

State of M.P.

Vs

Chhayaram

Criminal Appeal No.455 of 1979

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

22.04.1992

JUDGEMENT

1. This appeal is directed by the State of Madhya Pradesh on being aggrieved by the judgment of the High Court of Madhya Pradesh at Jabalpur rendered in Criminal Appeal No. 1020/73 whereby the High Court has allowed the appeal of the respondent and set aside the judgment of the trial Court convicting the respondent under Section 302, IPC and sentencing him to undergo imprisonment for life.

2. According to the prosecution on 23-5-73 at about 7 a. m. between village Deogar and Badpali the respondent-accused axed the deceased Andhi Sirmati to death which occurrence is stated to have been witnessed by PWs 1 and 2.

3. The deceased was the widow of the respondent's elder brother Birbal and after the death of Birbal the respondent remarried the deceased. Some time after the marriage, the respondent wanted to dispose of the immovable property which the deceased inherited from her first husband. The deceased did not agree to the proposal of the respondent. On account of this, the relationship between the spouses became strained. According to the prosecution, the refusal on the part of the deceased to part with the property was the proximate cause for the respondent to put an end to the life of the deceased by ruthlessly attacking her with an axe marked as Art. E.

4. PWs 1 and 2 are projected as eyewitnesses to the occurrence. These two witnesses deposed that they witnessed the occurrence on their way to the market and on seeing the occurrence they returned to the village and reported this incident to PW3, the brother of the deceased. It may be mentioned here that PW 2 is none other than the daughter-in-law of PW 3. Thereupon PW 3 went to the scene and saw his sister lying dead in a pool of blood with innumerable cut injuries.

5. Meanwhile as per the prosecution, the respondent went to the police station where PW 15 (the Head Constable) recorded his statement under Ex. P-21 and recovered the, axe, Art. E in the presence of PW 8 under memo Ex. P-10. On the basis of Ex. P-21, a case was registered. PW 13, took up the investigation and proceeded with it.

6. The accused before the trial Court denied his complicity with the offence and stated that no statement was recorded from him. The case of the respondent is that he after hearing the information that his wife had been done away with went to the scene of occurrence, took the axe, which was lying there and went to the police station to make a complaint but the police instead of

registering a case against the real accused, detained him in the police station and foisted this false case against him.

7. The trial Court relying upon the evidence of PWs 1 and 2 and the admissible portions marked as A B C in Ex. P-21 and taking into consideration the conduct of the respondent in appearing before the police station with the axe under Section 8 of the Evidence Act, convicted the respondent under Section 302 and sentenced him to imprisonment for life.

8. On appeal preferred by the respondent the High Court acquitted the respondent by setting aside the conviction and the sentence imposed therefor by the trial Court on the following reasons:

(1) The axe and the dhoti seized from the respondent by PW 15 the presence of PW 8 is not found to have been stained with human blood.

(2) The evidence of PWs 1 and 2 is not cogent and reliable. In Para 12 of the judgment, the High Court has held thus:

"We are, therefore, reluctant to act on the testimonies of such witnesses."

(3) PW 3 who is none other than the father-in-law of PW 2, even being informed about the incident, did not go to the police station. In fact, PW 3 was not on good terms with deceased sister,.

Lastly, the High Court concluded as follows:

"All these facts show that it will be highly unsafe to act on the interested and inimical prosecution, evidence in the absence of independent corroboration. We are of the view that the appellant Chhayaram was wrongly convicted under Section 302 of the Penal Code."

9. After going through the judgments of the Courts below which are the only documents placed before us, we are constrained to hold that the evidence of PWs 1 and 2 does not inspire confidence in the mind of this Court. Once the evidence of PWs 1 and 2 is rejected, the only circumstance appearing against the respondent is his appearance before the police with an axe. Only certain portion of the statement of the accused in Ex. P-21 are marked as 'A', 'B' but there is nothing on record before us as to what those statements are.

10. It is highly deplorable that in spite of the fact that this appeal has been filed in the year 1979 and pending before this Court over a period of 13 years not even a single document relating to this case is filed before us. When we asked the learned counsel as to what are the portions marked as A, B, C he is not in a position to explain what those marked portions are. This Court is now completely handicapped in going through the entire evidence since no copies of the documents are filed before this Court.

11. The plea of the learned counsel at the fag end of this case for an adjournment to cause production of the documents cannot be acceded to at this length of time since the case was once argued in September, 1990 and thereafter it is reposted today before this Bench.

12. In absence of any other records, this Court is left with only an option of going through the judgments of the Courts below and rendering its finding. As we have pointed out above, the reasons

given by the High Court for disbelieving the evidence of the prosecution are not dislodged, under these circumstances, we see absolutely no reason to interfere with the judgment of the High Court which is neither perverse nor suffers from any manifest illegality or error.

13. In the result, the appeal is dismissed.

Appeal dismissed.

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