

Surendra Sharma vs. The State of M.P.

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Cr.A.No.703 of 2010

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ON THE 21st OF NOVEMBER, 2022

CRIMINAL APPEAL No. 703 of 2010

BETWEEN:-

**SURENDRA SHARMARAMSWAROOP
SHARMA, AGED ABOUT 30 YEARS,
22/2 VAIDH KHAYALIRAM KA
BAGEECHA INDORE (MADHYA
PRADESH)**

.....APPELLANT

(SHRI MANISH YADAV APPEARED FOR APPELLANT.)

AND

**THE STATE OF MADHYA PRADESH
GOVT. THRU.ARCHI KENDRA
CHATRIPURA INDORE (MADHYA
PRADESH)**

.....RESPONDENT

(SHRI R.S. BAIS APPEARING ON BEHALF OF A.G./STATE)

This appeal coming on for hearing on this day JUSTICE SHRI RAJENDRA KUMAR (VERMA) has passed the following:

J U D G E M E N T

01. Appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment of conviction and order of sentence dated 26.03.2010 passed in Sessions Trial No. 1169/2009, passed by Additional Sessions Judge, Indore, whereby the appellant has been convicted for the offence punishable under Section 302 of I.P.C. and sentenced to undergo life imprisonment with a fine of Rs.1,000/-, in default of payment of fine, to further undergo 1000 days R.I.

02. The prosecution story, briefly stated, is that on 24.04.2008 at about 04.00 PM, mother of appellant Gangabai alongwith Ankit was sitting on the dump (Gumti), appellant and his son Guddu was passing from there then, Ankit asked appellant that today where are are going looking like a hero. Appellant told him that wherever he was going, it was his last bye. Because wife of appellant Mona was not with him and due to this, she got suspicious went to appellant's house which was locked. When she saw through the lattice, Mona wife of appellant was lying dead and rope was wrapped around her neck. According to Ganga Bai the appellant

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had strangled Mona to death by putting a rope around her neck. At 5:10 PM at P.S. Chatripura, Indore, FIR lodged by Ganga Bai which was registered as Crime No. 167/2008. S.H.O B.D. Tripathi went on the spot and broken the lock and went inside the room and prepared Panchnama regarding breaking of lock. I.O. Prepared inquest panchnama of dead body i.e. Ex.P-2 and when he was preparing Panchnama he found a letter Ex.P-31 on plain paper which was written by appellant. I.O. also prepared spot map and seized the letter Ex.P-31. During investigation, specimen signature writing of appellant was taken and that letter Ex.P-31 was sent for examination to State Examiner. Charge-sheet was filed against the appellant/accused person.

03. Appellant was charged for offence under Section 302 of I.P.C. He abjured his guilt and took a plea that he has been falsely implicated in the present crime and prays for trial.

04. In support of the case of prosecution, the prosecution has examined as many as 11 witnesses namely Ganga Bai (PW-1), Sangeeta Bai (PW-2), Ranendra (PW-3), Shikha (PW-4), Ashok (PW-5), Devendra Jadhav (PW-6), S.S. Udavat (Inspector) (PW-7), Dr. Bharat Vajpai (Medical Officer) (PW-8), Moolchand Raghuvanshi (A.S.I) (PW-9), Rakesh Vyas (Inspector) (PW-10), B.D. Tripathi (I.O.) (PW-11). No witnesses have been examined by the appellant in defence. However, in examination under Section **313** of

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Code, appellant stated that above incident was caused by some unknown person who entered in the room by the backdoor.

05. Learned trial Court, on appreciation of the evidence adduced by the parties, pronounced the impugned judgment and finally concluded the case and convicted the appellant for commission of the said offence under the provisions of the I.P.C., as stated above.

06. Learned counsel for the appellant submits that the appellant is innocent and the learned Trial Court has convicted the appellant wrongly without considering the evidence available on record. There are material omissions and contradictions in the statements of the prosecution witnesses. The learned Trial Court has not considered the evidence in right aspect and convicted the appellant. It is also submitted that there is no eye witnesses, the prosecution case is based on circumstantial evidence Ganga Bai (PW-1) who lodged the F.I.R has turned hostile and has not supported the prosecution case.

07. It is also submitted by the appellant that report of Handwriting Expert was not produced by the prosecution and in the absence of such Report how it can be ascertained that Ex.P-31 (letter) was written by appellant. It is also submitted that the defence of appellant has been totally ignored by learned trial Court and the prosecution has failed to prove its story beyond reasonable doubt. Therefore, prays for acquittal of the

appellant.

08. Learned Public Prosecutor has opposed the prayer. Inviting our attention towards the conclusive paragraphs of the impugned judgment, learned public prosecutor has submitted that the learned trial Court has convicted the appellant rightly after considering each and every facts and evidence available on record produced by the prosecution. It is further submitted that all the allegations leveled against the appellant have been found proved by the learned trial Court after appreciation of evidence. Hence, appellant is not entitled for any relief and prays for dismissal of the appeal.

09. I have considered rival contentions of the parties and have perused the record.

10. It is settled law that the Court can even take into consideration the part of the statement of a hostile witness it supports the case of prosecution. In **(Attar Singh v. State of Maharashtra, (2013) 11 SCC 719)**, the Apex Court held that, the Court is not precluded from taking into account the statement of hostile witnesses is altogether and it is not necessary to discard the same in toto and can be relied upon partially. If some portion of the statement of hostile witnesses inspires confidence, it can be relied upon and it cannot be thrown out as wholly unreliable. [See also **(Bhajju v. State of M.P. (2012) 4SCC 327)**, **Govindaraju v. State (2012) 4 SCC 722)**, **M.**

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Sarvana v. State of Karnataka, (2012) 7 SCC 636, Veer Singh v. State of U.P. (2014) 2 SCC 455, Khujji v. State of M.P. (1991) 3 SCC 627, Devraj v. State of Chhattisgarh, (2016) 13 SCC 366, Sudru v. State of Chhattisgarh, (2019) 8 SCC 333l, Rajesh Yadav v. State of U.P. 2022 SCC OnLine SC 150 and (Syad Akbar v. State of Karnataka, (1980) 1 SCC 30),]

11. It is true that Gangabai (PW-1) has turned hostile partially, but she supported the prosecution story to the extent that she saw the appellant and his son passing through their dumpster (Gumti), Ankit asked appellant that, today where are you going looking like a hero. Appellant told him that wherever he was going, it was his last bye. Mona wife of appellant was not with him as usual. She went to Surendra's home which was locked. When she saw through the lattice his wife Mona was lying on the earth and she was not responding. Then she informed the police, thereafter, police came and broken the lock and entered in the room and they saw a rope (**feeta**) was wrapped around the neck of Mona. Testimony of Gangabai is unchallenged and there is no cross-examination by appellant. PW-2 Sangeeta Bai also supported PW-1 Gangabai, PW-2 Sangeeta Bai is the sister-in-law (Jethani) of deceased Mona. She stated that on the date of incident there was a quarrel between appellant and his wife/deceased, because deceased had gone somewhere from the home since last 15 days. Testimony of PW-2 Sangeeta Bai is also unchallenged. Thus, motive is also

proved by the prosecution. There is no reason to disbelieve the unchallenged testimony of PW-1 Ganga Bai and PW-2 Sangeeta Bai who are the close relatives of appellant.

12. Admittedly, Report of Handwriting Expert/State Examiner was not produced before the Trial Court but Ganga Bai (PW-1), who is the mother of the appellant clearly stated that inquest Panchnama (Ex.P-2) was prepared and letter written by his son appellant was found and seized by the Police at that time. B.D. Tripathi (PW-11) who has prepared the inquest Panchnama (Ex.P-2) has clearly stated that he found a letter/paper written by appellant. These statements have not been denied by the appellant in cross-examination.

13. In Ex. P-31, which was not challenged/disputed by the appellant. Appellant clearly confessed that he murdered his wife it can be reproduced as below:-

“मैं सुरेन्द्र शर्मा परिवार वालो से और अपनी औरत से तंग आकर मई इसे मार रहा है मेरी औरत के चाल चलन ठीक नहीं है वो गलत काम करती है सारे घर के लोग सहयोग करते हैं। मैंने परेशान होकर मुक्त कर दिया मोहल्ले के लोगों को मैं बताता है तो वो मुझसे बात नहीं करते मेरी नजर में ये लोग गधो को देर है घर न ही अड्डो जहो राजेश जैसे रहते है ओर मोज मस्ती करते है । सुरेन शर्मा”

14. It is settled law that an extra judicial confession, if it is voluntarily, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of accused and it is not necessary that evidence of extra judicial confession should be corroborated on material facts. In the present case, the confession made by appellant in writing is proved as Ex. P-31, which is not challenged by the defence. It is the argument of appellant that extra-judicial confession /Ex.P-31 cannot be made on sole ground of conviction, it may be used only as a corroborated piece of evidence.

15. In **Pyara Singh v. State of Punjab (1978) 1 SCR 661**, the Apex Court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears have been treated as a weak piece of evidence it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witnesses are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted

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and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trust-worthy and beyond reproach the same be relied upon and a conviction can be founded thereon.

17. In the present case the conviction is based on the unchallenged testimony of PW-1 Ganga Bai and PW-2 Sangeeta Bai, an extra-judicial confession in writing Ex. P-31 of appellant which is well corroborated with the medical evidence and testimony of doctor. In view of aforesaid assimilation of facts and evidence available on record, we find that prosecution has successfully proved its case beyond any doubt. Looking to the fact that Ex.P-31 is not challenged/disputed by the appellant, non-availability of Handwriting Expert's report is not fatal to prosecution.

18. In view of the aforesaid, no infirmity has been found in the order of conviction and sentence passed by the Court below.

19. The appeal fails and is hereby dismissed.

(Vijay kumar shukla)
Judge

(Rajendra Kumar (Verma))
Judge

Vatan