

**HIGH COURT OF MADHYA PRADESH AT JABALPUR****DIVISION BENCH****Criminal Appeal No.84/2005**

Laxman, son of Mangu Gond,  
aged about 52 years, resident  
of village Bhilwadi, Police  
Station Nepanagar, District-  
Khandwa (M.P.).

**Versus**

The State of Madhya Pradesh

**PRESENT :**       **Hon'ble Shri Justice S.K. Palo**  
                          **Hon'ble Smt. Justice Nandita Dubey**

Whether approved for reporting : YES

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For the Appellants:               Shri S.A. Khan, Advocate.

For the respondent/State:       Ms. Nirmala Nayak, Govt.  
  Advocate

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Arguments heard on   : 09.09.2017  
Judgment delivered on : 22.09.2017

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Law laid down

Significant paragraph numbers : 14 to 18

**J U D G M E N T****As per Nandita Dubey, J.:**

The appellant was convicted by the trial Court under Section 302 of the I.P.C. for having committed the murder of Jamnabai and sentenced to undergo life imprisonment for the offence under Section 302 of the I.P.C. with fine of Rs.1,000/- and a

further three months rigorous imprisonment in default of the same in S.T. No. 38/2004, by Additional Sessions Judge, Burhanpur, which judgment is under challenge in this appeal.

2. On 04.10.2003, at about 3.15 P.M., a report (Ex. P-6) was lodged by Village Patel Raghuvveer Prasad (P.W.-4) to the effect that about 8 O'Clock in the morning, he was informed by Parwatibai (P.W.-1) that Jamnabai, wife of Laxman Gond has died. On receiving this information, he alongwith Nor Singh @ Nar Singh(P.W.-5), Gokhariya and Kuwar Singh (P.W.-6) went to the house of Laxman Gond, where the dead body of Jamnabai was lying. Laxman, when asked about the same had disclosed in presence of above mentioned persons, that in the previous night at their field around 9 O'Clock, his wife Jamnabai was fighting with him, so he hit her with wooden stick, thereafter he brought Jamnabai to the house in bullock cart and went off to sleep. In the morning, he found that Jamnabai had died.

**2.** Pursuant to the report, crime was registered and investigation was undertaken. Inquest report (Ex. P-5) was prepared and the dead body of Jamnabai was

sent for autopsy. Site plan (Ex.P-12) was also prepared. Accused Laxman was arrested from his house and on his memorandum, a 4 ft. long stick was recovered vide seizure memo (Ex.P-9). The post mortem on the body was conducted by Dr. Gopal Pande, who found as many as 25 simple injuries on the body of the deceased. In the post mortem report (Ex.P-17), the doctor has opined that the death had occurred 32-26 hours prior to the post mortem. The injuries on the body were ante mortem in nature. The death was caused as a result of rupture of blood vessels underneath the bruises. According to the doctor, all the injuries were caused by hard and blunt object.

**3.** The prosecution has examined 11 witnesses. P.W.-1 Parwatibai, P.W.-2 Gangabai, P.W.-3 Jagdish and P.W.-7 Sakharam did not support the case of prosecution and were declared hostile.

**4.** After considering the material available on record, including the medical evidence, the trial Court found that Jamnabai died due to haemorrhage caused on account of the several injuries received by her and that the case was of culpable homicide. The trial Court

relying on the extra judicial confession made by accused Laxman to P.W.-4 Raghuveer Prasad and on the basis of last seen evidence, convicted the appellant under Section 302 of the I.P.C. and sentenced him as aforementioned.

**5.** Relying on the decision of **State of Rajasthan Vs. Chhotelal and others (2011) 14 SCC 306**, Shri S.A. Khan, learned counsel appearing for the appellant has contended that there was no occasion or attending circumstances for the appellant to make extra judicial confession incriminating himself. It is submitted by the learned counsel that the incident took place in the field at night, there were no eye witnesses. The family members of the accused have not supported the case of prosecution and under the circumstances, the appellant be acquitted of the charge.

**6.** Smt. Nirmala Nayak, learned Govt. Advocate appearing for the State, on the other hand has supported the judgment passed by the trial Court.

**7.** We have heard the learned counsel for the parties at length and perused the record.

**8.** From a perusal of the record, it is observed that the entire case of the prosecution is based on circumstantial evidence and the extra judicial confession made by the accused before P.W.-4 Raghuveer Prasad, P.W.-5 Nor Singh @ Nar Singh and P.W.-6 Kuwar Singh.

**9.** Raghuveer Prasad (P.W.-4), who had lodged the report (Ex.P-6) in his statement on oath had declared that in the presence of Parwati (P.W.-1), Nor Singh @ Nar Singh(P.W.-5) and others, Laxman, on being enquired, had confessed that he and Jamnabai had liquor at the night and when she started fighting with him, he had hit her with stick 2-3 times, however, the part that Laxman and deceased were in inebriated condition was missing from his case diary statement and the FIR (Ex.P-6). In his cross-examination, he has admitted that he neither knew how the incident happened nor knew who brought the body of the deceased from the field. He has further added that at the time of incident, crops were lying in the field and it is not uncommon for the *Rathia* people to steal the crops and beat the person, who is watching after the field.

**10.** However, both Nor Singh @ Nar Singh (P.W.-5) and Kuwar Singh (P.W.-6) had denied giving such statement to the police that Laxman, the accused had confessed before them that he had hit his wife with a stick under the effect of alcohol. It is pertinent to note that both these witnesses have not been declared hostile by the prosecution.

**11.** Parwatibai (P.W.-1), who had allegedly informed P.W.-4 Raghuveer Prasad regarding the death of Jamnabai had deposed that she saw the body of the deceased lying in the field, she had also denied the seizure memo and was declared hostile.

**12.** Gangabai (P.W.-2), daughter-in-law of the deceased had also not supported the story put up by the prosecution. She had deposed that her mother-in-law had gone in the night to watch the crops, whereas her father-in-law, the accused had stayed at home in the night. She had further stated that her father-in-law went to graze the buffaloes in the morning, where he found the body of the deceased. She had categorically stated that in the morning, the dead body of Jamnabai was found lying in the field and thereafter was brought

to the house. If accused had brought Jamnabai to the house in the night, the daughter-in-law and the son would have known the offence allegedly committed by the accused.

**13.** Jagdish (P.W.-3), son of the deceased has been declared hostile as he did not support the case of the prosecution. He had stated in his cross-examination that there was crops lying in the field and his mother used to go to watch the crops. He had also stated that people of *Rathia* community lives nearby the village and it is not uncommon for them to loot the crops from the field and beat the person watching the field.

**14.** In **Vijay Shankar Vs. State of Haryana (2015) 12 SCC 644**, following the decision in **Sahadevan Vs. State of Tamil Nadu (2012) 6 SCC 403**, the Supreme Court has observed that extra judicial confession is a weak piece of evidence and the Courts are to view it with great care and caution. For an extra judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. An extra judicial confession attains greater credibility and

evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

**15.** A perusal of the impugned judgment of the trial Court goes to show that the Court had taken into consideration the extra judicial confession made by the appellant before the witnesses that he hit the deceased with stick into convicting the appellant. However, in view of the evidence of P.W.-4 Raghuveer Prasad, P.W.-5 Nor Singh @ Nar Singh and P.W.-6 Kuwar Singh coupled with the omissions and contradictions discussed hereinabove, the extra judicial confession alleged to have been made by the accused to Raghuveer Prasad (P.W.-4) does not inspire confidence, is neither reliable nor worthy of credence. It is highly unlikely for the accused to make extra judicial confession to the witnesses, whom he did not know well to implicate himself.

**16.** Another aspect of the case is that none of the witness of the prosecution had said that the accused was at field with the deceased at the relevant time. Investigating Officer had made no efforts to find out as to whether the crops alleged to have been



watched by the deceased where actually looted or stolen, he did not even go to the place of occurrence. The appellant was at home and did not try to escape despite the fact that he was named as offender in the FIR. Even the recovery of the stick from the accused is doubtful as the witness of seizure P.W.-8 N.R. Gajbhiya had turned hostile. Yet another aspect of the case is that son and daughter-in-law of the accused had turned hostile and did not support the case of prosecution. The trial Court totally overlooked all these aspects while convicting the appellant. There is nothing on record to conclusively establish that the appellant was the author of the crime.

**17.** Having perused the oral and documentary evidence available on record, we are of the considered opinion that the prosecution has failed to prove the case beyond reasonable doubt.

**18.** It is settled law that suspicion, however strong, without conclusive evidence is not sufficient to justify the conviction. Reference may be made to the decision of Supreme Court in **Pawan Kumar Vs. State of Haryana (2001) 3 SCC 628**, wherein it is held:

**2.** Before advertng to the rival contentions, be it noted that the entire matter hinges on circumstantial evidence. There is also however existing on record a dying declaration, but its effect on the matter shall be discussed shortly hereafter in this judgment. Incidentally, success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While, however, it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of the strong suspicion without, however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accuses must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting, however, noting the observations of this Court in the case of **State of U.P. Vs. Ashok Kumar Shrivastava (AIR 1992 SC 240)** wherein this Court in para 9 of the report observed :

“9. This Court has, time out of number observed that while

*appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.”*

**3.** *The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this court is the case of **Balwinder Singh Vs. State of***

***Punjab (AIR 1987 SC 350)*** lends  
concurrency to the above.

**19.** In the light of the law laid down by the Supreme Court and in view of the peculiar facts and circumstances of the case, we are of the considered opinion that impugned judgment dated 30.09.2004 passed in S.T. No.38/2004 deserves to be and is hereby set aside. The appellant is acquitted of the alleged offence punishable under Section 302 of the Indian Penal Code.

**20.** The appeal filed by the appellant is allowed. The appellant be accordingly set free forthwith, if not required in connection with any other case.

**(S.K. Palo)**  
**JUDGE**  
**/09/2017**

**(Nandita Dubey)**  
**JUDGE**  
**/09/2017**