

(2017) 11 MP CK 0002
In the Madhya Pradesh High Court
Case No : 630 of 01

United India Insurance Company Ltd.	APPELLANT
Vs	
Sanny alias Sanjay and others.	RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 378 - Appeal in case of acquittal
Indian Penal Code, 1860, Section 302,&br/>Section 377 - Punishment for murd

Citation : (2017) 11 MP CK 0002

Hon'ble Judges : Sheel Nagu, Ashok Kumar Joshi

Bench : Single Bench

Advocate : R.K.Awasthi

Judgement

1. Challenge in this appeal filed by the appellant-State of MP under Section 378 of the Cr.P.C. is to the acquittal recorded by the Second Additional Sessions Judge, Vidisha vide judgment passed in S.T. No.185/1998 dated 27.05.1999, whereby the respondent-Deepak was acquitted from the charge of offences punishable under Sections 377 and 302 of the IPC.

2. The prosecution story, in short, is that at Police Station, Gyaraspur on 26.07.1998, complainant-Malkhan Singh (PW-2) lodged report to the effect that on 25.07.1998 his nephew Mohar Singh aged about ten years had gone to the field situated in village Bori at 2.00 PM with his mother, but Mohar Singh did not return back to his house and on searching in the night at about 12.00 hours in a nalah (ukyk) between boundaries of village Bori and Mankapur, dead body of Mohar Singh was found.

After recording marg report (Ex.P-1) of Malkhan Singh (PW-2) at 8.05 a.m., Head Constable Suresh Tiwari (PW- 8) on 26.07.1998 at 12.40 PM in presence of panch witnesses after inspecting dead body prepared inquest memo (Ex.P-3). In marg enquiry on 26.07.98, spot map (Ex.P-5) of the place, a bank of the nalah

where dead body was lying, prepared by SHO P.K.Shukla (PW-12) and dead body was sent for postmortem. On 27.07.1998 at 10-15 AM. Dr. D.K.Sharma (PW-9) started postmortem of Mohar Singh aged about ten years and recorded postmortem report (Ex.P-10).

3. On 26.07.1998 on the spot, in the presence of witnesses, P.K.Shukla (PW-12) also seized a pair of white coloured nylon shoes of the deceased lying at some distance from the dead body with a page of notebook on which some calculation was made, vide seizure memo (Ex.P-13). After marg enquiry, on 28.07.1998 at Police Station Gyarpur, FIR (EX.P-14) was recorded by Investigator P.K.Shukla (PW-12). The sealed clothes and visera received from hospital after postmortem were seized vide seizure memo (Ex.P-15) on 27.07.1998. Respondent-Deepak was arrested on 30.07.1998 vide arrest memo (Ex.P-7) and on the same day on his disclosure statement (Ex.P-8), the shoes worn by respondent were seized vide seizure memo (Ex.P-9) and the seized materials were sent to FSL for chemical analysis. After completing investigation, charge sheet was filed in the Court of CJM, Vidisha, who committed the arisen criminal case to the Court of Sessions, Judge, Vidisha.

4. The charge framed for offences punishable under Sections 377 and 302 of the IPC were denied by the respondent. Shyama Bai (PW-1), Malkhan Singh (PW-2), Kashiram (PW-3), Kampo Bai (PW-4), Ramswaroop (PW- 5), Chaghan Lal (PW-6), Constable Ram Naresh Singh (PW-7), Head Constable Suresh Tiwari (PW-8), Dr. D.K.Sharma (PW-9), Jaswant Singh (PW-10), Veer Singh (PW-11) and Investigator P.K.Shukla (PW-12) were examined by the prosecution. It was the defence of the respondent that he has been falsely implicated due to enmity of the village. No defence witness was examined by the respondent. After hearing, the trial Court found that no any alleged circumstance was proved against the present respondent beyond reasonable doubt, hence the respondent was acquitted from the charged offences.

5. Shri R.K.Awasthi, Learned Public Prosecutor for the appellant/State vehemently contended that by evidence of child witnesses, Jaswant (PW-10) and Veer Singh (PW- 11), it was proved that the deceased Mohar Singh was last seen with the respondent and from evidence of Kampo Bai (PW-4), it was also proved that she had seen respondent Deepak at the relevant time near the spot where carnal intercourse against the order of nature was committed with Mohar Singh and the fact of above mentioned intercourse was also proved from the evidence of Dr. D.K.Sharma (PW-9), who conducted the autopsy of the dead body of deceased Mohar Singh. It was further argued that the chain of circumstantial evidence was complete, indicating the guilt of the respondent but the learned trial Judge erred in acquitting the accused-respondent on surmises and conjecture, hence it is prayed that the appeal be allowed and the respondent be convicted with the charged offences.

6. Dr. D.K.Sharma (PW-9), who conducted the autopsy of the deceased Mohar Singh deposed that at the time of starting postmortem, he found defused

haematoma over scalp at parietal region in midline of size 3 1/2 inches x 2 1/2 inches square shape and a tear was present at anal region in 12'o clock position, size 2.5 x 1 cm, other tears at anal region (anal orifice) were two in number, one at 2'clock and another at 9'o clock position and contusion, redness and diffuse echymosis present around anal orifice.

7. In the opinion of the Doctor, all injuries of the deceased were ante-mortem in nature and caused by hard and blunt object and evidence of anal coitus (intercourse) were present. Dr. D.K.Sharma (PW- 9) also deposed that on dissection of the dead body, fracture of parietal and temporal bones of skull were found on both sides and in his opinion deceased had died because of cardio respiratory failure due to the injuries caused to brain and its complications and death of the deceased was occurred within 36-48 hours from starting of postmortem and in his opinion, the external and internal injuries caused to head were sufficient in the ordinary course of nature to cause death. There is no reason to disbelieve the above mentioned medical evidence. Hence, it was proved from medical evidence that after carnal intercourse (sodomy) against the order of nature, the deceased met with homicidal death.

8. According to prosecution's case, on 25.7.98, before sun set Kambobai (PW-4) had seen appellant lifting a boy on his shoulders and thereafter throwing that boy in the nalah, but Kambobai had not deposed these facts before trial Court in her deposition and was declared hostile. Therefore, prosecution's case is based only on circumstantial evidence.

9. To prove the alleged circumstance of last seen of the deceased with respondent-Deepak, two child witnesses, Jaswant Singh (PW-10) and Veer Singh (PW- 11) and Kampo Bai (PW-4) were produced, but Kampo Bai (PW-4) only deposed that on the date of incident in the evening at 6.00 PM, when she was returning after doing her labour work in field to her house, then near nalah Deepak met her, at that time Deepak was having a bicycle but she could not see what was with the respondent and at that time she did not talk with Deepak, and in the way respondent-Deepak went towards his house and she also went to her house. Kampo Bai was declared hostile, thereafter she admitted the suggestions given by the prosecution that on the date of incident in the noon at 3.00 PM, when she was going towards her house, in nearby bushes of besharam plants, she heard voice of some one that "daiyare mar gayo, bachhaiyo", but at that time she had not seen any one and after hearing the voice she stopped for a while, but she understood that in bushes someone is being sexually exploited by somebody, hence without standing there she ran away towards her house because she also thought that any ghost was there. She further deposed that after sun set she returned to field and at that time, in nearby field, respondent-Deepak met her, but she could not say that at that time any child was on the shoulders of Deepak or nor? She further deposed that on the next day, she came to know that Mohar Singh had died. She denied the marked portions of her police statement (Ex.P-6) to the Investigator. She clearly denied the suggestions of

prosecution that she had seen the respondent having lifted a boy on his shoulders and thereafter throwing that boy in nalah, hence it is clear that the deposition of Kampo Bai is not much helpful to the prosecution.

10. The child witnesses Jaswant Singh (PW-10) and Veer Singh (PW-11) were examined without administering them oath. Both of them deposed that deceased Mohar Singh was of their age group and on the date of incident they were jointly going to village Mankapur and in the way at about 2.30 PM near a well they had seen deceased boy Mohar Singh with respondent-Deepak, who were circulating around the well situated in the field and thereafter they had gone to the house of their maternal aunt Shyam Bai (PW-1), but Shyam Bai denied that on the date of incident in the noon Jaswant Singh and Veer Singh had come to her house, though she deposed that in the night during search of her son Mohar Singh, she had gone to village Mankapur, where Jaswant Singh and Veer Singh both told her that they have seen her son with respondent Deepak in field near a well.

11. Shyam Bai (PW-4) and Malkhan Singh (PW-2) deposed that in the night on the date of incident, when they met respondent-Deepak and asked him about Mohar Singh, he firstly replied that Mohar Singh was not with him, but on further enquiry, the respondent admitted that Mohar Singh was with him but he clarified that from field he and Mohar Singh had gone to their respective houses.

12. Maternal uncle of the deceased, Malkhan Singh (PW-2) deposed that in noon on the date of incident, sons of his brother-in-law came to his house and intimated that at about 2.30.PM they have seen Mohar Singh with Deepak, but his statement is not corroborated by the statement of his sister Shyam Bai (PW-1) on this point. On the contrary, Shaym Bai deposed that in the night she had reached during search to village Mankapur, where Jaswant Singh (PW-10) and Veer Singh (PW-11) intimated about the fact of seeing deceased with respondent- Deepak in the field. It is clear that on this point the evidence of Shyam Bai (PW-1) and Malkhan Singh (PW-2) is not complimentary and similar. This fact is even not mentioned in the marg report (Ex.P-1) lodged by Malkhan Singh, which has been lodged in the morning at 8.05 AM on 26.07.1998.

13. It is clear that both child witnesses Jaswant Singh (PW-10) and Veer Singh (PW-11) are close relatives of the deceased and Malkhan Singh (PW-2). The marg report (Ex.P-1) was lodged after recovery of the dead body in the mid night about 12.00 hours.

14. The trial Court has disbelieved the evidence of child witnesses on the ground that both of them stated that in the noon after seeing their close relative Mohar Singh with respondent, they even did not talk with Mohar Singh. Such conduct with a close relative boy appears to be unnatural and unbelievable, whereas deceased was of their age group.

15. Omission of the fact that in the noon of the date of incident Mohar Singh was seen with the respondent Deepak in marg report (Ex.P-8) clearly indicates that the evidence of both of the child witnesses is afterthought and totally

unbelievable. The investigator P.K.Shukla (PW-12) deposed that on 28.07.1998 he had recorded the statements of Jaswant Singh (PW-10) and Veer Singh (PW-11) but statements of these child witnesses recorded on 26.07.1998 were not produced with the charge sheet, instead their police statement recorded on 29.07.1998 were filed with the charge sheet. There were material contradictions between the statements given by the above witnesses before the Court and their relating police statements.

16. According to statement of Kampo Bai (PW-4), she had heard the voice of victim of unnatural intercourse at about 3.00 PM, but she also deposed that she had seen respondent-Deepak with cycle on the same day in the evening at about 6.00 PM when going towards his house. In such inconsistent statements of witnesses it could not be inferred that the deceased Mohar Singh was with the respondent-Deepak from 2.00 PM till 6.00 PM on the date of incident. Kampo Bai (PW-4) had not deposed the fact of seeing respondent-Deepak at 3.00 PM but clearly deposed that she had only seen Deepak at 6.00 PM with cycle. Hence, impliedly Kampo Bai's deposition rebuts the statements of child witnesses, Jawant Singh (PW-10) and Veer Singh (PW-11).

17. Some witnesses have deposed about the disclosure statement given by respondent-Deepak after his arrest on 30.07.1998, but most of the facts recorded in relating disclosure statement (Ex.P-8) recorded by P.K.Shukla (PW-12) are clearly confessional statements and such facts are inadmissible in evidence. Only that part of disclosure statement was admissible relating to respondent's worn shoes which were seized later on. According to the facts mentioned in Ex.P-8, at that time, respondent was wearing both his shoes in his legs, which was seized vide seizure memo Ex.P-9. Though panch witnesses of this disclosure statement and seizure memo (Ex.P-9) Ramswaroop (PW-5) and Chaghan Lal (PW-6) have deposed and supported the evidence of P.K.Shukla (PW-12) that in their presence the worn shoes were seized from the respondent, but there is no FSL report on record indicating the presence of human blood stains of the deceased on shoes, hence the alleged recovery of shoes of respondent-Deepak is totally unable to connect the respondent with the incident.

18. The trial Court had also in its judgment recorded that the FSL report was not filed by the prosecution before it till judgment and, therefore, has drawn adverse presumption against the prosecution. It is well established legal position that suspicion, however, strong could not replace the reliable and trustworthy evidence. The trial court had placed reliance on many citations referred in its judgment.

19. We are of the considered opinion that the trial Court has properly and legally appreciated and analyzed the entire evidence available on record and even not a single circumstance was proved against the respondent beyond reasonable doubt. Therefore, his acquittal from the charged offences as recorded by the trial Court appears to be totally justified, hence this appeal appears to be meritless.

20. Consequently, the appeal filed by the State against the acquittal of present respondent vide impugned judgment is dismissed and the judgment of acquittal is affirmed. Respondent's bail bonds be discharged. The order about disposal of the seized material of the case is also affirmed.