

Mahesh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-26-2002

Reported in : 2002(4)MPHT266

Judge : Dipak Misra and A.K. Shrivastava, JJ.

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

Appeal No. : Criminal Appeal No. 525/90

Appellant : Mahesh

Respondent : State of M.P.

Advocate for Def. : A.K. Mishra, Dy. Adv. General

Advocate for Pet/Ap. : Rakesh Jain, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.:

1. The accused/appellant was tried for the offences punishable under Sections 120B and 302 of the Indian Penal Code (hereinafter referred to as 'the IPC'). The other co-accused persons namely, Ghisla @ Ghasiram, Karodhi and Gorelal were

charged for the offence punishable under Section 120B, IPC, but they were acquitted by the impugned judgment. The appellant too was acquitted, for the offence punishable under Section 120B, IPC, but, was convicted of the offence punishable under Section 302, IPC, and has been sentenced to suffer rigorous imprisonment of life by the learned Additional Sessions Judge, Mudwara vide its judgment dated 21-4-1990 passed in Sessions Trial No. 185/86.

2. The facts, shorn of unnecessary details, lie in a narrow compass. The case of prosecution is that, few days prior to 19-2-1986 and 20-2-1986 there was some complaint, in the village, that deceased/Ram Milan, outraged the modesty of a girl, Sita Bai, taking note of which, the inhabitants of the village, belonging to Kachhi community, blockaded the house of the deceased and lodged a report against him. A case under Section 354, IPC, was registered, against the deceased, in which he was bailed out from the Court of Katni on 19-2-1986.

3. After release, the deceased, went to his village, from Katni. In the evening at about 7, accused Mahesh went to the house of deceased and told that he had to go to Jabalpur and a car of one Nayak, Advocate was reserved for that purpose. Accordingly, at about 7-8 P.M., deceased went with accused and thereafter he was not found.

4. The mother of the deceased Parwati Bai (P.W. 2), Mamta Bai (P.W. 3), sister-in-law, father Veeran (P.W. 4), and brother Jagdish (P.W. 16), searched for the deceased, but they could not, know his whereabouts. Next day noon, some boys of the village saw a dead-body near a pond, which was identified to be the body of the deceased. Village Kotwar Jethu (P.W. 1), on 20-2-1986 at 10.30 in the night lodged the report (Ex. P-I), which set the criminal law in motion.

5. The dead body of Ram Milan, was sent for post-mortem. The Autopsy Surgeon, Dr. K.K. Jain (P.W. 11), performed the post-mortem, on 21-2-1996 and found as many as 14 injuries, on the body of the deceased. His report is Ex. P-6. According to the Autopsy Surgeon, deceased died, on account of coma due, to multiple injuries upon the scalp, multiple fractures of skull, intracranial haemorrhage and injuries to brain. The Autopsy Surgeon found, 12 incised wounds, on the body of the deceased. According to the doctor, the duration of death was 18 to 36 hours.

The accused was arrested and the police vide Ex. P-14, seized the blood-stained, clothes (kurta & pyjama) of accused from him. A 'Baka' was also seized at his instance. The blood-stained clothes of accused and the Baka were sent for chemical examination. The other co-accused persons, who were acquitted, by the learned Trial Judge, were also arrested, as they belong to Kachhi community.

6. The prosecution filed the charge-sheet, before the Competent Court. After committal, the learned Trial Judge framed charge under Section 120B, IPC, against all the accused persons and a separate charge, of the offence punishable under Section 302, IPC, was framed against the appellant.

7. All the accused persons abjured their guilt and pleaded false implication.

8. The prosecution, in order to prove its case examined number of witnesses. The learned Trial Judge, found that prosecution, failed to prove its case, against all the accused persons, for the offence punishable under Section 120B, IPC, and acquitted them from the said charge, but, according to the learned Judge, the prosecution has proved the charge punishable under Section 302, IPC, against the appellant and hence, he was punished to suffer life imprisonment by the impugned judgment. The appellant has, thus, assailed the judgment of conviction by filing the present appeal.

9. In this appeal, Shri Rakesh Jain, learned Counsel for the appellant, submitted that there is no eye-witness, in the case and the case of prosecution rests upon circumstantial evidence. According to him, the circumstantial evidence should be consistent with the guilt, of the accused and inconsistent with his innocence. The chain of circumstances, furnished by the prosecution, should be so complete, as not to lead any reasonable ground, for the conclusion consistent, with the innocence of the accused. The incriminating circumstances for being used against the accused must be such, as to lead only to a singular hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. According to him, in a case of circumstantial evidence the whole endeavour and effort of the prosecution should be, to prove whether the crime was committed by the accused and the circumstances proved weave and unite themselves into a complete chain unerringly pointing to the guilt of the accused and if the circumstances proved,

against the accused in a case are not totally consistent with his guilt, he is entitled, to the benefit of doubt. According to the learned Counsel, the important links are missing and therefore chain is not complete and the accused/appellant is entitled for acquittal. He had also drawn our attention, to the material discrepancies and omissions, that had come in the statements of the prosecution witnesses.

10. Shri A.K. Mishra, learned Dy. Advocate General supported the judgment and contended that there being no infirmity in it, the appeal has no merit and deserves to be dismissed.

11. After hearing the learned Counsel for the parties, we are of the opinion that prosecution has failed to prove each of the circumstances, having a definite tendency pointing towards the guilt of the accused and therefore the appeal deserves to be allowed.

12. The circumstances which weighed with the Trial Court in convicting the appellant may be enumerated as under:--

(i) The day on which deceased was released on bail, he was accompanied by the appellant, from Katni Court, to his village. After an hour of their arrival, he again went to the house of the deceased and asked him to accompany him upto Jabalpur in the car of one Bacchan Nayak, Advocate. The accused, thus, was last seen in the company of the deceased;

(ii) At his instance, the weapon 'Baka', Article 'A', was recovered vide seizure memo (Ex. P-4). This weapon, was sent for serological examination, the blood was found on the weapon, but there was no iota of proof regarding existence of human blood;

(iii) On 25-2-1986 blood stained clothes (kurta & pyjama) of accused were seized vide Ex. P-14, but the serologist found them to be insufficient for the test;

(iv) Raghunath (P. W. 9), at about 8 P.M. saw a person lying dead and three persons fleeing from the spot and one of them was clad in kurta pyjama, but he was unable to identify Mahesh;

(v) Though motive was not proved, yet in para 16 of the judgment, it has been held that as the deceased was enlarged on bail, on the same day, therefore, it was quite possible that persons of Kachhi community with the help of the accused might have murdered the deceased.

13. The question that arises for consideration is whether any of the circumstance can be said to have not been proved and if all the circumstances can be said to have been proved then whether the circumstances thus proved are so complete that they point only towards the guilt of the accused and are inconsistent with the hypothesis of his innocence. The Supreme Court in the case of K.V. Chacko @ Kunju v. State of Kerala, (2001) 9 SCC 277 = AIR 2001 SC 537, has laid down the tests. In para 5 these tests have been enumerated, which reads as under :--

'5. The law regarding basing a conviction by the Courts on circumstantial evidence is well settled. When a case rests upon circumstantial evidence, such evidence must satisfy three tests :

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must also be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

14. The learned Trial Judge in paras 15 and 16 has categorically held that there is no motive on the part of the accused to cause murder. He further held that persons belonging to Kachhi community might have caused murder of the deceased, because he outraged the modesty of a girl belonging to the Kachhi

community. These findings are not against the accused, on the contrary they raises a reasonable doubt in his favour.

15. The blood stains on the clothes (kurta & pyjama) collected were not found sufficient for serological examination. Thus, it raises serious doubt and therefore accused/appellant cannot be convicted. The Supreme Court in the case of Kansa Behera v. State of Orissa, AIR 1987 SC 1507, has held that the recovery of blood stained clothes from accused without any positive report of serologist indicating the blood group can not be relied upon. In this context, para 11 of the said judgment is relevant which reads as under:--

'11. As regards the recovery of a shirt or a dhoti with blood-stains which according to the serologist reports were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood-stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood- stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.'

16. The prosecution has examined Chhannu (P.W. 22), a witness of seizure of blood stained clothes (kurta & pyjama). The memo is Ex. P-14. In cross-examination he has stated that he did not read the seizure memo and the same was prepared at the police station. Mamta Bai (P.W. 3), in para 2 of her statement says that she did not see which clothes were being worn by appellant. In para 4 she had further deposed that she has guessed that some body might have killed the deceased. Similarly Raghunath (P.W. 9), has stated that he saw one person was running wearing kurta & pyjama but he can not say, that person was Mahesh.

17. Much reliance has been placed, by the Trial Court, upon last seen evidence. It may be one of the circumstances, but the same cannot be the sole circumstance to convict the appellant. From the evidence of Tara Bai (P.W. 5) Gorelal (P.W. 6)

and Bhagwat (P.W. 8), it transpires that appellant was the Chowkidar of the pond near which the dead body of deceased was found. Therefore, his mere presence near the pond cannot connect him with the alleged offence.

18. In the aforesaid circumstances, we have no hesitation to come to the conclusion that on the circumstances established, it cannot be said, that the charge of murder against the accused/appellant has been proved beyond reasonable doubt. We, therefore, set aside the conviction and sentence against the accused/appellant and acquit him of the charge levelled against him.

19. The appeal is allowed. The accused/appellant be set at liberty forthwith unless required in any other case.

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