

Chamardas

Vs

State of M.P.

Criminal Appeal No. 156 of 1982

(K. Jayachandra Reddy, G. N. Ray JJ)

25.09.1992

JUDGEMENT

G. N. RAY, J.:-

1. This appeal is directed against the order of conviction of the appellant under Section 302, IPC and consequential sentence of life imprisonment passed on October 22, 1980 in Criminal Appeal No. 790 of 1975 by the High Court of Madhya Pradesh at Jabalpur, setting aside the Judgment of acquittal dated April 18, 1975 passed by the learned Sessions Judge, Bilaspur, in Sessions Trial No. 27 of 1975. The appellant, Chamardas, was tried for murdering one Mst. Kapothin on the night of November 6, 1974 in the house of Jaisingh (P.W. 1) in the village Dumar, Tehsil Katghora, District Bilaspur. The prosecution case in short is that the deceased, Mst. Kapothin, was an old and infirm lady and on the day of occurrence she had been living in the house of her son, Jaisingh, along with other members of the family. On November 6, 1974 at about 10.00 p.m. a thief entered the house of Hari Sharma (P.W. 4) in the said village but he was chased by Hari Sharma (P.W. 4) and Mahesh (P.W. 5). The said thief in a bid to escape entered the house of Jaisingh. He was carrying a burning faggot in his hand. Jaisingh (P.W. 1) and his wife, Phoolbai (P. W. 3) apprehending danger from the thief, ran out of the house, carrying their child with them but Mst. Kapothin, the old and infirm lady could not come out and remained inside the room. The said thief entered the room in which the old lady was present and bolted the room from inside. Some villagers collected outside the house of Jaisingh on hearing the shouts and in order to ensure that the said thief could not escape, the room in which the thief had locked himself was bolted from outside. Jaisingh and other villagers surrounded the house and kept a watch for the thief for apprehending him if he would come out. During the night Jaisingh (P.W. 1) heard the lady shouting for help on a few occasions and thereafter her voice was not heard. On the next morning, with the thief locked from outside and some villagers remaining on guard, Jaisingh (P.W. 1) left for Police Station, Pali and lodged a report giving details of the thief entering his house. It was mentioned in the first information report that the thief who was locked in the room was aged 25 to 30 years and he was wearing a half pant and a shirt and the old lady shouted from inside the room for help saying that she was being beaten but after some time her voice was not heard. Some time after Jaisingh had left to lodge the report at the Police Station, the thief had broken open the door and the said broken door was later on seized by the police. After breaking the door, the thief made a bid to escape but he was chased and ultimately apprehended near a nala and brought back to the house of Jaisingh. The police party which had come to Jaisingh's house on the basis of the first information report, took the said thief into custody. The old lady, Mst. Kapothin was found lying dead inside the room wherefrom the thief had escaped and it appeared that she had died of several injuries caused with the burning faggot which was also lying near the

dead body. The accused thereafter was tried for murdering the said Mst. Kapothin. Considering some of the alleged discrepancies indicated by the learned Sessions Judge, the learned Sessions Judge was of the view that the identity of the accused as the thief who was bolted in the said room from outside could not have been established beyond all reasonable doubts. It may be noted here that the accused had taken the defence that he was passing along the nala of the village and when he went to ease himself near the said nala. some of the villagers came and apprehended him.

2. The State of Madhya Pradesh thereafter preferred the said Criminal Appeal No. 790 of 1975 against the said Judgment of acquittal passed by the learned Sessions Judge. The High Court after analysing the evidences inter alia came to the finding that it was proved beyond all reasonable doubts that the thief who was locked inside, was the accused person and there was no difficulty in identifying the said accused, By indicating reasons, the High Court came to the finding that the learned Sessions Judge had misread the evidence and a very unreasonable view was taken by the learned Sessions Judge in holding that the identity of the accused could not be established beyond all reasonable doubts. The High Court indicated that from the deposition of the eye-witness it was established that the thief who was locked inside the room and who after breaking the door tried to escape was the accused person. It was also indicated that the description of the thief and his wearing apparel since mentioned in the first information report had also tallied. It was also established that an old and infirm lady died after sustaining several injuries inflicted on her with burning faggot. Accordingly, the High Court came to the finding that a case of murder committed by the accused was established. In that view of the matter, the High Court allowed the appeal, set aside the Judgment of acquittal passed by the learned Sessions Judge and convicted the accused under Section 302, IPC and sentenced him to life imprisonment. As aforesaid, against the Judgment and order of the High Court the instant appeal has been preferred.

3. The learned counsel for the appellant has contended that even if it is accepted that the thief had in fact entered the house of Jaisingh and was locked in the room as alleged by the prosecution, it is quite apparent and evident that the said thief could not be identified because it was a dark night and the thief was not known to the villagers or the said Jaisingh. The learned counsel has also contended that admittedly the thief was not apprehended by the police by opening the door. The accused was admittedly brought by the villagers from the side of the nala of the village and it was only on the basis of the evidence of some villager the said accused/ appellant was identified as the thief who entered the room. The learned counsel has contended that it is the positive case of the accused/ appellant that he had been near the nala to ease himself in the morning and he was unnecessarily apprehended by the villagers perhaps on mistaken identity. The learned counsel has contended that there is no direct evidence for establishing that the thief has caused the injuries on the person of the said Mst. Kapothin, as a result of which the old lady had died. It was only on the basis of the fact that some burn injuries were noticed on her person, it was presumed that the accused / appellant who was locked inside the room had caused such injuries and the poor lady had died because of such injuries. The learned counsel has contended that some infirmities and discrepancies in the evidences adduced by the witnesses were taken into consideration by the learned sessions Judge and by giving cogent reasons the learned Sessions Judge had come to the finding that the identity of the accused/ appellant as the thief who entered the room and was locked inside had not been established beyond all reasonable doubts. The learned counsel has submitted that if on the basis of the evidences and facts of the case, a view was taken by the learned Sessions Judge and such view is also one of the possible views, and an order of acquittal was based on a reasonable view taken by the learned Sessions Judge, there was no occasion for the High Court to make a re-appraisal of the evidences adduced in the case and to substitute its own findings for the purpose of convicting the accused/ appellant. He has submitted that the principles governing interference with the Judgment of acquittal

have been clearly indicated in a number of decisions by the Privy Council and this Court. The learned counsel has, therefore, submitted that the Judgment of the High Court since impugned in the appeal shall be set aside and the accused/ appellant should be acquitted by affirming the Judgment and order of the learned Sessions Judge.

4. After considering the facts and circumstances of the case and the submissions of the learned counsel of the appellant, we are, however, unable to accept the submissions made by the learned counsel. In this case, there are clear and positive evidences by which it was established beyond all reasonable doubts that the thief who entered the house of Jaisingh and was locked from outside where the poor lady was staying is the accused/ appellant. From the evidence of the eye-witnesses the description of the accused/ appellant was clearly established and his wearing apparel also tallied with the first information report lodged with the police before the accused/ appellant was apprehended. There are positive evidences to the effect that the deceased, Mst. Kapothin, cried for help and shouted that she had been assaulted by the thief. Barring the said thief, there was no other person inside the room where the deceased, Mst. Kapothin was staying. The deceased admittedly had suffered several burn injuries and a faggot with which the injuries were caused on the person of the deceased had also been found lying inside the room. There is no occasion to hold, in the facts of the case, that an innocent person who had gone to ease himself by the side of the nala was apprehended by the villagers on a mistaken identity of the thief. There is evidence that the accused/ appellant came out of the said room and when he was attempting to escape he was apprehended by the villagers. We fully agree with the view taken by the High Court that in the facts of the case the conclusion drawn by the learned Sessions Judge that the identity of the accused/appellant was not established beyond all reasonable doubts was wholly unjustified and completely against the weight of the evidences. In the aforesaid circumstances, we dismiss this appeal. The accused /appellant is on bail. The bail bond is cancelled and the accused/ appellant is directed to serve out the sentence. Appeal dismissed.

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