

Gulab Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-21-2013

Appellant : Gulab

Respondent : The State of M.P.

Judgement :

(1) Cr.A.No.231/2001 HIGH COURT OF MADHYA PRADESH: JABALPUR Division Bench: Hon'ble Shri Justice Rakesh Saxena Hon'ble Smt. Justice Vimla Jain CRIMINAL APPEAL NO.231/2001 Gulab son of Vithoba, aged 40 years, by occupation Labourer, resident of village Bhatkherha, Tehsil Burhanpur, District East Nimar (Khandwa) M.P.Appellant -Versus- State of Madhya Pradesh .Respondent

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the appellant: Shri S.K.Nema, Advocate. For the respondent: Shri Amit Pandey,
Panel Lawyer.

Date of hearing:

12. 02/2013 Date of Judgment:

21. 02/2013 *****

JUDGMENT

Per: Rakesh Saxena, J. Appellant has filed this appeal against the judgment dated 29.01.2001 passed by II Additional Sessions Judge, Burhanpur in Sessions Trial No.110/2000 convicting the appellant under section 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs.50,000/-.

2. In short, the prosecution case is that in village Bhatkherha on 4.6.2000, at about 3:45 o'clock in the night when Shivram, the deceased was asleep in his Bada, appellant reached (2) Cr.A.No.231/2001 there armed with an axe and dealt its blow on his head and ran away. Shyamrao, Gattu Patel, Kamal Bai and Yashoda Bai, who were also sleeping in the vicinity, took unconscious Shivram to the house of his son Suresh. Suresh tried to arrange a jeep for taking Shivram to hospital, but in the meantime he died.

3. Suresh (PW-1) along with Dadarao (PW-5) went to police station, Shahpur and lodged first information report Ex.P/1 at 5:00 a.m. K.N.Gupta, ASI (PW-11) registered the offence under section 302 I.P.C. against the appellant and reached at the spot. He drew the spot map and conducted inquest proceedings. After recording inquest memorandum Ex.P/3, he sent the body of deceased for postmortem examination to Nehru hospital, Burhanpur. On the same day, Inspector Gupta arrested appellant and on his information seized axe from his possession.

4. After investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Burhanpur, who in his turn committed the case to the Court of Sessions for trial.

5. During trial, appellant abjured his guilt and pleaded false implication over the enmity pertaining to election. The evidence was also adduced in defence to show that at the time of occurrence appellant was mentally unsound.

6. In order to substantiate its case, prosecution examined 11 prosecution witnesses including the eyewitnesses. Relying upon the evidence of eyewitnesses, learned trial Judge held the appellant guilty and convicted and sentenced him as afore-stated. Aggrieved by his conviction and sentence, appellant has filed this appeal. (3) Cr.A.No.231/2001 7. Learned counsel for the appellant submitted that

the evidence of eyewitnesses examined by the prosecution was discrepant and contradictory, as such it was unreliable. Learned trial Judge mis-appreciated the said evidence and illegally recorded finding of guilt against the appellant. Learned counsel submitted that learned trial Judge committed error in not holding that at the time of alleged incident the appellant was mentally unsound. On the other hand, learned counsel for State submitted that the evidence of eyewitnesses was cogent, consistent and reliable, therefore, impugned judgment of conviction of appellant was justified and did not call for any interference.

8. We have heard the learned counsel for the parties at length, perused the impugned judgment and the evidence on record carefully.

9. It is undisputed that deceased met with a homicidal death. Kala Bai (PW-2), Gattu Patel (PW-3), Shyamrao (PW-4), Yashoda Bai (PW-9) and Kamal Bai (PW-10), the eyewitnesses of the occurrence categorically stated that appellant assaulted deceased with an axe and that they carried him to the house of his son Suresh where he died. Suresh (PW-1), the son of deceased lodged the first information report Ex.P/1 at police station to the effect that his father Shivram died due to injuries. Investigating Officer K.N.Gupta (PW-11) conducted inquest proceedings and recorded the injuries found on the body of deceased in inquest memorandum Ex.P/3 and sent the dead body of deceased for postmortem examination. Dr. Dinesh Kumar Yadav (PW-8), Medical Officer of Nehru Hospital, (4) Cr.A.No.231/2001 Burhanpur deposed that on 4.6.2000, he conducted autopsy of the dead body of Shivram and found following injuries:- (i) Incised wound 3 x 0.7 cm cutting underlying bone on the right side of forehead; (ii) Incised wound 3 x 0.6cm cutting the bone parallel to injury no.1; (iii) Diffused swelling with abrasion of 2 x 2cm over right side cheek; (iv) Incised wound 2.5 x 0.5 cm x bone deep on right frontal region of head. On internal examination, he found multiple fractures of frontal bone and meninges cut. Haematoma was present over the frontal lobe of brain. Frontal lobe of brain was also cut. These injuries, except injury No.3, in his opinion, were possible by some sharp edged weapon. Death of deceased was caused due to shock resulting from excessive haemorrhage from the injuries. Postmortem report Ex.P/10 was signed by him.

10. From the aforesaid evidence, it stood amply established that deceased died a homicidal death.

11. In order to establish that it was appellant who caused the death of deceased, prosecution examined Kala Bai (PW-2), Gattu Patel (PW-3), Shyamrao (PW-4), Yashoda Bai (PW-9) and Kamal Bai (PW-10) as eyewitnesses.

12. Kala Bai (PW-2) deposed that she, Kamal Bai and Yashoda Bai were sleeping in the courtyard of Kamal Bai. The courtyard of Kamal Bai is situated in front of the Bada of Shivram. In the night appellant called her saying that there was thief in his house. When she went there he intimidated her to kill. Being scared (5) Cr.A.No.231/2001 she rushed back near Shyamrao, Yashoda Bai and Kamal Bai who also got awakened. In the meanwhile appellant came out of his house with an axe and dealt 5-6 blows with it on the head of Shivram who was lying asleep on his cot in the Bada. The Bada of Shivram is in front of the courtyard of Yashoda, Kamal and Shyamrao. She deposed that the house of Gulab is situated in the neighbourhood. In cross-examination, she was confronted with her police station Ex.D/2 wherein she did not disclose that appellant called her on the pretext of thief in his house but, in our opinion, it was not a material omission affecting the core of her testimony. PW-2 deposed that after the incident Gattu Patel, Shyamrao, Yashoda and Kamal took injured Shivram to his house. Evidence of Kala Bai (PW-2) finds support from the evidence of Gattu Patel (PW-3), Shyamrao (PW-4), Yashoda Bai (PW-9) and Kamal Bai (PW-10) who reiterated the same story in the Court. According to them, when Kala Bai shouted they woke up and saw that appellant emerged with an axe and assaulted Shivram who was sleeping in his Bada. All of them deposed that after assaulting Shivram, appellant ran away and they carried injured Shivram to his house where his son was residing. They informed to Suresh that appellant assaulted Shivram with an axe. Suresh though tried to arrange for a jeep for taking Shivram to the hospital but in the meantime Shivram expired.

13. According to Gattu Patel (PW-3), Suresh and Dadarao went to police station in the jeep and came back with the police within half an hour. Though the fact that Gattu did not disclose in his statement Ex.D/3 that Kala Bai shouted, but this

omission, in our (6) Cr.A.No.231/2001 opinion, does not seem to be material. The evidence of all the aforesaid eyewitnesses is categoric and consistent on the point that they saw appellant assaulting deceased with an axe while he was sleeping in his Bada. Suggestions were put to Yashoda Bai (PW-9) that she had illicit relations with deceased and it was she who assaulted deceased with an axe, but these suggestions were firmly denied. It is also important to note that Yashoda Bai happened to be the sister of accused. Evidence of aforesaid witnesses seems reliable since there appeared no animus or ill will between them and the appellant.

14. Investigating Officer K.N.Gupta (PW-11) prepared spot map Ex.P/4 at the instance of Suresh (PW-1). From the spot map, it is apparent that the place where the deceased was sleeping in his courtyard is situated in front of the houses of Gattu, Yashoda, Kamal and Shyamrao. The house of appellant is also situated adjacent to the house of Yashoda Bai. In this situation, it seems probable that eyewitnesses could see the incident.

15. Evidence of eyewitnesses finds further corroboration from the evidence of Suresh (PW-1) who lodged first information report after the occurrence. According to Suresh (PW-1), the Bada in which his cattle were kept was situated in front of the house of appellant. Houses of Kamal Bai, Yashoda Bai, Gattu Patel and the flour mill of Shyamrao are situated adjacent to his Bada. His father used to sleep in Bada for the security of his bullock carts. He stated that at about 4 o'clock Gattu, Shyamrao, Kamal Bai and Yashoda Bai brought his father in unconscious condition and informed him that (7) Cr.A.No.231/2001 appellant had assaulted him with an axe. He immediately went for fetching a jeep but in the meantime his father died. He had narrated all the facts to Dadarao. He then went to police station and lodged first information report Ex.P/1. The evidence of Suresh finds support from the evidence of Dadarao (PW-5) who accompanied him to police station when he went to lodge the report. He also participated in the inquest proceedings.

16. The evidence of eyewitnesses finds further corroboration from the evidence of Dr. Dinesh Kumar Yadav (PW-8), who conducted postmortem examination and found injuries on the head of deceased caused by sharp edged weapon.

17. After careful scrutiny and scanning the evidence of aforesaid eyewitnesses, we are of the opinion that it is consistent, cogent and credit worthy and further that learned trial Judge rightly appreciated their evidence and held that it was appellant who caused injuries to deceased with an axe.

18. Learned counsel for appellant urged that the conviction of appellant was bad since he was mentally unsound at the time of incident. He referred to the evidence of Kala Bai wherein she stated that after the incident appellant went to his house and sat on his Otthla and that his brother and son tied him with a rope to a window with a view that he may not run away. In our opinion, the fact that brother of appellant tied him does not go to indicate that appellant was suffering with mental insanity. The suggestions about his mental insanity were denied by all the prosecution witnesses including Gattu Patel (PW-3) and Dadarao (PW-5). It is all the more (8) Cr.A.No.231/2001 important that Yashoda Bai (PW-9), who happened to be the sister of appellant did not say that appellant was mentally unsound. It is true that burden to prove insanity can be discharged also from circumstances which preceded, attended and followed the crime but by mere absence or inadequacy of motive it cannot be held that appellant was insane.

19. Appellant though examined Kashinath (DW-2), Shantaram (DW-3), Sonaji (DW-4) and Shrawan (DW-5) to establish that he was insane and was suffering with fits of madness, but the appellant himself did not say in his statement under section 313 Cr.P.C. that he was of unsound mind, rather he stated that witnesses spoke against him because of old enmity over election.

20. From the evidence of Shantaram (DW-3), it appears that appellant used to deal in selling liquor and also in the business of Satta. Since last 2-3 years he was involved in these activities. For recovering money he used to indulge in quarrel with anybody, therefore, people were scared of him. He also stated that appellant used to act madly after consuming liquor. In these circumstances, it does not seem to us that appellant was a person of unsound mind and he caused death of deceased by the reason of said unsoundness.

21. For the aforesaid reasons, we find that prosecution succeeded in establishing that appellant assaulted deceased with an axe on his head while he was sleeping

in the night with the intention of committing his murder. Learned trial Judge committed no error in holding him guilty and convicting him under section 302 I.P.C. His conviction is, accordingly, affirmed. (9) Cr.A.No.231/2001 22. In view of the fact that appellant is a labourer and he is in jail since 5.6.2000, sentence of fine of Rs.50,000/- imposed on him is set aside.

23. Subject to modification as indicated above, this appeal is dismissed. (Rakesh Saksena) (Smt. Vimla Jain) b Judge Judge

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