

Laxman Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-19-1998

Reported in : 1999CriLJ620

Judge : Rajeev Gupta and ;R.P. Gupta, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 293 and 313

Appeal No. : Criminal Appeal No. 1302 of 1988

Appellant : Laxman

Respondent : State of M.P.

Advocate for Def. : R.A. Robertson, Adv.

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

Disposition : Appeal allowed

Judgement :

1. The appellant has been convicted by the II Addl. Sessions Judge, Bhopal vide judgment dated 26-11-88 for offence punishable under Section 302, IPC and sentenced to R.I. for life. He has been found guilty of committing murder of Roopsingh about 2 days before 12-7-87.

2. The prosecution case against the appellant rests on circumstantial evidence only. The story is that on 8-7-87 the deceased and his wife went to Bhopal. They came across this accused in Bhopal. The deceased and accused took liquor there and in discussion amongst them it was decided that the deceased should purchase a buffalo. For this purchase they sold the silver ornaments (Kadis) of the wife of the deceased i.e. Sonabai for Rs. 3800/- to Chandramohan (PW 7). Since it became late for transport to the village of the deceased, three of them stayed at the house of the accused. Next morning the deceased and his wife came to village Chopra. However it was decided between the deceased and the accused that the deceased would return to Bhopal. The money has been left with the accused who kept it with Bhanvarlal (PW 5). Thus the deceased in the afternoon started from village Chopra for Bhopal. He told his wife that he was going to the accused. Thereafter, the deceased was seen dead in the area of village Choprakala on 12-7-87. The body, inside the well, was detected because his Chappals and some articles were found outside the well by PW 3 Amarsingh, the father of the deceased. When the dead body was taken out it was having some injuries on the head and on the back of the body and also strangulation of the neck with a piece of the elastic which appeared to be torn off from some underwear. The police was intimated and the body was sent for post mortem examination which was conducted by PW 9 Dr. R. K. Singh on 13-7-87 who opined that the death occurred due to asphyxia due to strangulation. There were ligature marks on the neck corresponding to the piece of the elastic. So that was the ligature with which the deceased appeared to be strangled by somebody. It may also be noticed here that on the day when the accused and deceased sold the ornaments of Sonabai, a photograph at the shop of the photographer was taken in which only the accused and Sonabai appeared. Since suspicion was towards this accused, the police investigation revealed, on arrest of this accused, that he was in possession of the underwear from which the elastic found on the neck of the deceased had been torn off. The accused made the disclosure to the investigating officer on 22-7-87 and got the recovery made from the room of a building, known as Laxminarayan Hotel, where the accused was residing and which was a building under construction. The accused is a labourer. It was also the prosecution case that the accused disclosed about a black thread worn by the deceased and half

bottle of liquor having being concealed in bushes near the place of incident and he got them recovered. Armed with this evidence the accused was sent for trial.

3. The prosecution has relied upon only the circumstantial evidence against the appellant and the Court found it established that the circumstances proved on record established a chain of events which proved the guilt of the accused beyond doubt. These circumstances which have been found established may be enumerated as under:-

(i) The accused and deceased and the wife of the deceased met the accused on 8-7-87 at Bhopal, they sold some ornaments (Kadis) of wife of the deceased for Rs. 3800/- with PW 7 and the money was kept by the accused who gave it to PW 5 later on.

(ii) The accused, deceased and wife of the deceased stayed at the house of accused at Bhopal on 8-7-88,

(iii) The accused and wife of the deceased had a joint photograph at Bhopal on 8-7-87 and it suggested immoral connections between them,

(iv) the deceased and his wife returned to their house on 9-7-87 and the deceased had to meet the accused at 5 p.m. on that very day at Bhopal,

(v) the deceased went from his house telling his wife that he was going to meet this accused at Bhopal,

(vi) The accused did not return to his house and thereafter his body was found dead in a well in the area of his own village with a head injury and there was a ligature mark on his neck. The death was due to asphyxia resulting from strangulation. The other injuries on the back of the body were postmortem while the head injury was ante mortem and the strangulation mark was ante mortem. The body was found on 12-7-87.

(vii) Some clothes of the deceased were lying outside the well,

(viii) The ligature was an elastic torn from an underwear and it was still on the neck of the deceased when the body was taken out from the well. The doctor has given

definite opinion that the strangulation was with this ligature and it has created ciliated contusions all around the neck,

(ix) The accused made a disclosure on 22-7-87 about his underwear in his room where the accused was residing. He also disclosed about a thread of the deceased.

(x) The accused led to recovery of his underwear from his room and it was found that the elastic of the underwear had been torn off,

(xi) The opinion of the expert of F.S.L. is that the elastic with cloth sticking to it found on the neck of the deceased as ligature mark, in fact was torn away from the underwear produced by the accused.

(xii) The accused had disclosed about some thread worn by the deceased and concealed it in some bushes and also disclosed a liquor bottle and bidi stubs were lying on the spot, these were recovered, resultantly.

(xiii) The trial Court found these circumstances established beyond doubt and took an inference that this accused strangled the deceased with the elastic of his underwear and had thrown the body in the well. The strangulation must have been done after causing head injury. The motive was inclination of the accused towards the wife of the deceased and also the money which was consideration of the sale of the ornaments.

4. In order to establish these circumstances the prosecution had examined 9 witnesses. The narration starts with PW 6 Sonabai wife of the deceased who spoke about their going to Bhopal, selling her ornaments, taking of liquor by the accused and the deceased, three of them staying at the house of the accused that night, taking of photograph of herself and the accused but that her husband was also present at that, time, their returning to village leaving back the accused at Bhopal, the husband going to Bhopal to meet the accused next evening and thereafter her husband did not return. They had gone to Bhopal initially for treatment of her ailment.

5. PW 3 Amarsingh is the father of the deceased. He was residing separate from the deceased His brother PW 2 Harprasad had asked him where the deceased was. Thereafter, they searched for the deceased and found his clothes near a well. His Pyjama, Baniyan and Nikkar were lying there. He then reported to police who took out the body of the deceased from the well. The police was informed by him that the deceased had gone to Laxman.

6. PW 1 Prabhu dayalisa witness before whom this accused was interrogated by police and he made disclosure statement. It is important to note that he speaks of disclosure about a thread which was used and also about the place where he had kept the money and he shows the place where he had concealed the articles and also the place where he and the deceased had taken liquor and smoked bidi. He has not spoken anything about the disclosure of underwear. The disclosure statement is in memorandum Ex. P-1. This memorandum contained the disclosure about underwear and also disclosure of a thread and also about money. The witness did not speak in Court about the underwear. The mere contents of memorandum will not be evidence unless supported by statement on oath in Court, If a particular disclosure is treated as evidence Under Section 27 of the Evidence Act, it must be established that such disclosure was made by the accused and it resulted in discovery of fact. Mere statement of a witness that a disclosure statement was made and it was recorded is not proof of what was stated by the accused. The evidence of this witness cannot be taken as a positive proof about disclosure of Janghiya. Of course he has specifically narrated about the thread of the deceased and about the liquor bottle and bidi stubs. The disclosure of liquor bottle and bidi stubs are of no use for prosecution as it is not proved by any evidence that this bottle or bidi stubs were handled by the deceased. So we are left with the thread so far as this witness is concerned. There is no reliable evidence that the thread belonged to deceased.

7. It becomes further interesting that the investigating officer PW 8 R K. Jain also did not say that the accused disclosed about the concealment or whereabouts of his Janghiya. So, for the above reasonings, even his narration that the disclosures were recorded cannot be accepted as evidence of disclosure of underwear. It may be noted that third witness to the disclosure has not been examined. N. K. Jain

and Prabhuial have narrated that the accused got recovered a Janghiya and some clothes vide memorandum Ex. P-4 and a lock and key was also recovered at his instance vide memorandum Ex. P-5 and also some money was recovered at the instance of accused vide Ex. P-7. He does not say from where the money was recovered.

8. The investigating officer narrates that he was searching for Laxman on 15-7-87 and was able to apprehend him only on 18-7-87, but that day he left him after initial inquiry from him and again arrested him on 22-7-87 vide memo Ex. P-10. Then the accused made a disclosure on 22-7-87 which he recorded in Ex. P-1 and that day at the instance of the accused he went to hotel situated at Chhola Road in Bhopal and from a room of hotel this accused produced a Janghiya which was seized vide Ex. P-4 and that day he recovered the key of the room from the accused vide Ex. P-5. It is not stated that the accused had opened that lock of the door or the door was found locked when they reached there. He also recovered Rs. 3800/-at the instance of accused from Bhanwarlal (PW 5) to whom the accused had given the money.

9. The effect of evidence of PW I Prabhuial and N. K. Jain is that we cannot accept that this accused made a disclosure statement about Janghiya, in the absence of specific evidence in Court. So at best it could be expected that this accused produced a Janghiya from a room in the hotel. But main question arise about possession of this Janghiya and effect of its recovery. Of course, this is the Janghiya from which a piece of elastic was found torn out and when Janghiya and elastic were sent to F.S.L. Sagar, the expert reported that the elastic like in the Janghiya and must have been the part of this Janghiya. Unfortunately, even this report was not tendered as exhibit either by the public prosecutor or even in the statement of the investigating officer. This shows in what careless manner the prosecution proceeded in this case.

10. Another interesting feature is that the result of this report was never put to the accused in his statement Under Section 313, assuming that the Court was accepting it as a tendered document in view of Section 293 Cr. P.C., that it needs no formal proof. Even if such document be taken to be a tendered evidence, it was

important that it should have been brought to the notice of the accused that the ligature, (elastic) recovered from the neck of the deceased, was part of the Janghiya recovered from his possession. It was really a great blunder on the part of the trial Court not to have put this circumstance to the accused and to seek his explanation about it although the trial Court seems to have accepted this report as an important piece of evidence.

11. So, there are 3 vital situations arising in respect of this important circumstance as under:-

(i) That there was no proof of disclosure about it by the accused,

(ii) The report of the expert is not exhibited,

(iii) That the Janghiya and the elastic which was the ligature used for causing death of the deceased was not put to the accused to elicit his explanation.

12. It is settled principle of law that if an important circumstance is not brought to the notice of the accused in his statement and his explanation is not sought, it has to be ignored from evidence. That is unfortunate circumstance in this case.

13. We would have certainly remanded back the case for putting this question to the accused or might have called the accused for this purpose but we feel that it might not serve the purpose as the evidence about disclosure is missing. We are left with the fact of allegation that this accused produced from his room this Janghiya from which the elastic was partly missing. Now this situation raises a number of queries. Whether the accused carried this elastic with him after tearing it from his Janghiya and leaving the Janghiya back in the room or he after taking liquor with the deceased, took of his Janghiya and tore off its elastic and then strangled the deceased and also kept this torn Janghiya, which was an important piece of evidence, in his room. This query is to be judged in light of further circumstance that the deceased had gone from his house on 9-7-87 to meet the accused. We do not know whether the accused met him on 9th or not. If we go back to the evidence on record, the deceased was missing from his house from 9th till his body was recovered in a well on 12-7-87. So for 3 days we do not

know where the deceased was or whom he met.

14. The post mortem report shows that the deceased died within 24-48 hours of the post mortem examination which was conducted on 13-7-87. This would put the time of his death on 11-7-87 sometime between 11 and 12 July. So what this deceased had been doing and where he had been going on 9th July and 10th July? Nobody has seen him with the accused during this period.

15. When we consider the circumstance of recovery of Janghiya from the possession of the accused in the light of missing link and the fact that there is no disclosure and also the fact that a person would not ordinarily carry the torn Janghiya in his room, it becomes difficult to accept that he, without making a disclosure, led to the recovery of Janghiya from his room. It is not the prosecution case that strangulation was done by the accused in his house and then he carried body out and threw it in a well. A shadow of suspicion is caused to this piece of evidence also in the light of this background.

16. There is no doubt that Dr. Singh (PW 9), who conducted the post mortem examination, has, in detail, brought out the nature of ligature marks on the neck of the deceased and these marks were caused by an elastic and if this elastic was part of the Janghiya of this accused, then there is a clinching circumstance that this accused must have committed this act unless he can explain the presence of elastic of his Janghiya, on the neck of the deceased. But, as we have already discussed, the vital links are missing and mostly due to the negligence of the prosecution.

17. We may note further that one argument taken by the trial Court is that there must have been some illicit connection between the wife of the deceased and the accused as there is a photograph of them. But here also we find that the matter is not conclusive. The husband (deceased) and the wife and the accused were together. They entered into a transaction of sale of the ornaments of the wife with the consent of the husband. So it has to be accepted that they went to the photographer and the photo was taken in the presence of the husband. If that was the relationship between the accused and the deceased, it will be difficult to accept any immoral liason between accused and wife of deceased. Even in this respect

we see that the wife was not asked that this photograph Ex. P-15A was the one which was taken at Bhopal or it is some other photograph. It is a photograph in a natural pose. Even otherwise the photographer had not been examined. It was the duty of the prosecution to examine the photographer to get the negative. The investigating officer has narrated that he seized this photograph. From which photographer he got this, is not disclosed. So it does not lead to any inference of immoral connections between the wife of the deceased and the accused. This cannot be a motive for the accused to murder the deceased.

18. Another aspect on record is that the consideration for sale of the ornaments was with the accused and he kept it with PW 5 Bhanwarlal. The fact of sale of the ornaments for Rs. 3800/- is established by PW 7 Chandramohan and also by Sonabai. The deceased wanted to purchase a buffalo and he went to Bhopal the next evening presumably for this purpose. There is no allegation that for this money the accused committed the act of murder.

19. After scrutinising the evidence on record we are of the view that the trial Court was mainly led by the fact that the ligature, which was part of the Janghiya of the accused, was found on the neck of the deceased. But that evidence, as we have discussed, is too weak to be acted upon, as the disclosure part has not been established and the recovery part becomes surrounded with mystery as we do not know when and where the accused might have strangled the deceased. It is unnatural that a person would carry back his underwear which will become useless after tearing of the elastic. There is no suggestion that he had felt such an enmity with the deceased that he would hit him with some hard weapon on head and strangle him. There is no doubt that there is a serious head injury found on the head of the deceased. This resulted in subdural haemorrhage. The other injuries were caused by throwing in the well. The other injuries were post mortem while the head injury was ante-mortem and the death was due to strangulation. The statement of Sonabai does not lead to any inference that, the deceased must have gone to this accused on 9th July. So there are lot of questions which remain unanswered. The various links in the chain are missing.

20. In view of the above discussion we are not satisfied that the chain of events is complete against the accused so as to lead to irresistible conclusion that he alone is perpetrator of the crime, or to exclude all reasonable hypothesis of innocence of accused. Mere suspicion is not sufficient to achieve the standard of the proof beyond reasonable doubt. So the appellant is entitled to benefit of doubt. We set aside the impugned judgment of conviction and sentence against him and acquit him of the charge. He is on bail. His bail bonds shall stand discharged.

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