



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.35 OF 2022

Mukesh

..Appellant(S)

Versus

The State of Madhya Pradesh

..Respondent(S)

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.09.2019 passed by the High Court of Madhya Pradesh at Indore in Criminal Appeal No. 1244 of 2011 by which the High Court has dismissed the said appeal and has confirmed the judgment and order of conviction passed by the learned Trial Court convicting the accused for the offences punishable under Section 302 read with Section 34 of the IPC, original accused – Mukesh has preferred the present appeal.

2. That an FIR was lodged by one Nanbai – wife of the deceased at the Police Station Nanpur, alleging that on the Diwali night at about 10:00 or 11:00 pm the elder brother of her husband (Jeth) – accused No.1 – Sekadiya and his son Mukesh – accused No.2 came to her house to call her husband saying that there had been cooked 'Murga' in their house. According to the complainant, her husband – Vesta went along with accused No.1 and accused No.2. According to the complainant after sometime, she heard the voice of crying/scream of her husband and she immediately rushed to the house of her Jeth – accused No.1 – Sekadiya and she saw in the light of electricity that accused No.3 – Jethani (wife of accused No.1 – Sekadiya) had caught hold her husband – Vesta and accused No.1 assaulted her husband by Axe on the head, due to which Vesta fell down. As per the case of the prosecution, the husband of the complainant – Vesta died due to injuries from the axe. According to the prosecution there was a land dispute and therefore the accused persons killed the deceased by calling him at their house. According to the prosecution the accused persons

committed the offences punishable under Section 302 read with Section 34 of the IPC. After conclusion of the investigation, the Investigating Officer filed the chargesheet against the accused for the aforesaid offences. The accused pleaded not guilty and therefore all of them claimed to be tried by the learned Sessions Court for the offences punishable under Section 302 read with Section 34 of the IPC. To prove the charge against accused the prosecution examined in all eight witnesses out of which Nanbai – PW1 was the eye witness. The prosecution also brought on record the documentary evidences including the medical evidence through various witnesses. On closure of the evidence on the side of the prosecution, statements of accused under Section 313 Cr.PC were recorded in which the accused stated that they have been falsely implicated in the case at the instance of the Sarpanch due to enmity of election. On appreciation of evidence, the learned Trial Court held all the accused guilty for the offences punishable under Section 302 read with Section 34 of the IPC and sentenced all of them to undergo life imprisonment.

3. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Trial Court accused preferred an appeal before the High Court. By the impugned judgment and order the High Court has partly allowed the said appeal and has acquitted the original accused No.3 – wife of accused No.1 (Jaithani), however, has dismissed the appeal qua accused Nos.1 and 2.
4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court original accused No.1 and 2 preferred appeals before this Court. Appeal qua accused No.1 – Sekadiya has been dismissed by this Court earlier vide judgment/order dated 12.01.2021, therefore, the present appeal is required to be considered qua accused No.2 – Mukesh – son of accused No.1.
5. We have heard learned counsel appearing on behalf of the respective parties at length. We have also gone through the findings recorded by the learned Trial Court as well as the reasoning given by the High Court while convicting Mukesh – accused No.2 for the offences punishable under Section 302 read with Section 34 of the IPC. We have also gone through the deposition of PW1 – original complainant – eye

witness. The learned Trial Court has observed while convicting the appellant – accused No.2 – Mukesh that he, along with his father went to the house of the deceased to call him for dinner as they had cooked ‘Murga’ and thereafter accused No.1 inflicted the axe blows on the head of the deceased – Vesta and thereafter dead body was dragged by Mukesh also, which was thrown in the courtyard (Aangan of the house of deceased) by accused Mukesh and Sekadiya. The Trial Court has also observed that there was a conspiracy hatched by all the accused to kill the deceased. However, from the deposition of PW1 – eye witness it does not appear that Mukesh had thrown the dead body in the Aangan (courtyard). As such except the fact that accused No.1 and accused No.2 came to the place of the deceased to call the deceased for dinner at their house and the deceased went with accused No.1 and accused No.2 no further role is attributed to Mukesh – accused No.2. There is no overt act alleged so far as accused No.2 – Mukesh is concerned. The specific role and overt act is alleged against accused No.1 and accused No.3. However, unfortunately accused No.3 has been acquitted by the High Court against which no

appeal is preferred by the State as of today. Be that it may, solely on the basis that appellant – accused No.2 – Mukesh accompanied with accused No.1 when they went to the house of the deceased and invited him to dinner in their house by that itself it cannot be said that there was any criminal conspiracy hatched by all the accused. On the contrary, there are specific allegations against accused No.1 and accused No.3 only and as observed hereinabove no overt act at all is alleged so far as accused No.2 Mukesh is concerned. As observed hereinabove, there are no allegations even by PW1 that Mukesh had dragged the dead body and thrown it into the courtyard of the deceased. Therefore, the finding recorded by the learned Trial Court against appellant – accused No.2 – Mukesh that he also dragged the dead body and thrown into the courtyard of the deceased is not supported by any evidence. Therefore, we are of the opinion that both, Trial Court as well as the High Court have committed a grave error in convicting appellant herein – accused No.2 – Mukesh for the offences punishable under Section 302 read with Section 34 of the IPC.

Conviction and sentence of appellant – accused No.2 – Mukesh is hence unsustainable.

12. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court as well as that of the Trial Court convicting appellant herein – Mukesh – original accused No.2 for the offences punishable under Section 302 read with Section 34 of the IPC is hereby quashed and set aside.

As per the custody certificate, a copy of which has been placed at page No.94 of the paperbook, accused Mukesh is presently undergoing sentence in Central Jail, Barwani, M.P. Since, we have quashed and set aside the judgment and order of conviction and sentence against him, accused Mukesh be released forthwith, if not required in any other case. The present appeal is accordingly allowed so far as accused Mukesh is concerned.

.....J.
(M. R. SHAH)

.....J.
(B. V. NAGARATHNA)

New Delhi,
January 18th, 2022