

State of M.P. Vs. Ashok

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Court : Madhya Pradesh

Decided On : Jan-03-2008

Reported in : 2008(2)MPHT281

Judge : Abhay Gohil and ;A.P. Shrivastava, JJ.

Appellant : State of M.P.

Respondent : Ashok

Disposition : Appeal dismissed

Judgement :

Abhay Gohil, J.

1. State has preferred this appeal under Section 378 Cr.P.C. after obtaining the leave from this Court against the judgment of acquittal dt.11.9.1996 passed by the Sessions Judge Shivpuri in Sessions Trial No. 165/95 for the offences under Section 302 read with Section 201 of IPC.

2. As per the prosecution story, on 27.7.1995, at about 7.30 p.m. in the evening deceased Hariram alongwith his nephew respondent had gone to ease himself near Aamghat, but in the night deceased Hariram did not come back. Mulua, father of Hariram, enquired from the respondent about the whereabouts of Hariram, but he said that he is not aware about him. The deceased was searched

in the night but on the next day at about 12 p.m. his dead body was found lying in the water in Aamghat Nala, which was also stained with blood. It was also the prosecution case that the respondent, who is the nephew of the deceased has developed a liking towards the wife of Hariram and on account of this, the relations between uncle and nephew were not cordial. Therefore, the prosecution case was that it was the respondent, who committed the murder of deceased. Mulua, father of the deceased, lodged FIR on the next date at 3.30 p.m., which is Ex.P/6. The dead body was taken out from nala, Panchayatnama was prepared and the dead body was referred for post mortem. After investigation charge sheet was filed. In the trial court none of the witnesses including the witnesses of recovery and arrest memo have supported the prosecution except Rambai (P.W.12), who is the wife of the deceased. As per the evidence of Dr.Jain (P.W.11), who performed the autopsy of the dead body, two incised wounds were found on the neck of the deceased and the cause of death was excessive bleeding. The nature of the death was homicidal and the injury was sufficient to cause death in the ordinary course of nature. Trial court found that it was a case of circumstantial evidence, there was no eye witness account and only evidence of Rambai (P.W.12) for last seen and motive is not sufficient to convict, thus acquitted the respondent, against which the State has filed this appeal.

3. We have heard the learned Counsel for the parties and perused the evidence on record. There is no dispute that none of the prosecution witnesses have supported the prosecution evidence and they were all declared hostile except Rambai (P.W.12), who is the wife of the deceased, but the question is whether the evidence of Rambai (P.W.12) for last seen and motive available on record is sufficient to reverse the finding of acquittal and to convict the respondent.

4. There is no dispute that the respondent is the nephew of the deceased as well as Rambai and the deceased was his uncle and Rambai is the aunt. It is also true that in this case the investigation was not properly conducted. Blood stained clothes of the respondent were referred for chemical examination but no attempt was made by the prosecution to get the blood group of the deceased matched with the blood group available on the clothes and knife seized at his instance. Court has found that there is no evidence whether any human blood was found on the

clothes and knife, whether any grouping of the aforesaid blood was done and no opinion was sought from the chemical examiner in this regard, which could have been the best evidence in favour of the prosecution. The trial court discarded the evidence of Rambai (P.W.12) on the ground that her statement was recorded after 10 days. According to us that can not be a ground to discard the evidence of Rambai (P.W.12). If a lady in a state of shock because of the death of her husband gives the statement after 10-12 days, the same can not be discarded simply on that ground. We have perused the entire statement of Rambai (P.W.12). Though she has stated that the deceased had gone with the respondent, who is his nephew and there is also no effective cross examination from this witness. Rambai only stated that respondent had said to her that when uncle will not remain, he will keep her. Though there is omission of these words in her case diary statement (Ex.D/1) but in some other words it has been mentioned in Ex.D/1 that the respondent used to like her and incite her on occasions. For that she has made complaint to her husband as well as to mother-in-law and father-in-law and on her complaint he was rebuked and since then he was keeping some ill will against her and that is why he has committed the murder of her husband, but loudly she has not made such statement before the Court. From her statement, it is only found proved that they both left house together. There is nothing wrong that when they were residing together why they can not go together, after all they were family members. There is no evidence on record that they were seen together at the place of occurrence or respondent was seen there by some one in some suspicious circumstances.

5. From the statement of Rambai (P.W.12), the evidence of motive is also not clear. There is no detail statement that how the respondent used to incite Rambai and in what manner he used to like her aunt, who was younger to him. However considering her statement, we are of the view that evidence of motive can not be extracted from her statement. It was also a fact that all the witnesses including father, mother, brother and sister of the deceased have not supported the prosecution in the court. If the father and mother have lost their son, they could have supported the prosecution, but they have not done so.

6. Supreme Court has consistently held that in a case of circumstantial evidence, the conviction can not be based merely on the evidence of last seen. On the point of circumstantial evidence, law has been laid down in detail in the case of *Sharad Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 . In the case of *Gambhir v. State of Maharashtra* 1982 SC 1157 the Supreme Court has held that

On scrutiny the only thing established is that the accused and other persons used to visit the house of Laxmi during the absence of her husband and that he was again seen in the company of Laxmi on February 26 in the night till before dinner time. This single circumstance by itself is too feeble to connect the accused with the murder of Laxmi and her children.

Accepting that the accused was seen in the evening of February 26 in the company of Laxmi, in the absence of any positive evidence about the probable time of death, it is difficult to connect the accused with the crime as there might be a long gap between the accused being seen in Laxmi's company and the time of the death of the three deceased. Many more persons might have come in between. Besides there is evidence on the record to show that other persons also used to visit Laxmi's house.

7. In the case of *Prem Thakur v. State of Punjab* : 1983 CriLJ155 , the Supreme Court has held -

The circumstance that the appellant was last seen in the company of the deceased it be accepted as proved but no inference can arise therefrom that the appellant had committed the crime. The appellant was working with the deceased and others and there was nothing unnatural in the appellant being in the company of his companions on the evening before the murders were committed.

8. Again in the case of *Makhan Singh v. State of Punjab* : AIR 1988 SC1705 Lordships of the Supreme Court held that as regards the evidence of last seen, that alone can not be considered as a piece of circumstantial evidence against the appellant. Again in the case of *Inderjit Singh v. State of Punjab* : 1991 CriLJ2191 the Supreme Court has held

The only circumstance, namely, that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the accused. The only relevant circumstance is that the appellants and the deceased left the house together in a friendly manner for birdshooting. It is needless to say that no conviction can be passed on this sole circumstance. In the result, the convictions and sentence awarded by the Courts below are set aside.

9. In the case of *Shera Singh v. State of Punjab* : (1996)10SCC330 , the Supreme Court has held that

Simply on the basis of evidence of PW-16 that the deceased was last seen in the company of the appellant, the appellant is not liable to be convicted for the offence of murder.

10. In the case of *Prem Prakash Mundra v. State of Rajasthan* : 1998 CriLJ1620 , the Supreme Court has again held that

The circumstances of last seen alone of the case were rightly regarded as not sufficient for convicting the accused under Section 302 IPC.

11. Though the State has vehemently submitted that the statement of Prembai (P.W.12) is sufficient to prove the evidence of last seen as well as to prove the motive, but according to us when the nephew and uncle both were residing together and if they left the house together, that alone is not sufficient to make out a case that the crime was committed by the respondent because there is no evidence they were last seen together at Aamghat in the night which is the place of occurrence, where dead body was found or the respondent was seen in some suspicious circumstances. So far as the evidence of motive is concerned, the same is also not strong and suffers from many lapses. In such cases the prosecution has to prove that the circumstance led to no other inference, except that of guilt of the respondent and has to exclude every other hypothesis of his innocence. Since there is no evidence that they were last seen together at the Aamghat or the respondent was seen near the dead body of the deceased, as we have observed supra that in this case best evidence could be of examination of blood group as well as the nature of the blood, which was found on the knife and

clothes of the respondent; whether it was the human blood and whether the blood group of the deceased was found on the clothes of the respondent, but the prosecution has not produced any such evidence.

12. In the matter of blood group, the Division Bench of this High Court in the case of Narayan v. State of M.P. 2003 (2) MPWN 138 placed reliance in the case of Kansa : 1987 CriLJ1857 that the evidence about the blood group is only conclusive to connect the blood stains with the deceased. Therefore, in the absence of this evidence that blood found to be of human and also of the same group, the evidence can not be said to be conclusive. Since the said evidence was absent and the prosecution witnesses have also not supported, it appears that the trial court has not committed any illegality in recording the finding of acquittal.

13. From the foregoing discussion it, therefore, inevitably follows that the charges against the respondent could not be brought home fully and they were entitled to acquittal. Therefore, no case is made out for interference in this appeal against acquittal, as it is the settled principle under the law that when two views are possible or unless the finding of the trial court is wholly perverse and that apart the view taken by the trial court was not possible, there can not be any interference in the order of acquittal. Therefore, this State appeal fails and is hereby dismissed.