

**HIGH COURT OF MADHYA PRADESH AT JABALPUR****M.Cr.C No. 1711/2016****State of Madhya Pradesh**

Vs.

**Laxman Domar & Ors.****Present : Hon'ble Shri Justice S.K.Seth, Judge**  
**Hon'ble Smt. Justice Anjuli Palo, Judge**

---

Shri Prakash Gupta, Panel Lawyer for the applicant / State.  
None for the respondents.

---

**ORDER**  
**( 21/06/2017)**

**Per : Smt. Anjuli Palo, J :-**

1. This application has been filed by the State under Section 378(3) of the Code of Criminal Procedure, 1973 seeking leave to appeal challenging the impugned judgement of acquittal dated 06.08.2015 passed by the First Additional Sessions Judge, Annupur in ST No. 88/2012, whereby the respondents have been acquitted from the charges of offence punishable under Sections 302, 120-B in alternate Section 302 r/w Section 34 and Section 201 of Indian Penal Code.
2. Heard learned counsel for the State. Perused the record.
3. The respondents were charged for the offences punishable under Sections 302, 120-B in alternate Section 302 r/w Section 34 and Section 201 of Indian Penal Code for committing the murder of Vishnu Mogre in the intervening night of 7<sup>th</sup> and 8<sup>th</sup> January, 2012

at village Tikuri Tola. Later, the evidence was wiped out by throwing away the body of the deceased into pond named Gayatri Sarovar.

4. The prosecution case was based on last seen theory and circumstantial evidence. Prosecution failed to prove its case. Hence, respondents were acquitted by the learned Trial Court from the abovementioned charges.

5. It is submitted by the applicant / State that the findings of learned Trial Court are contrary to the evidence on record and is perverse. The evidence regarding seizure has not been properly appreciated by the Trial Court. Therefore, respondents are liable to be convicted under 302, 120-B and 201 of IPC. The applicant pray for grant of leave to appeal.

6. In case of **Sanwat Singh & Ors. Vs. State of Rajasthan (AIR 1961 SC 715)**, it was held that in *an appeal against acquittal the appellate Court has full powers to review the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon the evidence the order of acquittal should be reversed*. The scope of the powers of an appellate court in an appeal against acquittal has been elucidated by the Privy Council in **Sheo Swarup v. King-Emperor [AIR 1934 PC 227 (2)]**, Lord Russell observed at p. 404 thus:

*"..... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a*

*presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.*

*These two passages indicate the principles to be followed by an appellate court in disposing of an appeal against acquittal and also the proper care it should take in re-evaluating the evidence.”*

7. After re-appreciating of the prosecution evidence, we find the following lacunae in the prosecution case:-

- (i) With regard to last seen theory, there has been no evidence on record against the respondents. S.P.Mogre (PW-2), uncle of the deceased has clearly stated that they had grave suspicion against the respondents. It is settled law that suspicion cannot take the place of proof. Thus, suspicion alone is not sufficient for conviction. There have been enmity between the deceased Vishnu and the respondents for the closeness between the respondent No. 3 Meera Bai and the deceased Vishnu Mogre.
- (ii) S.P.Mogre (PW-2) himself lodged the missing report (Ex.P1) of Vishnu Mogre. He has stated that deceased Vishnu left his house in the morning saying that his uncle Surendra has called him. No one saw the deceased leaving with the respondents.

(iii) Bhuri Bai (PW-8) mother of the deceased in Para 6 of her cross-examination admitted that the deceased had dispute with many persons namely Dheeraj, Surendra Rajak, Santosh Panicker, Shravan Pathani and Pramod Sharma. Hence there is a strong suspicion that any of the above mentioned persons may be the culprit.

(iv) It is contended by learned counsel for the applicant that on the memorandum of the respondent, Brijraj Singh the investigating officer seized a rope which was used for strangulating the deceased. But Jhanna Domar (PW-18) in para 8 has stated that the rope was seized from open *badi* (place). Even then only the seizure of aforesaid rope is not sufficient to connect the respondents with the crime as such kind of rope is generally used for domestic purpose in the village which is easily available in every household.

(v) Seized rope (Article B) had no blood stain nor was it sent to FSL for examination as admitted by Brijraj Singh (PW-19), Investigating Officer.

(vi) The seizure of rope (Ex. P-17) on the basis of memorandum of the respondent creates reasonable

doubt on the prosecution case. It is not sufficiently proved that the seized rope was used in the crime.

(vii) Name of the respondents are not reflected in the FIR.

8. We find that the finding of learned trial Court is neither perverse nor suffer from any legal infirmity or non-consideration or misappropriation of evidence on record. We cannot reverse the judgment of acquittal merely because the other view was possible. The prosecution cannot be said to have proved its case beyond reasonable doubt.

9. In case of **State of MP Vs. Ramratan @ Bablu Loni [2016(3) MPLJ (Cri.) 366]**, **MP Shahul Hameed Vs. State of Kerala [2017 Cr.LJ 732 SC-A]** and **Harbeet Singh Vs. Sheeshpal [2017 Cr.LJ 169 SC]** it is held that:

*“The reversal of acquittal can be made only if the conclusions recorded by the trial Court did not reflect a possible view, that is to say a view which can reasonably be arrived at. In the case of acquittal, the judgement of the trial Court may be interfered with only where there is absolute assurance of guilt of the accused / respondent on the basis of evidence on record and not merely because the High Court can take another possible or a different view.*

10. In view of the discussion in the foregoing paragraphs, we find no ground for interference with the impugned judgement passed by the learned trial Court. As the impugned judgement of acquittal is neither palpably wrong nor grossly unreasonable, therefore, interference against the acquittal is not called for.

11. Hence, the application for leave to appeal is accordingly dismissed.

**(S.K.SETH)**  
**JUDGE**

**(SMT. ANJULI PALO)**  
**JUDGE**

*vidya*