

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE D.B. HON'BLE MR. JUSTICE S.C. SHARMA & HON.MR.**  
**JUSTICE ALOK VERMA, JUDGE**

**Criminal Appeal No.326/2010**

Munna @ Kaniram & another . . . Appellants

Versus

State of Madhya Pradesh . . . Respondent

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**CORAM**

Hon'ble Shri Justice S.C. Sharma

Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

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Shri Vivek Singh, learned counsel for appellant No.1.

Shri A.K. Saxena, learned counsel for appellant No.2.

Shri Mukesh Kumawat, learned counsel for the respondent/State.

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**Judgment**

**24.10.2017**

**Per : Alok Verma, Justice:**

This Criminal Appeal arises out of judgment passed by learned Special Judge, Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act, 1989, District-Ratlam in Special Session Trial No.25/2008 dated 23.03.2010, wherein the learned Special Judge convicted the present appellants under Section

364/34, 302/34, 201/34 of IPC and sentenced them to 7 years rigorous imprisonment under Section 364/34 of IPC and fine of Rs.1,000/-, life imprisonment under Section 302/34 of IPC and fine of Rs.1,000/- & 3 years rigorous imprisonment under Section 201/34 of IPC and fine of Rs.1,000/- with default stipulation. In all, eight persons including the present appellants faced trial before the learned Special Judge. The learned Special Judge convicted the present appellants as aforesaid and acquitted the other co-accused Madanlal, Ishwarlal, Prakash, Babu, Ramesh & Bharat.

2. According to prosecution story, the dead body of the deceased Ramesh, husband of Sonu (P.W-6) and son of Tulsi Bai (P.W-32), was found on 22.03.2008 under a culvert. On this, a merg was registered by Police Station-Badnawat, District-Dhar and panchayatnama lash (Exhibit-P/9) was prepared. During merg inquiry, the nature of death of the deceased was found to be homicidal, and therefore, the dehatinalish (Exhibit-P/32-A) was registered and spot map (Exhibit-P/11) was prepared. Subsequently, the dead body was identified as that of the deceased Ramesh, and thereafter, investigation began.

3. During the investigation, it was found that the deceased was taken by the accused Munna along with accused Ramlal, who was Police Constable, in a jeep along with other co-accused. The deceased was dealing in purchasing and selling of tomatoes and it

also transpires from the record that the accused Munna was his active partner in the business. It was alleged that Ramesh owed Rs.80,000/- to accused Munna and to recover the amount, he was taken by accused Munna along with accused Ramlal, who pressurize him for payment of the amount.

4. After he was taken away by the accused Munna and Ramlal with other co-accused, he did not come back to his home and his dead body was found next day i.e. on 23.03.2008, and therefore, the case of the prosecution hinges on the fact that he was last seen alive with the accused Munna and Ramlal.

5. The learned trial Court framed charges against the accused persons under Sections 147, 364/149, 302/149, 201 of IPC & Section 3(2)(5) of Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act. The trial Court recorded evidence of both the sides and also recorded their statements under Section 313 of Cr.P.C. and convicted and sentenced them as aforesaid.

6. Aggrieved by the judgment of conviction and sentence, the present appeal is filed on the ground that the case is based on circumstantial evidence, which is not reliable and conviction cannot be based on alleged circumstances. It was also not proved that the deceased owed Rs.80,000/- to accused Munna. The learned trial Court placed reliance of statement of Jagdish (P.W-31), who was only a chance witness and cannot be relied. The trial Court also

erred in holding that the appellant Munna informed the wife of the deceased through Jhamaklal (P.W-11) between 22.03.2008-26.03.2008 that the deceased would come back home and she should not worry.

7. Learned counsel for the State supported the judgment of conviction and sentence and submits that conviction and sentence passed by the trial Court should be affirmed.

8. After going through the impugned judgment, point for determination arises that whether the sole circumstance of last seen alive with accused Munna and Ramlal can be taken as proved before the trial Court and whether conviction can be based on the facts and circumstances that were found proved.

9. In the present case, there are following circumstances appeared against the present applicant:-

(i) that on 22.03.2008, the deceased was taken away in a jeep by the appellants Munna and Ramlal along with other co-accused.

(ii) on next day, dead body was found under a culvert, which could be identified only on 26.03.2008.

(iii) between 22.03.2008 to 26.03.2008, appellant Munna informed the wife of the deceased Sonu (P.W-6) through Jhamaklal (P.W-11) that the deceased would come back home in a day or two and she should not worry about him.

(iv) as far as motive was concerned, it was the case of the prosecution that the deceased owed Rs.80,000/- to accused Munna.

10. Now the appellant Ramlal police constable, who was stated to have helped the accused Munna in taking away the deceased from his home and he was also seen by Jagdish (P.W-31), who was a chance witness and it was a day when people were celebrating Holi (Dhuleri), and therefore, this witness went out in search of beer to drink and when he was searching beer for himself, he saw a jeep, in which, the accused Ramlal sitting along with the deceased Ramesh.

11. Now to appreciate the evidence produced by the prosecution before the trial Court, these circumstances has to be minutely scrutinized to see whether all the circumstances were fully proved.

12. The most important witness of the prosecution is Sonu (P.W-6) wife of the deceased, who stated in her statement that when her husband was taken by accused Munna along with other co-accused, the deceased and this witnesses were in the house of father of this witness Balu (P.W-7). Father and mother of this witness went to the field to work there after which, the accused persons reached home and took the deceased along with them. In her statement, she did not identify other co-accused persons including the appellant Ramlal. She only identified Munna, and therefore, it is apparent that she picked and chose the accused according to her wishes.

13. Further, she omitted many material facts in her court

statement including the fact that her father also saw the deceased along with the co-accused when her sister went to the field to call her father and when her father was coming back towards home. This fact was totally missing in her statement in respect of other accused persons. She was not declared hostile by the prosecution, and therefore, she was allowed to pick and choose the accused persons.

14. Balu (P.W-7) is father of Sonu (P.W-6), wife of the deceased Ramesh. According to his statement, he came to know about the incident when he reached back home. He did not state that he saw the deceased along with the co-accused in the jeep.

15. Another important witnesses is Jhamaklal (P.W-11), who is real brother of the deceased. This witness turned hostile, however, when he was cross-examined by the Public Prosecutor, he admitted that he informed the wife of the deceased on the behest of accused Munna that the deceased would come back home in two to three days and she should not worry about him.

16. Last important witness is Jagdish (P.W-31), on whose testimony, the learned trial Court relied. As stated earlier, he was a chance witness. He was roaming here and there in search of beer and per chance he saw the deceased along with other accused persons in a jeep.

17. Statement of Sonu (P.W-6) wife of the deceased was recorded on 27.03.2008 after identifying the body of the deceased. In her

statement to police, she stated that the deceased did not want to go with them. Accused Munna was demanding his money back and the deceased told him that he would pay the amount after arranging it in few days, however they were in a hurry and they took him with them. They did not allow him even to wear the sleepers. They did not allow him to wear proper cloths and took him in a lower, which he was wearing at that time, however, she did not informed anybody about the incident.

18. The explanation given by the prosecution is that Jhamaklal (P.W-11) informed her that her husband was safe and he would reach back home in a few days, however, this story was a after thought as police statement of Jhamaklal was recorded only on 30.03.2008 after four days of identifying the dead body.

19. Sonu (P.W-6) in her examination-in-chief, she did not mentioned that she was informed by Jhamaklal (P.W-11) about the incident though this fact was mentioned in her statement under Section 161 of Cr.P.C. She was again declared hostile and did not confront with this part of the statement, so it cannot be said that this peace of evidence that Jhamaklal (P.W-11) informed witness Sonu between 22-26.03.2008 is not proved.

20. Prosecution witness Jagdish is a chance witness. His statement was recorded on 20.01.2008. As such, his statement was recorded by delay of about a month, and therefore, not reliable. Being a chance witness, his statement should have been scrutinized very minutely, but

the trial Court without taking this aspect into consideration, relied on him heavily to convict the appellant Ramlal, who was not identified by wife of the deceased Ramesh.

21. Another important witness is mother of the deceased, Tulsibai, who was examined as P.W-32. She was not present when the deceased was taken by Munna but she said that Ramesh had great faith on the accused Munna and he never informed her that he was asking for money. She also stated that Munna is closely associated with Ramesh and she was informed through mother of Sonu (P.W-6), wife of the deceased Ramesh that deceased would come back home. This information was obtained on her behest by mother of Sonu on telephone from appellant Munna. He informed her that Munna sent the deceased to Ujjain giving him Rs.500/- and he would come after two to three days.

22. Taking these materials into consideration, it is apparent that so far as the statement of Sonu (P.W-6) is concerned, there is a material omission in her statement. She also picked and chose amongst the accused persons. The statement of Jhamaklal (P.W-11) and Jagdish (P.W-31) were not reliable and conviction could not be based on their statement.

23. Theory of last seen together alive is a weak kind of evidence. The conviction can be solely placed on such evidence only after fact of seeing last alive with the accused is proved beyond doubt. In this case, however, as the statement of Jhamaklal (P.W-11) and Jagdish

(P.W-31) are not reliable and statement of Sonu is full of contradiction and in our considered opinion, it is not safe placed conviction of the present appellants on such statements.

Accordingly, this appeal is allowed. The appellants are given benefit of doubt. Their conviction and sentence under Sections 364/34, 302/34, 201/34 of IPC are hereby set aside. They should be released forthwith if their presence is not required in any other case. The amount of fine deposited by them if any, may be returned to them.

Directions issued by the trial Court in respect of seized material are hereby affirmed.

**(S.C. Sharma)**  
**Judge**

**(Alok Verma)**  
**Judge**