

Tej Singh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-23-2005

Reported in : 2005(2)MPHT356; 2005(2)MPLJ31

Judge : Deepak Verma and ;A.K. Awasthy, JJ.

Acts : Indian Penal Code (IPC) - Sections 201 and 302

Appeal No. : Criminal Appeal No. 13/1997

Appellant : Tej Singh

Respondent : State of Madhya Pradesh

Advocate for Def. : Girish Desai, Dy. Adv. General

Advocate for Pet/Ap. : C.L. Yadav, Adv. in Criminal Appeal No. 13/1997 and ;A. Siddiqui, Adv. in Criminal Appeal No. 89/1997

Disposition : Appeal allowed

Judgement :

A.K. Awasthy, J.

1. Appellant-accused Tejsingh has filed the Criminal Appeal No. 13 of 1997 and appellants-accused Bapu Singh and Arjun Singh have filed the Criminal Appeal No. 89 of 1997 against the judgment and order dated 5-12-1996 delivered in

Sessions Trial No. 89/1995 by learned Additional Sessions Judge, Agar, District Shajapur, of their conviction and sentence under Section 302 of IPC for the imprisonment for life and fine of Rs. 500.00, Rs. 500.00 and under Section 201 of the IPC for the rigorous imprisonment of 2-2 years and fine of Rs. 500.00 - Rs. 500.00, and in default of payment of fine, further RI for 3-3 months on each count.

2. The prosecution case is that on 7-2-1995 at about 1.30 p.m. the information was received in the Police Station, Barod about the death of Shankarsingh and after recording the Merg, police went to the Village Kanakheda where from the Well the dead body of Shankarsingh was taken out. That the dead body was sent for the examination at Barod where Dr. C.M. Pathan (P.W. 10) conducted the autopsy on 7-2-1995 and found the incised wound on the parietal region and a bruise on the neck and opined that the death was caused due to asphyxia. Ex. P-13 is the post-mortem report. During the investigation, the statements of Ratanbai (P.W. 5) and Arjunsingh (P.W. 6), parents of the deceased, were recorded who have disclosed that the accused persons took the deceased for the party and on the next date when they asked the accused persons about whereabouts of Shankarsingh, they failed to provide any clue about him. After the usual investigation, the charge-sheet was filed against the accused persons under Sections 302 and 201 of the IPC.

3. The accused have abjured the guilt and denied the statements of the prosecution witnesses and pleaded that they were innocent.

4. The prosecution has examined 12 witnesses and the Court on the basis of the circumstantial evidence has recorded the conviction of the accused and sentenced them as stated above.

5. The appellants have assailed the conviction on the ground that the alleged circumstances of last seen was not proved and in any case it was insufficient to bring home the guilt against the accused.

6. Vikram Singh (P.W. 2) has stated that deceased Shankarsingh was his real brother and in the night at about 9.00 p.m. the accused persons took his brother and on the next day his brother did not come back. Vikram Singh (P.W. 2) has

further stated that the police has recovered the dead body of his brother from the Well. Ratanbai (P.W. 5), who is the mother of deceased Shankarsingh, has testified that in the night all the accused came to her house and asked her son to accompany them in a party. She has further stated that she gave 5 Chapatis to his son and thereafter her son went with the accused persons and on the next day her son did not come back and his body was found in the Well. Consequently, from the statements of Vikram Singh (P.W. 2) and Ratanbai (P.W. 5), it is proved that the accused persons were last seen with the deceased on the fateful night.

7. Ratanbai (P.W. 5) has admitted that the relations between the accused and the deceased were cordial. The prosecution has not recovered the weapon of offence from possession of the accused persons. There is the absence of any other circumstantial evidence to indicate the involvement of accused in the murder of the deceased. The absence of motive or enmity rules out the involvement of the accused in the case. Suspicion, however, strong can not prove the case and the duty of the prosecution is to establish the case beyond reasonable doubt. In the factual backdrop highlighted above, the charge of murder against accused was not proved. The learned Trial Court has erred in believing on the theory of the 'last seen' to record the conviction. It is observed in the case of Shera Singh v. State of Punjab, 1996 SCC (Cri.) 1271: (1996) 10 SCC 330, that simply on the basis of the evidence the deceased was last seen in the company of the appellant, the appellant is not liable to be convicted for the offence of murder. In the case of Indrajeet Singh v. State of Punjab, AIR 1991 SC 1674 :1991 Cri.LJ 2191, it was laid down that in number of cases it has been held that only circumstance of deceased was last seen in the company of accused itself is not sufficient to established the guilt of the accused.

8. The accused are acquitted due to the benefit of doubt. The appeals are allowed. The conviction and sentence is hereby set aside. The bail bonds of the accused are hereby discharged.