

A.F.R.
HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.	441 of 1995
Parties Name	Arun Shankar, S/o Ram Shanker Upadhyaya, aged about 33 years, R/o Padav Ward, Mandla (M.P.) Vs. State of Madhya Pradesh, through Police Station Niwas, District Mandla (M.P.)
Bench Constituted	Hon'ble Shri Justice S.K.Gangele & Hon'ble Shri Justice Anurag Shrivastava
Judgment delivered by	Hon'ble Shri Justice Anurag Shrivastava
Whether approved for reporting	Yes/No
Name of counsels for parties	For appellant: Shri Sharad Singh Baghle, Amicus Curie. For respondent/State: Shri Ajay Tamrakar, Panel Lawyer for the respondent.
Law laid down	
Significant paragraph numbers	

J U D G M E N T
(05.12. 2017)

This appeal under Section 374(2) of Cr.P.C. has been preferred by the appellant/accused against the judgment and conviction dated 13.03.1995, passed by II Additional

Sessions Judge, Mandla, (M.P.) in S.T. No.40/1994, whereby the appellant/accused has been convicted for commission of offences punishable under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life and a fine of Rs.500/- and Section 201 of IPC and sentenced to undergo rigorous imprisonment for seven years and fine of Rs.500/- with default stipulations.

2. The case of prosecution in brief is that deceased Sushildhar Dubey and appellant Arun Shankar are relatives and resident of village Amgoan. Earlier they used to go for consuming liquor together. On 29.09.1993 in the evening at around 7 O' clock the appellant went to the house of deceased and asked him to accompany the appellant for drinking liquor. Thereafter the appellant and deceased went to liquor shop of Ram Das at village Kohaka, took liquor and consumed it. Than they left for home. Thereafter the deceased was not seen alive. His dead body was found in the morning of 30.09.1993 on the road leading to village Bijholidhar Amgoan. There were injuries on the person of the body of the deceased. The report of the incident was lodged at Police Station Niwas by younger brother of the deceased namely Anil Kumar. The police initiated the inquest and prepared spot map, seized the red earth and plain earth and also prepared panchanama of the dead body and sent it for postmortem. The police registered the offence and initiated an investigation. During investigation knife was seized at the instance of the appellant. The statement of witnesses were recorded and after usual investigation the charge sheet has been filed before the Court.

3. The appellant has been charged for commission of offence punishable under Sections 302 and 201 of IPC. He abjured guilt and pleaded innocence. The prosecution has examined seventeen witnesses, whereas appellant has not adduced any witness in his defence.

4. The trial Court on appreciation of evidence held the appellant guilty for commission of offence punishable under Sections 302 and 201 of IPC and sentenced him as mentioned hereinabove.

5. It is submitted by the learned counsel for the appellant that there is no eye witness to the incident. There is no evidence of last seen. The deceased had left for his home after taking liquor with the appellant. Thereafter, who had killed the deceased is not known. As per postmortem report the time of death of deceased is within 24 hours prior to the postmortem. Postmortem indicates that the deceased might have been died on 30.09.1993 after 10 O' clock in the morning. At this time appellant was present in his house. There is no enmity between the appellant and deceased. The knife seized by the police during investigation was not stained with the human blood. The alleged circumstances are not established by prosecution beyond reasonable doubt. The trial Court on wrong appreciation of evidence has held that the appellant guilty. Thus the finding of guilt recorded by the trial Court is not sustainable.

6. Heard arguments and perused the record.

7. It is not disputed that the dead body of the deceased was found on 30.09.1993 near the road leading to village Bijholi Amgoan. The report of the incident was lodged at around 3:30 pm at Police Station Niwas. I.N. Pandey Assistant Sub Inspector (PW-16) deposed that on 30.09.1993 at about 03:30 pm he has recorded a Marg intimation (Ex.P/1) on the basis of report lodged by the brother of the deceased at Police Station Niwas. Guru Narayan, Head Constable (PW-17) conducted the inquest and deposed that during inquest he had prepared panchanama of the dead body (Ex.P/2). Spot map (Ex.P/9) and seized red earth and plain earth vide seizure memo (Ex.P/8) and sent the dead body for postmortem.

8. Dr. Mahendra Kumar Ahirwal (PW-15) deposed that on 01.10.1993 at Community Health Centre, Niwas he had performed the postmortem of deceased Sushildhar. At around 10 O' clock in the morning and found rigor mortis present all over the body. Postmortem lividity was not found. There was incised wound 4 X 2 cm on left thigh. Femoral artery and vein were cut. Another injury was a lacerated wound over junction of left scrotum and thigh vertically placed 6 X 3 cm in size. Spermatic cord alongwith right artery and vein were found cut. Multiple abrasions over right forearm, right thigh and contusion over right hip were present. There was lacerated wound 3 X 1 cm present over right knee also.

It is opined by the doctor that the death is caused by extensive hemorrhage and shock as a result of injuries sustained by the deceased. The time of death is 12 to 24 hours prior to the postmortem. Injuries are homicidal in

nature. The defense has not disputed the death of the deceased. Therefore, it is rightly found proved by the trial Court that the death of the deceased was caused due to injuries, which is homicidal in nature.

9. Now the question arises, whether the present appellant has committed the murder of deceased. There is no eye witness to the incident. The case of prosecution rests upon circumstantial evidence. The main circumstance suggested by the prosecution against the appellant is that the appellant had taken the deceased with him for consuming liquor, he remained with the deceased till his last time. Appellant was last seen with the deceased.

10. In this regard Smt. Anjana Devi (PW-6) who is the wife of the deceased deposed in her evidence that on the date of incident at around 7 O' clock her husband Sushildhar was at home. The appellant came there and took her husband with him for consuming liquor. Thereafter her husband did not come back. Next day in the morning she sent her elder son Shreedhar to the house of appellant for inquiring about her husband. It was found that the appellant was sleeping in the house and her husband was not with him. Thereafter at about 8 O' clock in the morning the appellant came to the house of Anjana Devi and informed that he had left the deceased after consuming liquor and returned home. He did not know whereabouts of the deceased. Appellant told her that he is going in search of deceased and left her house. Another witness Amba Bai (PW-8) also corroborates the aforesaid fact. She is mother of the

deceased and was present in the house when appellant took the deceased with him and also on next day when appellant told them about the deceased. She deposed that the appellant had taken the deceased for consuming liquor and thereafter deceased did not returned home. Next day at around 8 O' clock appellant came to her house and told her that deceased is not with him and now he is going for search of the deceased.

11. Anildhar (PW-1) is the younger brother of the deceased. He had also deposed that the appellant had taken the deceased with him for consuming liquor. Thereafter deceased did not returned home. Next day when they inquired from the appellant about the deceased, he informed that the deceased was with him till around 2:30 am in the morning, thereafter deceased left him, than appellant returned his home.

12. Ram Das (PW-2) deposed that in the night at about 8 O' clock appellant and deceased came to his house at village Kohaka and had taken liquor from him and consumed it. Thereafter they went towards village Amgoan. He further deposed that village Bijholi is situated on the way to Amgoan. Witness Arjun (PW-4) deposed that when he was sitting near the canal for natural call at around 9 O' clock in the night he had seen the appellant and deceased going towards village Amgoan. Another witness Chhotelal (PW-3) deposed that at around 5 O' clock in the morning he was going towards village Amgoan, he reached near temporary road constructed on river Nangdar, he had seen the appellant coming from Amgoan and going towards

Bijholi. On the same day, the dead body of deceased was found.

13. Thus from evidence of witness Smt. Anjana Deiv (PW-6), Smt. Amba Bai (PW-8) and Anildhar (PW-1) it appears that, at around 7 O' clock in the evening the appellant had taken the deceased with him for consuming liquor. Witness Ram Das (PW-2) verifies this fact by stating that in the night around 8 O' clock the deceased and appellant came to his house at village Kohaka, purchased liquor consumed it and left for village Amgoan. It is also stated by the witnesses that on the way to village Kohaka and Amgoan the village Bijholi is situated, where the dead body of the deceased was found.

14. Another witness Arjun (PW-4) deposed that he had seen the deceased and appellant going towards village Amgoan at around 9 O' clock in the night when he was sitting near a canal for natural call. Witness Chhotelal (PW-3) had seen the deceased near the scene of occurrence going towards Bijholi Amgoan at around 5 O' clock in the morning.

15. From above evidence, it is established that the deceased remained in company of the appellant from 7 O' clock in the evening. They both had consumed liquor and went towards scene of occurrence. Next day in the morning at about 5 O' clock the appellant was seen coming from the scene of occurrence. The appellant had given wrong explanation to the brother of deceased Anildhar (PW-1) that he had returned home by 2:30 am.

This shows that the appellant was only person present with the deceased at the time of incident.

16. As far as time of death is concerned the Dr. Mahendra Kumar Ahirwal (PW-15) who had performed postmortem of the deceased stated the death of deceased occurred during 12 to 24 hours prior to postmortem. The postmortem was conducted at 10 O' clock in the morning of 01.10.1993. Doctor has found the rigor mortis present all over the body. As per Modi's Medical Jurisprudence and Toxicology (25th Edition) at page No.342, it is described that in temperate region rigor mortis usually lasts for 2 to 3 days. In the northern India, the usual duration of rigor mortis 24 to 48 hours in winter and 18 to 36 hours in summer. In case law ***Mangu Khan Vs. State of Rajasthan AIR 2005 SC 1912*** in para 9 Hon'ble Apex Court had observed that the development of rigor mortis depends on various factors such as constitution of the deceased, season of the year, the temperature in the region and the condition under which the body has been preserved. In another case law ***Baso Prasad and Others Vs. State of Bihar (2006) 13 SCC 65*** Hon'ble Apex Court in para 22 observed that the exact time of death cannot be established scientifically and precisely only because of presence of rigor mortis or in the absence of it.

17. Thus, in the present case it is quite possible that death of the deceased might have been caused at around 4 to 5 am in the morning, which is within 30 hours prior to postmortem. At this time, the appellant was seen coming from the scene of occurrence. His

house is situated near the house of deceased. When appellant and deceased left the liquor shop for going to their house, it is not possible for deceased to take other way. There was only one way for the houses of appellant and deceased. Appellant and deceased were coming together towards village Amgawan, then when the deceased had parted from the appellant, it is to be explained by the appellant. In view of aforesaid circumstances which indicates that only the appellant was present in company of the deceased till his death, we can draw the conclusion that the appellant had killed the deceased.

18. In the case laws of **Ram Mohan Vs. State of NCT Delhi 2012 Cr.L.J. 745** and **Roopsena Khatun Vs. State of West Bengal AIR 2011 SC 2256** relied upon by the counsel for the appellant, there was a considerable time gap between the last seen evidence and time of death of deceased, there was no proximity between time when deceased was last seen together with the accused and time of death. Therefore, Hon'ble Apex Court observed that the time gap is sufficient for deceased to come in contact with many other persons, whereas in the present case proximity between time when deceased was last seen with the accused and time of death of deceased is duly established by prosecution evidence.

19. In view of aforesaid, the trial Court on proper appreciation of evidence held the appellant guilty for commission of murder of the deceased. The findings recorded by the trial Court is neither perverse nor illegal.

20. Consequently, the conviction and sentence awarded by the trial Court on the appellant for the offence punishable under Sections 302 and 201 of IPC is affirmed and maintained. The appeal filed by the appellant has no merit and hereby dismissed.

(S.K.Gangele)
Judge

(Anurag Shrivastava)
Judge

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