
Rupsai and Others Vs State of M.P. (Now C.G.)

Criminal Appeal No. 843 of 1994

Court: Chhattisgarh High Court

Date of Decision: July 28, 2011

Acts Referred:

Penal Code, 1860 (IPC) " Section 302, 396, 460

Citation: (2012) 1 CGLJ 354

Hon'ble Judges: Sunil Kumar Sinha, J; R.S. Sharma, J

Bench: Full Bench

Advocate: Sanjeet Sharma, for the Appellant; U.K.S. Chandel, Panel Lawyer, for the Respondent

Final Decision: Allowed

Judgement

Hon"ble Shri Radhe Shyam Sharma, J.

This appeal is directed against the judgment dated 1-8-1994 passed by the Additional Session

Judge, Jashpurnagar in Session Trial No.64/89. By the impugned judgment, the appellants have been convicted under Sections 460, 302 and 396

of the Indian Penal Code and sentenced to undergo imprisonment for life. Case of the prosecution, in brief, is as under :

In the intervening night of 31st of January and 1st of February, 1989, the appellants entered the house of deceased Mohan Prasad Verma, and

committed decoity with murder of the deceased. Nankibabu (PW-1) lodged First Information Report (Ex.P-1) on 1-2-1989. The investigating

officer reached the place of occurrence, gave notice to the Panchas and prepared inquest (Ex.P-9A) on the dead body of the deceased. Dead

body of the deceased was sent for post mortem to Community Health Centre, Patthalgaon. The post mortem examination was conducted by Dr.

Amal Kumar Jha (PW-3), who gave his report Ex.P-2, in which he found the following injuries:

(i) Incised wound on the left temporal region horizontal in direction 4""x2""x3 l/2"" deep dura & brain matter coming out.

(ii) Incised wound at left pre auricular ear extending upto post marshid region cutting through and through external ear leaves 1/3rd 5"x2"x4" deep.

(iii) Incised wound oval shaped on back left side at the level of T11-T12 2 1/2"x 1x2" deep. All injuries ante mortem in nature.

The doctor opined that mode of death was shock and coma on account of injuries over the vital organs - brain, internal jugular vein and carotid

artery and the death was homicidal in nature.

2. In further investigation, memorandum statement of appellant Rupsai was recorded on 4-2-1989 vide Ex.P-11 and at his instance, a Chakoo

(Knife) was seized vide Ex.P-18. Memorandum statement of appellant Mahendra was recorded on 4-2-1989 vide Ex.P-9 and at his instance, a

Farsi was seized vide Ex.P-20. Memorandum statement of appellant Jaikumar was recorded on 4-2-1989 vide Ex.P-10 and at his instance, an

Axe was seized vide Ex.P-21. Memorandum statement of appellant Tejram was recorded on 4-2-1989 vide Ex.P-12 and at his instance, a

bamboo was seized vide Ex.P-19. Seized articles were sent for chemical examination to Director, Forensic Science Laboratory, Sagar, from

where a report (Ex.P-27) was received. According to the FSL report, article A, i.e., blood stained soil, article Cl. i.e., Lungi of the deceased,

article C2, i.e., underwear of the deceased, article C3, i.e., Baniyan of the deceased, article D, i.e., Knife which was seized from appellant Rupsai,

article E, i.e., Farsi, which was seized from appellant -Mahendra and article F, i.e., Tangi, which was seized from appellant Jaikumar, articles G1

and G2, i.e., bed-sheets, which were seized from the place of occurrence, were stained with blood.

3. After completion of the investigation, a charge-sheet was filed in the Court of Judicial Magistrate First Class, Jashpurnagar, who, in turn,

committed the case to the Court of Session, from where it was received on transfer by the Additional Sessions Judge, Jashpurnagar, who

conducted the trial and convicted and sentenced the appellants as mentioned above.

4. Dr. Sanjeet Sharma, learned counsel for the appellants argued that the finding of guilt recorded on the basis of evidence of Ku. Laxmin (PW-2),

Urmila (PW-4) and Champabai (PW-5) is not reliable and the offences were not proved beyond reasonable doubt. Names of the appellants were

not mentioned in the First Information Report (Ex.P-1). According to the prosecution, a test identification parade of the appellants was arranged

by the investigating officer, but, report thereof is not on record of the session case and the Tahsildar, who conducted the parade, was not examined

by the prosecution. In absence of the memo (report) of test identification parade, identification of the appellants for the first time in the Court is not

reliable. Memorandum and recovery are also not proved by the prosecution. Therefore, the finding of guilt recorded by the trial Court is not

sustainable in the eye of law.

5. On the other hand, Shri U.K.S. Chandel, learned Panel Lawyer for the State/respondent, supporting the judgment under appeal, argued that the

prosecution witnesses are natural witnesses. The identification of the appellants made by the prosecution witnesses in the Court is substantive

evidence and can be based for conviction of the appellants.

6. We have heard learned counsel for the parties at length and have perused the record with utmost circumspection. Conviction of the appellants is

based on the testimonies of Ku. Laxmin (PW-2), (Jrmila (PW-4) and Champabai (PW-5). The case of the prosecution is based on identification

of the appellants made by these three witnesses.

7. In the instant case, the trial Court in paragraph 11 of the impugned judgment has held that merely because the identification memo was not

produced in the Court, evidence of the prosecution witnesses cannot be held to be not reliable. The witnesses have legally identified the appellants

before the Court.

8. It is true that the test identification parade as such is not a substantive piece of evidence, but it is done only for the satisfaction of the prosecution

that the investigation was moving in the right direction. The substantive evidence of a witness is the statement in Court but as a rule of prudence,

earlier identification proceedings are held in order to corroborate the testimony of a witness given in Court as regards the identity of the accused

who is not known to him from before. In the instant case, the test identification parade was held under the supervision of a Tahsildar, but neither

the test identification parade memo was produced in the Court nor the Tahsildar was examined by the prosecution.

9. Now, we have to see whether the statements of Ku. Laxmin (PW-2), Urmila (PW-4) and Champabai (PW-5) regarding identification of the

appellants for the first time in the Court are reliable.

10. As stated by Ku. Laxmin (PW-2) in paragraph 3 of her statement, she had identified the appellants/accused Tejram, Mahendra, Rupsai,

Jaikumar and Ramprasad in the Court and she had stated that the appellants committed murder of her brother Mohan (the deceased). Urmila

(PW-4) has stated that, the appellants had entered her house and caught hold of her husband Mohan. (the deceased). Champabai (PW-5) has

stated that the appellants had dragged the deceased out of his room and accused Mahendra had assaulted the deceased with a Katar (Knife).

11. Nankibabu (PW-1) has stated that he had lodged First Information Report (Ex.P-1). Inquest (Ex.P-9A) was prepared by J.P. Singh,

Assistant Sub-Inspector (PW-9). The First Information Report (Ex.P-1) was lodged against, unknown persons. No mark of identification of the

assailants was also disclosed therein. While the investigating officer was preparing the inquest report, no mark of identification was disclosed. In the

Inquest (Ex.P-9A), it is mentioned that on being enquired from the relatives of the deceased, they told that unknown persons had entered the

house of the deceased in the night and assaulted the deceased with sharp weapon. Nankibabu (PW-1) is the father of Urmila (PW-4). According

to the contents of the F.I.R., he was duly briefed by Urmila (PW-4) and Ku. Laxmin (PW-2). These witnesses did not tell the names of assailants

to him. If the appellants were the assailants, who were well known to the eye witnesses, their names would have been stated to Nankibabu (PW-

1). Therefore, omission of the names of the appellants in the F.I.R. was fatal to the prosecution.

12. Ku. Laxmin (PW-2) has stated in paragraph 7 that test identification parade was conducted by the Tahsildar at Kansabel and the police

officials had accompanied her to the place of the parade. Urmila (PW-4) has stated in paragraph 6 that police did not make any enquiry from her

nor she had stated anything to the police. She has further stated in paragraph 10 that she had gone to the Rest House for identification of the

appellants. Police personnel were present in the Rest House. Champabai (PW-5) has stated in paragraph 7 that her eyesight is very weak. At the

time of occurrence also, her eyesight was weak.

13. From the statement of Champabai (PW-5), it is evident that her eyesight was weak and the occurrence took place in the night, therefore, it

was not possible for her to identify the appellants in the night. It is also evident from the evidence of Ku. Laxmin (PW-2) and Urmila (PW-4) that

during the identification proceeding, the police personnel were present. Since police personnel were present at the time of identification proceeding

and the identification of the appellants was done in their presence, therefore, the said identification proceeding is not reliable and cannot be based

for conviction of the appellants.

14. The First Information Report (Ex.P-1) was lodged against unknown persons. No mark of identification of the appellants was disclosed therein.

In the Inquest (Ex.P-9A), it is mentioned that on being enquired from the relatives of the deceased, they told that unknown persons had entered the

house of the deceased in the night and assaulted the deceased with sharp weapon. The identification memo was not produced in the Court nor the

Tahsildar, who conducted the test identification parade, was examined by the prosecution. The manner in which the occurrence took place as well

as the conduct of Ku. Laxmin (PW-2), Urmila (PW-4) and Champabai (PW-5), who for the first time identified the appellants in the Court, do not

lead to an inference that the appellants were properly identified.

15. The prosecution has led evidence against the appellants on the basis of blood found on the articles D - Chakoo (Knife) and E - Farsi, which

were seized on the memorandum statements of appellants Rupsai and Mahendra respectively, but it has failed to prove the memorandum

statements and the recovery made on the basis of the memorandum statements.

16. Lunduram Bhagat (PW-6) and Apeel Singh (PW-7), who are witnesses to the memorandum statements and recovery of the articles, have not

supported the case of the prosecution. Therefore, the prosecution has failed to prove that the Chakoo was seized from appellant Rupsai and the

Farsi was seized from appellant Mahendra and has also failed to prove that human blood was found on these two articles. In the above

circumstance, the memorandum statements and the recovery of the articles cannot be based for conviction of the appellants.

17. We are of the view that in the above facts and circumstances of the case, the prosecution has utterly failed to prove the charges against the

appellants and for the reasons aforementioned, the impugned judgment cannot be sustained. In the result, the appeal is allowed. The conviction and

sentence awarded to the appellants under Sections 460, 302 and 396 of the Indian Penal Code are set aside. At present, the appellants are on bail.

Their bail bonds are cancelled and sureties stand discharged.