
(2006) 08 MP CK 0064
In the Madhya Pradesh High Court

Vinod Laxmiprasad Rai

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Evidence Act, 1872 — Section 145, 159, 27
Penal Code, 1860 (IPC) — Section 201, 302, 34, 394, 397

Citation : (2006) 4 MPLJ 296

Hon'ble Judges : W.A. Shah, J;S.L. Kochar, J

Bench : Division Bench

Judgement

W.A. Shah, J.

Vinod and Sandeep were tried together for offences punishable under Sections 450, 394/397, 302 and in the alternative 302/34 and 201/34 of the Indian Penal Code, in the Court of learned Fourth Additional Sessions Judge, Indore in Sessions Trial No. 48/2002 and therein vide judgment dated 8-7-2003 Sandeep has been acquitted while Vinod has been convicted and sentenced as under:

(a) u/s 450 Penal Code, to RI for 10 years.

(b) u/s 394/397 Penal Code, to Life Imprisonment.

(c) u/s 302/34 Penal Code, to Life Imprisonment, with fine of Rs. 1,000-00 relating to murder of Harivallabh and also u/s 302/34 Penal Code, to Life Imprisonment and fine of Rs. 1,000-00 relating to murder of Meenu, a 2 years female child.

(d) u/s 201/34 Penal Code, to RI for 7 years.

All the sentences have been ordered to run concurrently and for each default of payment of fine, separate sentence of 10 months RI has been directed.

Accused appellant Vinod being aggrieved has filed this appeal against the above judgment, findings and sentences. According to the prosecution, at the relevant

time PW-1 Complainant Smt. Suman was working as a Sales Girl in Indira Export situated at Yeshwant Niwas Road, near Rani Sati Gate, Indore. She and her husband Harivallabh were blessed with a son aged 4 years named Shanu and daughter aged 2 years named Meenu. Her husband Harivallabh was not having any regular employment and was only looking after petty works, therefore, when Shanu, who was studying in Merit School, remained away to School and complainant Smt. Suman away to her work, he used to stay back at home at Bhamori, Indore and looked after the 2 year old daughter Meenu. It was also an understanding created by Smt. Suman with her neighbour that after the return of Shanu from his School, he was being taken care of at the neighbour's residence till the arrival of Smt. Suman. On the fateful day i.e. 9-11-2001 around 9.00 a.m. as usual Smt. Suman went to her work, Shanu had already gone to School, therefore, she left her husband Harivallabh and daughter Meenu at home. When she came back to her home around 7.30 p.m. and taking Shanu from the neighbour's home reached there, opened the lock of the Boundary Gate and entered in her house. She found that one of the doors of her first room was closed from inside and another gate was closed from out side with chain being applied. She entered through the same gate into the room. As she reached there, she found her husband Harivallabh lying in a pool of blood on the floor. The complainant, therefore, called for help. Neighbour Mantu along with his mother reached there hearing her. They all found that Meenu was also missing and Harivallabh @ Ballu was dead. Search for Meenu was made but in vain. The complainant Smt. Suman through the help of a passer boy informed to the police about the incident. On the said information Sub-Inspector Vinod Dixit reached the house of the complainant and took a Dehati Nalish Ex. P/1 there.

Station House Officer M.I.G. Police Station, Indore - B.P.S. Parihar [P.W.-17] was informed telephonically about the incident. He, therefore, reached there and on the basis of Dehati Nalish, at the instance of the complainant, prepared spot map [Ex. P/29] at 8.40 p.m. Then on the basis of Dehati Nalish, at Out Post Vijay Nagar, re port Ex. P/22 was also written. On the basis of Ex. P/22, later at Police Station M.I.G. formal First Information Report [Ex. P/14] was prepared and the Crime No. 954/2001 was registered at 8.50 p.m.

Investigation Officer B.P.S. Parihar [PW-17] on the date of the incident at 8.50 p.m. collected samples of the blood sprinkled all over the floor and also took into his possession blood stained clothes which were used for clearing the floor, as also in the bathroom he found 3 knives placed near the wash-basin. Also took them into his possession. Out of the 3 knives, one of the knife was broken and tilted. Around the dead body of deceased Harivallabh, playing cards and one plastic can, one red coloured wallet containing a visiting card of accused/appellant Vinod with the name of B.M. Rai was also found. All the above articles were seized by B.P.S. Parihar vide Ex. P/27, the Seizure Memo. Prior to that at 8.30 p.m. he had issued Subpoena Form Ex. P/3 for preparing the Panchayatnama Lash of Harivallabh. At 9.10 p.m. in the presence of Panch witnesses, Panchayatnama Lash Ex. P/4 was prepared. Taking a clue from the

above visiting card, at 10.05 p.m. accused/appellant Vinod was arrested by B.P.S. Parihar [PW-17] vide Ex. P/7. Soon thereafter acquitted accused Sandeep was also arrested.

Soon after the arrest, Sandeep had informed at 10.15 p.m. that dead body of Meenu was lying in a plastic drum in the inner room of the house of complainant. He also gave disclosure about clothes etc. Following the said information, accused/appellant Vinod also disclosed to police that the dead body of Meenu was lying there and in the presence of the Panch witnesses said information was recorded in Ex. P/10, the Memo u/s 27 of the Evidence Act. The same was prepared by Station House Officer B.P.S. Parihar. Same day at about 10.30 p.m. Vinod led the recovery and at his instance Meenu's dead body was taken out from the plastic drum. The same was seized in the presence of Panch witnesses vide Ex. P/11 being prepared by B.P.S. Parihar. Then B.P.S. Parihar prepared the Panchayatnama Lash of Meenu at 10.45 p.m. after the issuance of Subpoena Form Ex. P/5 at 10.45 p.m. in the presence of Panch witnesses. The Panchayatnama Lash is Ex. P/6. At the spot itself, the Station House Officer registered Marg vide Ex. P/30.

Same day at 11.05 p.m., B.P.S. Parihar [PW-17] at the instance of accused/appellant Vinod, in the presence of witnesses, seized blood stained clothes of Vinod. His visiting card was also seized. Seizure Memo Ex. P/12 relating to the seizure of the above articles was prepared by B.P.S. Parihar. Thereafter at the instance of acquitted accused Sandeep, certain articles were recovered. At 11.30 p.m. B.P.S. Parihar prepared requisition Ex. P/31 for post-mortem of the dead body of Harivallabh and requisition Ex. P/32 for the post-mortem of the dead body of Meenu. The same were forwarded to Head of the Department, Forensic Science Department, M.Y. Hospital, Indore.

Dr. Ravindra Choudhary [PW-7] conducted the post-mortem of Harivallabh @ Ballu on 10-11-2001. He started his postmortem at 1.15 p.m. He prepared the autopsy report Ex. P/17 giving opinion thereby that he died homicidal death. The same Dr. Ravindra Choudhary on the same day conducted post-mortem of Meenu. He started her postmortem at 2.20 p.m. At its completion, he prepared autopsy report Ex. P/18 and opined that she also died homicidal death. The clothes taken from the dead bodies were also forwarded by him to concerned Police Station.

On 10-11-2001 accused/appellant Vinod also gave disclosure statement regarding Meenu's Paizeb, Kada and coins taken out from her coin collection box. His information was recorded in Ex. P/23 by B.P.S. Parihar [PW-17] in the presence of Panch witnesses. Similar information was also given by the acquitted accused Sandeep. On 12-11-2001 accused/appellant Vinod led the discovery of above articles which were seized by B.P.S. Parihar [PW-17] in the presence of Panch witnesses preparing Ex. P/24, the Seizure Memo. Certain seizure were also effected at the instance of acquitted accused Sandeep.

On 13-11-2001 at the instance of accused/appellant Vinod, coins to the tune of Rs. 350-00 were seized by B.P.S. Parihar vide Ex. P/16 in the presence of the Panch witnesses. On 28-11-2001 vide Memo Ex. P/34, requisition for Chemical Examination of the relevant articles, was forwarded along with articles. On 1-12-2001, 3 knives seized during investigation were also sent for opinion vide Letter Ex. P/19 to Dr. Choudhary. Dr. Choudhary after seeing the knives, on the back of Ex. P/19 written his opinion that the possibility of their use in the commission of the crime under reference was not ruled out.

Complainant Smt. Sumanbai was called upon to make a test identification of Silver Kade and Silver Paizeb and Silver coin. The test identification was conducted by Munnalal Yadav [PW-12]. Complainant Smt. Suman in the above test parade identified the above articles. Munnalal Yadav prepared the record of the test identification vide Ex. P/3, the Memo.

At the conclusion of the investigation, the prosecution presented charge-sheet against Sandeep as well as accused/appellant Vinod for offences punishable under Sections 450, 394/397, 302 and 201 Penal Code. The Trial Court charged them for offences punishable under Sections 450, 394/397, 302 and in the alternative 302/34 Penal Code and also charged them for offence of Section 201/34 Penal Code. The accused persons pleaded not guilty. The case went to trial. During trial, prosecution rested its case entirely on circumstantial evidence. The accused persons did not produce evidence. At the conclusion of the trial, the learned Court below found the following circumstances being proved:

- (a) Accused/appellant Vinod was living nearly to the house of the deceased Harivallabh and used to visit Harivallabh's house.
- (b) Soon after the death of Harivallabh, near to his dead body a Wallet containing visiting card of accused/appellant was recovered.
- (c) Soon after the lodging of the Dehati Nalish, accused/appellant Vinod was arrested and on his information and at his instance dead body of child Meenu was discovered from a plastic drum placed inside the house of complainant.
- (d) Discovery of Silver coin at the instance of accused /appellant Vinod.
- (e) Soon after the incident, the clothes which were seized from accused/appellant Vinod were stained with blood which matched with the Blood Group "A" of deceased Harivallabh.

The learned Trial Court in view of the above circumstances did not find Sandeep guilty and accordingly acquitted him; whereas held the accused/appellant Vinod guilty and sentenced him as shown at the outset.

We have heard the arguments for and against the appeal and have perused the record with the assistance of both the learned Counsel. We will deal with the arguments at seriatim.

With reference to conviction of the appellant u/s 394/397 Penal Code, the

learned Counsel for the appellant contended that only on the basis of discovery of loose Silver coin at the instance of the appellant, he is not connected with crime, the property being unidentifiable having not been identified by the complainant in the dock. In this connection we find that vide Para 4 of her deposition PW-1 Smt. Suman has stated this much only that vide Ex. P/2, the test identification parade, she had identified a Silver coin. However, in the Court, neither she appears to have been called upon to identify the discovered coin, nor she has attempted, at the same since it had not been produced and shown to her during her statement. The substantive evidence of identification of coin is accordingly absolutely missing. Hence we are not required to go into the value of test identification which was conducted by PW-12 Munnalal Yadav, a Social Worker and latter a local Corporator. We, therefore, accept the above contention of the learned Counsel for the appellant.

With reference to the conviction of the appellant for the murder of Harivallabh, the learned Counsel for the appellant contended that the evidence of discovery of his clothes at his instance and said to be stained with blood group of the deceased is worthless inasmuch as it is not proved that the discovered clothes were sealed at the time of the seizure and sent in the same condition to the Chemical Examiner. The learned Counsel for the Respondent/State in reply submitted that vide Ex. P/12, the Seizure Memo, dated 9-11-2001 depicting the seizure of these clothes, there is a mention of the same being sealed. We have readily discovered that vide Bhagirath and Others Vs. State of Madhya Pradesh, , it has been held that lists of discoveries or memoranda or panchnamas are not substantive evidence by themselves. The information contained therein is required to be stated in Court in exact words by the persons recording them and it is so because Section 159 of the Evidence Act provides for their use for the refreshing of the memory of witnesses to the memoranda etc. To be specific, it has been held therein as under:

Lists of discoveries or memoranda of panchnamas exhibited in criminal cases are not themselves evidence. These lists or memoranda or panchnamas can only be used by persons who signed them or prepared them to refresh their memory within the meaning of Section 159 of the Evidence Act. Whatever statement is attributed to an accused person in police custody giving information leading to the discovery must be proved by witnesses like any other fact.

We have perused the statement of PW-17 B.P.S. Parihar, the Investigation Officer, who prepared seizure vide Ex. P/12 and have also perused the statements of Panch witnesses PW-2 Banshlal and PW-16 Mahesh Kumar. Incidentally all of them are silent about the sealing of the above clothes at the time of their seizure. As such substantive evidence required in the matter is absent. Thus, possibility of intermeddling with the seized clothes after the seizure till their chemical examination, does not stand ruled out more so when as per Ex. P/34, the Memo, forwarding these clothes to Chemical Examiner, the same were despatched on 28-11-2001 with a delay of 19 days. Accordingly we see great

substance in the contention of the learned Counsel for the appellant.

The learned Counsel for the appellant submitted that the Court below has attached importance to the fact of appellant's visiting terms to the deceased Harivallabh in neighbourhood and recovery of his Wallet by the side of the deceased. According to the learned Counsel on the own showing by the Court below, the appellant was neighbour of the deceased and was also on visiting terms with him, thus that does not give rise to his criminality of conduct and is only reflective of good relations between the two. The recovery of Wallet is also inconsequential since it could be an unnoticed droppage during friendly visit of the appellant to deceased's place. Be that as it may, the above circumstances to our mind do not invariably point to the conclusion that it was the appellant and the appellant only who was the perpetrator of the offence and the above evidence is not incompatible with the innocence of the appellant. In this connection we refer to *Eradu and Others Vs. State of Hyderabad*, , for the proposition that it is a fundamental principle of Criminal Jurisprudence that circumstantial evidence should point invariably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused. We are, therefore, in agreement with the learned Counsel for the appellant.

The learned Counsel for the appellant also argued that the discovery of dead body of Child Meenu on the information and at the instance of the appellant is totally concocted. The learned Counsel contended that according to the prosecution the disclosure statement was made at 22:20 hours and Meenu's dead body was seized at the instance of the appellant at 22:30 hours on the date of the incident. The learned Advocate further went on to contend that still vide Ex. P/29, the Spot map, prepared latter at 20:40 hours same day in the notes therein the dead body of Meenu is shown to be concealed In the plastic drum placed in an inside room of the house of complainant, therefore, its discovery is not attributable to the appellant. But we find that as per the statement of PW-17 B.P.S. Parihar, the Investigation Officer, he prepared it with the assistance of PW-1 complainant Smt. Suman and in accordance with the situations pointed out by her. As such the spot map [Ex. P/29] stands hit by Section 162 Code of Criminal Procedure. We further find, however, as per the provisions of Section 145 of the Evidence Act, B.P.S. Parihar has not been confronted with the same with reference to dead body of Meenu being still kept in plastic drum. Accordingly, the appellant is unable to make the use of the above note from spot map. In this respect, we may rely upon, *Jit Singh Vs. State of Punjab*, , which lays down as under:

The notes on the site plan prepared by the investigating officer in accordance with the various situations pointed out to him by the witnesss are statements recorded by the Police Officer in the course of investigation, and are hit by Section 162. These notes can be used only for the purpose of contradicting the prosecution witnesses concerned in accordance with the provisions of Section

145, Evidence Act, and for no other purposes. Therefore, where this was not done, and the witnesses were never confronted and contradicted with this record, the notes on that site plan cannot be used to contradict the account given by the witnesses in Court In regard to the distances from which they saw the occurrence.

We find that PW-17 B.P.S. Parihar, Investigation Officer, has deposed that on 9-11-2001 shortly after the incident appellant was apprehended by him vide Ex. P/ 17, the Arrest Memo. His interrogation followed the arrest and in his interrogation he informed him about the concealment of the dead body of Meenu in a drum placed in the room. The same was recorded in Memo Ex. P/10. Then the appellant led the recovery of the dead body which was seized vide Ex. P/11. Panch witnesses PW-2 Banshilal and PW-16 Mahesh Kumar have in this connection substantially supported B.P.S. Parihar [PW-17]. Thus we see that the said discovery clearly establishes the criminality of the appellant in authorship of concealment of the corpus of Meenu. As such it was the appellant who gave the information leading to the discovery of dead body of Meenu who had himself concealed it. It is a fact discovered in consequence of the information received from the appellant, therefore, is well within the ambit of Section 27 of the Evidence Act. In this respect we are fortified by State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, .

There has been no challenge to the fact of homicidal nature of Meenu's death before us in this appeal, yet we have perused the relevant medical evidence rendered by PW-7 Dr. Ravindra Choudhary with reference to Ex. P/18, the post-mortem report, and we have been convinced that the homicidal death of Meenu has rightly not been called into question.

The upshot of above discussion is that conviction of the appellant under appeal for murder of Harivallabh deserves reversal. So also his impugned conviction u/s 394/397 Penal Code merits subversion. Thus we direct accordingly. However, we hasten to add that the conviction of the appellant under appeal for murder of child Meenu deserves confirmation and as the established circumstances in which it was committed also constitute the evidence of commission by the appellant of the offences of Sections 450/34 and 201/34 Penal Code, we see no illegality in this respect also in the impugned judgment. Since the case has rested upon circumstantial evidence, therefore, application of Section 34 of the Penal Code is also justified. The appeal is accordingly partly allowed to the above extent with no substantial change, however, in the actual imprisonment. Fine amount which formed part of sentence for the murder of Harivallabh if paid, be refunded. To be explicit we confirm the following conviction and sentences imposed upon the appellant by the impugned judgment:

(i) Conviction u/s 450 Penal Code and sentence thereunder for 10 years RI.

(ii) Conviction u/s 302/34 Penal Code relating to the murder of Meenu and sentence thereunder of Life Imprisonment and fine of Rs. 1,000-00 with direction

that default of fine payment would entail 10 months separate RI.

(iii) Conviction u/s 201/34 Penal Code and sentence thereunder of RI for 7 years.

And all substantive sentences running concurrently.