

Guru Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-12-2013

Appellant : Guru

Respondent : The State of M.P.

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.297/2003 Guru S/o Ramlal...Appellant Vs. The State of M.PRespondent For the appellant : Ms. Neena Khera, Advocate For the respondent: Shri Sudeep Deb, Government Advocate ***** Present: HONOURABLE SHRI JUSTICE AJIT SINGH HONOURABLE SHRI JUSTICE B. D. RATHI *****

JUDGMENT

(12/9/2013) The following judgment of the Court was delivered by : B. D. Rathi, J.This appeal has been preferred under Section 374(2) read with Section 383 of the Code of Criminal Procedure (for short the Code.) being aggrieved with the judgment dated 29/10/2002 passed by III Additional Sessions Judge, Chhindwara in Sessions Trial No.322/2001, whereby the appellant has been convicted under Section 302 of the Indian Penal Code (for short the IPC.) and sentenced to imprisonment for life with fine stipulation.

2. Prosecution case, in brief, is that, on 14/10/2001, Kalmabai (since deceased) gave food to her ailing daughter Vineeta, who refused to eat. Appellant, husband of Kamlabai, said that he would also not take food if Vineeta did not have the

same. Kamlabai told the appellant that they should not compel Vineeta to eat as she was sick, upon which the appellant got enraged and, while abusing, got up to beat Kamlabai. However, Vineeta and her brother Vinot pacified the appellant. Thereafter, the appellant, without having meals, went and sat in the Courtyard and after a while, without 2 Cr.A. No.297/2003 informing anyone, left the home. Vineeta and her brother fell asleep and Kamlabai also slept in the Verandah. At about 3 to 4 a.m., upon hearing the sound coming from the Verandah, as Vineeta and her brother, peeped through the gaps in the door, they saw that appellant was assaulting their mother with a Vasula (Axe type weapon). They both cried, but appellant did not open the latch and fled from the spot. Vineeta and Vinod, opening the backdoor of the house, went to the Verandah, and found that Kamlabai, drenched in blood, was moaning. They called their maternal grandmother Devkibai and apprised her of the incident. They all put Kamlabai in a bullock-cart and were taking her to a Hospital, but Kamlbai expired in the way. Morgue intimation (Ex.P/14) was recorded at Police Station Junnardeo in the morning of 15/10/2001 at 11.40 a.m., on the information of Devkibai and, thereafter, Dehati Nalishi (Ex.P/15) was recorded. After investigation, charge-sheet was filed.

3. Appellant was charged with the offence punishable under Section 302 of the IPC. He denied the charge and pleaded false implication.

4. Learned counsel for the appellant submitted that the appellant has been falsely implicated and the trial Court has not appreciated the evidence on record in a correct perspective. According to her, all the eye-witnesses were declared hostile and the conviction is based upon the sole testimony of the Investigating Officer. She, accordingly, prayed that the conviction be set aside and instead, appellant be acquitted.

5. In response, learned Government Advocate, while making reference to the incriminating pieces of evidence on record, submitted that the judgment of conviction was well merited.

6. Having regard to the arguments advanced by learned counsel for the parties, impugned judgment and record of the trial Court were perused.

7. Dr. Indrajeet Singh (PW8), who conducted the autopsy and prepared the report (Ex.P/10), found as many as 3 incised wounds and 2 lacerated wounds on the dead body. According to him, cause of death was shock due to the injuries sustained. He also examined 3 Cr.A. No.297/2003 the Vasula seized from the appellant vide seizure memo (Ex.P/3), and opined that the injuries found on the body of the deceased could be caused by the said weapon.

8. Eye-witnesses Vineeta (PW5) and ViNo.(PW6), children of the deceased, have been declared hostile and did not support the case of prosecution. Devkibai (PW1), mother of the deceased, deposed that appellant used to demand money from her daughter for consuming liquor and on her denial used to beat her. She further deposed that when she reached the spot, Kamlabai was alive and had informed her that appellant had assaulted with a Vasula. However, in absence of corresponding recital in the Morgue intimation (Ex.P/4), the trial Court did not believe the said dying declaration. Factum of seizure of Vasula at the instance of the appellant by Ramdayal Sharma (PW11), Assistant Sub Inspector, though not corroborated by witnesses of seizure viz. Mahesh (PW4) and Bhangilal (PW7), was believed by the trial Court in view of the fact that in absence of any material infirmity, evidence of Investigating Officer could not be discarded merely on the ground that he was a police officer.

9. As per Forensic Science Lab report (Ex.P/20), human blood was found on the Vasula and shirt seized from the appellant. However, no explanation was given by the appellant regarding the said blood found on the articles seized from him. Moreover, as the offence was committed in the house of the appellant, it was for the appellant to explain the circumstances which were in his special knowledge under which the offence was committed. The Apex Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra ((2006)10 SCC 681).has reiterated the well settled principle that when an incriminating circumstance is put to the accused and that accused either offers no explanation or offers an explanation which is found to be untrue then the same becomes an additional link in the chain of circumstances to make it complete. In this case, the Supreme Court has also held that where a husband is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime,

they were seen together or the offence takes place in the dwelling house where the husband also normally resided and if the husband does not offer any explanation how the 4 Cr.A. No.297/2003 wife received injuries or offers an explanation which is found to be false, it was a strong circumstance pointing that he alone was responsible for the commission of crime.

10. Though, Vineeta and Vinot have deposed in their respective cross-examination that their father had left the home on the date of incident at 3 p.m. for Pipariya, for cutting the Soyabean Crop at Garha, yet, the same does not inspire confidence in view of corresponding omission in their police statements (Ex.P/8 & Ex.P/9). Further, not calling of the appellant at the funeral of the deceased by Vineeta, Vinot and Devkibai clearly suggested that they were well aware that appellant after committing the offence had fled and there was no likelihood of his returning.

11. In the examination under Section 313 of the Code, though the appellant took the plea of alibi saying that he had gone to Jheel Pipariya, yet, the same was disbelieved by the trial Court as detailed information was not furnished by the appellant regarding the same. Moreover, had he gone to Jheel Pipariya, his family members would have called him for the funeral of the deceased. On the contrary, the police arrested the appellant two days after the funeral as he did not surrender himself.

12. Thus, after appreciating the entire evidence on record and taking into consideration the aforesaid facts and circumstances of the case, we are of the considered opinion that the trial Court has not committed any illegality or perversity in convicting and sentencing the appellant.

13. The appeal, accordingly, fails and is, dismissed. Impugned judgment is hereby affirmed.

14. Copy of the judgment be sent to the trial Court for information and compliance.
(AJIT SINGH) (B. D. RATHI) JUDGE JUDGE 12 9/13 12/9/13 (and)