(2002) 2 JLJ 176 : (2002) 3 MPHT 459 : (2002) 4 MPLJ 225

Madhya Pradesh High Court

Case No: Criminal Appeal No. 330/91

Raju @ Rajesh @ Topa	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision: May 1, 2002

Acts Referred:
Evidence Act, 1872 â€" Section 24, 60#Penal Code, 1860 (IPC) â€" Section 302, 397

Citation: (2002) 2 JLJ 176 : (2002) 3 MPHT 459 : (2002) 4 MPLJ 225

Hon'ble Judges: Rajeev Gupta, J; Ajit Singh, J

Bench: Division Bench

Advocate: Neena Khera, for the Appellant; G.S. Ahluwalia, Government Advocate, for the Respondent

Judgement

Ajit Singh, J.

Appellant Raju alias Rajesh alias Topa, the sole accused in this case, has been convicted under Sections 302 and 397 of the Indian Penal Code

and sentenced to imprisonment for life and seven years respectively (both sentences to run concurrently) by 1st Additional Judge to the Court of

Sessions Judge, Bhopal, vide impugned judgment dated 6-5-1991 for causing the murder of Jagannath Patel and robbing Rs. 500/- from his wife

Bardi Bai (P.W. 1). Appellant has been found guilty of causing fatal injuries on the deceased by means of an axe and robbing Rs. 500/- from Smt.

Badri Bai (P.W. 1) at 9.30 p.m. on 20-12-89 in the farm house of Sayyad Mustafa alias Achhe Mia.

Briefly stated facts giving rise to this appeal are as under :--

About three years prior to the date of incident, Jagannath (since deceased) and his wife, Smt. Bardi Bai (P.W. 1) were employed by Sayyad

Mustafa (P.W. 7) as a care-taker of his farm. Sayyad Mustafa (P.W. 7) himself resided at Bhopal whereas his farm is situated at Village Pipalner,

Gandhi Nagar, Bhopal. For Jagannath and his wife, Smt. Bardi Bai (P.W. 1), he even provided a small three room farm house for residence.

Latcron, about one month prior to the date of incident, Sayyad Mustafa (P.W. 7) also employed appellant in his same farm as a labour and

allowed him to live with Jagannath and his wife, Smt. Bardi Bai (P.W. 1) in their house. Appellant even shared meals with them.

On 20-12-89 sometime in the afternoon, Sayyad Mustafa (P.W. 7) visited his farm house from Bhopal and paid wages to the appellant and

Jagannath. Lateron, in the evening both of them went to Bairagarh and purchased liquor and meat. While Jagannath and appellant were taking

liquor and cooking the meals for dinner in the farm house, Smt. Bardi Bai (P.W. 1) slept in the ""Dalhan"" as she was having fever. It is alleged that

at about 9.30 p.m. appellant assaulted Jagannalh with an axe and killed him. Thereafter, he went to another room of the farm house where Smt.

Bardi Bai (P.W. 1) was sleeping and caused injuries to her and robbed Rs. 500/-. It is further alleged that the appellant after the incident went to

the house of Sayyad Mustafa (P.W. 7) in the mid-night at Bhopal and made an extra-judicial confession before him in the presence of his wife Smt.

Sarvar (P.W. 2). After that Sayyad Mustafa (P.W. 7) called his neighbour, Riyazuddin (P.W. 19) before whom also the appellant is alleged to

have made an extra-judicial confession. Both, Sayyad Mustafa (P.W. 7) and Riyazuddin (P.W. 19) took the appellant to the Police Station,

Parvalia Sadak in their jeep where the First Information Report (Ex. P-34), in the form of his confession was recorded by the Assistant Sub-

Inspector, Shri M.K. Mishra (P.W. 18), an Investigating Officer of the case.

Mr. M.K. Mishra (P.W. 18) immediately rushed to the place of incident along with Sayyad Mustafa (P.W. 7), Riyazuddin (P.W. 19) and the

appellant. At the place of incident, he prepared a Panchayatnama (Ex. P-2), of the body of Jagannath and spot map (Ex. P-22). Thereafter, he

sent the body of Jagannath for post-mortem and Smt. Bardi Bai (P.W. 1) for her treatment to Hamidia Hospital, Bhopal Mr. M.K. Mishra (P.W.

18) recorded the discovery statement (Ex. P-28) of appellant and allegedly seized an axe vide Ex. P-29, from a hidden place of the aforesaid farm

house. Mr. M.K. Mishra (P.W. 18), also seized Rs. 500/- vide Ex. P-24 and blood stained clothes (Ex. P-26), from the possession of appellant.

Seizure memo of the nails of appellant prepared by Mr. M.K. Mishra (P.W. 18) is Ex. P-25 who ultimately arrested him on 21-12-89 at 1.30

p.m. vide arrest Panchnama Ex. P-23.

Dr. D.S. Badkul (P.W. 17) conducted the post-mortem of the deceased, Jagannath. He in his report (Ex. P-43), gave an opinion that the death

was due to shock and haemorrhage as a result of injuries to the neck and that death was homicidal in nature. He also opined that the death was

caused by a sharp cutting heavy object. The injury on the person of Smt. Bardi Bai (P.W, 1) were, however, reported to be simple in nature by

Dr. K.N. Agarwal (P.W. 20) and Dr. R. Mandal (P.W. 21) in their injury reports, (Ex. P-45, Ex. P-46) respectively. Dr. G.S. Kanwar (P.W. 14)

also confirmed that no fracture was found in any of the X-ray plates of Smt. Bardi Bai (P.W. 1).

The appellant in his defence pleaded that he is innocent and has been falsely implicated. He also pleaded that, in fact, it was one Ramesh, another

employee of Sayyad Mustafa (P.W, 7) who had committed the offence and that he was even arrested by the police but Sayyad Mustafa (P.W. 7)

managed his release and instead implicated him.

The Trial Court relying upon the evidence of Smt. Bardi Bai (P.W. 1) and an extra-judicial confession allegedly made by the appellant, convicted

him u/s 302 of the Indian Penal Code for committing the murder of Jagannath and u/s 397 of the Indian Penal Code for robbing Rs. 500/- from

Smt. Bardi Bai (P.W. 1). The Trial Court also believed the recovery of weapon of offence i.e., axe from the possession of appellant and also

recovery of Rs. 500/- as an amount robbed from Smt. Bardi Bai (P.W. 1). However, here it is relevant to mention that the confessional First

Information Report (Ex. P-34) of the appellant to the Police Officer Mr. M.K. Mishra (P.W. 18) was not used against him by the Trial Court and

rightly so, in view of the judgment of the Supreme Court in N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others, .

Learned Counsel for the appellant challenged the conviction of appellant on the ground that the Trial Court ought to have disbelieved the evidence

of Smt. Bardi Bai (P.W. 1) as she was, in fact, not an eye-witness and was actually sleeping at the time of incident: It was further argued that the

Trial Court ought to have disbelieved the extra-judicial confession allegedly made by the appellant before Sayyad Mustafa (P.W. 7), his wife, Smt.

Sarvar (P.W. 2) and neighbour Riyazuddin (P.W. 19). The learned Counsel further argued that the evidence of recovery of weapon of offence and

Rs. 500/- from the possession of appellant was fake and planted and hence has no credibility. It was also argued that on none of the alleged seized

articles from the possession of appellant, human blood has been found which itself leads to the conclusion regarding his innocence.

We have heard the arguments on behalf of appellant and respondent, State, and have perused the available records and are, however, unable to

agree with the Trial Court that the prosecution has proved the guilt of the appellant beyond all reasonable doubt.

Smt. Bardi Bai (P.W. 1} has been examined by the prosecution as the sole eye-witness in the case. In her entire evidence in the Court, she has

nowhere stated that she actually saw the appellant assaulting the deceased Jagannath. She has admitted that at the time of incident she was having

fever and hence, was sleeping outside at the ""Dalhan"" of the house. She has also admitted in her evidence that she was asleep when the appellant

and deceased had returned from the market and were preparing meat. She has, however, stated that she opened her eyes when the appellant

assaulted her. Her this part of the evidence cannot be accepted as admittedly, the appellant was well known to Smt. Bardi Bai (P.W. 1) and

perusal of the injury report of Bardi Bai (P.W. 1), Ex. P-46, prepared by Dr. R. Mandal (P.W. 21) makes it clear that she was, in fact, assaulted

by some unidentified person. Dr. R. Mandal (P.W. 21) has specifically deposed in his evidence that at the time of her examination, Smt. Bardi Bai

(P.W. 1) was fully conscious and the injuries on her person were simple in nature. According to him, he had enquired from her about the name of

person who had assaulted her and in reply she stated that she was assaulted by some unknown persons. Dr. R. Mandal (P.W. 21) had medically

examined Smt. Bardi Bai (P.W. 1) at about 3.45 hours on 21-12-89. At that time he was posted as Assistant Surgical Specialist - R.S.O. in the

Department of Surgery, Hamidia Hospital, Bhopal. Smt. Bardi Bai (P.W. 1) was admittedly referred to the Hamidia Hospital for her treatment by

the police. Thus, even the police also did not know at the time of her examination by Dr. R. Mandal (P.W. 21) as to who was responsible for the

crime. Dr. R. Mandal (P.W. 21) in his injury report (Ex. P-46), has very categorically mentioned in the column of history of patient ""'assault by

some unidentified persons at 11.00 p.m., Gandhi Nagar (Parvilia Sadak)"". Furthermore, even in the police requisition form (Ex. P-42), prepared

by the police for the medical examination of Smt. Bardi Bai (P.W. 1) it is specifically mentioned that some unknown person has caused the injury

on the head of injured Smt. Bardi Bai (P.W. 1). All these circumstances make the evidence of Smt. Bardi Bai (P.W. 1) very suspicious and hence

the same cannot be relied at all. Had the appellant was the assailant his name would have definitely been mentioned in the police requisition memo

(Ex. P-42), and injury report of Smt. Bardi Bai (Ex. P-46) prepared by Dr. R. Mandal after her medical examination. Thus, we are left with no

option but to hold that Smt. Bardi Bai (P.W. 1) could not actually identify the assailant and her evidence in this case against the appellant is

unworthy of any credit. Consequently, the evidence of Ramesh (P.W. 3) is of no consequence. Even otherwise, he was declared hostile as he did

not .support the prosecution case.

According to the prosecution, the appellant immediately after the incident went straight to the house of Sayyad Mustafa (P.W. 7) to Bhopal in the

mid-night and made an extra-judicial confession before him about the crime in the presence of his wife, Smt. Sarvar (P.W. 2) and neighbour,

Riyazuddin (P.W. 19), We have carefully perused the evidence of Sayyad Mustafa (P.W. 7), Smt. Sarvar (P.W. 2) and Riyazuddin (P.W. 19)

and have noticed several discrepancies regarding the persons to whom the confession was made and what precisely was said by the appellant.

Smt. Sarvar (P.W. 2) has stated in her evidence that the appellant had come to her house at 2 O''clock in the night and confessed before her

husband, Sayyad Mustafa (P.W. 7) in her presence that he has killed Patel (Jagannath) and Patelin (Smt. Bardi Bai, P.W. 1). She has also stated

that her husband, Sayyad Mustafa (P.W. 7) did not ask him about the reason for murdering them. On the other hand, Sayyad Mustafa (P.W. 7)

has slated in his evidence that appellant had come to his house at about 12 O''clock in the night and confessed that he has killed both Patel

(Jagannath) and Patelin (Smt. Bardi Bai, P.W. 1) with an axe. Sayyad Mustafa (P.W. 7) has also deposed that on an enquiry by him regarding the

reason for killing, the appellant staled that Jagannath Patel was drunk and was not giving him good food and that he also used to abuse him.

Sayyad Mustafa (P.W. 7) has further deposed in his evidence that after the confession of appellant before him he called his neighbour, Riyazuddin

(P.W. 19) who also asked the appellant as to what has happened and before him also he made the same confession. Here it is relevant to mention

that Sayyad Mustafa (P.W. 7) has nowhere stated about the presence of his wife Smt. Sarvar (P.W. 2) at the time of making of confession by the

appellant. Further, Sayyad Mustafa (P.W. 7) did enquire from the appellant about the reason for committing the offence which has been denied by

Smt. Sarvar (P.W. 2). Moreover, the evidence of Smt. Sarvar is silent about the weapon of offence used by the appellant whereas it is not so in

the evidence of her husband, Sayyad Mustafa (P.W. 7). Riyazud-din (P.W. 19) has stated in his evidence that when he had reached the house of

Sayyad Mustafa (P.W. 7) he saw the appellant confessing before him about his murdering Jagannath and his wife Smt. Bardi Bai (P.W. 1) and that

he was also holding his feet and requesting to save him. Riyazuddin (P.W. 19) has clearly admitted in his evidence that he was present at the time

of confession by the appellant before Sayyad Mustafa (P.W. 7) and the appellant did not confess separately before him. The evidence of

Riyazuddin (P.W. 19) thus further contradicts the evidence of Sayyad Mustafa (P.W. 7) regarding the making of extra-judicial confession by the

appellant.

Thus, in view of the aforesaid several discrepancies regarding the persons to whom the confession was made, the time when the confession was

made and what precisely was said by the appellant, it is very difficult for us to believe the extra-judicial confession which has been retracted by the

appellant. There is also nothing on record to show that appellant had any reason to take them into confidence and believe that they would save him

from trouble. We are not impressed with the evidence of Sayyad Mustafa (P.W. 7), his wife Smt. Sarvar (P.W. 2) and neighbour, Riyazuddin

(P.W. 19) that the appellant made an extra-judicial confession to them. Furthermore, it is also doubtful that the appellant after committing the

murder and particularly robbery of Rs. 500/-would go all the way to Bhopal in the cold wintry mid-night of December and confess before Sayyad

Mustafa (P.W. 7), his wife Smt. Sarvar (P.W. 2) and neighbour, Riyazuddin (P.W. 19).

Mr. M.K. Mishra (P.W. 18) vide Ex. P-22 prepared a spot map on 21-12-89 at about 10.30 p.m. In the said map an axe is clearly shown as a

weapon of offence lying openly at the place of incident. It is, thus, very difficult to believe that an axe was ever recovered from the possession of

appellant on the basis of his discovery statement (Ex. P-28). Furthermore, neither in the axe nor in any of the articles seized from the appellant,

presence of human blood has been reported. Moreover, it has come in the evidence of Sayyad Mustafa (P.W. 7) that he had paid the wages to

appellant in the afternoon of the date of incident and, therefore, merely because of the recovery of Rs. 500/- from his possession it cannot be said

that he had robbed the same from Smt. Bardi Bai (P.W. 1).

For the above reasons, we, therefore, allow the appeal and set aside the conviction of the appellant and sentence awarded to him. He is acquitted

of the charges under Sections 302 and 397 of the Indian Penal Code. He be set at liberty forthwith if not wanted in connection with any other

case.