

HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL No. 1533/2007

Bhura @ Atip S/o Sheikh Aziz
aged about 28 years, R/o Village
Sitajhir, P.S. Chourai, District
Chhindwara (M.P.) Appellant.

Versus

State of Madhya Pradesh
through Police Station Chandameta
District Chhindwara, M.P. Respondent.

For the appellant: Ku. Savita Choudhary, Advocate
For the respondents: Shri Akhilesh Singh, Government Advocate

Present: HON'BLE SHRI JUSTICE AJIT SINGH
HON'BLE SHRI JUSTICE RAJENDRA MAHAJAN

Date of hearing : 31.12.2014
Date of Judgment : 27.01.2015

J U D G M E N T

The following judgment of the Court was delivered by:

Rajendra Mahajan, J: Appellant Bhura @ Atip has preferred this criminal appeal under Section 374(2) of the Code of Criminal Procedure (for short the Cr.P.C.), being aggrieved by the impugned judgment of conviction and order of sentence dated 09/07/2007 passed by the Court of First Additional Sessions Judge, Chhindwara in S.T. No. 262/2005 State of M.P. Vs. Bhura @ Atip, whereby he stands convicted under Section 302 of the Indian Penal Code (for short the IPC) for committing murder of his wife Taj Bi and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 1000/-, in default of which to suffer further rigorous imprisonment for two

months.

2. The prosecution case as unfolded during the trial is given below in detail because the case is based upon the circumstantial evidence:-

2.1 On 31/05/2002 at about 2.45 PM an unknown person informed Rajendra Kumar Singh (PW 14), the then SHO P.S. Chandameta, on telephone that a dead body of unknown woman is lying on the mount of Mahadev Puri coal mine. He entered this information in Rojnamcha Sanha No. 1216 and reached the spot with Police force to verify the truthfulness of it. He found a corpse of young woman aged between 20-22 years (for short" the deceased") is lying under a tree and her face is badly crushed beyond recognition. At the spot, he recorded a marg report Ex. P/11 under Section 174 of the Cr.P.C. Later it was registered as Marg case No. 1012.

2.2 On 01/06/2002, Rajendra Kumar Singh drew a spot map Ex. P/5 in presence of Baldev (PW 4) and Chand Khan (PW 3). He prepared inquest report Ex. P/8 in presence of as many as 8 witnesses including the aforesaid witnesses. He also seized from the spot some plain soil, blood stained soil, broken pieces of bangles, a stone weighing near-about 5 kg., and a

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Mangalsutra vide seizure memo Ex. P/9 in presence of the above witnesses.

2.3 On 01/06/2002, a panel of three doctors performed autopsy on the dead body of the deceased and gave postmortem report Ex. P/18. According to postmortem report, the deceased had died due to multiple injuries caused by hard and blunt object and her nature of death was homicidal.

2.4 Upon the basis of postmortem report, on 01/06/2002, Rajendra Kumar Singh lodged an FIR Ex. P/21 against an unknown offender for the murder of the deceased under Section 302 of the IPC. The FIR was registered at crime No. 188/2002.

2.5 The Police preserved the clothes, Mangalsutra and broken bangles of the deceased for the purpose of identification of the deceased in future.

2.6 On 01/06/2002 constable Shivnath (PW 7) buried the dead body of the deceased in presence of witnesses namely Guddu @ Dharmendra, Raju and Ashok (who are not examined), after preparing burial Panchanama Ex. P/14.

2.7 Shaikh Niyamat (PW 11) and his family members approached the Police Station Chandameta. He made an oral statement to the Police that his sister Taz Bi

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was married to the appellant about 4-5 years ago. The appellant has not been telling them the whereabouts of her, and, therefore, they entertain a doubt that he may have committed her murder.

2.8 On 22/12/2002 J.R. Patley (not examined), the then Tehsildar-cum-Executing Magistrate of Tehsil-Parasiya, held identification parade of the articles in the premises of the Tehsil Office Parasiya. In the course of identification parade, Shaikh Majid (not examined) and Mumtaj Bi (PW 9), who are the father and sister of the deceased respectively, identified the clothes, ornaments and broken bangles as those of Taj Bi.

2.9 During the course of investigation Rajendra Kumar Singh, Inspector R.P. Ahirwar (PW 2) and Sub-Inspector Safiq Khan (PW 12) recorded the case diary statements of various prosecution witnesses. They came to conclusion that the appellant had committed murder of his wife Taj Bi. On 25/09/2005, R.P. Ahirwar arrested the appellant vide arrest memo Ex. P/5 in presence of witnesses namely Dashrath (not examined) and Baldev. The appellant himself led R.P. Ahirwar and the aforesaid witnesses the place of occurrence, where he had allegedly murdered his wife

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Taj Bi. He also prepared spot map Ex. P/3 at the instance of the appellant.

2.10 Upon completion of investigation of the case, the Police charge-sheeted the appellant under Section 302 of the IPC in the court of Shri S.C. Rai, JMFC, Chhindwara. The charge-sheet was registered as criminal case No. 887/2005 State of MP Vs. Bhura @ Atip. The case was committed vide order dated 06/12/2005 to the Sessions Court Chhindwara, which, in turn, made over the case to the Court of First Additional Sessions Judge, Chhindwara for trial.

3. The trial Court charged the appellant under Section 302 of the IPC. He pleaded not guilty and claimed to be tried. The appellant in his statement under Section 313 of the Cr.P.C. denied all the incriminating evidence and circumstances appearing against him in the prosecution evidence. His defence was that he had been falsely implicated by the family members and relatives of his wife, Taj Bi. The appellant has examined Shaikh Rasid (DW 1) in his defence.

4. On evaluation of the evidence on record, the trial court found the appellant guilty of commission of murder of his wife Taj Bi, the deceased, under Section 302 of the IPC and sentenced thereunder as stated in para 1 of the judgment.

5. The learned counsel for the appellant has assailed

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the correctness and legality of the impugned judgment on the ground that the trial Court convicted the appellant merely on the evidence that the deceased was last seen with the appellant in absence of any supportive evidence and concomitant circumstances, whereas it is a trite law that the circumstantial evidence of last seen of the deceased with the accused without corroborating evidence is a weak piece of evidence. In support of the arguments, learned counsel relied upon the decisions reported in the matters of Dhruwa Singh Vs. State of M.P. (1982 Weekly Notes 537), Rameshwar Vs. State of M.P. (1982 Weekly Notes 65), Balsingh Vs. State of M.P. (1983 Weekly Notes 287) and Ram Vs. State of M.P. (1983 Weekly Notes 92). She further submitted that the prosecution had not examined J.R. Patley, who held the identification parade, and , therefore, the evidence of Mumtaj bi (PW-9) on the point of identification of the articles is not worthy of credence. Upon these submissions, learned counsel submitted that the conviction of the appellant is bad in law. Hence, this appeal deserves to be allowed, setting aside the impugned judgment.

6. Per contra, the learned Government Advocate has submitted that the prosecution proved its burden with cogent and reliable evidence that the deceased was last seen in the company of the appellant, therefore, the onus has been shifted upon the appellant to explain satisfactorily as to when the

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deceased had left his company and what steps he had taken thereafter, but the appellant did not discharge the said onus. In support of the above arguments, he relied upon the decision rendered by Hon'ble the Supreme Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra [(2006)10 SCC, 681]. He also submitted that though the prosecution had not examined J.R. Patley, who held identification parade of the articles seized from the dead body of the deceased, yet Mumtaj Bi (PW 9) has categorically stated in her evidence that the articles belong to Taj Bee, her Nanad (sister-in-law). Therefore, non-examination of J.R. Patley would not make any dent in the prosecution case. He further submitted that the conviction of the appellant is just and proper and, therefore, interference by this Court with the impugned judgment is not warranted. He prayed for dismissal of the appeal.

7. Dr. P.K. Soni(P.W. 13) has stated in his evidence that he is one of the members of the panel of three doctors which conducted autopsy on the dead body of a unknown woman aged 22 on 01.06.2002 at Primary Health Centre, Parasia. The panel found following injuries upon the dead body.

(I) A lacerated wound the size of which is 6"X1/2" bone deep on the left side of forehead.

(II) A fracture in the frontal bone of the left side of the head the size of which is 6"X1/3".

(III) A crushed injury on the left side of the face, the size of which is 6"X3.5", on account of which jaws, teeth, tongue and maxilla had been open and the left eye ball was broken.

(IV) Fractures in the left mandible and maxilla.

This witness opined that all the above injuries were anti-mortem in nature and were caused 48-72 hours prior to the postmortem with a hard and blunt object. He further opined that on account of these injuries, there was extensive blood loss and they were on the vital parts, resulting into the death of the deceased-instantaneously. Therefore, the nature of death of deceased is homicidal. The defence has asked only one question in the cross-examination of this witness as to whether the face of the deceased can be identified in view of the crushed injuries on her face? This witness has replied in negative. In view of above, the evidence of this witness remains unchallenged and, hence, his evidence is fully reliable. Consequently, from the evidence of this witness, it is fully established that the deceased had died of homicidal death.

8. Mumtaj Bi (PW 9) is the elder sister of Taj Bi. She deposed in para 3 of her statement that she had identified a saree, bangles and an ornament (Mangalsutra) as those belonged to her sister Taj Bi in the identification parade. She further stated that Taj Bi had gone with her husband, the

appellant, from her house wearing the same articles. She confirmed that the identification memo Ex. P/16 bears her signature.

9. Before embarking on analyzing the evidence of Mumtaj Bi (PW 9), we cannot lose sight of the fact that in general the persons, have uncanny sense of identification of their wearing apparel and ornaments, though there are no visible identification marks on them. Not only that, their relatives and friends, who are in closed touch with them, may also be able to identify them. This view of ours is forfeited by the decision rendered in the case of Praveen Kumar Vs. State of Karnataka, (2003 (4) Crimes 538 SC). In that case, some ornaments being seized at the instance of the appellant-accused in the course of identification parade were identified by Prema Setti (PW 3), who was neighbour and close friend of the slain/deceased woman of the case, as those belonging to the deceased. She has stated in her evidence that she would always see the deceased wearing the ornaments. The Supreme Court relied upon her evidence. Now, we will proceed to scrutinize the evidence of Mumtaj Bi (PW 9). The defence has grilled her on the point of identification of the articles but there is no iota of evidence in favour of the appellant to disbelieve her evidence. Thus, her evidence is fully reliable. Moreover, it is not the defence of the appellant that his wife Taj Bi

is still a missing alive person. Upon the basis of the evidence of Mumtaj Bi, we hold that the deceased is none other than Taj Bi, the wife of the appellant.

10. From the evidence of Inspector A.P. Dwivedi (PW 8), it appears that he had exhumed the dead body of the deceased for the purpose of identification but it had been fully decomposed. The skull had separated from the remaining skeleton. Under the circumstances the dead body could not be placed for identification.

11. Now, we will consider whether the non examination of J.R. Patel, who held identification parade of the seized articles, will make any dent in the prosecution case? Had he been examined by the prosecution, he would have supposedly stated that he followed the procedure as mentioned in the identification memo Ex. P/16 at the time of identification of the articles and nothing more. On the point of identification of the seized articles, we have already held the evidence of Mumtaj Bai (PW 9) is wholly reliable, therefore, non-examination of J.R. Patel does not make any dent in the prosecution case.

12. Afsana Bi (PW 10) has deposed in her evidence that deceased Taj Bi was sister of her husband and she was married to the appellant. They live in village Kanhargav. The deceased lived with the appellant in village Sitajhar. One day in the afternoon near about 4 PM, the appellant came to their

residence and told them that his mother has fallen ill. Therefore, he had come to take Taj Bi. She further stated that her family members asked the appellant for a night stay but he refused, saying that he had brought a bullock cart to carry her, and that he had parked it in village Samswada. Therefore, he had to go today itself. Taj Bi and the appellant left their house at about 6 PM. Her Devar Salamat (not examined) accompanied Taj Bi and the appellant upto village Jam. This witness further stated that when Taj Bi stayed with them, she was pregnant. There is nothing adverse in her cross-examination to disbelieve her evidence. Hence, the testimony of this witness is held to be fully reliable.

13. Mumtaj Bi (PW 9), who is the elder sister of Taj Bi, testified in her evidence that she lives in village Kanhargav with her husband. Her mother had died when Taj Bi was about 14-15 years old. She brought Taj Bi up and married her off. On perusal of her evidence, we find that she fully corroborates the evidence given by Afsana Bi (PW 10). Mumtaj Bi has also stated that whenever Taj Bi visited them, she would tell them that the appellant does not keep her well and beats her for the demand of bike in dowry. The defence has thoroughly crossed this witness, but there is nothing in her cross-examination to discredit the evidence of this witness. Hence, her evidence is worthy of reliance.

14. Upon the evidence of Afsana Bi (PW 10) and Mumtaj Bi (PW 9), we hold that the appellant had taken Taj Bi from the house of her parents before her murder.

15. Shaikh Niyamat (PW 11) has deposed in his evidence that Taj Bi was her younger sister. She very often told him and other family members that the appellant would beat her, demanding dowry. He further stated that he does a job at Nagpur and when the appellant took Taj Bi from his house, he was not present. After a month, Taj Bi being taken by the appellant, he came to his village Kanhargav. His father asked him to go to village Sitajhar to bring Taj Bi. Thereupon, he went to village Sitajhar, where he was told that the appellant and Tej Bi had gone to Nagpur. However, Turki (not examined), who happens to be brother-in-law of the appellant, told him that in fact the appellant is in Chandameta town. Upon this information, he went to Chandameta and met the appellant. He asked the appellant the whereabouts of Taj Bi. The appellant told him that Taj Bi is in Nagpur with his friend. Thereafter, his uncle Samshad (not examined), the appellant and he went to Nagpur, where the appellant told them that Taj Bi stays in Prem Nagar Colony. When they were proceeded to Prem Nagar, the appellant fled in the midway, leaving them.

16. This witness has been subjected to grueling cross-examination by the defence. But the defence has failed to

shake his credibility. Hence, he is a witness of truth. The unusual conduct shown by the appellant at Nagpur in the company of this witness and his uncle Samshad proves that the appellant has been intentionally hiding the whereabouts of Taj Bi as he knows by heart that he had put her to death, otherwise, he would have arranged a meeting between Taj Bai and this witness along with his uncle Samshad at the residence of his so called friend at Nagpur. Upon the evidence of this witness, we hold that Taj Bi was with the appellant before her death.

17. As per the case diary statement Ex. P/12 of Arvind (PW 6), the appellant had confessed before him that he had committed murder of his wife Taj Bi on account of her having illicit relations with a boy who lives in his in-laws village Kanhargav. But, he has deposed just against his case diary statement. The prosecution has declared him hostile. In our opinion, the hostility of this witness does not adversely affect the prosecution case in view of the strong evidence against the appellant.

18. Defence witness Sheikh Rashid (DW 1) has testified that he knows Taj Bi. He met her in her parents' house in village Kanhargav when he visited the village. He has further stated that in the course of conversation she told him that her husband, the appellant, had come to village Kanhargav to take

her but she had not gone with him owing to her ill-health as she had three months old pregnancy. Later, he came to know that Taj Bi had gone missing. On perusal of the evidence of this witness, it appears that he is a permanent residence of village Charoi and his in-laws are neighbours of the appellant in village Sitajhar. He has admitted in his cross-examination that the appellant is his distant relative. In view of the above relation, we hold him that he is an interested witness. Further he had given vague evidence as to when he met Taj Bi in village Kanhargav. Hence, the evidence of this witness does not inspire confidence of us. We, therefore, do not rely upon his evidence.

19. Needless to say, that it is well established in law that the sole circumstantial evidence of last seen the deceased in the company of the accused is a weak piece of circumstantial evidence in the absence of other cogent and concomitant circumstances for recording conviction. However, the apex Court in its decision in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra (supra) has recorded the conviction of accused on the last seen circumstantial evidence. In that case the deceased was the wife of the accused, the prosecution established beyond doubt that the deceased was last seen in the company of accused. The accused did not offer any explanation as to what steps he had taken to smoke his wife out. The facts of the

above case are similar to those of the instant case. In this case, the prosecution has fully established that Taj Bi, the deceased, was last seen in the company of the appellant. However, the appellant had not offered any satisfactory explanation even obliquely as to what steps he had taken to search Taj Bi out after she had gone missing as alleged by him. Autopsy Surgeon Dr. P.K. Soni (PW 13) has stated in his evidence that the face of the dead body was badly crushed beyond recognition. The appellant has not offered any explanation as to under what circumstances, his wife Taj Bi was killed by him. Hence, we can safely hold that the appellant is guilty of committing murder of his wife Taj Bi on the sole circumstantial evidence that she had been with the appellant before she was murdered.

20. In the ultimate analysis, we hold that the trial court has not committed any error on facts or law in holding the accused guilty of having committing murder of his wife Taj Bi, therefore, we dismiss this appeal, affirming the impugned judgment of conviction.

21. The appellant has been serving out the jail sentence. A copy of this judgment be sent to him for information through the concerned jail authorities.

(AJIT SINGH)
JUDGE

(RAJENDRA MAHAJAN)
JUDGE

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JUDGMENT FOR CONSIDERATION

(Rajendra Mahajan)
Judge
.01.2015

HON'BLE AJIT SINGH J.

(Ajit Singh)
Judge
.01.2015

Post for : .01.2015

(Ajit Singh)
Judge
.01.2015