

Galal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-05-2005

Reported in : 2005(4)MPHT345

Judge : S.L. Kochar and ;S.K. Gangele, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 561/2001

Appellant : Galal

Respondent : State of M.P.

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

Advocate for Pet/Ap. : R.K. Bhadang, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. By this appeal, the appellant seeks to set aside the judgment dated 27-3-2001 rendered by the learned Sessions Judge, Jhabua in Sessions Trial No. 382/2000 thereby finding the appellant guilty of the offence punishable under Section 302, Indian Penal Code, convicted and sentenced him to suffer imprisonment for life

with fine of Rs. 500/-, and in default of payment whereof, to suffer additional R.I. for three months.

2. Briefly stated, the prosecution case for the purposes of disposal of this appeal is that on 27-4-2000 at 3.00 AM P.W. 6 Dolsingh lodged a report at Police Station, Kakanwani that in the previous evening after taking meals he himself, his both daughter-in-laws and daughter Dalibai were sleeping in the courtyard situated between the hutments. Deceased Mansingh was sleeping underneath the branches of tree in the courtyard and appellant Galal was sleeping in the verandah. At about 1.00 and 1.30 AM in the night he overheard some sound. He got up and went to the Jhapla (verandah) and saw that the deceased Mansingh was lying on the cot and was asking for water. He (deceased) abusing told that he was assaulted. Dolsingh, father of the deceased raised alarm which attracted the neighbours namely Velji Bhamar, Nathu Bhamar, Chhappan Damor, Khumchand Damor, who reached over there. Dolsingh saw injury on the left ear, and five injuries on left side of neck caused by axe. Blood was oozing from the wounds and had spread on the cot and floor. After demanding water, deceased died on the cot. Thereafter, his son appellant Galal came there from the side of the field of Kishan Damor. Dolsingh further mentioned in the First Information Report that the deceased Mansingh and appellant Galal were having quarrel on account of a woman. He raised suspicion on appellant Galal for having committed murder of Mansingh. On this report, police party reached on the place of occurrence and prepared the spot map (Ex. P-10), seized controlled and blood stained earth, one blood stained saree, small towel and green plastic leaves. Police also effected inquest of the dead body and sent the same for post-mortem examination. Autopsy was conducted by P.W. 4 Dr. Dayalshankar Narela on 27-4-2000. Dr. Narela found an incised wound on the mandible region, another incised wound on left side neck and occipital region. There was a fracture of occipital bone, at a distance of one and a half inches from injury No. 2. There was another incised wound behind the left ear and fracture of bone of left ear. He also noted incised injury on the front side of left ear between left ear and left eye. There was a fracture of maxillary bone. On internal examination, the doctor found a cut of left carotid artery and fracture of left occipital and temporal as also maxillary bone. The post-mortem report is Ex. P-6.

3. According to the doctor, the injuries were caused by sharp edged weapon and were sufficient in the ordinary course of nature to cause death. The deceased, according to the opinion of the doctor, died because of excessive bleeding from the wounds and the nature of death was homicidal.

4. On the disclosure statement of the appellant, axe was seized which was sent to the Forensic Science Laboratory. According to the Laboratory report (Ex. P-15), blood was present on the axe and human blood was present on shawl. Both these articles were sent to Serologist. According to the Serologist Report (Ex. P-16), human blood was present on the shawl. After requisite investigation, charge-sheet was filed against the appellant. The appellant pleaded innocence and claimed trial. The learned Trial Court, after trial, finding the appellant guilty, convicted and sentenced him accordingly as indicated hereinabove.

5. We have heard learned Counsel for the parties and also perused the entire record cautiously. The conviction of the appellant is based on circumstantial evidence. The circumstances relied upon by the learned Trial Court are, the evidence of last seen of the deceased in the company of the appellant, extra-judicial confession made by the appellant before P.W. 9 Chhappan, recovery of article and shawl and presence of blood on the axe, and human blood on shawl coupled with motive.

6. On careful scrutiny of the evidence adduced by the prosecution with regard to extra judicial confession, which is said to have been made by the appellant before P.W. 9 Chhappan, we are unable to place reliance on the statement of this witness. According to this witness, he reached at the house of deceased, appellant and his father P.W. 6 Dolsingh, on hearing the cries raised by Dolsingh and saw Mansingh in dead condition. At that time the appellant was present in the house and he disclosed to him about commission of murder by causing axe-injuries. This witness has further testified that there was some sort of dispute between the appellant and the deceased Mansingh on account of a woman. The deceased was making complaint with the appellant Galal that why he was not getting him married and there was a dispute between them on this score. P. W. 9 Chhappan is also a witness of recovery of blood-stained and controlled earth from the scene of

occurrence. Blood-stained shawl of deceased Mansingh, some string (rope) of the cot, small towel through seizure-memo Ex. P-11. We are not impressed by the statement of this witness P.W. 9 Chhappan with regard to the evidence of extra-judicial confession in view of the statement of other witnesses who also reached immediately at the house of P.W. 6 Dolsingh after hearing his cries. None of these witnesses, i.e., P.W. 1 Khumchand, P.W. 3 Velji, P.W. 6 Dolsingh, P.W. 7 Dallibai and P.W. 8 Pushpabai have stated about disclosure by the appellant regarding commission of murder of deceased Mansingh.

7. P.W. 9 Chhappan has nowhere stated that when he reached at the house of Dolsingh (P.W. 6) and appellant Galal, the appellant alone was present there and admitted about commission of murder of deceased Mansingh. If the appellant Galal had really made any kind of confessional statement before P.W. 9 Chhappan, the other witnesses as mentioned hereinabove, would have also overheard the same, but none of them has stated anything about making of extra-judicial confession by the appellant.

8. P.W. 1 Khumchand is an independent witness. According to him, he overheard the cries of P.W. 6 Dolsingh in the night between 2.00 and 2.30 AM Dolsingh was saying that 'DAUDO DAUDO CHHORE KO MAAR RAHE MAIN'. While running this witness reached at the house of Dolsingh and saw that the deceased Mansingh was lying on the cot having incised injuries caused by axe on his person. He has further stated that when he was going towards the house of Dolsingh, the appellant Galal met him on the way and this witness asked Galal as to where he (appellant) had gone. The appellant replied that people were chasing him and because of which he was running. Again this witness Khumchand (P.W. 1) was put a leading question-- 'TU JHOOTH BOL RAHA HAI, TAINE MANSINGH KO MAARAA HAI'. On this question, the appellant did not give any reply and thereafter they went to the Police Station and lodged the report. According to this witness P.W. 1 Khumchand, at that time, P.W. 9 Chhappan and one Nathu, resident of same village had also reached over there. This witness has not been declared hostile by the prosecution. Therefore, the prosecution is bound by his statement. {See : Sukhram v. State of M.P. (1989 J.L.J Page 121) and Kunju Muhammed v. State of Kerala : (2004)9SCC193 . This witness has further stated

that when he reached at the house of Dolsingh (P.W. 6), his daughter-in-law Netabai, daughter Dallibai and Pushpabai had come out of the house and the appellant Galal had also reached over there. This witness had put a specific question to the appellant Galal about killing of Mansingh, but the appellant did not admit, so there was an occasion for the appellant to make extra-judicial confession before this witness. According to Chhappan (P.W. 9), when he reached at the house of Dolsingh, the appellant Galal made statement about causing injuries to Mansingh by axe.

9. As we have already stated, if really the appellant had made such admission of his guilt, the other witnesses who were also present at the house of Dolsingh would have not failed to hear and mention before the police as well as before the Court. Therefore, the statement of P.W. 9 Chhappan with regard to making of extra-judicial confession before him, in the facts and circumstances of the present case, does not inspire confidence, and we do not find any ring of truth in the statement of P.W. 9 Chhappan.

10. The next material circumstance relied upon by the Trial Court is the motive. According to P.W. 9 Chhappan, the deceased Mansingh was complaining to the appellant for not getting him to be married and there was a dispute between them on this count. Whereas P.W. 3 Velji has stated in Para 3 that there was no dispute between deceased Mansingh and appellant Galal. His house was situated nearby to the house of the deceased Mansingh, and P.W. 6 Dolsingh. This witness has also not been declared hostile by the prosecution and the say of this witness is that upon hearing the cry in the night between 2.00 and 2.30 AM being raised by P.W. 6 Dolsingh-- 'DAUDJO DAUDJO CHOR AAVI GAYA HAI'. This witness reached at the house of Dolji and before him Dolji disclosed that Mansingh was assaulted by the thieves and Mansingh was lying dead on the cot underneath the branches of tree. This witness has further stated that the appellant Galal met them in the filed of one Kishan and he too disclosed that Mansingh was assaulted by the thieves. He too was caught by the thieves, but he escaped from their clutches. This witness Velji (P.W. 3) is contradicting the statement of P.W. 9 Chhappan on the question of making of extra-judicial confession by the appellant and dispute between the appellant and deceased Mansingh on the issue of not getting the

deceased Mansingh married by the appellant.

11. P.W. 6 Dolsingh is the father of the deceased as well as that of the appellant and he has nowhere stated about presence of P.W. 9 Chhappan as his house. According to this witness, on the alarm being raised by him, the Village Sarpanch Gendal, witness Khumchand, Veerji and Nathu had reached at his house. At that time, the appellant was not there in the house and the deceased did not disclose anything about the incident to him. This witness has also stated that there was no dispute between the appellant and the deceased Mansingh on the ground of marriage with a woman. This witness in Para 3 has admitted about lodging of the First Information Report Ex. P-9. He has also admitted his thumb impression thereon, but denied about mentioning of the fact mentioned at portion marked A to A in the FIR (Ex. P-9), i.e., 'TABHI MERA CHHORA GALAL KISHAN DAMOR KE KHET TARAF SE AA GAYA MERE CHHORE MANSINGH AUR GALAL AURAT KI BAAT KO LEKAR JHAGADA KARTE RAHATE THE. MERE KO LAGTA HAI KI BADE CHHORE GALAL NE MANSINGH KO MAAR DAALA HAI'. After denial of mentioning this fact as well as the evidence of motive, the prosecution has not declared him hostile and also not confronted with the contents of the FIR and the case-diary statement. In cross-examination, the say of this witness is that the night of the incident was dark. The deceased Mansingh cried 'CHOR HAIN CHOR HAIN' and upon hearing this cry, he came out from the house and found the deceased lying injured. The deceased did not speak anything and died. The statement of this witness also is incline of the statement about extra-judicial confession and evidence of motive.

12. The next witness P.W. 7 is Dallibai. Her version is that she also reached after hearing the cries of her father alongwith his sister-in-law P.W. 8 and saw the deceased lying on the cot in injured condition. He was not in a position to speak and died after some-time. There was dispute between deceased Mansingh and appellant Galal, for marriage of deceased Mansingh. When they came out from the house and reached near the deceased, the appellant was also present in the court-yard. This witness also has not been declared hostile and was also not cross-examined by the defence. Therefore, there is no reason to discard the testimony of this witness and according to the statement of this witness, the

appellant was also present at his house in the court-yard where all other witnesses were present. If the appellant would have made extra judicial confession, this witness would have also overheard or atleast knowing the fact of making the extra judicial confession by the appellant before P.W. 9 Chhappan. Therefore, the statement of P.W. 7 Dallibai is also not supporting the statement of P.W. 9 Chhappan.

13. Now the next witness is P.W. 8 Pushpabai. She is the sister-in-law of the deceased Mansingh. She has testified that the appellant and deceased Mansingh were sleeping on the cot in the verandah. In the night at about 1.30 AM, she heard the cries of her father-in-law Dolsingh (P.W. 6). She came out of the house and saw the deceased Mansingh lying on the cot having injuries on his neck. She saw the appellant running away. After some time, the deceased died and did not disclose anything about the incident. There was a dispute on the question of marriage between the deceased and the appellant. The appellant Galal was always complaining to deceased Mansingh about not getting the appellant married. She has also stated that who had assaulted the deceased, it was not known to her. This witness has also not been declared hostile and gave a contradictory statement with the statement of P.W. 7 Dallibai, P.W. 6 Dolsingh and other witnesses about dispute on the question of marriage. The other witnesses have said that Mansingh was having grievance against the appellant because the appellant was not getting Mansingh married. In cross-examination, this witness has stated that when her father-in-law Dolsingh (P.W. 6) raised alarm, so many persons of the village reached and assembled at their house. She also stated that the deceased Mansingh and appellant were having good terms and both were paying respect to the words of each other. There was absolutely no quarrel between them on the question of marriage and the appellant Galal never made any complaint before her as well as to her father-in-law about marriage. We have no reason to discard or disbelieve the testimony of this witness on material question of motive and relation between the deceased and the appellant. This witness also reached immediately near the deceased where villagers had assembled and the appellant was also present, but she has nowhere stated about admission of guilt for committing death of Mansingh by the appellant to P.W. 9 Chhappan.

14. On a careful scrutiny of the statement of P.W. 9 Chhappan, it is also crystal clear that according to this witness, the appellant did not confess the guilt when Mansingh alone was present and at a secluded place. Therefore, without any corroboration to the testimony of P.W. 9 Chhappan by material particulars, we do not think it just and proper to place reliance on the solitary testimony of this witness on the question of extra-judicial confession. Corroboration by independent material particulars is not at all available. Therefore, we are of the opinion that the circumstances of making confessional statement by the appellant before P.W. 9 Chhappan has not been proved by the prosecution beyond all reasonable doubt.

15. So far as the recovery of axe is concerned, from the possession of the appellant, since no human blood or blood tallying with blood-group of the deceased was found on this weapon. This evidence is not at all falling within the category of an incriminating circumstance against the appellant. So far as presence of human blood on the shawl is concerned, the same was seized from near the dead body. It was the shawl of deceased Mansingh. Therefore, the presence of human blood on the shawl is of no consequence.

16. The law of circumstantial evidence is well enunciated right from the Supreme Court judgment in Hanumant Govind Nargundkar and Anr. v. State of M.P. : 1953 CriLJ129 to State of M.P. v. Sanjay Ray [2005 (1) J.L.J 411]. It is trite law that the prosecution is required to establish each circumstance independently beyond all reasonable doubt and the same should form the chain of circumstances pointing out unerringly towards the guilt of the appellant/accused while excluding all reasonable hypothesis of innocence in his favour. The law is also well settled about conviction of the accused only on the basis of the evidence of extra-judicial confession, but, when the same inspires full confidence and is fully reliable. In the case in hand, the evidence of P.W. 9 Chhappan is not of sterling quality, as discussed hereinabove. Therefore, in our opinion, it would be hazardous to place implicit reliance on his testimony.

17. In the result, on the basis of the discussion as aforesaid, the appeal of the appellant succeeds and is hereby allowed. The Trial Court is directed to release the appellant forthwith, if not required in any other criminal case. Fine if deposited

or paid by the appellant, shall be refunded to him.

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