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Madhya Pradesh High Court

Case No: Criminal Appeal No. 745 of 1985

Kumar Prasad alias Sunderlal	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision: April 25, 1991

Acts Referred:

- Evidence Act, 1872 - Section 118

Citation: (1992) 37 MPLJ 512 : (1992) MPLJ 512

Hon'ble Judges: S.K. Chawla, J; P.C. Pathak, J

Bench: Division Bench

Advocate: S.C. Datt, for the Appellant; A.S. Jha, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Chawla, J.

Appellant Kumar Prasad, aged 26 years, challenges his conviction u/s 302, Indian Penal Code for the offence of murder of his step-mother Dulari Bai and sentence of imprisonment for life imposed for that offence by Additional Sessions Judge, Raipur by judgment dated 4-7-1985.

Appellant"s father Chandrika Prasad (P.W.1) has two wives. The first wife named Deepa Bai was married to him about 20 to 25 years back. Chandrika Prasad (P.W.1) has 3 children from her, appellant being the eldest of them. After 7 to 8 years of the marriage, Deepa Bai is said to have gone insane and is living away from her husband in village Rasni. About 13 to 14 years back, Chandrika Prasad took a second wife namely deceased Dulari Bai, from whom he has 4 children. Deceased Dulari Bai with her children was living with her husband Chandrika Prasad in village Belsoda, Police Station Mahasamund, District Raipur. So far as appellant Kumar Prasad is concerned, he was

living for the past 6 to 7 months prior to the present incident in village Rasni with his mother.

The prosecution alleged that on 20-11-1984 at about 10 a.m. the appellant came on a hired cycle to his father"s house in village Belsoda, when there was none in the house except the appellant"s step-mother deceased Dulari Bai. The appellant killed her by first inflicting injuries on her and then by burning her. When the appellant was leaving the house, Ahilya Bai (P.W.2), aged about 11 years, his step-sister, chanced to come back to the house. She saw the appellant leaving the house on a cycle. It is said that the appellant also left his chappals in the house. During investigation, he is said to have got bush shirt and a full pant recovered on his information and at his instance, which on the report of Chemical Examiner Ex.P-18, were found to be blood stained. The report of serologist was not filed by the prosecution. It is, therefore, not known whether the blood stains on the clothes were of human origin. Nail parings of the feet of the appellant were also found to be stained with blood vide the aforesaid report of the Chemical Examiner. The appellant had a property dispute with his father Chandrika Prasad. He wanted more property in partition from his father and in that connection had earlier belaboured both his father Chandrika Prasad (P.W.1) and his step-mother Dulari Bai and has even wrongfully shut them inside a room of their house in Belsoda where the present occurrence had taken place. Dulari Bai had reported about the previous incident vide FIR Ex.P-16 dated 244-1984. On these allegations, it was the prosecution case that the appellant had murdered his step-mother.

The appellant abjured his guilt and denied that he even visited the house of the occurrence in village Belsoda at the alleged time of the incident According to him, he had gone on the hired cycle from his own village Rasni to village Gullu where his uncle-in-law Shobhit Ram (D.W.2) lived. He had gone there in the company of his cousin Santosh Kumar (D.W.1) who proceeded on his own cycle. The appellant and Santosh had returned from that village only in the evening.

The learned trial Judge held the following circumstances to be established :

(i) The appellant was seen running away from the house of the occurrence,.

(ii) Blood stained bush shirt and full pant were recovered at the instance of the appellant,

(iii) Nail parings of the feet of the appellant taken at the time of his arrest were on chemical examination found to be blood-stained,

(iv) The appellant had taken a cycle on hire in the morning on the date of the occurrence. He had kept that hired cycle with him throughout the day and had returned it only in the evening. The appellant had failed to properly explain his whereabouts throughout the day,

(v) The appellant had strained relations with his step-mother deceased Dulari Bai and his own father Chandrika Prasad. Deceased Dulari Bai had earlier reported against the

appellant and hence, there was sufficient motive for the murder to be committed by the appellant.

Shri Datt, learned counsel for the appellant, urged in his arguments that the case rested against the appellant mainly on the evidence of child witness Ahilya Bai (P.W.2). Relying on the decision of Bharvad Bhikha Valu and Others Vs. The State of Gujarat, he argued that the evidence of child witness should not have been accepted by the trial Court except upon corroboration. The evidence of the child witness itself was discrepant and untrustworthy. It was also argued that the alleged circumstance that appellant was seen leaving the house of the occurrence was not sufficiently incriminating in character. A person may due to fear of falsely being implicated in a crime behave in that manner. Reliance was placed on the decisions of Pratap Singh v. State of M.P. 1970 MPLJ 978 , and Haren Kalita Vs. The State of Assam, The evidence about blood being found in nail parings of the feet of the appellant was absolutely worthless. In this respect support was sought from the decision in Ujagar Singh and Ors. v. Emperor AIR 1939 Lah 149.

"There is, to begin with, no doubt about the fact that deceased Dulari Bai was murdered inside her husband"s house at village Belsoda at the time of the incident. On her post mortem examination, it was found that she had an abrasion 4" X 2" on her left arm and laceration 3" X 1/2" X full thickness of scalp on left parieto occipital region. On internal examination it was found that there was haemorrhage underneath subcutaneous tissue on right parietal region and there was intra-cranial haemorrhage in the right cerebral hemisphere. There were also burns on the face and right half of the head with charring of hairs, on abdomen and chest, right and left thighs, left leg and on parineum with charring of pubic hairs. The burns were approximately 50% and varied from 2nd to 4th degree at various places. This is evident from post mortem report Ex.P-11 and the evidence of Dr. K. Vinaya Kumar (P.W.15). It is also the evidence of the said doctor that the cause of death was due to shock resulting from head injury and burns. The head injury was sufficient in the ordinary course of nature to cause death and so also were the burn injuries. There is no doubt that somebody had first assaulted deceased Dulari Bai and then attempted to burn her before she died.

The more important question for consideration is whether the appellant was the person responsible for the crime. The most important circumstance in this connection was deposed to by Ahilya Bai (P.W.2), step-sister of the appellant. Ahilya Bai was a girl of 11 years. It is her evidence that in the morning on the date of the occurrence she had gone with her grand-father Jhumaklal (P.W.5) to work in a paddy field. Then at about 10 a.m., her grand-father told her to go back to the house because her mother would be required to leave the house to take bath in village tank. It is further the evidence of Ahilya Bai that when she was going back and reached home, she saw her brother i.e. the appellant emerging from house and holding, a cycle. She saw the appellant reaching the gate of the house with the cycle and then riding away on it. She went as usual inside the house but to her great horror she found that her mother was lying sprawled inside the house and was actually burning. She shouted to a neighbouring lady Shanti Bai (P.W.3) that her

mother was burning. Shanti Bai thereupon told her to immediately rush to her father and grand-father and bring them to the house. Ahilya Bai further stated that she then went rushing to her father who was working in a field, different from the field in which her grand-father was working. On way she met one Dilip. Dilip asked her where she was going. She replied to him that she was going for an urgent work to her father. It is also the evidence of Ahilya Bai that when she reached her father, she told him that her mother was burning in the house. She also told him that she had seen brother Kumar Prasad leaving the house on a cycle. Ahilya Bai admitted that Jethu (P.W.7), their servant, was present at the field, where she had gone to tell her father. She deposed that her father soon rushed with her to the house, where the whole thing was then witnessed.

The girl"s father Chandrika Prasad (P.W.1), who was working at a paddy field at the material time, lent full corroboration to the evidence of the girl. He deposed that his daughter Ahilya Bai (P.W.2) had stated to him that her mother was burning in the house and also that she had seen brother Kumar Prasad (appellant) leaving the house on a cycle. The only discrepancy which has appeared in the evidence of these two witnesses related to the question whether Ahilya Bai gave information in parts, namely, the most important information that her mother was burning, which was of most immediate concern to her, and the rest of the information that she had seen brother Kumar Prasad leaving the house with a cycle, at one place or at different places. The evidence of Chandrika Prasad (P.W.1) was that the entire information was given by Ahilya Bai to him at the field itseli The evidence of Ahilya Bai (P.W.2) on the other hand was that she had given the first part of the information to her father at the field and the second part of the information on their way to home. Such kinds of discrepancies are bound to occur when witnesses were recalling matters of detail. The most important thing to note is that Cbandrika Prasad (P.W.1) had got information given by his daughter recorded in the FIR (Ex.P-1) lodged by him soon after the occurrence. The FIR inter alia says :

"My daughter Ahilya Bai came to the field to me at about 12 O"Clock and told me that when she went home on account of work, she saw brother Kumar Prasad emerging out of the house and running away on a hired cycle. She went inside the house and found that her mother was lying burning inside the kitchen."

The FIR cannot of course be used in corroboration to the testimony of the girl Ahilya Bai about the kind of information she gave. The FIR can be used in corroboration of only the maker. The maker of the FIR was Chandrika Prasad. The point, however, about the FIR is that it makes the evidence of Chandrika Prasad (P.W.1) credible and makes it safe to rely on him as to the kind of information his daughter gave to him. The information given was not only that the girl"s mother was burning, but also that the girl had seen the appellant leaving the house and going away on a cycle.

It is judicially recognised that a child witness is often times a dangerous witness. Any mistakes and discrepancies in the statement of a child witness are ascribed to innocence or failure to understand by the child and undue weight is given to what may merely be a

well taught lesson. See Manni v. Emperor AIR 1930 Oudh 406. Hence it is a rule of caution to accept the evidence of child witness only when satisfaction is reached that it is free from tutoring and upon close scrutiny it is found to bear the stamp of naturalness and truth. In the present case, there was no scope for tutoring Ahilya Bai (P.W. 2) on the question as to what information she had given to her father, because of the check furnished by the FIR (Ex.P-1). The appellant was Ahilyabai''s brother, albeit step-brother. The appellant might be having property disputes with Ahilya Bai''s parents. Children are generally unconcerned about disputes between their elders. Ahilya Bai had absolutely no reason to falsely implicate her brother. Ahilya Bai also exhibited lot of understanding and maturity in her evidence. She was doing a woman''s job already i.e. working in the field and running errands etc. Her evidence does not suffer from the infirmity usually attaching to the evidence of a child witness.

The learned counsel for the appellant laid much stress on the evidence of Jethu (P.W.7). Jethu is a servant of Chandrika Prasad (P.W.1) and was working with him at the field when Ahilya Bai came running there. It is the evidence of Jethu that Ahilya Bai loudly wailed to her father that mother had burnt. Jethu did not depose to the further information said to have been given by Ahilya Bai that she had seen appellant leaving the house and going away on a cycle. The evidence of Jethu for that matter would not establish that Ahilaya Bai had not given that part of the information. The possibility that Jethu did not listen intently to what, after all, was being told by a girl to her father because he was just a servant or that he might be away at some distance when that part of the information was given, cannot be ruled out. So far as the neighbouring lady Shanti Bai (P.W.3) is concerned, it was natural for Ahilya Bai at the time of shouting to her to only tell that her mother was burning. Ahilya Bai was not expected to shout at that time all that she had seen because the welfare of the mother was bound to be her first concern. Ahilya Bai was also not expected to tell anything else than the fact that she was going for urgent work to her father; when Dilip (not examined) met her on way.

In conclusion, we hold that it is clearly established that appellant was seen leaving the house of the occurrence and going away on a cycle, when the incident took place. This was also the information conveyed by Ahilya Bai to her father. The learned trial Judge for good reasons rejected the oral evidence of alibi set up by the appellant.

Coming to next circumstance, there is no doubt that appellant did not have good relations with his step-mother, deceased Dulari Bai. In this regard, there was documentary evidence Exs.P-3 and P-13. It is amply established that about 7 months prior to the present incident, to be exact on 24-4-1984, deceased Dulari Bai had made a complaint Ex.P-3 and had also lodged a report Ex.P-13 against the appellant. It would appear from these documents that even after partition between Chandrika Prasad and his brother as also the appellant, the brothers of Durga Prasad and the appellant were not satisfied with the partition. They had on 24-4-1984 gone to the house of the occurrence to forcibly get a stamp relating to partition signed by Durga Prasad. When Durga Prasad had refused to lend his signature to the stamp, they had beaten Durga Prasad and so also deceased

Dulari Bai. They had also shut Durga Prasad, Dulari Bai and their children into a room and had left. The police had registered a case against the appellant and Durga Prasad''s brothers for offences under Sections 342, 323/34, Indian Penal Code.

The trial Judge held the circumstance about recovery of blood stained clothes on the information and at the instance of the appellant to be also established. We are not inclined to attach much weight to this circumstance because of failure on the part of the prosecution to prove that those clothes belonged to the appellant.

To sum up, the appellant was living in village Rasni for the last 6 or 7 months prior to the incident. He was seen departing from the house of the occurrence at village Belsoda and going away on a cycle. He had absolutely no business to come to that house of his father and step-mother with whom he had strained relations. Deceased Dulari Bai was alone in the house at the material time. The incident, which took place inside the house, could not be the handiwork of any person except the appellant who visited the house and disappeared soon after the commission of the crime. The decisions of Pratap Singh and Haren Kalita (supra), relied on by learned counsel for the appellant have no application to the present case. Those decisious would apply when the only circumstance disclosed against the accused may be that he was seen running away at some distance from the house of the occurrence. In the present case, the appellant was seen emerging from the house of the occurrence and leaving on a cycle, at a time when murder, must have taken place in the house. There was none in the house who could have committed the crime. The appellant had absolutely no legitimate business to visit the house. On the other hand, the appellant falsely pleaded alibi. His visit to the house at the material time would show that the crime was his handiwork. The appellant also entertained motive to kill the deceased. All these circumstances when cumulatively considered lead to one and the only conclusion that it was the'' appellant and none else who committed the murder in question. The above circumstances are not only consistent with the guilt of the appellant but are also inconsistent with his innocence. The appellant was the murderer.

In view of the foregoing discussion, there is no force in this appeal. The appeal is dismissed. The conviction and sentence of the appellant are maintained. The appellant is in jail. He shall serve out his sentence.