

**Chander Mohan Vs. State**

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**Court :** Rajasthan Jodhpur

**Decided On :** Feb-04-2014

**Appellant :** Chander Mohan

**Respondent :** State

**Judgement :**

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

## **JUDGMENT**

Chandra Mohan Mahiya versus State of Rajasthan D.B.Criminal Appeal No.957/2006 against the judgment dated 6.10.2006 passed by Additional Sessions Judge No.1, Sriganganagar in Sessions Case No.16/2005.

Date of Judgment :: 4th February, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.Kalu Ram Bhati, for the appellant.

Mr.K.R.Bishnoi, Public Prosecutor, for the State...BY THE COURT : (PER HON'BLE MATHUR,J.) This appeal is preferred to challenge the judgment and order dated 6.10.2006 passed by Additional Sessions Judge No.1, Sriganganagar in Sessions Case No.16/2005.

By the judgment impugned learned Additional Sessions Judge convicted accused Chandra Mohan for commission of offences punishable under Sections 302, 364 and 201 Indian Penal Code and ordered to undergo sentence as under:- u/S.302 IPC - Life term imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo one month's simple imprisonment.

-2- u/S.364 IPC - Five yearRs.rigorous imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo one month's simple imprisonment.

u/S.201 IPC - Three yearRs.simple imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo one month's simple imprisonment.

The case of the prosecution is that on 14.9.2005 Shri Darshan Singh (PW-4) submitted a written report at Police Station Chunawadh with regard to missing of his nephew Suraj, who was working with Malhotra Mobile Shop as Cellular Phone Mechanic.

According to missing report submitted, Suraj left his house at about 5:00 - 6:00 PM on 11.9.2005 for Sriganagar with accused Chandra Mohan in a jeep driven by Shri Kewal Singh (PW-3).A lady in tuesday night telephonically informed that Suraj was safe and no need was there to worry, however, no whereabouts of Suraj were available despite search at all relevant places.

Shri Darshan Singh also provided necessary identifications of Suraj including the fact that he was having a tattoo on his arm.

On 16.9.2005 an unknown dead body was found in village Red Baggi within the jurisdiction of Police Station Ramsinghpur which was highly decomposed.

However, the same was identified as body of Suraj by Shri Darshan Singh and his other family members on basis of the tattoo available on arm.

After recovery of dead body an oral statement made -3- by Shri Darshan Singh was reduced in writing and on basis of that a criminal case was lodged pertaining to the offences punishable under Sections 364, 302 and 201 Indian Penal Code.

During the course of investigation police arrested accused Chandra Mohan and a juvenile Sandeep.

On basis of the information given by accused Chandra Mohan as per documents Ex.P/41 and Ex.P/42 certain recoveries were made.

A wallet of deceased Suraj was also recovered from the place where dead body was found while getting that place verified by the accused.

After completing the entire investigation a police report was filed before the competent court against accused Chandra Mohan and the case was committed to the court of Sessions, being exclusively triable by that court.

Learned Sessions court after providing an opportunity of hearing framed a charge against the accused for commission of offences punishable under Sections 364, 302/34 and 201/34 Indian Penal Code.

The accused denied the same, thus, trial commenced as desired.

Suffice to mention that the case of other accused Sandeep was referred to the Juvenile Justice Board, he being juvenile.

The prosecution supported its case with the circumstantial evidence pertaining to the last seen of deceased in the company of the accused and the recoveries made during the course of investigation.

To substantiate the charges, testimony of 17 witnesses was examined and several documents were exhibited.

An opportunity was given to the accused to explain the adverse and incriminating - 4- circumstances available in the prosecution evidence against him and while availing the same he termed the entire evidence as false with assertion that he was implicated in the case falsely.

Before the trial court the case of the accused was defended on the counts that as a matter of fact the dead body was found in a canal and that was highly decomposed.

As such, it was wrongly identified as dead body of Suraj.

It was also asserted that no evidence available on record connects the accused with the crime.

Emphasis was also given to the fact that the wallet seized from the place, where dead body of Suraj was found was having a photograph and foreign currency in it, could have not remained lying unnoticed at an open place unidentified for a period of about 11 days after the incident.

Learned trial court after examining the evidence available and considering the rival submissions recorded conviction of the accused and awarded sentence accordingly.

In appeal, the arguments advanced by counsel for the appellant are that - (1)The dead body found in the canal on 16.9.2005 was highly decomposed and that could have not been identified as of Suraj, as such, the very edifice of the case is ill-founded.

(2)Without prejudice to the above, the medical evidence available nowhere indicates that the death of Suraj was -5- homicidal one.

(3)In view of the statements made by Ranjeet Singh (PW-2).Kewal Singh (PW-3).Surendra Pareek (PW-7).Darshan Lal (PW-4) and Mool Chand (PW-12).a finding at the most could have been given that deceased Suraj was in company of the accused in the evening of 11.9.2005, but there is no evidence to establish any offence described under Sections 364 and 302 Indian Penal Code.

(4)The recoveries made at the instance of the accused are apparently planted and are not at all trustworthy.

It is asserted that the wallet was seized from an open place on 21.9.2005 while getting the site of crime verified by the accused.

As a matter of fact the site was not the place of crime but the place where dead body of Suraj was found floating in a canal.

Per contra, learned Public Prosecutor submits that deceased Suraj was taken from his house by the accused and further he sent a false information at his house through Ms.Mamta (PW-6) about safety and welfare of deceased which clearly indicates his involvement in the crime.

The recoveries made at the instance of the accused further substantiated the same.

Heard learned counsel for the appellant, learned Public Prosecutor and also pondered the entire evidence available on record.

The dead body in question was recovered on 16.9.2005 in a water flowing canal.

The body was highly -6- decomposed.

The external appearance as noticed in the postmortem report (Ex.P/24).contents of which were verified by Dr.

Sanjay Kumar Sharma (PW-8).was as follows- A male dead body which was decomposed found on 3 RBM Tel (i.e.minor canal) body was massively decomposed.

Left eye protruded from the eye ball.

Skull was opened.

Some hairs was found on the occipital region of the head which was easily separated when they are snatched.

There was a tattoo mark on right forearm (scorpion shaped).Left side of femur exposed from thigh and muscles.

Fron thigh was absent.

About half of both foot were damaged.

(?.

by animal eaten).Index and middle finger of right hand and thumb, index, middle and little fingers of left hand was absent (?).

eaten by animals).There was presence of maggots is noted from the body.

The skin was loosened.

In the medical evidence no sign of external injury was also found and a tentative opinion was given about the head injury that could have been received due to flow in canal.

As per the medical evidence no final opinion could have been given about cause of death.

No finding, therefore, can be given about homicidal death of the person whose dead body was found by the police on 16.9.2005.

However, its identification was adequately made by Shri Darshan Singh (PW-4) and Mool Chand (PW-12).father of the deceased, on basis of the marks of tattoo available on right forearm.

Precisely, the question requires adjudication in the instant matter is that looking to the medical evidence -7- available on record and other circumstantial evidence, any finding could have been given by the trial court for commission of the offences punishable under Sections 302 and 364 Indian Penal Code.

At the fiRs.instance, it is pertinent to note that no cause of death is available in the medical evidence adduced by the prosecution.

A tentative fact is mentioned by Dr.

Sanjay Kumar Sharma (PW-8) about the head injury available with the corpus of Suraj.

Dr.

Sanjay Kumar Sharma in quite specific terms clarified that such an injury could have been received even while in flow with water of the canal.

Suffice to mention that the weapon of offence said to be recovered at the instance of accused, i.e. a lathi, was not having any blood stains or any other mark on basis of that it could have been connected with the injury concerned.

Be that as it may, no evidence is available about homicidal death of Suraj.

The factum of murder could have been asserted on basis of the other circumstantial evidence, but in our opinion that too is not adequate in the instant matter.

Shri Darshan Lal (PW-4).uncle of deceased Suraj and Shri Mool Chand (PW-12).father of deceased Suraj, stated that on 11.9.2005 Suraj left the house with Chandra Mohan in a jeep driven by Kewal Singh.

These witnesses though have stated that Chandra Mohan may be keeping some annoyance with Suraj as he was having an apprehension of -8- unwanted and illicit relationship of Suraj with his sister, but nothing has been said by them about any scar appearing in relations, when Suraj accompanied Chandra Mohan in jeep on 11.9.2005.

The voluntary and desired movement of Suraj with Chandra Mohan clearly indicates that these two persons were maintaining cordial relations.

Looking to this fact we do not find any force in the apprehension shown by the prosecution with the aid of the statements given by Shri Mool Chand (PW-12) and Shri Darshan Lal (PW-4) about abrasion in relationship of deceased and accused.

The motive sought to be extended for commission of the crime is not having sufficient foundation.

However, in view of the statements given by Shri Darshan Lal (PW-4).Shri Mool Chand (PW-12).Shri Ranjeet Singh (PW-2) and Shri Surendra Pareek (PW-7).there is no doubt about the fact that Suraj was in company of the accused in the evening of 11.9.2005.

An important witness in the case is Shri Kewal Singh (PW-3) who was driving the vehicle in which accused and deceased were travelling.

This witness has narrated about the places where deceased Suraj and Chandra Mohan travelled, but not stated any fact on basis of that even a presumption can be drawn about some scratch in the friendship of these two persons.

The cordial movement from house of Suraj at one hand demolishes the charge of committing offence under Section 364 Indian Penal Code, but at other hand establishes the circumstance of last seen of deceased in the company of the accused.

True it is, the evidence adduced by Ms.Mamta (PW-6) indicates ill-conduct of accused Chandra Mohan as he -9- through this witness made an effort to communicate family members of Suraj on 11.9.2005 about safety and welfare of deceased, but merely on basis of it in addition to the evidence relating to last seen, it cannot be concluded that the accused abducted and murdered Suraj.

The prosecution to complete the chain of circumstances further placed reliance upon the recoveries said to be made at the instance of the accused.

The fiRs.and foremost recovered item is wallet, recovery memo of which is available on record as Ex.P/14.

From perusal of the document Ex.P/15 and in view of the statement made by investigating officer Shri Dinesh Kumar Rajora (PW-15).it is apparent that the wallet was found from a place near to the place from where dead body was recovered.

It is evident that the place is open one and no information about availability of the wallet was given by the accused.

The recovery was made on 21.9.2005 i.e.after a lapse of about 8-10 days from the date of incident.

In normal couRs.an article like wallet would have not remained unnoticed and unidentified for such a long period, specially looking to the fact that it was having a

photograph of Shri Mool Chand, father of deceased, and also foreign currency.

Looking to this factual background, we are having reasonable doubt about truthfulness of the recovery of this article.

The other items recovered at the instance of the accused are also not sufficient to establish his guilt.

As per the prosecution the accused was arrested on 18.9.2005 -10- at 08:15 PM.

A disclosure was made by him on 22.9.2005 at 11:15 AM as per document Ex.P/41 about placement of a Motorola Cellular Phone handset of Suraj.

On the same day at 01:15 PM another disclosure was made by the accused as per the document Ex.P/42 about the lathi, weapon of offence.

The handset was recovered on 23.9.2005 at 04:15 PM as per the document Ex.P/15 and the lathi was recovered as per document Ex.P/17 on 24.9.2005 at 06:40 AM.

Recovery in pursuant to the informations referred above were made after a considerable delay.

The investigating officer did not explain as to why the recovery of the informed articles was made after a lapse of 48 hours from the time of having disclosure.

While effecting recoveries, the attesting witnesses Shri Darshan Lal and Shri Deepak Kumar, both residents of Netewala, accompanied the investigating agency.

No effort was made by the investigating officer to have any independent witness in relation to the recoveries said to be made.

It is further important to note that before the court the attesting witness Deepak Kumar was not produced in witness box.

It is only Shri Darshan Lal, who happens to be the real uncle of the deceased, attested the recoveries.

The place wherefrom Cellular Phone was recovered is at the distance of about 28 kMs.from the police station and the place wherefrom lathi was recovered is also a village different than of Darshan Lal.

The police team could have made recoveries by availing service of independent witness, but no effort in this regard was made.

The investigating officer also failed to give any satisfactory explanation for not having independent eye witness.

In quite specific terms he stated that Shri -11- Darshan Lal accompanied the police team.

The factual background noticed above creates a reasonable doubt about genuineness of the recoveries said to be made by the investigating agency.

The chain of circumstances formed by the prosecution is not adequate to indicate only one conclusion i.e.involvement of the accused in the crime in question.

In totality of the facts as coming on surface on examination of the evidence, we are having a reasonable doubt in believing the prosecution story, that demands acceptance of this appeal.

Accordingly, the appeal is allowed.

The conviction recorded and sentence awarded under the judgment dated 6.10.2006 passed by learned Additional Sessions Judge No.1, Sriganaganagar in Sessions Case No.16/2005 is set aside.

Accused appellant Chandra Mohan Mahiya is acquitted from the charge by extending benefit of doubt.

Let he be released from State custody, if not wanted otherwise.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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