

(2013) 10 MP CK 0100

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Appeal No. 1294 of 2001

Rajendra and Chandadevi

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Oct. 21, 2013

Hon'ble Judges: S.R. Waghmare, J; P.K. Jaiswal, J

Bench: Division Bench

Advocate: Jai Singh and Mr. Rajesh Chouhan, for the Appellant; Deepak Rawal, Learned Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

S.R. Waghmare, J.

This appeal u/s 374 of the Cr.P.C. is filed by the accused/appellants Rajendra and Chandadevi challenging their conviction for offence u/s 302 /34 of the IPC passed by XII Additional Sessions Judge, Jhabua in Sessions Trial No. 199/1991 dated 07.11.2001 and sentence of life imprisonment with fine of Rs. 5,000/- each and in default of payment of fine they were to under go three months rigorous imprisonment they were also convicted for offence u/S. 449 of the IPC and sentenced of five years rigorous imprisonment with fine of Rs. 2,000/- each and in default they were to undergo one month rigorous imprisonment each. Brief facts of the prosecution case are that one Leelabai wife of Dulichand aged 25 years, resident of village Parvaliya within the jurisdiction of police station Kakanwani was working as Assistant Teacher when on 27.06.1990 at approximately 12:30 in the noon accused Rajendra Bhatt along with his wife Chandradevi came to her house. He had taken the contract from Leelabai to construct the house and there arose a dispute, whereupon Rajendra caught hold Leelabai and Chandadevi forcefully put a black tablet in her mouth. Leelabai's daughter Mamta took her to hospital Thandla and during the treatment she expired at 5:00 pm. The information about the death was sent to the police station Kakanwani, the merge or inquest report was registered the dead body was sent to the postmortem and according to the report she had died

due to poisoning. The offence, which was registered against the accused persons. After completion of the investigation they were arrested and under the memo of u/S. 27 of Evidence Act, they recovered the piece of paper and the viscera was sent to F.S.L. at Sagar. The statement of witnesses were recorded, thereafter, the offence was registered against the accused persons for under Sections. 302, 328 /34 and 449 of the IPC. The accused were duly charged and committed to trial.

2. The accused abjured their guilt and submitted that they were falsely implicated in the matter however they did not examine any witness in defence. The trial Court on considering the offence, however convicted and sentenced the appellants as hereinabove indicated and hence, this appeal.

3. Counsel for the appellants has vehemently urged the fact that the entire prosecution was malafide and important witness Anil Pathak has been given up; whereas at the criminal trial the prosecution must come with clean hand and un-varnished truth must to be placed before the Court. Counsel submitted that the only eyewitness Mamta (P.W. 6), has been discredited, moreover she is a child witness and her testimony should be scrutinized with great caution and care. Counsel placed reliance on [Shankarlal Gyarasilal Dixit Vs. State of Maharashtra](#), to state that the Court held "it is not the duty of the Court to examine that if it is not the accused then who else could have committed the offence, some questions are always difficult to answer." Relying on paragraph No. 33, he urged that the Apex Court held thus:

33. our judgment will raise a legitimate query: if the appellant was not present in his house at the material time, why then did so may people conspire to involve him falsely? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions. In the instant case, the dead body of a tender girl. Raped and throttled, was found in the appellant's house and, instinctively, everyone drew the inference that the appellant must have committed the crime. No one would pause to consider why the appellant would throw the dead body in his own house, why would he continue to sleep a few feet away from it and whether his house was not easily accessible to all and sundry, as shown by the resourceful Shrinaraya Sharma. No one would even care to consider why the appellants name was not mentioned to the police until quite late. These are questions for the Court to consider.

Counsel urged that the medical evidence on record did not support the prosecution case, the participation of the accused became doubtful, Counsel relied on [Jadu Yadav and others Vs. State of Bihar](#), . Counsel thus stated that in the present case also the evidence on record did not support the prosecution case at all. The merge intimation in the present case was on information by Anil Pathak, it has been recorded at 3:00 pm on the date of the incident in the Rojnamcha and proved by

S.H.O. Ramchandra Gulati (P.W. 14). However Anil Pathak has been given up by prosecution although his name is mentioned in the prosecution list of witnesses. Counsel categorically urged that the prosecution had not come to Court with clean hand and adverse inference should be drawn against the prosecution for leading such artificial and unnatural evidence and in the matter of Shankarlal (supra), five independent witnesses have been examined but they were found to be unreliable and taking the testimony of Mamta (P.W. 6). Counsel submitted that her narration is not corroborated by the testimony of Sohan Singh (P.W. 2), the compounder of the Parvaliya hospital, who has turned hostile in Court and similarly Ramgopal (P.W. 4) as well as Goverdhan Singh (P.W. 11) have not supported the prosecution case. Counsel urged that the defence of the accused that the deceased could have committed suicide has not been taken into consideration by the Trial Court. Counsel prayed that the impugned judgment be set aside since there is no concrete evidence on record and the accused be acquitted from the offences.

4. Counsel for the respondent/State on the other hand has vehemently opposed the submissions of the Counsel for the appellants and fully supported the judgment of the Trial Court. He categorically stated that Ex-P/15 was an inquest report or Dehati Nalishi and gave only information and not the actual story and if at all defence had been aggrieved by the non-examination of Anil Pathak it could have examined the witness in defence which has not been done. Moreover the testimony of Mamta, daughter of the deceased (P.W. 6) was of sterling quality and properly relied for the conviction, it is duly corroborated by Bishan Singh Rathore (P.W. 5) Ayurvedic doctor, who initially examined the deceased when she was alive and dying declaration Ex-P/11 recorded by medical officer and proved by Dr. Arun Purohit (P.W. 12) as well as Ex. P/17 (Naksha Panchayatnama). The FIR Ex. P/7 all also clearly indicated that the accused were guilty as charged, Counsel prayed that the appeal is without merit and the same be dismissed as such.

5. On considering the above submissions, we find that the questions that arise for our consideration in this appeal are whether there is sufficient evidence on record to sustain the conviction of the accused for offence under Sections 302, 328 /34 and 449 of the IPC.

In this regard it is essential to consider the testimony of Mamta, daughter of deceased Leelabai (P.W. 6) at the time of incident this witness was only 14-15 years of age whereas her statement in Court has been recorded on 18.02.1995 when she was 19 years of age, which is in the paragraph No. 4 & 5 where she is stated that:

Thereafter, she stated that she had taken her mother with the aid of Ramgopal (P.W. 4) to the hospital and had told Dr. Arun Purohit (P.W. 12) to administer some medicine so that mother would vomit out the poisonous substance, swallowed by her and which was forcefully put into her mouth by accused Chandadevi. She stated that her mother vomited, which has been cleaned by compounder Sohan Singh (P.W. 2) and the doctor advised to admit her mother in Thandla hospital but finding

no vehicle she had taken her mother by private bus service and got her admitted at 2:15 at noon at the hospital she succumbed at 5:00 pm on the same day. Prior to this she has also reported that official at Thandla hospital refused to admit her mother because there was no police report and the hospital authorities themselves informed the police and on the same day her statement was recorded by police itself and she had returned to her maternal uncle's home at 11:30 at night.

We find that Ex-P/11 is the dying declaration recorded by Dr. Arun Purohit (P.W. 12). This dying declaration has been much disputed by the Counsel for the appellants stated that dying declaration is not accordance with provisions of law and Dr. Arun Purohit stated in his statement before the Court in impugned para No. 4 that he had recorded the dying declaration on the instruction of accused Rajendra Bhatt and Chandadevi and he did not go the name of the persons who brought Leelabai in the hospital and Counsel for the appellants under the circumstances submitted that such dying declaration was not sterling quality and ought to be discarded at the very first instance.

Even if this argument Counsel is considered, the narration of the fact clearly indicates that there was some enmity between deceased Leelabai and accused persons regarding the contract of construction of the house given to him and it also categorically indicated that accused Rajender held the hand of deceased Leelabai and his wife Chandadevi intentionally opened the month and put one black tablet as per narration of Mamta at the earliest point of time. This corroboration by the statements of S.H.O. Rameshchand Gulati (P.W. 14), who has stated that he had received the information from one Anil Pathak that deceased Leelabai taken some poisonous substance and he had recorded the information in Rojnamcha Ex-P/15. If Ex-P/15 is considered, it categorically stated that it was the representation for recording the dying declaration by Dr. Arun Purohit along with Head Constable Virdendra Singh and Constable No. 556 Vanraj Singh to the Primary Health Center, whereby it also clearly indicated that dying declaration had been recorded, although doubt of its credibility has raised due to the statement in Court by doctor. The evidence may not be of sterling quality however there is ample corroboration to the testimony of Mamta, even if the witness Anil Pathak has been given up by the prosecution. Moreover no malafide as such are imputed to the prosecution by defence and considering the Dehatinalshi Ex-P/15, we find that it is Rojnamcha entry which merely gives information that report had been made by one Anil Pathak regarding deceased Leelabai being taken to hospital and requiring recording of dying declaration since it has been proved by S.H.O. Ramesh Chand Gulati (P.W. 14) and Head Constable Virendra Singh, there is no need to doubt authenticity to the same the dying declaration has been proved by doctor and in this regard also we do not find it necessary to pick holes in the story of the prosecution. The entire matter is proved clinchingly by FSL report Ex-P/19, which clearly indicates as per viscera contents, the pesticide substance aluminium celphos was found. Besides we find that the FIR has been duly and promptly filed on the basis of Dehati Nalishi; the

daughter of deceased Mamta (P.W. 6) has remained steadfast in her cross examination. There is no need of doubt her testimony, besides considering the fact that there is corroboration by Bishan Singh Rathore (P.W. 5) the Ayurvedic doctor, who examined the deceased first point in time categorically stated that some story was repeated to him by Mamta and Mamta asked him to administer some medicine so that her mother would vomit out tablet that had been swallowed by her mother and he had expressed his inability the dispensary did not have the said medicine at that time, she had called over Pappu (P.W. 7) to take her mother at primary health center Thandla and also call for ambulance, more than clearly establishes the fact that the deceased Leelabai was alive at the time. He also recorded the statement of Leelabai vide Ex-P/5 and sent to the police station then under the circumstances, we find that the judgment of the Trial Court is impeccable, conviction of the accused is based on proper appreciation of evidence Sohan Singh (P.W. 2) the compounder has also turned hostile in Court; however if his statement of u/S. 161 of the Cr.P.C. is considered, he has stated that the vomit by Leelabai was washed away since there were some patients sitting. Similarly the tablet brought in a piece of old news paper which has been recovered vide Ex-P/1 is also proved in accordance with provisions of law. The postmortem report of Dr. Kiranbala Chaturvedi (P.W. 3) also indicates that deceased had abrasions on her hands and leg indicates that there was struggle between the accused and the deceased. Moreover prosecution case under the circumstances cannot be stated to be cooked up as is being alleged by Counsel merely because Anil Pathak has been given up by the prosecution as witness, it could not indicate that the prosecution was mala fide; it is for the prosecution to decide as how to prove its case and which witnesses should be examined so also has already been observed above, if the defence was so much aggrieved it could have examined Anil Pathak as a defence witness.

With the aforesaid observations, we find that the Trial Court has properly convicted the accused for the aforesaid offences and as observed both the accused cannot be acquitted, the *mens rea* as to the accused Rajendra having misappropriated amount of Rs. 22,000/- handed over to them by deceased Leelabai for construction of her house has also been a recurring theme of the prosecution story. In these circumstances, we uphold the conviction and sentence of both the accused. The accused are on bail, it is directed that they shall surrender themselves on or before 21st November 2013 to undergo remaining part of jail sentence.

With the aforesaid observations, the appeal is dismissed.

A copy of this order be sent to the trial Court for compliance.