefore the evidence of Pratap has no value. The police has recorded the statement of respondent Mukhiya Patel u/s 27 of the Evidence Act, which was not so important, because a little portion of the statement given by the respondent Mukhiya Patel was admissible in the evidence. The clothings of the deceased were found burnt at the spot, and therefore it cannot be said that he killed his own wife.

7. The possibility cannot be ruled out that when the police could not locate the actual culprit, then the story of illicit relation was created between the deceased and Mukesh @ Kaladhari and entire guilt was shifted upon the husband of the deceased, because the deceased died in her own room. When all the family members had left the house to attend the marriage or for other purposes, then possibility cannot be ruled out that outsider had come who committed such a

crime. As per the police when the deceased was found with Mukesh @ Kaladhari, then it was possible that someone else could also have entered in her house and committed such a crime. It is true that the death of the deceased was homicidal in nature, and therefore there must be some culprit to commit the crime. However, the chain of circumstantial evidence is broken. It cannot be said beyond doubt that the respondents were the persons who committed the crime, and therefore if the learned Additional Sessions Judge has given the benefit of doubt to the respondents, then there is no need to interfere in the judgment passed by the learned Additional Sessions Judge, Panna.

8. On the basis of the aforesaid discussion, there is no reason so that any interference can be done in the impugned judgment passed by the trial Court by granting leave to appeal. Consequently, the present application filed by the applicant-State is hereby dismissed at motion stage.

9. A copy of this order be sent to the trial Court along with its record for information.