

Kalu Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-12-2005

Reported in : 2005CriLJ4777

Judge : S.L. Kochar and ;Ashok Kumar Tiwari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; ;[Evidence Act, 1872](#) - Sections 25 and 165; ;Code of Criminal Procedure (CrPC) - Sections 174, 313 and 323

Appeal No. : Crl. A. No. 1251 of 2001

Appellant : Kalu

Respondent : State of M.P.

Advocate for Def. : Manoj Dwivedi, Govt. Adv.

Advocate for Pet/Ap. : Manish Sharma, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. This appeal aims at setting aside the conviction and sentence of the appellant passed by the learned Additional Sessions Judge (Shri Anil Abbas), Kukshi by

judgment dated 11th September, 2001 in Sessions Trial No. 86/2001, thereby finding the appellant guilty of the offence punishable under Section 302, IPC and sentencing him to suffer imprisonment for life and fine of Rs. 1,000/-, in default of payment of fine to suffer R.I. for two months.

2. Briefly stated, the prosecution case as unfolded before the trial Court was that on 3-1-2001, the appellant informed the police of P. S. Kukshi that the dead body of his wife Thavlibai was lying in the forest. On this information Merg. No. 01/2001 under Section 174 of the Code of Criminal Procedure was registered and PW-6 R. S. Raghuvanshi Sub-Inspector started enquiry in to the Merg. PW-6 R. S. Raghuvanshi effected the seizures of iron-rod, slipper etc. from the place of occurrence. Its seizurememo is Ex. P/12. On merg enquiry, the Enquiring Officer found involvement of appellant Kalu in commission of murder of his wife. Therefore, Crime No. 5/01 under Section 302 of the Indian Penal Code was registered and investigation commenced by Investigating Officer B. R. Yadav (PW-7). He recorded the statement of the witnesses and arrested the appellant vide arrest-memo (Ex. P/7). Ex. P/4 is the Panchnama of dead-body. Autopsy on the dead body was conducted by Dr. PW-1 F. S. Chauhan who found 9 external injuries and on internal examination, he found fractures of rib-bones. According to him, the deceased died because of internal haemorrhage. The medical report issued by this doctor is Ex. P/2. On the basis of the memorandum statement (Ex. P/8) the investigating officer seized an axe and Darata (sickle) from the house of the appellant. The seizure-memo of these weapons is Ex. P/9. He also seized a bamboo lathi. All these seized articles were sent for Chemical Examination to the Forensic Science Laboratory at Indore. The Report is Ex. P/15.

3. According to this report. Ex. P/15, on the lathi, axe and Darata, simple blood was noted. After investigation, charge-sheet was filed against the appellant under Section 302, Indian Penal Code. The appellant refuted the charges and pleaded innocence. Therefore, the prosecution, to prove its case, examined seven witnesses. The appellant did not examine any witness in defence. After hearing the parties, the learned trial Court, finding the appellant guilty of the offence of murder, convicted and sentenced him as indicated hereinabove.

4. Aggrieved by the aforesaid judgment, the appellant has preferred this appeal.
5. Having heard the learned Counsel for the parties and having gone through the evidentiary material minutely this Court is of the firm view that there is no legal, admissible, cogent and reliable evidence available on record to maintain the conviction of the appellant.
6. PW-1 D.F.S. Chauhan, in the postmortem Report (Ex. P/2) found in total nine injuries on the person of the deceased on various parts. All the injuries were caused by hard and blunt object and the injuries were contusions and abrasions. On internal examination, the doctor found 6th, 7th and 8th ribs fractured. According to the medical expert, the deceased died because of internal haemorrhage within 24 hours from the time of his examination i.e. 3-1-2001 at 5.00 p.m. This doctor has not stated in his statement about the nature of injuries whether they were antemortem and/or postmortem and whether the death was homicidal, accidental or suicidal. In these days, we generally find these important lacuna although it is the duty of the counsel for the prosecution to ask these questions and seek answer from the medical expert. The prosecution is required to first establish homicidal death. If the prosecutor fails to discharge this onerous duty, the trial Court should be vigilant and put this question as per provision under Section 165 of the Evidence Act, but in this matter, both have failed to discharge their duties as per provisions of law.
7. PW-2 Punibai has deposed that on the date on which the deceased Thavlibai died in the evening at 5.00 p.m. near tower situated in village Talanpur, she was cutting the fuel wood and that time, the appellant was abusing her. On the next day, there was a talk in the village that Thavlibai had died. She has further stated that the appellant Kalu used to consume liquor and often used to pick up quarrels with Thavlibai. In para 6 this witness has stated that the appellant belongs to Mankar caste and all the people of this caste used to consume liquor. She also stated that in every family the disputes take place. She herself was having dispute and verbal altercation with her husband when he was alive. We do not find any substantive material against the appellant in the statement of this witness.

8. The third witness is PW-3 Jagdish. This witness has been declared hostile. In cross-examination para 2, he admitted his signature on the Panchnama of dead body (Ex.P/4) and the notice given by the Police (Ex.P/3). He denied recording of his statement by the police vide Ex./5, PW-4 Ugarsingh has also been declared hostile. The say of this witness is that on Tuesday in the early morning at 4.00 a.m. the appellant knocked at the door upon which he told him that he will talk in the morning and did not talk with the appellant at 4.00 a.m. The appellant again came to his house in the morning at 8.00 a.m. and disclosed that his wife is lying dead in the field of Dayaram.

The appellant also disclosed his ignorance as to how his wife died. Thereafter, this witness Ugarsingh, village-Sarpanch and the appellant went to the Police Station and at the Police Station the appellant disclosed before them that he committed murder of his wife. In cross-examination by the A.G.P., this witness denied the suggestion given to him that the appellant made extra-judicial confession before him at his house. On the contrary, he has testified that when the appellant disclosed about commission of death of his wife by him, the police was present. In the light of this statement, the evidence of extra-judicial confession in the presence of the police is not admissible in view of Section 25 of the Evidence Act.

9. PW-5 is Mulibai. She also has been declared hostile. She was confronted by the A.G.P. with her police-statement Ex. P/11 which she has denied. In para 5 she has admitted that the dead body of deceased Thavlibai was lying by the side of common road which was being used by the villagers. This witness has also stated about arrival of the appellant at her house at 4.00 a.m. but, she did not respond the appellant because of fold and told him to approach Village Patel. The appellant disclosed before that the dead body of his wife is lying near the hand-pump. The evidence of Mulibai (PW-5) is not useful to the prosecution in any manner.

10. PW 6 R.S. Raghuvarshi is the witness for preparing seizure of iron-rod, slipper etc. and he has proved the seizure-memo Ex.P/12. These articles were seized from the field of Dayaram. Dayaram has not been examined by the police. PW-7 B. R. Yadav, Station House Officer, conducted investigation and arrested the appellant. This witness recorded memorandum-statement of the appellant

(Ex.P/8), and in pursuance of this statement, he effected seizure of axe and Darata (seizure) vide seizure-memo (Ex. P/ 9). He also seized one Bamboo stick from the house of the appellant vide seizure-memo Ex. P/10. All these articles were sent for examination to the F.S.L. The report was not tendered in evidence while recording the statement of Investigating Officer PW-7 B. R. Yadav on 27-8-2001. The order-sheet dated 7-9-2001 is disclosing the fact that the F.S.L. report was exhibited and marked as Ex. P/15 by the trial Court because, by mistake it could not be tendered in evidence of the Investigating Officer.

11. The learned trial Court in its judgment para 47 placed reliance on the Chemical Examiner's report Ex. P/15 and in paras 49 and 50, considering the arguments and judgments relied upon by the appellant held that even if the blood group was not found on the seized lathi, axe and Darata, the presence of simple blood is sufficient as an inordinating circumstance against the appellant and the same can be used against the accused and the learned trial has accepted the contents of the Chemical Examiner's Report Ex. P. 15, as circumstantial evidence against the appellant though in the accused-statement recorded under Section 323, Cr. P.C., no question was put to the accused about receiving of Chemical Examiner's Report (Ex. P/15), and the contents thereof. The statement of the accused under Section 313, Cr. P.C. were recorded on 3-9-2001 and thereafter, the case was fixed on 7-9-2001 for examination of defence witnesses. On his date (7-9-2001), the Court had exhibited the Chemical Examiner's report as Ex. P/15.

12. Since the incriminating circumstances available in the Chemical Examiner's report (Ex. P/15) were not specifically put in the accused statement to the appellant and no opportunity was given to him to explain the same, the contents of the report (Ex. P/15) could not be relied upon as an incriminating circumstance against the appellants.

13. After the above detailed scanning of the prosecution evidence, we are of the view that the judgment of the learned trial Court is based on conjectures and surmises as well as on inadmissible evidence. The record is also disclosing the fact that the learned Addl. Sessions Judge is not aware of the basic legal position about admissibility of extra-judicial confession as well as importance of accused's

statement under Section 313, Cr. P.C.

14. As a result of the discussion as aforesaid, this appeal is allowed. The conviction and the consequent sentence of imprisonment for life with fine of Rs. 1,000/- is hereby set-aside. Let a copy of this judgment be transmitted along with the record to the trial Court immediately who shall release the appellant forthwith if not required in any other criminal case.

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