

Jagdish Mishra Vs The State of M.P. & Another

Court: MADHYA PRADESH HIGH COURT

Date of Decision: July 21, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 292](#) - Power to examine the accused - Evidence of officers of the Mint

[Indian Penal Code, 1860](#), [S](#)

Hon'ble Judges: [J.K.Maheshwari](#), [J.P.Gupta](#)

Bench: Single Bench

Advocate: [Manish Datt](#), [Priyank Choubey](#), [S.K Shrivastava](#)

Final Decision: [Dismissed](#)

Judgement

1. This criminal appeal has been filed assailing the impugned judgment dated 18/04/2007 passed by the Sessions Judge, Damoh, District Damoh,

in Sessions Trial No.132/2005 whereby the appellant has been convicted under sections 302, 364(A) and 201 of the I.P.C. and sentenced him to

undergo imprisonment for life along with fine of Rs.100/-, imprisonment for life along with fine of Rs.100/- and R.I for 5 years along with fine of

Rs.100/-, in default three months R.I for each of the offence.

2. The case of the prosecution, in brief, is that the deceased Hakam Singh was missing on 18/03/2005 near about 7.00 PM and on 19/03/2005

near about 7.00 AM in the court yard of Hakam Singh, his aunt Ganga Bai (PW-8) found three letters in which ransom was demanded to get back

Hakam Singh alive with threatening that he will be killed if any information is given to the police. Thereafter some efforts were made to search him.

Thereafter on the same day senior member of the house Bhan Singh (PW-5) went to the police station Pathariya District Damoh along with

aforesaid three letters and lodged the report about in the incident and handed over aforesaid three letters to the police and police recorded Dehati

Nalishi Ex.P-2 and seized aforesaid three letters. On the basis of aforesaid information, FIR (Ex.P-13) was registered at Crime No.73/2005 for

the offences punishable under section 364(A) of IPC. On 22/03/2005 dead body of Hakam Singh was found in the field of Ghandharv Singh of

Village Pathariya under the cover of "Bhusaa" and body was badly smelling. On post mortem, it was found that death of Hakam Singh was taken

place on account of strangulation 3-4 days before. During investigation Halki Bai @ Geeta Bai (PW-2), Narayan Singh (PW-2) and Devendra

(PW-7) disclosed that on 18/03/2005 near about 7.00 to 7.30 PM, the deceased Hakam Singh was seen alive with the appellant/accused and

thereafter dead body of Hakam Singh was found. The appellant/accused was arrested on 27/03/2005 and from his possession one note book

Article B was seized and seizure memo Ex.P-9 was prepared. During the investigation with the permission of the Chief Judicial Magistrate sample

of handwriting of the accused was taken and the seized letters and note book Article B and samples of handwriting were sent for handwriting

expert report of the questioned documents to the State Examiner, Government of M.P.

3. After completion of the usual investigation, the charge sheet was filed before the Chief Judicial Magistrate, Damoh and case was committed to

the Sessions Court and report of the handwriting expert Ex.P-116 was received. According to the report of handwriting expert, the aforesaid

letters with regard to the demand of ransom were found to be written by the person who written note book Article B and sample handwriting. The

learned Trial court framed charges under sections 364(A), 302 and 201 of the IPC against the appellant/accused and his plea was recorded. He

abjured the guilt and claimed trial.

4. The learned Trial court after completing the trial, recorded finding of conviction of appellant for the offence punishable under sections 364(A),

302, and 201 of the IPC and sentenced him as mentioned above. The learned Trial court recorded aforesaid finding of conviction mainly based on

the circumstantial evidence of last seen of deceased Hakam Singh alive in company of the appellant and letters written by the appellant/accused

with regard to demand of Rs.50,000/- for getting back Hakam Singh alive.

5. Learned counsel for the appellant has assailed the aforesaid finding of learned trial court on the ground that the evidence with regard to the last

seen of deceased in the company of appellant/accused is not proved beyond reasonable doubt and the report of handwriting expert is also not true

and believable as appellant have been asked to copy down by the police forcibly and they are fabricated. Hence it cannot be said that prosecution

has proved charges beyond the reasonable doubt. Hence the appeal be allowed and appellant/accused be acquitted.

6. On the other hand, learned Panel Lawyer for the respondent/State opposed the aforesaid contention of the learned counsel for the appellant and

prayed to dismiss the appeal.

7. Having considered the contention of the learned counsel for the parties and on perusal of the record, we found that in this case there is no

controversy with regard to finding of dead body of the deceased Hakam Singh on 22/03/2005 in the field of Gandharv Singh of village Pathariya

and the dead body was covered with "Bhusaa" and bad smell was coming and this fact has been proved by the testimony of Narayan Singh (PW-

3) and N.S. Bais (PW-15) Investigating Officer and lash Panchayatnama Ex.P-5. In this case it is also not controversial that the death of the

deceased was taken place on account of strangulation 3-4 days before and the same fact has been proved by the prosecution with the testimony of

Dr.Vijay Ambore (PW-10) and post mortem report Ex.P-10. Thus the prosecution has proved the fact that death of Hakam Singh was homicidal.

8. Now the question is that whether appellant abducted and committed death of the deceased and also demanded ransom of Rs.50,000/- and

after commission of death with intention to disappear the evidence of crime hide the dead body of the deceased.

9. As mentioned earlier, the case of the prosecution is based on circumstantial evidence, in which Halki Bai @ Geeta Bai (PW-2) and Devendra

(PW-7) claimed that on 18/03/2005 deceased Hakam Singh was last seen alive in the company of appellant/accused near about 7.30 PM and

thereafter deceased was not seen alive. On perusal of the statements of Halki Bai @ Geeta Bai (PW-2) and Devendra (PW-7) we are of the view

that their statements are reliable and there is nothing on record to consider their statement with suspicion. They are independent and natural

witnesses and have no personal grudge with the appellant/accused and their testimony has remained unimpeachable during their cross examination.

10. Apart from it, the demand of ransom by the appellant/accused through letter Article A is also found to be proved beyond reasonable doubt.

Note book Article B has been seized from the possession of the appellant/accused on 27/03/2005 after arrest of him by seizure memo Ex.P-9 as

stated by N.S. Bais, Investigating Officer (PW-15) and Bhagwan Singh (PW-9) and correctness of their statement has been accepted by the

appellant/accused during his accused statement under section 313 of Cr.P.C. Similarly, Chappan Singh, ASI (PW-14) has stated that he with the

permission of the Chief Judicial Magistrate (Ex.P-13) collected samples of handwriting of the appellant/accused from the jail, which are Ex.P-14 to

Ex.P-113 and the appellant/accused has admitted correctness of this fact in his statement recorded under section 313 of the Cr.P.C.

11. Ganga Bai (PW-8) has stated that on the next day of missing of Hakam Singh near about 8.30 AM while she was grooming the court yard of

her house she found three papers, in which it was narrated that Hakam Singh has been abducted and Rs.50,000/- be arranged to get back him

alive and she handed over the letters to his father-in-law Bhan Singh and Vijay Ambore, S.I (PW-16) has stated that on 19/03/2005 Bhan Singh

reported the incident to him and he recorded Dehati Nalishi Ex.P-2 and also seized letters Article A, A-1 and A-2 and prepared seizure memo

Ex.P-3. Bhan Singh (PW-5) has also corroborated the same fact and N.S. Bais, Investigating Officer (PW-15) has stated that the aforesaid letters

and Article B and sample of handwriting were sent to the State Handwriting Examiner with the memo Ex.P-115 and got report of Handwriting

Examiner which is Ex.P-116. As per the report, the questioned documents Q-1 to Q-3 are the letters Articles A, A-1, and A-2 and handwriting

mark A-1 to A-111 (in which A-1 to A-100 are sample handwriting of the accused and A-101 to A-111 part of the handwriting content of note

book Article B) have been written by the same person. The correctness of the report Ex.P-116 has not been challenged. During the accused

examination, appellant/accused has not specifically denied the correctness of the report. The report has been given by State Examiner, Government

of Bhopal of the questioned documents as a public servant, which is admissible in view of the provision of section 292 of the Cr.P.C and section

114(e) of the Indian Evidence Act. In the appeal memo, it's correctness or admissibility has not been challenged. In this regard the contention of

the appellant/accused is that the letter (Article A) is fabricated and was got the same written by police forcibly but this contention has not substance

as during the statement of the concerned witnesses, no suggestion has been given with regard to aforesaid defence. Appellant/accused during

examination of him under section 313 of the Cr.P.C has not disclosed anything with regard to compelling or forcefully written letter Article A in his

handwriting or any sample of his handwriting. Therefore in this regard prosecution evidence are reliable and it is found proved beyond the

reasonable doubt that the appellant/accused has written letter Article A and in the Article A author claimed that deceased Hakum Singh was in his

possession and if Rs.50,000/- was not arranged, the dead body of Hakum Singh will be sent to his house. As the letter Article A has been written

by the appellant/accused, which proved admission of the appellant/accused that he abducted the deceased for getting ransom. This fact and

circumstance corroborate the circumstance of last seen with the company of the deceased and these facts and circumstances in absence of any

explanation, proved the fact beyond the reasonable doubt that appellant/accused abducted the deceased for getting ransom of Rs.50,000/- under

threat to commit death of him and thereafter committed murder and also hide his corpus to disappear the evidence of the aforesaid crime.

12. Therefore, in view of the above discussion, the appellant's conviction for the offence punishable under sections 364(A), 302, 201 of the IPC is

affirmed. So far sentence is concerned, it is also found to be in accordance with the law. Hence the order with regard to sentence is also affirmed

and appellant"s appeal is dismissed.