

HIGH COURT OF MADHYA PRADESH : JABALPUR

DIVISION BENCH: HON.SHRI JUSTICE RAJEEV KUMAR DUBEY

&

HON. SHRI JUSTICE SANJAY DWIVEDI, J. J.

Criminal Appeal No.143/2010

Sher Singh

Versus

The State of M.P.

Shri Ravindra Kumar Rajput, Advocate for the appellant as Amicus Curiae.

Shri Arpit Tiwari, Govt. Advocate for the respondent/State.

J U D G M E N T

(Reserved on 02/02/2019)

(Delivered on 08/02/2019)

This appeal has been filed under Section 374 (2) of the Cr.P.C. against the judgment dated 31/7/2009 passed by the Ist Additional Sessions Judge, Betul in S.T. No.81/2008, whereby learned Sessions Judge found appellant guilty for the offence punishable under Sections 302 and 201 of IPC and sentenced him to undergo R.I. for life with fine of Rs.1/- and seven years with fine of Rs. 1/- with default stipulation respectively.

2. Brief facts of the case are that on 18/01/2008, Dasan Uike (PW1) lodged the FIR (Ex.P-2) at P.S. Chicholi, Distt. Betul averring that he was a resident of village Katkuhitodar Thana Chicholi, his brother Munnalal Goud was also resided in the same vicinity near his house. On 15/01/2008 at about 8 p.m., when he was at his house, Indra (PW8)

Banshi's wife came to his house and informed him that at 8 p.m. appellant Sher Singh came to her house and took Banshi along with him and Banshi had not returned since. They thought that Banshi would go to Dwarka Seth as he used to work with him. But that day, Girdhari informed him that one dead body packed in a bag was lying at the chunabhatti area. On that, he and village kotwar, Munnalal (PW4), Sundarlal (PW7) went to there accompanied by 8-10 villagers. There they saw a bag and on opening it, he found Banshi's dead body packed inside it and his neck was almost cut. There were many wounds on the back side of his neck. He also saw blood stains from the spot, where the corpse was found, going up to Amarlal's farm and in his field also there was a lot of blood was lying on one spot, which was burnt and he has a doubt that Amarlal had murdered Banshi. On that, S.L. Surja (PW13), SHO registered Crime no.15/2008 for the offence punishable under Sections 302 and 201 of the IPC and also registered merger intimation report no.2/2008 (Ex.P-1) and investigated the matter. During investigation, he went to the spot and prepared inquest report of dead body of Banshi (Ex.P-15) and also prepared spot map (Ex.P-4) of both the spots. He also seized one slipper, simple soil and ash of burnt grass and soil and a piece of pants of deceased Banshi from Amarlal's field (first spot) and prepared seizure memos (Ex.P-12 & 13). He also seized blood stained and simple soil and blood stained bag in which dead body of Banshi was found from the second spot (where Banshi's dead body was found) and prepared seizure memos (Ex.P-18 & 19). S.L. Surja (PW13) also found that the grass of the place, where Banshi was murdered was also burnt for hiding the evidence of the murder. On that, he also prepared Panchnama (Ex.P-24) of said spot. Thereafter, he sent dead body of Banshi for postmortem to CHC, Chicholi along with application (Ex.P-23) through Constable No.415 Santosh, where Dr. Rajendra Mausik (PW10) conducted an autopsy of the dead body of Banshi and gave postmortem report (Ex.P-21) to the effect that the

death of Banshi was homicide and he had died due to cutting of his throat and duration of death was between 3 to 5 days prior to the postmortem. During investigation, S.L. Surja (PW13) also recorded the case diary statements of Dasan (PW1), Khuddi (PW2), Sukka Bai (PW3), Munnalal (PW4), Dwarika Prasad (PW5), Girdhari (PW6), Sundarlal (PW7), Indra Bai (PW8), Poonam (PW11) and Sukiya Bai (PW12). On 19/01/2008, he arrested appellant Sher Singh and co-accused Mohan and Amarlal and prepared arrest memos (Ex.P-27 to Ex.P-29) and he also seized one axe (Article-H) on the information of appellant Sher Singh and prepared information memo (Ex.P-5) and seizure memo (Ex.P-6) and he also seized the blood stained clothes of the accused Sher Singh, which he had worn at the time of his arrest and prepared seizure memo (Ex.P-31). He also seized blood stained rope from the possession of co-accused Amarlal and one stick and clothes from the possession of co-accused Mohanlal and prepared seizure memos (Ex.P/7,8 & 11) and information memos (Ex.P/9 & 10). He also sent all seized articles for chemical examination to F.S.L. Bhopal through S.P. Betul along with the draft (Ex.P-34), from where report was received to the effect that human blood found on the piece of pants of deceased Banshi, the bag in which dead body of the deceased was found and the axe (Article-H) seized on the information of the appellant and the blood group of the blood found on these three articles was "B". After completion of the investigation, police filed charge sheet against appellant Sher Singh, co-accused Amarlal and Mohanlal before CJM, Betul, who committed the case to the Court of Session, where on that charge sheet S.T. No.81/2008 was registered. Learned ASJ framed the charge against the appellant and co-accused Amarlal and Mohan for the offence punishable under Sections 302/34 and 201 of the I.P.C. and tried the case. The prosecution produced as many as 13 witnesses for proving its case. The appellant and co-accused abjured the guilt and took the defence that they were innocent and have falsely been

implicated in the case. However, after trial learned Sessions Judge acquitted co-accused Amarlal and Mohan but found appellant guilty of the offences punishable under Sections 302/34 and 201 of the I.P.C. and sentenced him as indicated above. Being aggrieved from that judgement, the appellant filed this appeal.

3. Learned counsel for the appellant submitted that there is no eyewitness of the incident. The prosecution case is solely based on circumstantial evidence. It is settled that when there is no direct evidence of the commission of offences, the case rests entirely on the circumstantial evidence, all the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. While in this case, no chain of circumstance has been proved by the prosecution beyond reasonable doubt against the appellant. Learned trial Court, merely on the basis of seizure of blood stained axe by the police on the information of the appellant and the fact that the appellant was last seen with the deceased, found him guilty for the aforesaid offences. While, these circumstances were not proved by the prosecution beyond reasonable doubt against the appellant. The seizure of the axe, at the instance of the appellant, is doubtful. In the seizure memo (Ex.P-6), it is mentioned that the axe was seized from Amarlal's field while Dasan (PW1), witness of the seizure memo, deposed that the said axe was recovered by the police from the field of appellant Sher Singh. So seizure becomes doubtful. Likewise, regarding last seen theory, Munnalal (PW4) deposed that on 15/01/2008, appellant Sher Singh and co-accused Mohan took deceased Banshi along with them from his house while learned trial Court acquitted co-accused Mohan from the charges. So, there is no chain of circumstances to prove the guilt of the appellant. Also, there is no evidence on record to show that the appellant had any motive to murder Banshi. Learned trial Court

without appreciating all these facts, wrongly found the appellant guilty for the aforesaid offences.

4. On the other hand, learned counsel appearing for the respondent/State submitted that there is an ample evidence on record to prove the guilt of the appellant. Learned trial Court did not commit any mistake in finding the appellant guilty of the aforesaid offences. Hence, prayed for rejection of the appeal.

5. Point of determination in this appeal is whether the conviction and sentence awarded by the trial Court to the appellant for the offences punishable under Sections 302 and 201 of IPC is liable to be set aside for the reasons stated in the memo of appeal and argued before this Court.

6. This Court has gone through the record and the arguments put forth by both the counsel. On the point that on 18/01/2008 the dead body of deceased Banshi was found lying at chunabhatti area in a bag, and his death was culpable homicide amounting to murder, there is no ambiguity in the prosecution evidence. S.L. Surja (PW13) deposed that on 18/1/2008 he was posted as SHO, P.S. Chicholi. On that day, Dasan (PW1) lodged the report (Ex.P-2) on which he registered Crime no.15/2008 and investigated the matter. During investigation, he went to the spot, where he found the dead body of Banshi lying in a jute bag. He prepared inquest report of dead body of Banshi (Ex.P-15). He also seized one slipper, simple soil and ash of burnt grass and soil and a piece of pants of deceased Banshi from Amarlal's field (first spot) and prepared seizure memos (Ex.P-12 & 13). He also seized blood stained and simple soil and blood stained bag in which dead body of Banshi was found from the second spot (where Banshi's dead body was found) and prepared seizure memos (Ex.P-18 & 19). He further deposed that he also found that the grass of the place, where Banshi was murdered

was also burnt for hiding the evidence of murder. On that, he also prepared Panchnama (Ex.P-24) of said spot. In this regard, his statement is also corroborated by the statement of Dasan (PW1), Indra Bai (PW8) and Munnalal (PW4), who also deposed that on 18/01/2006 the dead body of deceased Banshi was found lying at chunabhatti area in a bag.

7. On the point prosecution story also corroborated by the statement of Dr. Rajendra Mausik (PW10), who conducted autopsy of the dead body of deceased Banshi. He deposed that on 19/01/2008, he was posted as Medical Officer at CHC Chicholi and on that day, he conducted the autopsy of Banshi's dead body brought by the Constable Santosh. He started the post mortem of Banshi's dead body at 12:00 in the afternoon. In the postmortem, he found following injuries in his dead body:-

- (i) Chop wound back and left side of neck size 12.5x3x6cm and on opening of that wound it was found that cervical vertebra was also cut.
- (ii) Chop wound left side of occipital region size 7x1x5cm. and on opening of that wound it was found that occipital bone was also cut upto the brain matter.
- (iii) Chop wound on right side of neck size 5x1x3cm.
- (iv) Chop wound on left scapular region 3x1x muscle deep and muscle was also cut.
- (v) Chop wound on lateral surface of right thigh size 10x3x2cm.

He further deposed that all above mentioned injuries were antemortem in nature and caused by sharp and heavy weight object and deceased Banshi died due to hemorrhagic shock which was caused due to cutting of major blood vessels of neck. As a result of chop wound on

the neck and the duration of his death was three to five days from the postmortem.

8. At this point, the appellant has not given any significant challenge to the statements of the above-mentioned witnesses in their cross-examination. On this point there is no ambiguity in the statements of above mentioned witnesses. So, there is no reason to disbelieve their statements in this regard. As appears from postmortem reports assailant caused three injuries on the neck of deceased Banshi due to which his major blood vessels were cut, which clearly shows that the assailant caused those injuries with intention to murder Banshi. So, from the statements of above-mentioned witnesses, it is clearly proved that the dead body Banshi was found on 18/1/2008 in chunabhatti area in a bag and his death was culpable homicide which amounts to murder.

9. On the point that whether appellant murdered Banshi and threw his dead body at the chunabhatti area in a bag to hide the evidence of the murder, there is no direct evidence on record to prove the guilt of the appellant. The prosecution story is solely based on circumstantial evidence.

10. The trial Court found following circumstances proved against the appellant:-

- (I) The appellant was last seen with the deceased.
- (II) Human blood was found on the axe (Article-H) which was seized by the police at the instance of the appellant and the blood group of said blood matched with the blood group of the deceased.

Regarding point No.(i) Indra Bai (PW8), wife of the deceased deposed that at the date of incident at 7 p.m., when she was at home, her husband Banshi returned from the market to his house along with co-accused Mohan. At that time, appellant Sher Singh came there and

took Banshi along with him. Thereafter, Banshi did not return and thereafter, his dead body was found in a bag at chunabhatti area. In this regard, her statement is also corroborated by the statement of Dasan (PW1), who also deposed that on 15/01/2008 Indra Bai told him that appellant Sher Singh had taken Banshi with him from the house and Banshi did not return thereafter. In this regard, the statement of Dasan (PW1) is also supported from the FIR (Ex.P-2) lodged by him at P.S. Chicholi, Distt. Betul.

11. Learned counsel for the appellant submitted that Munnalal (PW4) deposed that both appellant Sher Singh and co-accused Mohan took Banshi from his house, while learned trial Court acquitted co-accused Mohan. So, the prosecution story that at the date of incident only appellant Sher Singh took Banshi with him becomes doubtful. But this argument has no force. The fact that when appellant took Banshi with him from his house at that time co-accused Mohan was with him is an exaggeration in the Court statement of Munna Lal, because this fact is not mentioned in his case diary statement (Ex.D-1). On the contrary, it is mentioned that only appellant Sher Singh took Banshi with him. So that statement of Munnalal (PW/4) do not cast any doubt on prosecution story that at the time of incident only appellant Sher Singh took deceased Banshi with him. On the point that at the time of incident, only appellant Sher Singh took deceased Banshi with him from his house, there is no contradiction in the statements of Indra Bai (PW8) and Dasan (PW1). Appellant did not give any suggestion to Indra Bai (PW8) in her cross-examination that at the date of incident, the appellant did not take Banshi with him. So, there is no reason to disbelieve the statement of Indra Bai (PW8) which is also corroborated from the statement of Dasan (PW1). So from the prosecution evidence, it is clearly proved that on 15/1/2008 at around 7 p.m., appellant Sher Singh took Banshi from his house and Banshi did not return thereafter

and later, his dead body was found on 18/1/2008 at chunabhatti area in a bag.

12. Regarding Point No.2, S.L. Surja (PW13) deposed that during investigation, on 19/1/2008, he arrested the appellant and prepared arrest memo (Ex.P-27) and during interrogation, the appellant Sher Singh informed him that he had concealed the axe (Article-H) in the bunch of bamboo trees grown in Amarlal's field on which he prepared memorandum (Ex.P-5) and later at the instance of the appellant seized that axe (Article-H) from the bunch of bamboo trees grown in Amarlal's field and prepared seizure memo (Ex.P-6); his statement is also corroborated from the statement of Dasan (PW1), who is the independent witness of the information memo and seizure memo.

13. Learned counsel for the appellant submitted that Dasan (PW1) in his Court statement had deposed that the police seized axe (Article-H) from appellant Sher Singh's field while S.L. Surja (PW13) deposed that he seized axe (Article-H) from the bunch of bamboo trees growing in Amarlal's field, so seizure became doubtful. But, this argument has also no force. Although, Dasan (PW1) deposed that the police seized axe (Article-H) from appellant Sher Singh's field while S.L. Surja (PW13) deposed that he seized axe (Article-H) from the bunch of bamboo trees growing in Amarlal's field at the instance of appellant Sher Singh. But, in the memorandum (Ex.P-5), it is mentioned that appellant Sher Singh informed that he had concealed the axe in the bunch of bamboo trees growing in Amarlal's field and in the seizure memo (Ex.P-6) also it is mentioned that the said axe was seized by S.L. Surja (PW13) at the instance of appellant Sher Singh from the bunch of bamboo trees growing in Amarlal's field. S.L. Surja (PW13) also in his Court statement clearly deposed that the appellant gave the information that he had concealed the axe in the bunch of bamboo trees growing in

Amarlal's field and he had seized the said axe (Article-H) at the instance of appellant Sher Singh from the bunch of bamboo trees growing in Amarlal's field. So only on the basis, that Dasan (PW1) deposed that the police had seized axe (Article-H) from appellant Sher Singh's field, the statement of S.L. Surja (PW13) that the appellant had given the information that he had concealed the axe in the bunch of bamboo trees growing in Amarlal's field and he had seized the said axe (Article-H) at the instance of appellant Sher Singh from the bunch of bamboo trees growing in Amarlal's field which also corroborated by the memorandum (Ex.P-5) and seizure (Ex.P-6), can not be disbelieved. So, it is also proved that police seized the axe (Article-H) at the instance of the appellant.

14. S.L. Surja (PW13) also deposed that he sent the piece of pants of deceased Banshi (Article-A), bag (Article-E) in which dead body of deceased Banshi was found and the axe (Article-H) seized at the instance of appellant Sher Singh to FSL Bhopal along with draft (Ex.P-23) from where FSL report was received. In that report, it is mentioned that in the piece of pants of deceased Banshi (Article-A), bag (Article-E) in which dead body of deceased Banshi was found and the axe (Article -H) seized at the instance of appellant Sher Singh human blood was found and the group of said blood was "B". So, it is also proved that human blood was found on the axe (Article-H) seized by the police at the instance of appellant Sher Singh and the group of the said blood matched with the blood group of deceased Banshi.

15. So, from the prosecution evidence as discussed above, it is proved that appellant Sher Singh took Banshi alongwith him from his house on 15/1/2008 at around 7:00 p.m. and thereafter, his dead body was found on 18/1/2008 in a bag in chunabhatti area and Dr. Rajendra Mausik (PW10), who conducted the autopsy of dead body of deceased

Banshi on 19/01/2008 opined that Banshi had died three to five days prior to the postmortem, which clearly shows that deceased Banshi was murdered on the same day. i.e. 15/01/2008, when the appellant had taken him along with him from his house and police also seized one blood stained axe (Article-H) at the instance of appellant Sher Singh and the group of the blood found on the axe matched with the blood group of the deceased Banshi. But, the appellant did not give any explanation regarding these circumstances during trial and at the time of his examination, under Section 313 of the Cr.P.C., he only stated that he did not know anything regarding those circumstances.

16. Hon'ble Apex Court in the case of **State of Rajasthan v. Kashi Ram** reported in **AIR 2007 SC 144** held that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. Apex court in the case of **Sahadevan Alis sagadevan Vs State represented by Inspector of Police chennai (2003) 1 SCC 534** also held that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company.

17. In the instant case also the prosecution established the fact that appellant Sher Singh took deceased Banshi along with him from his house on 15/01/2008 at around 7:00 p.m. and thereafter, his dead body was found on 18/01/2008 in a bag in chunabhatti area and he was murdered on the very same day i.e. 15/01/2008 when appellant Sher Singh had taken deceased Banshi alongwith him from his house and from the postmortem report, it also appears that deceased Banshi sustained incised wound, caused by sharp object and police also seized

one axe (Article-H) (sharp edged object) at the instance of appellant; human blood was also found on that axe and the group of blood found on it matched with the blood group of deceased Banshi. So, it was the duty of the appellant to give explanation regarding these circumstances. But, the appellant after his arrest did not offer any explanation and even at the trial only denied the allegations made against him without offering any explanation.

18. So, these incriminating circumstances collectively in our view form a complete chain and are consistent with no other hypothesis except the guilt of the accused/appellant. He did not give any explanation regarding all these circumstances, which clearly proves that the appellant murdered Banshi and thereafter, concealed his dead body in a bag and threw the same at chunabhatti area to hide the evidence of murder.

19. So, we are of the view that the learned trial Court did not commit any mistake in finding the appellant guilty for the offences punishable under sections 302 and 201 of IPC. Hence, appeal filed by the appellant has no force and is hereby **dismissed**.

20. The period already undergone shall be set off from the period of substantive jail sentences.

(Rajeev Kumar Dubey)

Judge

(Sanjay Dwivedi)

Judge

m/-