

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRIMINAL APPEAL NO. 660/2008**

Amar Singh and three others..... Appellants

Versus

The State of Madhya Pradesh..... Respondent

For the appellants : Mr. Devdatt Bhawe, Advocate appeared
as *Amicus Curiae*.

For the respondent/State : Mr. Manhar Dixit, Panel Lawyer

Present:

**HON'BLE MR. JUSTICE ATUL SREEDHARAN
HON'BLE MRS. JUSTICE SUNITA YADAV**

J U D G M E N T
(16-09-2021)

Per : Sunita Yadav, J.

As per letter No.06/Warrant-1/2021 dated 01.04.2021 of Superintendent, Central Jail, Satna (M.P.), it appears that appellant no.1 **Amar Singh** S/o Rambharose Singh has died during the pendency of this appeal on 30.04.2021. Therefore, this appeal so far it relates to appellant no.1 Amar Singh, is **abated**.

2. Being aggrieved by the judgment and order dated 01.03.2008 passed in Sessions Trial No.152/2004 and supplementary Sessions

Trial No.75/2005 by the learned First Additional Sessions Judge to the First Sessions Judge, Panna (M.P.) by which appellants Amar Singh (**since deceased**), Halke, Raju @ Rajaram and Raju @ Baghela have been convicted for the offence punishable under Sections 302 and 201 of the Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.50,000/- and rigorous imprisonment for two years and fine of Rs.2000/- each, respectively, in default of payment of fine, the appellants were directed to undergo additional rigorous imprisonment for 5 years under Section 302 of the Indian Penal Code and rigorous imprisonment for 2 months under Section 201 of the Indian Penal Code, the present appeal has been filed by the aforesaid appellants.

3. The prosecution case in nutshell is that on 21.06.2004, the SHO Devendra Nagar District-Panna received an information that a beheaded dead body was floating in Satna river below the Itwa bridge. It was also informed that a stone was tied up with the body with the help of electric wires on the chest and a torn banyan was wrapped around the chest and the head of the dead body was lying in the nearby field of one Radhelal Kushwaha. After getting the information, the SHO Devendra Nagar reached the spot and recorded a Dehati Naleshi. The said Dehati Naleshi

was sent to P.S. Devendra Nagar District-Panna, on the basis of which, Marg No.17/04 as well as Crime No.85/04 was registered against the unknown person. After preparing the inquest report/Panchnama, the body was sent for postmortem. On 24.06.2004, one Sushil Bilthariya submitted an application to SHO Devendra Nagar stating that his brother Ashok Bilthariya was missing from the Ashram of Dunha Baba Amar Singh. In that application, it was further stated that Halke Vishwakarma, Ashok Singh Thakur, Raju Dhimar, Mahesh Dhimar, Bhushan Singh Thakur, Raju Kushwaha, Bablu Singh and Santosh Singh were working in the Ashram of Dunha Baba along with Ashok Bilthariya. It was further mentioned that the missing person Ashok Bilthariya along with Halke Vishwakarma had come to the house of applicant Sushil at Champa on 16.06.2004 and after having meals in the night, both Halke and Ashok went to the Ashram of Amar Singh.

4. In the said application, it was also stated that on inquiring from Amar Singh, Santosh Singh and Halke Vishwakarma, different versions were being given by them. Subsequently, on 25.06.2004 another application was submitted by Sushil Bilthariya to the SHO stating that the dead body found on 21.06.2004 might be that of his brother Ashok Bilthariya. Later

on, the dead body was identified by Prabhudayal (PW-4) Shri Kumar (PW-13) and Rajkumar Bilthariya to be that of Ashok Bilthariya.

5. Further case of prosecution is that deceased Ashok Bilthariya was having illicit relations with the niece of Baba Amar Singh on account of which he was killed on 18.06.2004 and after beheading the body, the same was taken in a Jeep bearing Registration No. MP 19-E/7384. The beheaded body was tied up along with the stone with electric wires and was thrown in the river. The decapitated head of the body was thrown in a field. During the course of investigation, clothes of deceased along with weapons axe and *farsa* used for committing the crime were seized at the instance of the accused persons. The seized articles were sent for Forensic Examination.

6. After completion of investigation, charge sheet was filed against the appellants/accused along with other co-accused persons. The trial Court framed charge against the appellants and other co-accused persons which was denied by them. At the time of filing of charge sheet, accused Bhushan Singh, Bablu @ Ravendra and Mahesh Dhimar were found to be absconding. During the course of trial, two co-accused persons namely Bhushan and Bablu @ Ravendra were arrested and a

supplementary charge sheet was filed by the police. Thereafter, both the trials were clubbed and a common judgment was pronounced on 01.03.2008.

7. The learned counsel for the appellants has submitted that the trial court failed to consider that the prosecution could not prove the death of Ashok Bilthariya as the identification of the dead body is not proved. The trial Court has also failed to consider the origin of the blood group of the deceased which is said to have been found with the seized articles. The chain of circumstances is broken from the fact that the seizure of axe from co-accused Santosh Singh did not contain any blood stains. He further submitted that the trial court has also failed to consider that there is no material evidence to prove that the deceased was having an illicit relation with the niece of Amar Singh. The motive is based on suspicion which cannot take place of a positive proof. No motive has been attributed to the present appellants.

8. On the other hand the learned counsel for the State argued that the prosecution has successfully proved the chain of circumstances to connect the appellants with the offence. Therefore, the impugned judgment convicting and sentencing the appellants should be sustained.

9. In the light of above arguments rendered by opposite parties, we have carefully examined the prosecution evidence. The prosecution on its behalf examined as many as 18 witnesses to prove its case. On perusal of the evidence produced by the prosecution, it is clear that the present case is based on circumstantial evidence. It is well settled law that where there is no direct evidence against the accused and the prosecution rests its case on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. In other words, there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. All the links in the chain of circumstances must be complete and should be proved through cogent evidence.

10. Baori Bai (PW-7) and Braj Kishore (PW-8) are the witnesses who saw the body of the deceased first. These witnesses have stated that after seeing the dead body in the river, Chowkidar of the village was informed. Chowkidar Bukiya @ Shivbalak (PW-9) has deposed that after getting the information about the dead body which was floating in the river, he informed

the police of Devendra Nagar. The police arrived and recovered the dead body and the decapitated head of the body.

11. Vinod Sonkiya (PW-10), the then Tehsildar, has deposed that he got the dead body identified by Prabhudayal (PW-4), Sushil Kumar (PW-12) and Shri Kumar (PW-13). These witnesses have corroborated the statement of Vinod Sonkiya (PW-10) and deposed that they had identified the body and found that the dead body was that of Ashok Bilthariya. Nothing came out in the cross-examinations of above witnesses which goes to the root of the prosecution story. Hence, the argument of the defence counsel is not tenable that the identification of the dead body is not proved.

12. Dr. P. Shrivastava (PW-14) has conducted the postmortem on the body of the deceased. According to the doctor, while examining the dead body, he found an incised wound measuring 11cm x 5cm x 11.5cm round shaped on the back of the neck. He further stated that because of this injury, the head got severed from the torso. The injury was *ante mortem* and was caused by a sharp object. The death was homicidal in nature and the injury was sufficient to cause the death. In the light of the evidence as discussed above, it is proved that the body which was found was that of Ashok. The death of Ashok was homicidal in nature and

was caused by some sharp edged weapon.

13. The prosecution has relied upon following circumstances to link the appellants with the crime;

(1) Deceased Ashok was last seen with the accused/appellant Halke and both the deceased and the accused/appellant Halke went to the Ashram of accused Amar Singh.

(2) The weapon used in the crime, the clothes and shoes of the deceased were recovered at the instance of accused persons.

14. The prosecution has produced Parvati (PW-3), Asharam (PW-5), Siyaram (PW-6) and Sushil Kumar (PW-12) to prove that deceased Ashok was with accused/appellant Halke when they saw the deceased for the last time.

15. Parvati (PW-3), who is the sister of the deceased has stated that she had two brothers. The deceased was her elder brother and Sushil (PW-12) is her younger brother. Deceased Ashok worked in Dunha Baba Ashram. On 16th June, his brother Ashok came to the house along with a *Barhai* (carpenter) and asked her to cook food for them. She prepared the food and offered her brother to have it but her brother refused saying that he would rather have his dinner at the Ashram of Dunha Baba. Thereafter she packed the food in a polythene and handed it over to her brother Ashok. After taking the food, her brother left the house

and never come back. During recording her court statement, this witness has identified the accused Halke as the *barhai* (carpenter) who had visited her house with Ashok that day.

16. Sushil Kumar (PW-12) has corroborated the statement of Parvati (PW-3), who is his sister, and deposed that on 16.06.2004, he saw his brother Ashok for the last time when he along with accused/appellant Halke Vishwakarma came to his house. This witness has stated that he saw Ashok and Halke carrying their food. Ashok and Halke left the house saying that they were going to the Ashram of Dunha Baba. Next morning, he got to know that on the previous night his brother Ashok had stayed in the house of Siyaram (PW-6). After that day, his brother Ashok never returned.

17. Siyaram (PW-6) has testified that on 16th June, 2004 deceased Ashok and accused/appellant Halke came to his house. Ashok asked him to fetch food and when he expressed his inability, Ashok went to his own house and brought some food. Halke and Ashok had their dinner in his house and slept in the same house. Next morning, Halke and Ashok left his house saying that they were going towards Dunha. After that, he had never seen Ashok.

18. After going through the evidence of Parvati (PW-3),

Siyaram (PW-6) and Sushil Kumar (PW-12), it is clear that all the above witnesses had seen the deceased Ashok with the accused/appellant Halke on 16th June, 2004 for the last time. However, as per the prosecution case, on 18th June, 2004 Asharam (PW-5) had taken the deceased Ashok on his tractor to the Ashram of Dunha which, according to the prosecution story, had been run by the accused Amar Singh. Consequently, it is not proved that Parvati (PW-3), Siyaram (PW-6) and Sushil Kumar (PW-12) had seen the deceased on 16.06.2004 for the last time because the deceased Ashok was seen by PW-5 Asharam on 18.06.2004. Since Asharam (PW-5) is the person who, according to the prosecution story, saw the deceased Ashok on 18.06.2004 for the last time; therefore, the evidence of this witness is very significant for the prosecution to prove the circumstance of last seen together.

19. PW-5 Asharam in his Court evidence has deposed that he used to drive the tractor of accused/appellant Amar Singh. He doesn't know the employees, who worked in the Ashram of Amar Singh. In the month of June, he went to Devendra Nagar by his tractor. There were many passengers on his tractor. Deceased Ashok was also traveling on his tractor. Deceased Ashok along with other passengers had alighted at Devendra Nagar Square

(Chauraha).

20. Asharam (PW-5) has been declared as hostile by the prosecution. During the cross-examination, this witness has not supported the case of prosecution that the deceased Ashok had gone to the Ashram of Dunha on his tractor along with appellant Halke. Consequently, the first circumstance, the prosecution has relied upon, that the deceased was last seen with the appellant Halke and they both went to the Ashram of Amar Singh is not proved.

21. In the light of the above discussion, the finding of the trial Court that the deceased Ashok was last seen on 16.06.2004 by the prosecution witnesses Parvati (PW-3), Siyaram (PW-6) and Sushil Kumar (PW-12) is found to be contrary to the evidence available on record.

22. As per the prosecution story, the appellants Halke, Raju @ Rajaram and Raju @ Baghela were the employees of the appellant Amar Singh (since deceased) but no corroborative evidence like pay roll, service contracts, work assigned to them etc. are produced by the prosecution to prove this fact. PW-5 Asharam who used to drive the tractor of accused/appellant Amar Singh has not supported the prosecution story that the appellants Halke, Raju @ Rajaram and Raju @ Baghela worked in the

Ashram of Amar Singh. Therefore, it is not proved that the present appellants Halke, Raju @ Rajaram and Raju @ Baghela worked in the Ashram of Amar Singh as his employees and were under obligation to obey his directions.

23. Seizure of incriminating articles at the instance of accused persons is the second circumstance to connect the appellants with the crime. The prosecution has produced Shri Kumar (PW-13) to the alleged recoveries at the instance of accused persons. According to this witness, a piece of wire was seized before him at the instance of accused Ashok Singh as per Ex.P/25. He further stated that in pursuance to the disclosure of Raju Dhimar, a lower of tracksuit was seized as per Ex.P/27 and one spade along with a pickaxe were seized as per Ex.P/31 at the instance of accused Raju @ Rajaram. It is evident from the perusal of the material available on record and the seizure memos Ex.P/25, Ex.P/27 and Ex.P/31 that the said articles were allegedly seized from the open place, spade and pickaxe were seized from the open land of the Ashram and not from the temples of the Ashram. As per PW-13 Shri Kumar, the Ashram is surrounded by the fields. All the places surrounded by the Ashram are the places where anyone can have access and the witnesses have also accepted that the seized articles are easily available in the market. The articles

seized were sent to the State Forensic Science Laboratory, Sagar for the Serological test. The FSL report is Exhibit-P/67. A perusal of the said report, reveals that no blood was found on the seized articles i.e spade, axe and pickaxe allegedly used to commit the murder of Ashok. Therefore, from the solitary circumstance of the alleged recovery of the articles as described above does not prove the guilt of appellants without any other incriminating circumstance to complete the chain. Standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability. In **Subramanian Swamy Vs. A.Raja (2012) 9 SCC 257** it was held that suspicion, however strong, cannot take the place of legal proof.

24. When the prosecution is based on circumstantial evidence, the motive behind the crime becomes important. In this case, as per prosecution story, the deceased Ashok had an illicit relationship with the niece of the accused/appellant Amar Singh but the prosecution has failed to produce cogent evidence to prove the motive as mentioned above. Parvati (PW-3) who is the sister of the deceased Ashok, has stated that she was not aware of the fact that her brother Ashok was beaten up because of his

relationship with the niece of accused/appellant Amar Singh.

25. Sushil Kumar (PW-12) in his Court evidence at para 4 has stated that he came to know that 10 to 15 days before the date of incident, accused/appellant Amar Singh had beaten up Ashok because he had a doubt that Ashok was having an affair with his niece. But when we compare his court statement with the police statement, it reveals that there is an omission in his police statement on this fact which shows that this witness has improvised his court statement. The evidence of this witness on this point is also based on hearsay evidence and he has not even disclosed the source of information about the alleged affair between the deceased and the niece of Amar Singh. Therefore, his Court statement about the alleged illicit relationship between the deceased Ashok and niece of Amar Singh being the motive behind the crime is also not found to be trustworthy. Moreover the appellant Amar Singh died during the pendency of this appeal and no motive has been attributed to the present appellants Halke, Raju @ Rajaram and Raju @ Baghela by the prosecution.

26. The net result of the above discussion is that the prosecution has not been able to prove each of the links in the chain of circumstances or that the proved circumstances point unmistakably to the guilt of the appellants. Therefore, the trial

Court erred in convicting the appellants for the offence under Sections 302,201 of IPC.

27. Consequently, the impugned judgment of the trial Court and the order of sentence are accordingly set aside. The appellants Halke, Raju @ Rajaram and Raju @ Baghela are accordingly acquitted of the offences punishable under Sections 302,201 of IPC.

28. Resultantly, the appeal is allowed. The bail bonds and surety bonds of appellants Halke, Raju @ Rajaram and Raju @ Baghela stand discharged.

29. Before parting this case, we record our appreciation to Mr. Devdatt Bhave, Advocate who has appeared as *amicus curiae* in this case and assisted this Court.

(Atul Sreedharan)
Judge

(Sunita Yadav)
Judge