

**(2008) 04 MP CK 0032**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** None

Kishan and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

**Date of Decision:** April 8, 2008

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 34

**Citation:** (2008) ILR (MP) 1273 : (2008) 4 MPHT 214

**Hon'ble Judges:** Shahi Kant Kulshreshtha, J; Manjusha Namjoshi, J

**Bench:** Division Bench

**Final Decision:** Allowed

### **Judgement**

S.K. Kulshrestha, J.

The appellants assail the judgment dated 8th February, 1999 of the learned 1st Additional Sessions Judge, Shajapur, in S.T. No. 247/97 by which the appellant No. 1 has been convicted for offence punishable u/s 302 of the IPC and sentenced to imprisonment for life and fine of Rs. 1,000/- while appellant No. 2 Soram Bai has been convicted u/s 201 of the IPC and sentenced to three years R.I. and fine of Rs. 500/-. The appellants were indicted for offence under Sections 302/34 and 201 of the IPC for having committed murder of Dhapubai in pursuance of their common intention and having concealed her body with a view to screen the commission of the offence.

2. According to the prosecution case, on 2-6-1997, Devisingh (P.W. 8) went to the house of his sister-in-law and found that the house was locked from outside. On inquiry having been made, it was learnt that the accused No. 1 Kishan and his wife Dhapubai had left the house eight days ago. On 3-6-97, Devisingh lodged report (Exh. P-2) at Police Station Sundersi. Thereafter, on 8-7-97, at about 10 O'clock, Kesu and Bansi saw a human skull and ribs burried in the ground with clothes covering part of it. This information was given to the village Chowkidar Siddhu (P.W. 1), who

reported the matter at Police Station Sundersi on 9-7-1997. On the basis of this report, a case of sudden death was registered and Naib Tehsildar (Executive Magistrate) was approached for exhumation of the body and a panchanama to that effect was made. The panch then, identified the clothes to be the clothes of Dhapubai and on that basis, it was inferred that the skeleton was of Dhapubai, second wife of appellant No. 1. The police then proceeded with the investigation. Blood stained and control earth were seized from the spot and the clothes covering the skeleton alongwith a rope were also seized and were sent to the Medical Officer for his opinion. Thereafter, the skeleton was sent to Medico Legal Institute, Bhopal from where report was received. After recording of the statement of witnesses, offence was registered and after arrest of the appellant No. 1, pickaxe, spade and axe were recovered. The bullock-cart in which body of the deceased had been taken was also seized and, thereafter, charge-sheet was filed against the accused.

3. The accused pleaded not guilty and stated that the witnesses had falsely deposed against them on being tutored by the police. The learned Additional Sessions Judge, on trial convicted the appellants and sentenced them as herein-above stated.

4. Learned Counsel for the appellants has submitted that there is no legal evidence to connect the appellants with the commission of the crime even assuming that an offence was committed and, the appellants, therefore, deserve to be acquitted.

5. The State Counsel, per contra, submits that since skeleton of Dhapubai was found and there was evidence to the effect that Dhapubai and Sorambai, both wives of the appellant No. 1 Kishan, were having strained relation which had compelled Dhapubai to live with her parents for a period of two years prior to rejoining the matrimonial home, it were the appellants alone, who had committed the murder of the deceased and burried her body. He has also invited our attention to Paragraph 28 of the impugned judgment, in which, the circumstances on the basis whereof the two appellants have been convicted, have been duly enumerated.

6. We have heard learned Counsel for the parties and perused the record.

The prosecution has examined, in all, twelve witnesses, but the evidence is purely circumstantial. With regard to the skeleton having been found, the prosecution examined Siddhu (P.W. 1), who lodged report (Exh. P-2) on the basis of the information received from Kesu and Bansi. The evidence of J.S. Kushwah (P.W. 12), Station House Officer, shows that he recovered the body of the deceased vide memo (Exh. P-7) and the other articles such as Hessian bag, Nylon bag and about 10 feet long rope, from the spot. The evidence of Dr. Prabhakar Anvekar (P.W. 7) and the report (Exh. P-9) to the effect that no opinion can be given, advised that opinion from higher authorities be obtained. It was, therefore, sent to Forensic Science Laboratory where the body was examined by Dr. Ashok Sharma (P.W. 10), who has though opined that the skeleton was that of a female, aged between 35 to 40 years, but it was not possible to give the cause of death. It is, therefore, clear that

notwithstanding that the skeleton was exhumed, it was in a state where there was no evidence of any felonious act resulting in her death. It is also not clear that the skeleton was of Dhapubai though it was expressed by Siddhu (P.W. 1) that the human skull and the skeleton was that of Dhapubai as per Nandram (P.W. 5), father of the deceased. Nandram (P.W. 5), however, denies having gone to the spot and seeing the skeleton about which report was made. It is, thus, clear that evidence of Siddhu (P.W. 1) is directly contradicted by the father of Dhapubai, who has stated that he did not go to the spot where the skeleton was found. This belies the statement of Siddhu (P.W. 1) that on account of the clothes found on the spot where the dead body was exhumed, Nandram (P.W. 5), the father of Dhapubai had identified the body. Irresistible conclusion from the testimony of Siddhu (P.W. 1), Nandram (P.W. 5), Dr. Prabhakar Anvekar (P.W. 7) and Dr. Ashok Sharma (P.W. 10) is that it has not been proved by the prosecution that the skeleton found buried and taken out for identification was identified by anyone as the skeleton of Dhapubai. There is no evidence, either of Dr. Prabhakar Anvekar (P.W. 7), who gave autopsy report (Exh. P-9) or from F.S.L. Report of Dr. Ashok Sharma (P.W. 10), to show that the death was homicidal. Under these circumstances, the circumstances recorded in Paragraph 28 (b) of the impugned judgment about the dead body, being the dead body of Dhapubai, is rendered nugatory.

7. Heeralal (P.W. 2) has not supported the prosecution evidence but Umraosingh (P.W. 3) has stated that the accused had come to borrow the bullock-cart while Nandram (P.W. 5) has referred to the past estrangement between the deceased and appellant No. 1 -Kishan. He has stated that on account of the quarrel between the first wife namely Sorambai (appellant No. 2) and his daughter, his daughter had shifted to his house, but after passage of considerable time when accused Kishan assured that she will not be ill-treated, she was sent back to the house of accused Kishan. In this connection, Narayan (P.W. 4), cousin of the deceased has been examined by the prosecution, who has deposed that wives of the appellant Kishan used to quarrel with each other and, therefore, accused had started siding Sorambai, his first wife. The dispute arose as Dhapubai wanted to live separately and was claiming a share in the land.

8. Narbad (P.W. 6) has stated that Nandram (P.W. 5) had gone to the house of the accused but the house was found locked. From the mere fact that the house of the accused was found locked on a particular day, no inference of culpability can be drawn. The said circumstance does not prove the guilt of the accused much less its inconsistency with the innocence of the accused.

9. The other evidence which has been pressed in the service is the testimony of Umraosingh (P.W. 3) to the effect that the accused has come to borrow the bullock-cart. The mere fact that the accused have come to borrow the bullock-cart, does not lead to any assumption with regard to the complicity of the accused in commission of the murder of his second wife Dhapubai. The prosecution has also

examined Shivnarayan (P.W. 9), who has deposed that accused Kishan was arrested and was brought to the village and in his presence, he had given information about the axe, pickaxe, and spade which were recovered at his instance from near a tree close to the place where the skeleton of Dhapubai was found. It is not unusual for the villagers to keep such articles and even if these articles were found concealed, merely on account of recovery of these articles, no inference can be drawn about the guilt of a person. Narayan (P.W. 4) is a panch witness to various seizures (Annexures P-5 to P-7) and Naib Tehsildar J.K. Mangal (P.W. 11) has only witnessed the exhumation of the body (skull).

10. In the context of the above averments, if the circumstances taken into consideration by the learned Additional Sessions Judge are examined, the earlier history of quarrel which was amicably settled and absence of the accused from the village at the time of the last rites of Sunderbai, the recovery of the skeleton after a month and a half from a distant place, the attempt to borrow the bullock-cart from Umraosingh (P.W. 3) on the ground that she was unwell, that Dhapubai had met homicidal death and that her body had been buried, are not the circumstances, which individually or collectively point the guilt of the accused persons. In the case of circumstantial evidence, it is necessary that each circumstance should indicate the guilt of the accused without being compatible with any hypothesis of his innocence and all the circumstance should make a complete chain which indicates that the accused is guilty and which is not consistent with the innocence of the accused.

11. In the analysis made by the learned Additional Sessions Judge as noticed in Paragraph 28 of his judgment, in which, he has recorded the circumstances proved by the prosecution, it is clear that absence for short time cannot lead to any presumption about the guilt of the accused, the recovery of the skeleton of a woman between the age group of 35 and 40 also does not attach culpability to the accused. The finding that there was unnatural conduct on the part of the accused, is not supported by any evidence, the demand of bullock-cart from Umraosingh (P.W. 3) cannot be taken as an incriminating circumstance, finding that Dhapubai met a homicidal death is contrary to the evidence on record, viz., the testimony of Dr. Prabhakar Anvekar (P.W. 7) and Dr. Ashok Sharma (P.W. 10) and there is also no evidence that it were the accused who had buried the dead body. When these circumstances, do not attach culpability to the appellants, it is obvious that the circumstances taken together cannot make a chain indicating the guilt of the accused person. At the most, it may lead to a vague suspicion against them but suspicion, howsoever strong, cannot take the place of proof.

12. In view of the foregoing discussion, we are of the considered view that the prosecution has failed to prove the guilt of the appellants and the appellants deserve to be acquitted.

13. Accordingly, this appeal is allowed. The conviction and sentence awarded to the appellants are set aside and they are acquitted of the charges against them. The appellants are on bail. Their bail bond shall stand discharged.