

Rajesh Vs. State of Madhya Pradesh

Rajesh Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/503176

Court : Madhya Pradesh

Decided On : May-11-2004

Reported in : 2004(3)MPHT295; 2005(2)MPLJ17

Judge : S.P. Khare and ;A.K. Shrivastava, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; [Evidence Act, 1872](#) - Sections 3 and 8

Appeal No. : Criminal Appeal No. 361/1997

Appellant : Rajesh

Respondent : State of Madhya Pradesh

Advocate for Def. : S.K. Gangrade, Panel Lawyer

Advocate for Pet/Ap. : Kailash Malviya, Adv.

Disposition : Appeal allowed

Judgement :

1. Appellant Rajesh has been convicted under Section 302, Indian Penal Code and sentenced to imprisonment for life for committing murder of his wife and daughter. He has also been convicted under Section 201, Indian Penal Code and sentenced to rigorous imprisonment for three years for causing disappearance of the evidence of the commission of the offence.

2. The prosecution case was that on 3-1-1996 accused Rajesh committed murder of his wife Sukhvati and his daughter Rinki, aged about 3 years in his house in Village Chunni Chougan. According to the prosecution accused Anil Kumar (who has been acquitted) had engaged accused Rajesh as a servant in the field and accused Anil Kumar was having an evil eye upon the wife of accused Rajesh. On 3-1-1996 also accused Anil Kumar was found cutting filthy jokes with Sukhvati and it was not to the liking of accused Rajesh. Therefore, after accused Anil Kumar left that place accused Rajesh assaulted his wife and caused her death. The daughter of accused Rajesh was trampled under his feet and that of his wife when he was assaulting his wife. The prosecution case was based on the alleged extra-judicial confession of accused Rajesh to different persons. Information was given to M.M. Sharma (P.W. 8) who was Station Officer of Damua Police Station regarding this incident. He prepared Panchnamas of dead bodies of Sukhvati and Rinki which are Ex. P-8 and Ex. P-11. Bodies of two dead persons were sent for post-mortem examination. Dr. R.K. Vishwakarma (P.W. 9) conducted the autopsy and in his opinion the death of Sukhvati and her daughter was homicidal. They have sustained a number of injuries as noted in the post-mortem reports Ex. P-13 and Ex. P-15, It was the prosecution case that accused Anil Kumar asked accused Rajesh that he should not report this incident to the police and he should cremate the dead bodies immediately. Accused Rajesh is also said to have purchased certain material for cremation purposes.

3. Accused Rajesh pleaded not guilty. He has been convicted on the basis of circumstantial evidence by the Trial Court. Accused Anil Kumar has been acquitted as there was no legal evidence against him.

4. In this appeal it has been argued that the prosecution case was mainly based on the extra-judicial confession of accused Rajesh and that could not be proved as the witnesses to whom the extra-judicial confession was said to have been made have turned hostile during the trial. It is also pointed out that there is no incriminating material against the appellant on the basis of which it could be held that he is guilty for committing murder of his wife and his daughter.

5. We have scanned the evidence on record. Sukhvati (P.W. 3), Dhanlal (P.W. 4), Vishnu (P.W. 6) and Ganpat (P.W. 7) are the persons before whom accused Rajesh was alleged to have confessed his guilt. But these witnesses have not supported the prosecution case on this point and they have been declared hostile. As already stated, the extra-judicial confession of accused Rajesh was the main plank of the prosecution case and that could not be established.

6. It is not in dispute that dead bodies of Sukhvati and her daughter Rinki, aged about 3 years, were recovered from the house in the field in which accused Rajesh was living with them. The only point which deserves serious consideration is whether accused Rajesh is the person who caused their death. Sukhvati (P.W. 3) has deposed that she was crossing through the house of accused Rajesh and she saw him sitting in front of his house. She asked him about Sukhvati and he replied that she has died. She has further stated that she opened the door and then she found the dead bodies of Sukhvati and her daughter inside the room. There was blood around these dead bodies. She asked accused Rajesh how these two persons have died and then accused Rajesh replied that his wife was complaining that some evil spirit has engulfed her. She informed the Village Kotwar about this incident. In cross-examination she has stated that accused Rajesh had also disclosed to her that he had gone to the forest to fetch wood and when he returned he found his wife and daughter lying dead in the room.

7. Ganpat (P.W. 7) is the Kotwar of the village. He has deposed that accused Rajesh himself came to him at about 7.00 P.M. and he was weeping. According to this witness, accused Rajesh told him that he had gone to the forest to bring wood and when he returned he found his wife and his daughter dead. In cross-examination he has stated that there is a forest at a distance of about 5-6 miles from the house where accused Rajesh was living. He has further clarified that accused Rajesh told him that he had gone to the forest at about 8-9 A.M. and when he returned in the evening he found the two dead bodies in his house.

8. The extra-judicial confession not having been proved, the conviction of the appellant is based primarily on the basis of his conduct. So far as the conduct is concerned, it can not be said that accused Rajesh has suppressed this incident

from anyone. According to the Village Kotwar, accused Rajesh was the first person who came to him and made complaint about the death of his wife and his daughter. Sukhvati (P.W. 3) has also made the same statement. The conduct of the appellant is not such, on the basis of which alone he can be convicted for causing death of his wife and his daughter. The defence set-up by him can not be said to be wholly without substance. As mentioned above, there is no witness who might have seen accused Rajesh committing murder of his wife and his daughter. There is also no strong circumstantial evidence on the basis of which the guilt of accused Rajesh can be said to have been established. The Trial Court has used one sentence from here and one sentence from there from the statements of the hostile witnesses and on that basis held accused Rajesh guilty. In the opinion of the Trial Court accused Rajesh was at his residence when his wife and his daughter were done to death. But even that is not proved by the prosecution. No one has seen him in the house when the death of these two persons took place or when the injuries were caused to them. The motive which was alleged by the prosecution has also not been proved at all.

9. The prosecution case, as already stated, is based on circumstantial evidence. It is well settled that in order to base a conviction on circumstantial evidence, each and every piece of incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than the one of guilt of the accused and the circumstances can not be explained on any hypothesis other than the guilt of the accused. The Court has to be cautious and avoid the risk of allowing mere suspicion, howsoever strong, to take the place of proof. A mere moral conviction or a suspicion howsoever grave it may be can not take the place of proof. [Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67]. In Golakonda Venkateswam Rao v. State of A.P., AIR 2003 SC 2846, it has been reiterated : 'It is a well settled principle of law that in cases where the evidence is purely circumstantial in nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and must unerringly point to the guilt of the accused'. The circumstantial evidence, in the present case, does not establish that appellant Rajesh committed murder of his wife and his daughter.

10. In the result this appeal is allowed. Conviction and sentence are set aside and appellant Rajesh is acquitted of the charges under Sections 302 and 201, Indian Penal Code.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com