

Devisingh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-10-2003

Reported in : 2004(2)MPHT217

Judge : S.L. Kochar and ;Uma Nath Singh, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302; ;[Evidence Act, 1872](#) - Sections 45, 60 and 156

Appeal No. : Criminal Appeal No. 641/98

Appellant : Devisingh

Respondent : State of Madhya Pradesh

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

Advocate for Pet/Ap. : P.V. Newalkar, Adv.

Disposition : Appeal dismissed

Judgement :

S.L. Kochar J.

1. The appellant has preferred this appeal against the judgment dated 13th April, 1998 rendered in Sessions Trial No. 31/98 by the learned Additional Sessions Judge, West Nimar, Sendhwa, thereby finding the appellant guilty of the offence

punishable under Section 302 of the Indian Penal Code, convicted and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 1,000/-. In default of payment of fine the appellant is directed to suffer R.I. for one year.

2. The brief history of the prosecution case is that on 22-11-97 at about 3.00 P.M. in Village Mandvi, the appellant assaulted his wife Junabai by axe on a money dispute. She was completely beheaded. At that time she was carrying pregnancy. The incident was witnessed by the mother of the appellant namely Jaidabai (P.W. 1). In the noon at about 3.00 P.M. she overheard the shouts of appellant Devisingh and his wife Junabai. She woke up and reached over there and saw that appellant was assaulting Junabai by an axe. The head of the deceased was completely severed. She immediately rushed to call her another son Kalsingh. First Information Report (Ex. P-1) was lodged by (P.W. 2) Kalsingh. On this information, the police stepped into investigation and sent the dead body for post-mortem examination to the hospital where Dr. Durgasingh Chauhan (P.W. 6) conducted the autopsy on the dead body of Junabai and issued post-mortem report (Ex. P-12). According to the doctor, Junabai died because of shock and haemorrhage as a result of the injury and the death was homicidal. The head of the deceased was separated from the body from the joint of mandible. Internal part of brain was visible. There was communicated fracture of parietal and occipital bone. According to him, the injury was caused by sharp edged weapon, and the deceased was carrying pregnancy of seven months. The appellant was arrested on 25-11-97. After the investigation, charge-sheet was filed against the appellant.

3. In his examination under Section 313 of the Code of Criminal Procedure, in answer to the last question, the appellant stated that he was mentally imbalanced at that time and he did not know anything. After trial, the learned Addl. Sessions Judge finding the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code, convicted and sentenced him as indicated hereinabove. Hence this appeal by the appellant through jail.

4. We have heard Shri P.V. Newalkar, learned Counsel for the appellant appointed by the Legal Aid Committee and Shri G. Desai, learned Deputy Advocate General, for the State and also perused the record carefully.

5. The homicidal death of deceased Junabai is fully established from the testimony of Dr. Durga Singh Chauhan (P.W. 6), who found severe head and other injuries on the person of the deceased and opined that the death was homicidal. There is no cross-examination on this point by the defence.

6. Now the other evidence against the appellant available to us is the statement of Jaidabai (P.W. 1), the real mother of the appellant. She has deposed that on the date of incident, in the noon at 3.00 P.M. she was sleeping as she was suffering from fever and as such, she was in the house. The appellant went to harvest the toor-crop in the field accompanied by his wife deceased Junabai. Both of them had returned to the house at 3.00 P.M. She had heard the shouts of Devisingh and the deceased on which, she woke-up and saw the appellant assaulting his wife Junabai by an axe and separated the head of the deceased from the body. Immediately thereafter, she went to call her another son Kalsingh. In her cross-examination she was given suggestion that since Devisingh is inside the jail, she herself, her husband and her son Kalsingh were cultivating the land of his share and whenever he comes out of jail, he may ask for the possession of his land. Again a question was put to this witness that she wanted to see the appellant behind the bars so that they could cultivate his land. On this question, the witness kept mum.

7. In Para 5, she has deposed that she was sleeping in the courtyard. She has denied the suggestion given by the defence that the appellant had come to her and informed that some body had killed Junabai and that she wanted to implicate the appellant falsely for the land.

8. Another witness is Kalsingh (P.W. 2), the brother of the appellant who had gone to the Police Station and lodged the First Information Report (Ex. P-1). He has fully supported the statement of his mother Jaidabai (P.W. 1). We do not find any substantial material in his statement to discredit his testimony.

9. Dulsingh (P.W, 3) is the Village Upsarpanch to whom immediate information was given about the incident by Kalsingh (P.W. 2). After receiving this information, he came to the house of the appellant and they caught and tied the appellant with a tree by rope. He is also the witness of inquest and seizure-memo of axe.

10. Madan (P.W. 5) has deposed that he was in the field and was informed by Kalsingh (P.W. 2) about killing of Junabai by the appellant. In cross-examination of this witness, he denied witnessing of the incident and again repeated the same thing which he narrated in his examination-in-chief.

11. Dr. Durgasingh Chauhan (P.W. 6), who performed the postmortem examination has proved the post-mortem report (Ex. P-12). His evidence has already been discussed earlier. S.S. Baghel (P.W. 7), Sub-Inspector is a witness about recording of the First Information Report (Ex. P-1) and further investigation.

12. We find no infirmity in the testimony of Jaidabai (P.W. 1), and Kalsingh (P.W. 2). Their statements are duly corroborated by the medical evidence of Dr. Durgasingh Chauhan (P.W. 6) and the witness Madan (P.W. 5) as also Dulsingh (P.W. 3). The statement of Kalsingh (P.W. 2) is also corroborated by the First Information Report (Ex. P-1) and fully supported by the medical evidence.

14. In this view of the matter, we find no substance in this appeal which is liable to be dismissed.

15. Consequently this appeal fails and is hereby dismissed. The judgment of conviction and the sentence imposed against the appellant are hereby affirmed. The jail authorities be informed accordingly.