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**(2017) 03 MP CK 0039**  
**MADHYA PRADESH HIGH COURT**  
**Case No:** 721 of 2004

Ramhuzur

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision:** March 20, 2017

**Acts Referred:**

- Indian Penal Code, 1860, Section 302, Section 397, Section 392 - Punishment for murder - Robbery or dacoity, with attempt to cause death or grievous hurt - Punishment for

**Hon'ble Judges:** N.K. Gupta, ANAND PATHAK

**Bench:** Division Bench

**Advocate:** Sunil Soni, Ankit Saxena, J.M. Sahni

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**Judgement**

(1) The appellant has preferred the present appeal being aggrieved by the judgment dated 15.09.2004 passed by IV Additional Sessions Judge, Gwalior (M.P.) in Sessions Trial No.447/2001 whereby the appellant has been convicted of offence under Section 392 read with Section 397 and 302 of IPC and sentenced to RI for seven years with a fine of Rs.2,000/- and Life Imprisonment with a fine of Rs.3,000/- respectively with default stipulations.

(2) The prosecution's case, in short, is that Deepak Rai (PW-5) had a vehicle Tata Sumo bearing number MP06- B-1111 which was driven by deceased Ramautar (for brevity "the deceased"). Since Deepak Rai (PW-5) had no parking place, his vehicle was being parked at Railway Station parking in the night. On 10.11.2000, the deceased contacted Deepak Rai (PW-5) with the information that he wanted to take the vehicle to drop ailing father of his friends Ramhari and Kalyan Singh to Dhaurka, Police Station Poonch. Thereafter, he took the vehicle along with his friends Ramhari and Kalyan Singh. When the deceased did not come back and vehicle was also missing, Deepak Rai (PW-5) lodged the missing report. In that missing report it was mentioned that the passengers who took the vehicle were the residents of village Dhaurka and thereafter Deepak Rai (PW-5) along with Girwar Singh (PW-4),

contractor of Railway Station Parking, went to village Dhaurka and contacted Motilal Kushwah, father of appellant Ramhuzur. Motilal informed that actual name of Ramhari is Ramhuzur and he along with Kalyan Singh had come to village Dhaurka with a vehicle and most probably the vehicle was given to one Bablu and thereafter the SHO Police Station Padav, District Gwalior Mr. Devraj Singh Kushwah (PW-10) along with witnesses Girwar Singh (PW-4) and Sumant Rai went to the house of accused Bablu at village Karai Buzurg, District Jalaun (U.P.) and found the vehicle lying in front of his house covered with dry grass. On seeing the police party, Bablu ran away however, the vehicle was recovered with a recovery memo Ex.P-6 and the same was taken to the police station Padav, District Gwalior (M.P.).

(3) In the meantime, Fundi (PW-3), chowkidar of Chandura, Police Station Konch, District Jalaun (U.P.), intimated the SHO, Police Station Konch on 12.11.2000 that an unknown dead body was found in the field of Santram Dubey at village Chandura. A Roznamcha Ex.P- 11 was recorded. Inspector Mr. Jagannath Tiwari (PW-8) from police station Konch went to the spot and after completing the formal enquiry prepared the memo of possession of the dead body Ex.P-7 and sent it for post-mortem. A photo of the dead body Ex.P-9 was also taken. Dr. Amit Chaturvedi (PW-2) performed the post mortem on the dead body of an unknown person on 13.11.2000 at Community Health Centre Konch and gave a report Ex.P-5. He found as many as 10 incised wounds to the deceased and on opening of the body, there was blood found in the cavity of left and right lungs. Right lung and the heart were found cut at two places. According to Dr. Amit Chaturvedi (PW-2), the deceased died 36-48 hours back from the time of post mortem due to aforesaid injuries which were sufficient to cause his death in the ordinary course of his life and the death of the deceased was homicidal in nature.

(4) Dr. Amit Chaturvedi (PW-2) provided the clothes of the deceased to the concerned in a sealed packet. Head constable Prem Singh (PW-1) had shown the dead body of the deceased to Samrath Singh (PW-6), father of the deceased, who identified the body of his son and thereafter the packet of clothes was also produced before Samrath Singh and other witnesses who identified on the basis of clothes that the dead body was of the deceased. Inspector Devraj Singh Kushwah (PW- 10) arrested the accused Kalyan Singh and got his memo under Section 27 of the Evidence Act on 08.12.2000. He informed that that he kept the stepney and other parts of the body of vehicle with him, however it is not clear as to whether in consequence of that memo any recovery was done or not. Similarly, appellant Ramhuzur was arrested and a memo under Section 27 of the Evidence Act, Ex.P-3, was recorded by Head constable Prem Singh (PW-1) on 04.01.2001. He gave the intimation about a weapon i.e. knife and clothes worn by him at the time of incident. In consequence of that memo, a knife was recovered vide recovery memo Ex.P-4, however, no clothes of appellant Ramhuzur were recovered. It is not apparent from the record as to whether the knife was sent for forensic science analysis or not. After due investigation, the charge-sheet was filed before the Chief Judicial Magistrate,

Gwalior (M.P.) who committed the case to the court of Sessions and ultimately it was transferred to IV Additional Sessions Judge, Gwalior (M.P.).

(5) Appellant abjured his guilt. He did not take any specific plea and no defence evidence was adduced by him.

(6) The trial court started trial against appellant Ramhuzur and co-accused Kalyan Singh, however, the charge-sheet was filed against accused Bablu declaring him as absconded. During pendency of trial, Kalyan Singh also absconded and therefore the trial was completed only against appellant Ramhuzur. After considering the prosecution evidence, the trial court convicted and sentenced the appellant as mentioned above.

(7) We have heard the learned counsel for the parties.

(8) In the present case, there is no eyewitness and hence, the entire case is dependent upon the circumstantial evidence and thus each circumstance should be considered minutely one by one. First circumstance is whether the death of the deceased was homicidal in nature or not. In this connection, the evidence of Dr. Amit Chaturvedi (PW-2) is important who performed the postmortem on the body of the deceased and gave a report Ex.P-5. He found the following injuries on the body of the deceased:-

1. Incised wound - 5.0 cms x 0.5cm x muscle deep present over front of right upper arm 2.0 cms below shoulder joint;

2. Incised wound - 11.0 cms x 3cm x bone deep present over back of neck at the base vertebra C6-C7 fractured;

3. Incised wound - 2.0 cms x 1.0 cm x muscle deep present over right side of neck, 2.0 cms below ear;

4. Incised wound - 4.0 cms x 1.0 cm x muscle deep present over back of right side of neck, 2.0 cms above the injury no.2;

5. Abrasion - 18.0 cms x 1.0 cm present over back of right chest;

6. Incised wound - 2.0 cms x 0.5cm x present over front of left chest, 2.0 cms below clavicle & 1.0 cm outer to sternum depth muscle deep;

7. Incised wound - 2.0 cms x 1.0 cm x cavity deep present over front of left chest, 2.0 cms outer & below injury No.6;

8. Incised wound - 2.5 cms x 1.0 cm x cavity deep present over front of left chest, 2.0 cms below injury No.7;

9. Incised wound - 2.0 cms x 1.0 cm x cavity deep present over front of right chest, 2.5 cms below clavicle & 1.5 outer to sternum;

10. Incised wound - 1.5 cms x 1.0 cm x cavity deep present over front of right chest, 4.0 below injury No.9.

On opening the body of the deceased, Dr. Chaturvedi (PW-2) found the heart and right lung to be cut at two places and the cavities below the left and right lungs were found to be filled up with huge blood and due to these fatal injuries the deceased died. According to Dr. Chaturvedi (PW-2), the death of the deceased was homicidal in nature and the injuries were sufficient to cause his death in the ordinary course of his life.

(9) Such ten incised injuries could neither be caused by the deceased himself nor could they be sustained by him in any accident and therefore the opinion given by Dr. Chaturvedi (PW-2) is acceptable that the death of the deceased was homicidal in nature and the injuries sustained by him were sufficient to cause his death in the ordinary course of his life.

(10) Second circumstance is motive to cause death. It would be apparent that as per the prosecution story, two persons engaged the vehicle to take their ailing father to village Dhaurka and thereafter the vehicle was also found missing, hence, though there is no previous enmity between the appellant and the deceased but his death could be caused to take the vehicle from his custody. Hence, a person who obtained the vehicle from the deceased should be the culprit of murder. Under these circumstances, if the appellant is found to be the culprit of robbery then motive of murder would be automatically established.

(11) The third circumstance is the evidence of last seen. In this connection, Deepak Rai (PW-5) has created a witness Girwar Singh (PW-4), contractor of parking of Railway Station, Gwalior so that his version should be confirmed by independent witness, however, there are several lacunae in the evidence of Girwar Singh (PW-4). First, according to witness Deepak Rai (PW-5) and Girwar Singh (PW-4) there was no place of parking at the house of Deepak Rai (PW-5) and therefore, the vehicle was being parked at the Railway Station's parking in the night and parking slip was

issued by Girwar Singh. The missing report which was lodged by Deepak Rai (PW-5) was not proved by the prosecution. However that report in shape of the entry of Roznamcha is available in the file of the Chief Judicial Magistrate, Gwalior in which the case was committed to the Court of Session. According to that intimation, at about 03:00 pm, driver i.e. deceased took the vehicle with the pretext that he wanted to drop his friends Ramhari and Kalyan Singh to village Dhaurka so that their ailing father may be dropped at village Dhaurka. If any document filed by the police along with the charge- sheet goes in favour of the accused then it can be read in evidence though it is not otherwise proved. Hence, it is proved that according to the missing report, the vehicle was taken by the deceased at about 03:00 pm and thus there was no possibility that the vehicle was finally parked in the night at parking of Railway Station or there was any opportunity to witness Girwar Singh (PW-4) to meet the passengers of the vehicle to whom the deceased was taking to village Dhaurka. It is surprising that when the vehicle was taken in the mid day and it was not finally parked in the parking of Girwar Singh then there was no possibility to have any parking chit or any slip which can be written by the witness Girwar Singh and hence in the absence of seizure of that chit it cannot be accepted that the Girwar Singh had noted the names of the passengers who were taken by the deceased. In this connection, it is also important to note that in seizure memo Ex.P-6 by which the vehicle was recovered from one Bablu, Girwar Singh was shown as a witness. The owner of the vehicle- Deepak Rai (PW-5) did not visit village Karai Buzurg for recovery of his vehicle whereas police had taken Girwar Singh (PW-4) with him and it appears that Girwar Singh (PW-4) had acted in this case as an agent of Deepak Rai (PW-5), the owner of the vehicle. Hence, testimony of Girwar Singh (PW-4) cannot be believed beyond doubt.

(12) The story was cooked by Girwar Singh (PW-4) and Deepak Rai (PW-5) that after lodging of the missing report they went to village Dhaurka and met Motilal father of appellant Ramhuzur who informed about the vehicle that it was with Bablu and ultimately the vehicle was recovered from the house of Bablu vide recovery memo Ex.P-6. In this connection, the police did not take the evidence of various villagers of village Dhaurka to show that on 10.11.2000 the vehicle was taken by appellant at village Dhaurka and thereafter sold the said vehicle to accused Bablu. Even Motilal, father of appellant, was not examined by the police. The evidence given by Girwar Singh (PW-4) and Deepak Rai (PW-5) falls within the category of hearsay evidence to the fact that they were taken to the village Dhaurka and Motilal was not ailing at that time because the fact told by Motilal cannot be reproduced by these witnesses without any basis and they have stated what they had heard from Motilal. Hence, the evidence of Girwar Singh (PW-4) and Deepak Rai (PW-5) has no evidentiary value that the vehicle was taken to village Dhaurka or the appellant had sold it to the absconding accused Bablu.

(13) As discussed above, there was no intervention of Girwar Singh (PW-4) when the vehicle was taken at about 03:00 pm. There was no basis shown by Deepak Rai

(PW-5) except the entry made by Girwar Singh (PW- 4) relating to names of passengers who engaged the vehicle. Though the names of passengers were mentioned in the missing report, the missing report was not proved by the prosecution. However, since name of the appellant was mentioned as Ramhari in the missing report and according to Deepak Rai (PW-5) his correct name was Ramhuzur and his father's name is Motilal, it can be accepted that initially the vehicle was taken by appellant Ramhuzur and Kalyan Singh but such evidence of fact relating to last seen is a remote evidence. It was for the prosecution to connect appellant Ramhuzur with the crime thereafter. If vehicle was taken to village Dhaurka then as to how it was recovered at an open place in front of the house of accused Bablu at village Karai Buzurg, District Jalaun. Police did not mention about the distance between village Dhaurka and Karai Buzurg. The dead body of the deceased was found at village Chandura, Police Station Konch, District Jalaun (U.P.) and thereafter it was for the prosecution to establish as to what was the date when the vehicle was snatched from the deceased and whether the dead body of the deceased could be thrown at village Chandura and thereafter the vehicle could be sold to accused Bablu, resident of Karai Buzurg. According to Dr. Chaturvedi (PW-2), he performed the post mortem on the unknown body on 13.11.2000, however, the body was putrefied and the death of the deceased was caused before 36 to 48 hours prior to date and time of the post mortem and therefore it is possible that the deceased was killed on 11.11.2000 after 02:00 pm whereas the story of last seen gives an indication that on 10.11.2000 the vehicle was taken by the appellant and Kalyan Singh and on the same very day it was parked at village Dhaurka whereas it is not clear as to whether the driver was missing or not. Witness Girwar Singh (PW-4) has accepted, in para 2 of his statement, that Motilal had accepted that when the vehicle was taken to village Dhaurka driver i.e. the deceased was also alive and present with the vehicle and appellant. If the vehicle was taken to village Dhaurka with a wrong pretext then the appellant and accused would have killed the deceased prior to taking the vehicle to village Dhaurka, hence, presence of driver at village Dhaurka indicates that some mishappening was done by someone with the deceased who took the vehicle back from the village Dhaurka and that piece of chain of circumstantial evidence could not be traced by the police in a proper manner.

(14) Also, the witness Girwar Singh (PW-4) and Deepak Rai (PW-5) have claimed that they had seen the passengers who engaged the vehicle but after arrest of appellant Ramhuzur or the absconding accused Kalyan Singh no test identification parade was arranged by the police before these two witnesses and therefore dock identification has no much evidentiary value in the present case. Under these circumstances, the circumstance pertaining to fact of last seen is not proved beyond doubt that deceased was taken by appellant Ramhuzur along with the vehicle and if it is found proved then according to witness Girwar Singh (PW-4) himself the deceased was alive along with the vehicle when the appellant had reached village Dhaurka and

therefore the evidence of last seen is not sufficient to connect the appellant Ramhuzur with the case. It was for the police to prove the entire facts that vehicle was provided by appellant Ramhuzur to co-accused Bablu who is absconding and it was to be connected as to how the dead body of the deceased was found at village Karai Buzurg, jurisdiction of Police Station Konch where the vehicle was found in front of the house of absconding accused Bablu at village Karai Buzurg, hence, no cogent evidence is found against the appellant relating to fact of last seen.

(15) The appellant had tried to get a memo under Section 27 of the Evidence Act against co-accused Kalyan Singh to show that he had kept some parts of the vehicle like stepney etc with him but after getting that memo Ex.P-14 to be recorded no consequential recovery is produced to show that confession given by the accused was correct, thus, the document Ex.P-14 is not at all admissible as per the provisions of Section 24 of the Evidence Act and it has no evidentiary value.

(16) The investigating officer Head Constable Prem Singh (PW-1) has stated that on interrogation, appellant Ramhuzur told about his clothes worn by him at the time of incident and one knife which was used as a weapon in the crime on which a memo under Section 27 of the Evidence Act was recorded as Ex.P-3 and then the knife was recovered vide seizure memo Ex.P-4. It is true that no clothes of the appellant Ramhuzur were recovered by Head Constable Prem Singh (PW-1). It is also true that the seized knife was not sent for forensic science examination to show that there was any human blood or blood of the deceased present on the knife. The investigating officer who recovered the knife after approximately two months of the crime had himself realized that there was no blood stain on the knife and therefore the same was not sent for forensic science analysis. In memo recorded under Section 27 of the Evidence Act, the entire story written by the police is not admissible. According to the provisions contained under Section 27 of the Evidence Act only that portion is admissible by which a new fact is known to the police and therefore only one line of that memo is admissible that the appellant had kept a knife behind a photo in his house. Learned counsel for the appellant has cross-examined the various witnesses like Girwar Singh (PW- 4) and Head Constable Prem Singh (PW-1) that whether the knife was recovered from behind the photo or a wall clock, however, the witnesses have stated that the photo was nothing but a sandwich of wall clock and photo, hence, such cross-examination has no much effect on the testimony of the witnesses Head Constable Prem Singh (PW-1) and Girwar Singh (PW-4). However, the evidence of Girwar Singh (PW-4) who was taken as a witness in seizure creates a doubt in itself. It was not shown by Head Constable Prem Singh (PW-1) as to why he did not take any independent witness relating to seizure of knife. Since knife was not sent for its forensic science analysis and such knife could be obtained from the open market, by seizure of that knife no evidence was created against the appellant.

(17) Under these circumstances, where investigation is silent on various points as to how the vehicle was taken by the deceased from the village Dhaurka and what was the incident which has taken place with the deceased at village Chandura where his dead body was lying and as to how vehicle was received by absconding accused Bablu and therefore only by evidence of last seen it cannot be said that appellant was the person who took the vehicle along with the driver or who robbed the vehicle or killed the deceased. Since the chain of circumstantial evidence is broken, the appellant could not be convicted of any offence like robbery or the murder. The trial court has committed an error in convicting the appellant of offence under Section 392 read with Section 397 and Section 302 of IPC.

(18) On the basis of the aforesaid discussion, the appeal preferred by the appellant appears to be acceptable and consequently, it is accepted. The conviction as well as sentence recorded by the trial court against the appellant for the offence under Section 392 read with Section 397 and Section 302 of IPC is hereby set aside. Appellant is acquitted from all the aforesaid charges.

(19) That, due to bail jump, the appellant is in jail and therefore the Registry is directed to issue a release warrant of appellant without any delay so that he may be released forthwith.

(20) A copy of the judgment be sent to the court below along with its record for information. It is pertinent to note that in the present case, accused Kalyan Singh and Bablu are still absconding.