



2019 INSC 1088

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1989/2010

MAHILA ROOMABAI JATAV

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

J U D G M E N T

This appeal by the convicted accused is directed against the judgment dated 11.10.2006 of the High Court of Madhya Pradesh whereby it upheld the judgment of the Trial Court convicting the appellant under Sections 302 read with 120B of the Indian Penal Code, 1860 and sentencing him to imprisonment for life. The accused was also held guilty for committing an offence punishable under Section 201, IPC and sentenced to undergo R.I. for five years.

Briefly stated, the facts are that the appellant was married to one Shivcharan. Shivcharan was the elder brother of Chironji Jatav (PW1). Both of them lived in the same compound but in separate huts. According to Chironji Jatav, on 13.03.1995 at about 3.00am in the morning, this witness saw the appellant going outside the house along with her husband Shivcharan. He asked them

where they were going. They replied that they were going to defecate. The witness said that he then went back to sleep. He woke up when the appellant - Roomabai returned home. On noticing her alone, Chironji Jatav (PW1) asked her where Shivcharan was. She replied that Shivcharan had not completed defecating and would come after some time. The witness then again went back to sleep. According to this witness, early in the morning, when Shivcharan had still not returned, he and his father enquired from the appellant where the deceased had gone. She did not give any satisfactory answer. This created a doubt in the mind of the family members of Shivcharan. According to these witnesses, the appellant was having an illicit relationship with one Ramesh of the same village. The family members searched for Shivcharan but could not find him. When they again enquired of the appellant to tell the truth, she allegedly told that Ramesh had killed the deceased and that the body had been thrown in a well.

According to PW1, they searched for the body of Shivcharan but could not find the same. Later, one Halke (PW5) came and informed that the dead body of the deceased was lying in the well of Patel which was about 1 km from the alleged place of occurrence.

Thereafter, PW1 lodged an FIR (Exhibit P1) which was

recorded at 1.30 pm on 13.03.1995 and the allegations in the FIR are similar. PW1 had given a similar version in his statement in Court. However, he did make an admission that he and Shivcharan had been separated and were living separately for more than six years. In cross-examination, he also stated that his statement in the examination in chief that his mother and wife woke up when Rumbabai was leaving the house was incorrect. This means that other than Chironji Jatav, nobody had seen Rumabai leaving along with Shivcharan.

In the cross-examination, the witness also stated that one day prior to the incident, Shivcharan (deceased), Rumabai (accused) and Ramesh (co-accused) were together in their house. He also admitted that Rumabai used to work as a labourer. He went on to state that he and his family members hated Rumabai.

Another important aspect of the statement of this witness is that he admitted in cross-examination that the police did not carry out any formality in the village. The police inspector took his signature on the documents after scribing the FIR and this witness did not read what was written in the FIR. It is also stated that FIR was not even read over to him. A suggestion had been put to this witness that he falsely implicated Rumabai with a view to grab the property of the deceased. We are not

going into this aspect of the matter.

There are some other witnesses including the mother (PW2) whose statements are similar but the fact remains that other than PW1 nobody saw Rumabai leaving the house with Shivcharan. The other witnesses are important only with respect to the alleged confession of Rumabai wherein she stated that Ramesh had killed Shivcharan and thrown the body into the well.

On the basis of this evidence, the Trial Court convicted both Rumabai and Ramesh for the offences of murder under Section 302 read with 120B, IPC and for destruction of evidence under Section 201, IPC. Both the accused filed appeals before the High Court.

The High Court acquitted Ramesh holding that there were no evidence against him. But, mainly relying on the theory of last seen and also on the so-called confession upheld the conviction of the appellant. The High Court also disbelieved the recovery allegedly made from Ramesh but believed the recovery made from Rumabai. The recoveries were an axe which allegedly had blood stains on it and shoes. These recoveries were allegedly made from the house of Rumabai and proved by the police officer (PW9) who arrested her.

There are no eye-witnesses to the case and the case is based solely on circumstantial evidence. The law with regard to circumstantial evidence is well settled that all the circumstances should be linked together in such a manner that they form an unbroken chain which leads to only one unerring conclusion, that is, the guilt of the accused. If there is any chance of the offence being committed by any other person then the benefit has to be given to the accused.

We shall now discuss the circumstances:

(i) Motive:- It is alleged that the motive was the so-called illicit relationship with Ramesh. The evidence of PW1 destroys this circumstance. He himself admits that just one day prior to the incident he had seen both the accused and Shivcharan together in the house of Shivcharan. This witness also states that he and his family members objected to the accused for having an illicit relationship with Ramesh. Therefore, obviously Shivcharan would have been aware of this fact. It is beyond comprehension that the husband will sit in the house at the same time with his wife and her paramour. This is not natural behaviour accepted from any human being. Therefore, we are not inclined to accept this circumstance to be proved.

(ii) Last seen:- As far as the circumstance of last seen is concerned, from the evidence of PW1, it is proved that PW1 had last seen the appellant going out with Shivcharan and she returned alone. Here it would be important to note that this is one of those unusual cases wherein the accused had stepped into the witness box. In her examination, she had not stated that she did not go out with her husband. Therefore, we accept that she was last seen by PW1 with the deceased - Shivcharan. But what is the effect of this last seen theory. A husband and wife being last seen with each other is nothing unnatural. The husband and wife in rural areas going out together in the early hours to defecate is not unusual. The wife came back and the husband did not come back. The body of the husband is discovered the next day at about 1.00 pm or so. How can it be inferred that it was the lady alone who had committed the murder specially when we have not accepted the motive for the murder.

(iii) The third circumstance relied upon is the recovery of a blood stained axe from the house at the instance of the appellant - accused. The only witness is the police official and there are no independent witnesses. Furthermore, this recovery is obviously a false recovery. We say so because even PW1 does not say that when he saw Rumabai, she was carrying an axe. How did this axe suddenly appear out of thin air into the

house.

(iv) Extra Judicial Confession : The Trial Court mainly relied upon extra judicial confession. The nature of extra judicial confession was that the co-accused - Ramesh had killed the deceased. Since Ramesh has been acquitted, therefore both the theory of illicit relationship and the extra judicial confession have to fall.

We, therefore, are left only with one circumstance of last seen and we do not feel this circumstance alone is sufficient to hold the accused guilty of the offences of which she has been convicted.

In view of the above, we allow the appeal and set aside the judgment of the High Court and the Trial Court. The appellant is acquitted. Bail bonds stand discharged.

.....J.
[DEEPAK GUPTA]

.....J.
[ANIRUDDHA BOSE]

NEW DELHI;
September 26, 2019.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1989/2010

MAHILA ROOMABAI JATAV

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

Date : 26-09-2019 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSEFor Appellant(s) Mrs. Rachana Joshi Issar, AOR
Mr. K. Vaijayanti, Adv.For Respondent(s) Mr. Sunil Fernandes, AAG
Mr. Zeeshan Diwan, Adv.
Ms. Nupur Kumar, Adv.
Ms. Priyanshaindra Sharma, Adv.
Mr. Rahul Kaushik, Adv.
Mr. Harsh Parashar, AOR

UPON hearing the counsel the Court made the following

O R D E R

The criminal appeal is allowed in terms of the signed order.
Pending application, if any, stands disposed of.

(MEENAKSHI KOHLI)
COURT MASTER(RENU KAPOOR)
COURT MASTER

[Signed order is placed on the file]