

PETITIONER:
INDRADEO MISHRA AND ANANG MISHRA

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 10/12/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF DECEMBER, 1996

Present:

Hon'ble Mr. Justice M.K. Mukherjee

Hon'ble Mr. Justice S.P. Kurdukar

Somraj Dutt, R.K. Shukla, Sr. Advs., Uma Dutta,
S.C. Maheshwari, R.C. Verma, Ms. Sandhya Goswami, Advs. with
them for the appellants.
U.N. Bachawat, Sr. Adv., Prashant Kumar, Adv. for Uma Nath
Singh, Adv. with him for the Respondent

J U D G E M E N T

The following Judgment of the Court was delivered:

WITH

CRIMINAL APPEAL NO. 761 OF 1989

J U D G E M E N T

S.P. KURDUKAR, J.

Indradeo Mishra (A-2), a middle aged widower had kept Laxamin Bai (since deceased) as his mistress. He was an employee of the Western Coal Fields Ltd. and admittedly had a company quarter at Banwari site. He also had his own house at Tilsara. He was living at Tilsara with Laxamin Bai whereas the company quarter at Banwari site was occupied by Chandrika Prasad (A-3- acquitted) who was said to be a student. Indradeo Mishra (A-2) is having a son Anang Mishra (A-1) and two daughters, namely, Bimla and Kamla. The family members of Indradeo Mishra did not approve the conduct of their father who had kept a mistress and this gave a rise to frequent quarrels between Anang Mishra (A-1) and Laxamin Bai. Anang Mishra firmly believed that the conduct of his father had brought disrepute to their family as they belonged to a higher caste (Brahmin) whereas Laxamin Bai was a Panka (Scheduled Caste).

2. Three villages i.e. Banki Mongra, Banwari Bandhawar Para and Tilsara are situated near the Western Coal Fields Ltd. (for short 'WCF Ltd.') having a police outpost at Banki Mongra. Various labour colonies existed in these villages and around WCF Ltd.

3. It is alleged by the prosecution that Anang Mishra (A-1) on 15-7-1981 met his father at Tilsara and asked Laxamin Bai to leave the house. Anang Mishra (A-1) and his two sisters, namely, Bimla and Kamla beat Laxamin Bai

mercilessly and drove her out of the house. After locking the house, they alongwith their father Indradeo Mishra (A-2) left Tilsara.

4. On 16-7-1981, Indradeo Mishra (A-2) finding the lock of his house broken, lodged a report at Banki Mongra police Outpost for house breaking and theft of some utensils. In the FIR, name of the suspected persons, viz., Hari Dass and Sunder Dass(PW 9), real

(A-1) and Laxamin Bai had gone. It was alleged by the prosecution that Laxamin Bai was not seen alive thereafter.

5. Jait Ram (PW 1), the maternal uncle of Laxamin Bai with whom she was staying asked Sunder Dass (PW 9) to go and make inquiries about her at Tilsara and Banwari. After coming to know that she was not found at both these places, Sunder Dass (PW 9) lodge a missing report on 20-7-1981 at Banki Mongra police outpost. On the very same day, her dead body was found towards the jungle side near Nala under Besaram tree. On getting that information, constable Malan Singh (PW 5) went to the spot for keeping a watch during the night and on the following day i.e. 21st July, 1981, ASI J.P.Singh (PW 17), reached the spot and commenced the investigation. The dead body was found in a very decomposed condition. After the inquest on the dead body was held, it was sent to the hospital for post mortem examination. Dr. B.S.Narvaria (PW 18) conducted the autopsy on 22-7-1981 and noted as many as nine ante mortem incised injuries. He opined that the death was caused due to excessive haemorrhage. After completing the necessary investigation, a charge sheet was submitted against Anang Mishra (A-1), Indradeo Mishra (A-2), and Chandrika (A-3) under Section 302 read with Section 34 of the Indian Penal Code for committing the brother of Laxamin Bai, were mentioned. The said complaint was investigated by HC Vikram Singh (PW 12) who during the investigation alleged to have recovered certain utensils from Laxamin Bai and asked her to report to the outpost, Banki Mongra on 18-7-1981. Accordingly, she went there with her cousin Mohar Dass (PW 2) and brother Sunder Dass(PW 9). Malan Singh (PW 5), a constable on duty took Laxamin Bai alongwith him and produced her before the Magistrate at Korba on 18-7-1981. She was then released on furnishing a personal bond and in the same evening she returned to Banki Mongra alongwith Malan Singh (PW 5) where she met Sunder Dass (PW 9) at bus stand and expressed her desire to return to the village. At that time, Indradeo Mishra (A-2) was also waiting at some distance. Laxamin Bai then met her Advocate, Mathani, who had earlier got her release on personal bound, in a hotel near bus stand whom she narrated the entire story. She also expressed her desire to stay with Indradeo Mishra (A-2) regardless of whether he would keep or kill her. Accordingly she then went to Indradeo Mishra (A-2) and thereafter both of them proceeded towards the jungle side enroute to the Labour Colony. Anang Mishra (A-1) and Chandrika (A-3) were also then present at bus stand. Anang Mishra (A-1) then asked Malan Singh (PW 5) as to what happened in the Court? After coming to know that she was released on furnishing a personal bond, he and Chandrika proceeded in the same direction in which Indradeo Mishra murder of Laxamin Bai.

6. The appellant denied the accusation levelled against them and pleaded that they were innocent and have been falsely implicated in the present crime. They prayed that they be acquitted.

7. The prosecution case entirely rested on the circumstantial evidence. In order to prove the complicity of the accused, the prosecution relied upon various

circumstances and led oral and documentary evidence in support thereof. The star witnesses of the prosecution case were Malan Singh (PW 5), Sonu Ram (PW 6), Sunder Dass (PW 9) and Jait Ram (PW 1).

8. The learned Addl. Session Judge, Disapur (M.P) on appraisal of oral and documentary evidence on record held that the prosecution had proved various vital circumstantial evidence. These proved circumstances were pointer to the guilt of Anang Mishra (A-1) and Indradeo Mishra (A-2) of committing the murder of Laxamin Bai. The learned Trial Judge accordingly convicted them under section 302/34 of the Indian Penal Code and sentenced both of them to suffer imprisonment for life. However, the learned Trial Judge gave benefit of doubt to Chandrika Prasad (A-3) and acquitted him of the said charge. Being aggrieved by the judgment and order of conviction passed by the trial court, both the convicted accused preferred an appeal to the High Court of Madhya Pradesh at Jabalpur Bench and the learned Division Bench vide its judgment and order dated 25th April, 1987, dismissed the same and affirmed the judgment and order of the trial court. It is against this judgment and order passed by the High Court Indradeo Mishra (A-2) on obtaining Special leave has filed Criminal Appeal No. 632 of 1988 whereas Anang Mishra has filed Criminal Appeal No. 761 of 1989 in this Court challenging the legality and correctness of the judgment and order passed by the High Court. Since both these appeals arise out of a common judgment, they are being disposed of by this judgment.

9. We have gone through the judgments of the courts below and we regret to notice that they did not enumerate/set out the circumstances alleged against the accused and the evidence in support thereof led by the prosecution when it was very much necessary in a case of circumstantial evidence. After going through the evidence on record, in our opinion, the following circumstances would be relevant to determine the complicity of the appellants in the present crime:-

- 1) Whether Laxamin Bai met with a homicidal death?
- 2) Laxamin Bai was staying with Indradeo Mishra (A-2) at Tilsara for the last three years as his mistress;
- 3) Motive;
- 4) Laxamin Bai was last seen in the company of A-2;
- 5) Opportunity to A-1 and A-2 to commit the murder of Laxamin Bai; and
- 6) Recovery of incriminating articles i.e. blood stained clothes of A-1.

10. Coming to the first circumstance, namely, unnatural death of Laxamin Bai, at the outset, it may be stated that it was not seriously disputed that Laxamin Bai died because of several injuries sustained by her. Dead body of Laxamin Bai was sent to the Primary Health Centre, Katghora, on 21-7-1981. and Dr. B.S. Narwaria (PW 18) on 22nd July, 1981 performed the post mortem examination. It was found in a highly decomposed condition. He noted as many as nine ante mortem incised injuries on the dead body. Dr. Narwaria testified that the death was caused due to excessive haemorrhage. It is thus clear that Laxamin Bai met with a homicidal death and according to the medical expert, the death in all probabilities was caused sometime between 18th and 20th July, 1981. Both the courts below, in our opinion, rightly held that Laxamin Bai died a homicidal death due to ante mortem injuries sustained by her.

11. To prove the second circumstance that Laxamin Bai was staying with A-2 as his mistress at Tilsara, the prosecution strongly relied upon the evidence of Jait Ram (PW 1),

maternal uncle of the deceased, Mohar Dass (PW 2), Ram Prasad (PW 8), Sunder Dass (PW 9), brother of the deceased and Chatur Dass (PW 10). Jait Ram (PW 1) had stated that Laxamin Bai was staying with Indradeo Mishra (A-2) as his mistress since last three years at Tilsara. The evidence of Jait Ram (PW 1) finds corroboration from the evidence of Mohar Dass (PW 2), Ram Prasad (PW 8), Sunder Dass (PW 9), brother of the deceased and Chatur Dass (PW 10). Sunder Dass (PW 9) is the real brother of Laxamin Bai whereas Jait Ram is the maternal uncle. Both of them testified that Laxamin Bai was staying with Indradeo Mishra (A-2) as his mistress at Tilsara. Ram Prasad Pandey (PW 8) was a teacher at Tilsara and an independent witness. He also supported the evidence of Jait Ram (PW 1) and Sunder Dass (PW 9). We, therefore, conclude that the prosecution has proved this circumstance.

12. The next circumstance is motive. To prove motive, prosecution sought to rely upon the evidence of Jait Ram (PW 1), Mohar Dass (PW 2), Ram Prasad (PW 8), Sunder Dass (PW 9) and Chatur Dass (PW 10). These witnesses testified that Anang Mishra (A-1) and his two sisters did not approve of the conduct of their father Indradeo Mishra (A-2) and there used to be quarrels between them. It was obvious that the children did not approve of the conduct of their father which had brought disrepute to the family. Though both the appellants have denied these facts but we see no reason to disbelieve the prosecution evidence. We accordingly hold that the relation between Anang Mishra (A-1) and Laxamin Bai were not cordial. Because of these strained relations, it was alleged and proved by the prosecution that on 16th July, 1981, Indradeo Mishra (A-2) and Anang Mishra (A-1) drove Laxamin Bai out of their house at Tilsara and locked the same. This fact stands proved from the evidence of Jait Ram (PW 1), Sunder Dass (PW 9) and Ram Parsad Pandey (PW 8). They have stated on oath that on 16th July, 1981, both the appellants drove Laxamin Bai from their house and gave her some utensils. Laxamin Bai thereafter came alongwith utensils to the house of Jait Ram (PW 1). The evidence of these witnesses is quite consistent and both the courts below committed no mistake in accepting this part of the prosecution story. We accordingly confirm the said finding.

13. To supplement the motive, the prosecution strongly relied upon the fact of lodging the First Information Report at Banki Mongra police station by Indradeo Mishra (A-2) against Laxamin Bai for house breaking and theft at his house at Tilsara. As a consequence thereof Laxamin Bai was required to attend the Court at Korba. There is intrinsic documentary evidence on record to indicate that infact such a report was lodged by Indradeo Mishra (A-2). During the course of investigation on 17th July, 1981, some utensils were alleged to have been recovered from Laxamin Bai and she was asked to remain present on 18th July, 1981 in the court of Judicial Magistrate at Korba. It also could not be disputed that on 18th July, 1981, Laxamin Bai did remain present in the court of Judicial Magistrate, Korba and on that date, she was released on bail upon furnshing a personal bond. Mohar Dass (PW 2) and Sunder Dass (PW 9) stated that they also attended the court alongwith Laxamin Bai. In regard to this theft case, there is evidence on record to show that Laxamin Bai was interrogated; some utensils were seized from her possession and she had to appear before the Court at Korba. This appears to be a strategy thought of by Anang Mishra (A-1) with the active assistance of some of the police official attached to Banki Mongra police station. Anang Mishra (A-1) could do this

because he himself was serving in the police constabulary in Madhya Pradesh and at the relevant time, he was posted as constable in Police lines, Bilaspur. The prosecution story in this behalf has got considerable substance and the conduct of Anang Mishra (A-1) was not free from doubt. From the material on record, we find that this complaint was lodged by Indradeo Mishra (A-2) at the instance of Anang Mishra(A-1). There is also material on record to prove that Anang Mishra(A-1) and his two sisters used to quarrel with Laxamin Bai and were asking her to leave the house and company of Indradeo Mishra (A-2). However, there is no material on record to show that Indradeo Mishra (A-2) had any quarrel with Laxamin Bai or had any motive to commit her murder. On the contrary, the evidence on record indicates that Indradeo Mishra (A-2) was a widower and was staying with Laxamin Bai for the last three years at Tilsara and had a very soft corner for her as she served him in all respects. In view of these circumstances we are of the considered view that the prosecution evidence on record does not justify; a finding that Indradeo Mishra (A-2) had any motive to commit the murder of Laxamin Bai. At the most, the evidence on record would indicate that Anang Mishra (A-1) had some motive to see that his father and Laxamin Bai did not stay together and she be driven out of the house. But in the absence of any further evidence, it would not be proper to hold that he (A-1) had a motive to do away with Laxamin Bai.

14. The next circumstance strongly relied upon by the prosecution is that Laxamin Bai was last seen in the company of A-2. To prove this circumstance, the prosecution sought to draw support from the evidence of Malan Singh (PW 5). He stated that he came alongwith Laxamin Bai to Banki Mongra police station. Thereafter she met her Advocate, Mathani and narrated the whole story to him. At the same time, Indradeo Mishra (A-2) was standing at some distance. Sunder Dass (PW 9) who was then present asked Laxamin Bai to come alongwith him to village Tilsara. She, however, refused saying that she would go alongwith Indradeo Mishra(A-2), irrespective of whether he would keep or kill her. The witness then stated that thereafter Indradeo Mishra (A-2) and Laxamin Bai went along the road towards the jungle side which leads to the Banwari site. He then stated that Anang Mishra (A-1) and Chandrika (A-3) who were standing in front of the police chowki enquired about the court matter and thereafter went towards jungle side.

15. Sunder Dass (PW 9) who is the brother of Laxamin Bai, stated that when he came to police station, Banki Mongra, he asked Laxamin Bai to come alongwith him to Tilsara but she refused and went alongwith Indradeo Mishra (A-2) towards the jungle side. On 19th July, 1981, when he found that Laxamin Bai did not come to Tilsara, lodged a missing report(Ex.17) on 20th July, 1981.

16. We have very carefully gone through the evidence of Malan Singh (PW 5) and Sunder Dass (PW 9). However, their conduct does not inspire confidence in us to accept it as credible. Malan Singh (PW 5) during cross-examination admitted that after the death report of Laxamin Bai was made on 20th July, 1981, under Section 174 of the Code of Criminal Procedure, he did not tell the Investigating Officer that on 18th July, 1981, in the evening, Laxamin Bai went to Banki Mongra bus stand alongwith Indradeo Mishra (A-2) and thereafter was followed by Anang Mishra (A-1) and Chandrika (acquitted accused). Even on 21st July, 1981, he did not mention these facts to the Investigating Officer at the place of occurrence. He denied that he knew about the

missing report lodged by Sunder Dass on 20th July, 1981. He admitted that in his arrival report dated 18th July, 1981 he did not mention therein that Laxamin Bai also came alongwith him from Korba to Banki Mongra. The above mentioned vital omissions rendered his evidence unreliable. Admittedly, Anang Mishra (A-1) was serving in the police constabulary and this fact, in our opinion, appears to be the reason why this witness was not consistent in testifying the whole truth.

17. Sunder Dass (PW 9) is the brother of Laxamin Bai who stated that when Laxamin Bai was produced before the Magistrate at Korba, he was present there but did not give any reason as to why he did not come alongwith her to Banki Mongra. This conduct of Sunder Dass (PW 9) appears to us a strange one. In addition to this, if according to this witness, he saw Laxamin Bai going alongwith Indradeo Mishra (A-2) towards the jungle side enroute to Banwari site and finding that she did not come to Tilsara, ordinarily the brother would have gone to Banwari site and found out her whereabouts. But he kept quiet until missing report (Ex.17) was lodged on 20th July, 1981. The report only recited that his sister did not return home and upon enquiry from Indradeo Mishra(A-2) he told him that he did not know her whereabouts. The next relevant witness on this circumstance is Sonu Ram (PW 6) who claimed to be the maternal uncle of Laxamin Bai. He stated that in the month of Ashaad on Saturday, he came to Tilsara from Samipal to see his children and agriculture fields where he met Ram Prasad and Jait Ram at the house of his brother Sudh Ram. Ram Prasad told him that Laxamin Bai was killed by some one somewhere. From Tilsara, he came at about 4.00 p.m. to jungle side where his sister was staying. He told Ram Prasad that he met Laxamin Bai on this very Saturday when he was going towards Samipal via jungle side at about 8.00 or 9.00 p.m. He then stated that Laxamin Bai and Indradeo Mishra (A-2), Anang Mishra (A-1) and Chandrika met him near a small pound and on inquiry by Laxamin Bai, he told her that he was going to Samipal. They also told him that they were going to Tilsara to leave Laxamin Bai at the house of her maternal uncle. After about 20/25 days, when he went to Tilsara from Samipal, Ram Prasad and Jait Ram told him at Tilsara about the murder of Laxamin Bai. He then went to the police chowki to make the report. He also stated that after meeting Laxamin Bai, he did not know about her death for 20/25 days till he returned to Tilsara. During the cross-examination he admitted that he did not tell about his meeting with Laxamin Bai to anyone else except Ram Prasad and Jait Ram. His evidence is again totally vague. His statement was recorded by the police on 12th August, 1981. In this view of the matter, we do not feel it safe to accept his evidence.

18. It is true that both the courts below accepted the evidence of Malan Singh (PW 5), Sunder Dass (PW 9) and Sonu Ram (PW 6) being reliable one. But in our considered view, they have totally ignored the vital omissions which were brought on record by the defence. It also needs to be mentioned that although Malan Singh (PW 5) was guarding the dead body from 20th July, 1981

until it was sent for post mortem examination on 21st July, 1981 to anybody. The evidence of these three witnesses was not consistent with human conduct and if this evidence is discarded, then there is hardly any evidence on record to prove that Laxamin Bai was last seen in the company of Indradeo Mishra (A-2) and after sometime Anang Mishra (A-1) and Chandrika followed them. It may also be stated that the First Information Report as regards the crime was lodged on

21st July, 1981 by Jait Ram (PW 1) who is the maternal uncle Laxamin Bai. He stated that he got the information as regards the unnatural death of Laxamin Bai from Sunder Dass (PW 9). After going through the evidence of these witnesses, in our opinion, it would not be safe to accept the same and hold that the prosecution had proved a vital circumstance, namely, that Laxamin Bai was last seen in the company of Indradeo Mishra (A-2).

19. As regards the next circumstance, namely, that A-1 and A-2 had an opportunity to commit the murder of Laxamin Bai even it is assume that they had such an opportunity but the prosecution has failed to connect this circumstance with the present crime.

20. The prosecution also sought to rely upon the evidence of recovery of certain articles (clothes) belonging to Anang Mishra (A-1). The evidence in this behalf is totally unsatisfactory inasmuch as it was not proved by the prosecution that these articles were seized after his arrest, pursuant to a discloser statement made by him under Section 27 of the Evidence Act. The only one article, namely, langot was shown to have some blood stains of which the origin could not be detected. On this slender evidence of blood stains on langot, it would not be correct to connect Anang Mishra (A-1) with the present crime.

21. It is unfortunate that the murder of Laxamin Bai remained undetected as the investigating agency did not take proper care to carry out the investigation. Various loopholes were left in the investigation and the present case being a case of circumstantial evidence, more care was expected on the part of the investigating agency. In these circumstances, we have no alternative but to give the benefit of doubt to the appellants and acquit them of the charge of committing the murder of Laxamin Bai punishable under Section 302/34 of the Indian Penal Code.

22. In the result, Criminal Appeal No.632 of 1988 and Criminal Appeal No. 761 of 1989 are allowed. The impugned judgment and order of conviction and sentence passed by the High Court is quashed and set aside and both the appellants are given the benefit of doubt and acquitted. If the appellants are on bail, they stand discharged from their bailbonds.