

1

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE ANIL VERMA
CRIMINAL APPEAL No. 909 of 2010**

BETWEEN:-

1. SHOBHARAM AND ANR. S/O RATAN BHIL, AGED ABOUT 20 YEARS, OCCUPATION: LABOUR VILL. GURJAR BIRMAVAL PS BILPANK DISTT. RATLAM (MADHYA PRADESH)
2. KAILASH S/O GOBA BHIL, AGED ABOUT 24 YEARS, OCCUPATION: LABOUR VILLAGE GURJAR PARA BIRMAVAL P.S BILPANK (MADHYA PRADESH)

.....APPELLANTS

(MS. SHARMILA SHARMA, LEARNED COUNSEL FOR THE APPELLANTS)

AND

THE STATE OF MADHYA PRADESH THROUGH POLICE STATION BILPANK DISTT. RATLAM (MADHYA PRADESH)

.....RESPONDENT

(SHRI NITIN SINGH BHATI, LEARNED GOVERNMENT ADVOCATE FOR THE RESPONDENT/STATE)

Reserved on : 22.02.2023

Pronounced on : 01.03.2023

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, Hon'ble Shri Justice Vivek Rusia delivered the following:

JUDGMENT

This appeal arises from the judgment dated 29.07.2010 passed by the IVth Additional Sessions Judge, Ratlam, District Ratlam in S.T.No.115/2009 whereby the appellants have been convicted under Section 302/34, 201 of IPC and sentenced to undergo life imprisonment, 1 Year R.I.each with a fine of Rs.5,000/-, Rs.1,000/- each and in default of payment of fine to further undergo 2 Years R.I.

2. The prosecution story in short is as under:

A. On 09.04.2009, Nandibai the mother of Soma S/o Narayan Bheel went to the river to take bath but did not return till the evening 6 P.M., then Soma and his wife Sitabai went to search for her but only clothes of Nandibai were found. They came back with the thought that she might have gone somewhere. The next day i.e. on 10.04.2009 also she did not return home. In the evening, Devi Singh informed Soma that her mother is lying dead near the river. Soma and his brother went there and saw the dead body of their mother without a head one hand and one foot lying. They thought that the animals might have damaged the dead body. They brought the dead body home and cremated it without informing the police.

B. After 2-3 days, Shobharam and Kailash were telling in the village that they have cut the throat of one and they would cut the throat of another and will go to jail. This was overheard by Bharat, the son-in-law of Soma. Prem S/o Kalu also heard and communicated to Soma. Kallu, suddenly appeared as an eyewitness that he saw Shobharam and Kailash assaulting Nandibai with Farsi and Sword. On the basis of said information, Soma lodged an FIR at Police Station Bilpank on 02.05.2009 which was registered at Crime No.117/2009 for offences under Sections 302, 201-A, 34 of I.P.C. against the appellants.

C. The appellants were arrested and on their disclosure one Farsi and Sword

were seized. From Soma passport size photographs and a pearl necklace were seized. The clothes of Nandibai were also recovered from the house. Kailash was arrested on 02.05.2009 vide Ex.P-4. His memorandum under Section 27 of the Indian Evidence Act was recorded in which he disclosed the place of crime. In the second memorandum Farsi was also recovered from an open place vide Ex.P-10 and in the third memorandum skull of Nandibai, a bunch of hair and a jaw were recovered near the agricultural field of Banjara vide Ex.P-11. Later on appellant No. 2 Shobharam was also arrested and on his memo, one sword was recovered vide Ex.P-12. On 03.05.2009 spot map was prepared and stones containing the blood stain, small pieces of bones, a white pearl necklace and broken bangles were recovered vide Ex.P-9. The two pearl necklaces were identified by Soma vide Ex.P-14, and the seized articles were sent for FSL examination. As per the FSL report Ex.P-22 human blood was found only on the stone and no blood was found on Farsi and Sword. After completing the investigation, the charge sheet was filed and the trial was committed to the Sessions Court. The appellants denied the charges and pleaded for a trial.

D. The prosecution examined 14 witnesses as PW-1 to PW-14 and exhibited 22 documents. In defence, the appellants examined one Radheshyam (DW-1) and got exhibited the statements of Kalu and Bharat under Section 164 of Cr.P.C. After evaluating the evidence which came on record, the appellants have been convicted and sentenced for the offence as stated above. Hence, this appeal before this Court.

We have heard the learned counsel for the parties and have perused the record.

3. Vide letter dated 03.06.2009, the Superintendent of Police, Ratlam sent the

bones to the Director of Medico-Legal Institute, Government of M.P. Dr R.P.Soni (PW-14), Senior Forensic Specialist sent a report Ex.P-21 on 09.06.2009 with the findings that the bones are of human origin and they belong to the same individual, sex appears to be of a female aged about 60 plus minus five years. Injuries present on the bone were caused by hard blunt-edged sharp objects sufficient to cause death and as such death will be homicidal in nature. Duration of death is 6-12 weeks from the date of receipt of bones i.e. 09.06.2009.

4. The prosecution examined Soma (PW-1). According to him when his mother did not return till the evening, he alongwith his wife went near the river and found the clothes of his mother. He came back to the house and the next day morning, she was searched but not found. Devi Singh of his village informed him that his mother is lying dead near the river. He found the dead body of his mother without a neck, one hand and one foot and he cremated the dead body. He should have informed this recovery of the body to the police but he did not imagine the murder of his mother. After 3-4 days, Bharat told them that the present appellants in a drunken condition were telling him that you have cremated the body, but the head is with them. Apart from Bharat, Prem S/o Kalu also informed them. According to Soma wife of Shobharam used to remain ill and he had a suspicion that the deceased Nandi Bai had done some witchcraft on her. He identified his mother from the pearl necklace lying near the dead body. Mohanlal (PW-2) also gave the same evidence. When they found the dead body and the death was appearing unnatural, therefore, it was their duty to inform about this the police. A postmortem was required to be done to ascertain the cause of death and the body belonging to Nandibai. There should be the identification of the body in presence of the police. They had no

suspicion of anyone due to which no FIR was lodged. The learned Additional Session Judge did not appreciate the conduct of Soma and his brother. But there is no investigation of the dead body which Soma and other family members cremated was the body of Nandibai. Except for the statement of Soma and two others, nothing is on record that any cremation was done even in the Village.

5. The FIR was lodged only when Bharat gave information about these appellants as they were telling that the head of Nandibai is with them. Although the police arrested them and recovered the head and other bones. As per the report of the Scientific Officer, it has been found that it was the bones of a lady aged about 60-65 years. The cremation of the dead body was done by Soma (PW-1) and Mohanlal (PW-2). Apart from their statements, there is no evidence that they cremated the dead body of their mother. Whether their statements are liable to be believed that they found the dead body which they cremated and even if they found the dead body, it was the body of their mother, the entire investigation is not saying anything about it. The only connecting evidence of these appellants, in this case, is that there was the recoveries of hairs, jaw and the skull of the lady aged about 60 years.

6. So far as the recovery of arms on discloser of the appellants is concerned, first Kailash was arrested and on his disclosure Farsi, skull, jaw and a bunch of hairs were recovered. The police have recorded three memorandum statements. From Shobharam sword was recovered. The seizure witnesses have turned hostile and did not support the recoveries. Apart from that on 07.05.2009 one pearls necklace was seized from Soma vide Ex.P-2 and one pearl necklace was recovered from the spot also vide Ex.P-9 on 03.05.2009, both were identified

by Soma in Test Identification Parade held on 13.06.2009 vide Ex.P-14. These recoveries and identification were done after 20-30 days from the date of the incident and surprisingly all articles were lying on the spot hence these materials did not connect the appellants with this crime.

7. Investigation Officer Prashant Mukadam (PW-13) was examined. He has admitted that he did not find the dead body of Nandibai and there was no post-mortem. He reached the spot after 22-23 days after the incident which is commonplace where the villagers go for a bath, but no one has informed him about the incident and death. He has also admitted that it was the primary duty of the informant to give information about the death because prima facia it was a homicidal death and not by way of an accident. On a specific question asked by the defence counsel, the informant i.e. Soma and his brother identified his mother only on the basis of the structure of the body and no evidence in respect of cremation was found. The DNA examination was not carried out. There are lots of important connecting circumstances which were not investigated by the Investigating Officer. When the bunch of hair, skull and jaw were recovered a DNA examination of them should have been conducted to establish that it was the dead body of Nandibai. The Investigation Officer also admitted that on 10.04.2009 he had received the information of the death of Nandibai, but did not explain as to why the FIR was lodged with so much delay and even he did not ask the informant about the delay. The incident had taken place on 10.04.2009, but the information was given on 02.05.2009 which itself gives ground for the acquittal of these appellants on the benefit of the doubt.

8. The Senior Scientific Officer has been examined as PW-14, who was also not in a position to tell that the bones of Nandibai were found on the spot. The appellants had no motive to commit the murder, as it is not a case of loot and

murder. There was no suspicion on them. Only on the basis of the statement of Bharatlal (PW-3) who is the son-in-law of Soma, these appellants were arrested. Kalu (PW-10) has completely turned hostile. It is a case where a definite finding cannot be given that Nandibai was murdered on 10.04.2009 and her dead body was cremated by Soma (PW-1) and Mohanlal (PW-2). No definite opinion of the Scientific Officer that skull, bones, jaw and bunch of hair recovered belongs to the deceased Nandibai.

9. The appellants who were at the time of the incident 19-20 years of age have wrongly been implicated in this alleged crime and unnecessarily kept behind the bars for more than 12 years. The golden period of their life has been consumed in jail their future is uncertain now. They are the victim of faulty investigation, they are entitled to compensation from the State certainly which would not be sufficient to compensate the losses sustained by them. The State is directed to pay 1-1 lac to each of them within 4 weeks from today.

Accordingly, this appeal is allowed. The impugned judgment dated 29.07.2010 is hereby set aside. The appellants are set at liberty if not required in any other case.

The record be sent back to the Court of learned Additional Session Judge, Ratlam.

(VIVEK RUSIA)
JUDGE

RJ

(ANIL VERMA)
JUDGE