

Chandu alias Chandrahas

Vs

State of M. P.

Criminal Appeal No. 556 of 1992,

(Kuldip Singh, N. M. Kasliwal JJ)

15.09.1992

JUDGEMENT

KULDIP SINGH, J.

1. Special leave granted.

2. Chandu alias Chandrahas was tried for the murder of one Hemrai. He was convicted by the trial Court on November 23, 1984 under Sections 302 and 201, Indian Penal Code. He was sentenced to imprisonment for life under Section 302 and was given five years' rigorous imprisonment under Section 201 of the Indian Penal Code. Appeal filed by him was dismissed by the High Court.

3. The prosecution case is entirely based on circumstantial evidence. The prosecution story is that sometime before the occurrence the cattle belonging to the appellant entered the fields of the deceased thereby damaging the standing crops which resulted in a quarrel between the two. The matter was reported to the village panchayat. It is further alleged that the appellant gave threats that he would kill the deceased. On February 2, 1984, sometime in the evening the deceased told his family members that he was going to village Renutola. The appellant was grazing his cattle in the Nalla which separates the two villages of Singhanbhedi and Renutola. The deceased and the accused were seen near that Nalla. The deceased did not return till late night. The dead-body of the deceased was found next morning from the fields near about the Nalla.

4. The trial Court relied upon the following circumstances to hold the appellant guilty of the murder of Hemrai:

"(1) The accused was grazing his cattle in a Nalla of village Singhanbhedi when the deceased had passed this nalla in order to go to his field in the adjoining village Renutola.

(2) There was sign of struggle on the spot across this Singhanbhedi nalia in the field of Bhahmmalal and thereafter almost the mark of continuous dragging towards the field of Uderam where the dead body of the deceased Hemraj was found. The upper part of the body of the deceased had no clothes and was bare.

(3) The deceased had left his house wearing the clothes including the shirt (Art. A-I) and neck thread (Art.A-3).

(4) The accused has recovered the shirt of the deceased (Art. A-I) from the tank of Singhanbhedi and the shirt was duly identified in identification proceedings.

(5) The accused had injuries in his body and the cloth of the accused was found bloodstained.

(6) The accused had beaten the deceased some 15 days prior to the occurrence and had threatened to kill him."

5. The findings of the courts below are primarily based, on two of the above mentioned six circumstances. It was found that the appellant and the deceased were last seen together near the Nalla from where the dead body of the deceased was recovered and corroboration was sought from the recovery of the shirt of the deceased at the instance of the appellant. Having believed these two circumstances coupled with other indicators mentioned above the courts below have come to the conclusion that the guilt of the appellant has been proved beyond reasonable doubt.

6. The prosecution examined Pardeshanbai (P.W. 2) sister of the deceased, Sukhwanrinbai (P.W. 3) mother of the deceased and Kumar (P.W. 5) brother of the deceased to prove the circumstance that the deceased and the appellant were last seen together. According to these witnesses they were returning from their fields in village Renutola to their village Singhanbhedi and when they reached near the Nalia they saw the appellant grazing cattle. These witnesses further deposed that they also saw the deceased who was about to cross the Nalia from the side of Singhanbhedi village. None of these witnesses actually saw the appellant and the deceased together. Simply because the appellant, the deceased and various other persons including the witnesses, were in the vicinity of Nalla at the relevant time it cannot be assumed that the deceased and the appellant were seen together. There is no evidence that the deceased and the appellant talked to each other or even met each other near the Nalia. We are of the view that the factum of appellant grazing his cattle near the Nalla and the deceased passing through that area is by itself, not sufficient to hold that they were last seen together. So far as the recovery of shirt worn by the deceased at the instance of appellant, we are of the view that this part of the story is highly improbable and difficult to believe. There is no reason whatsoever as to why the murderer of deceased should take the shirt of the deceased along with him. One can imagine the taking away of jewellery, weapon or some other valuable article, from the person of deceased but the taking away of the shirt of the deceased by the appellant is a circumstance which cannot be believed. This is obviously a police padding. Regarding the injuries on the person of appellant, he has explained that the police gave him beatings after his arrest. Having disbelieved the circumstantial evidence regarding their last seen together and the recovery of the shirt belonging to the deceased, it is difficult to sustain the conviction of the appellant.

7. We, therefore allow the appeal, set aside the judgments of the courts below, give benefit of doubt to the appellant and acquit him. He should be released forthwith.

Appeal allowed.

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