

CASE NO.:
Appeal (crl.) 222 of 2003

PETITIONER:
Lal Singh

RESPONDENT:
Vs.
State of Madhya Pradesh

DATE OF JUDGMENT: 11/08/2003

BENCH:
Brijesh Kumar & Arun Kumar.

JUDGMENT:
JUDGMENT

Brijesh Kumar, J.

This is an appeal preferred against the judgment and order passed by the Madhya Pradesh High Court dismissing the appeal of the appellant and maintaining the sentence of imprisonment for life under Section 302 IPC as awarded by the First Additional Sessions Judge, Alirajpur in Sessions Trial No.381/95.

The prosecution story is that on 11.2.1994 some time in the morning the deceased Magan, a boy aged 19 years went to the house of Lal Singh and started climbing upon his Tadi tree. Lal Singh accosted him abusively asking him as to why he had climbed upon his Tadi tree. Magan got down and went to the house of Lal Singh where Lal Singh pressed his neck and was tying rope around the neck of Magan when the PW-1 Gauri arrived who raised alarm saying that Lal Singh had killed her brother. She lodged a report at Police Post, Umralli, Police Station Somdawa. The police completed the investigation and submitted the charge-sheet. The rope was also recovered from the house of Lal Singh during the course of investigation by the police. The post mortem examination on the dead body was also conducted by PW-5 Dr. Jai Prakash Joshi

In support of the prosecution case two eye witnesses namely, Gauri, the sister of the deceased and her brother PW-2 Jagla were examined. PW-3 Kemtiya @ Kemla was examined to prove the factum of death of Magan but he turned hostile. PW-4 Moti Ram Kher is the investigation officer and PW-5 is Dr. Jai Prakash Joshi who had conducted the post mortem examination. PW-6 B.S. Kadam is the other Investigation Officer and PW-7 Rakesh Kumar Misra is the Head Constable who had registered the case. The appellant also examined two defence witnesses.

PW-1 Gauri who is the elder sister of the deceased stated that the house of Lal Singh is near to her house. Magan was a student of class 9th. On the fateful day Lal Singh and Magan had returned at about day break from Umralli where they had gone to see Gata. Magan came to the house but later started following Lal Singh. PW-1 was outside of her house and saw that Magan started climbing on Tadi tree of Lal Singh which was objected to by Lal Singh. Since Magan had to go to School in Sondawa, PW-1 went to the house of Lal Singh to call Magan but she saw Lal Singh pressing neck of Magan and tying a rope around his neck. She raised an alarm. Lal Singh was all alone at his house, he ran away. Her alarm attracted PW-2 Jagla, PW-3, Kemta. She told them about the incident and thereafter she went to lodge the report.

PW-2 Jagla supported the statement of PW-1 Gauri stating that when he reached the house of Lal Singh on the alarm raised by PW-1 Gauri, he saw Magan lying in the verandah of the house of Lal Singh. His feet were then moving a little. His sister Gauri was also present there at

that time. A rope was also tied around the neck of Magan who died a little later. He further stated that on arrival at the spot, Gauri had told him that Lal Singh had pressed the neck of Magan. So far PW-3 Kemta is concerned, he turned hostile. He stated that he had seen the dead body of Magan lying outside the house of Lal Singh. He did not enquire from anyone as to how he died. He also stated that Gauri had not told anything about the death of Magan to him. In cross-examination by the prosecution he denied having made the statement to the police or having given other details to police.

So far as the place of occurrence is concerned, no dispute in regard to the same has been raised nor any argument on behalf of the appellant in this regard made nor the fact that the dead body was found lying in the house of Lal Singh. To a specific question put to the learned counsel for the appellant in this regard, he submitted that Magan seem to have committed suicide at the house of Lal Singh mainly for the reason, as according to the defence case his father has scolded him about his studies. We feel that it is a strong circumstance which is not disputed that the dead body of Magan was lying in the house of Lal Singh which supports the prosecution case as disclosed in the FIR and the statements of PWs 1 and 2. PW-3 Kemta has tried to make some deviation by saying that it was lying outside the house of Lal Singh. He has not denied the presence of PW-1 Gauri at the spot but has only said that he was not told anything about the incident by Gauri. It is true, as pointed out by the learned counsel for the appellant that PW-3 Kemta has turned hostile yet we find that to some extent it lends support to the prosecution story. In so far the other two eye-witnesses are concerned, learned counsel for the appellant has taken us through their cross-examination to show that there are some contradictions in their statements. We however find that they are more omissions rather than contradiction with the statement recorded by the police during investigation. Mostly they relate to immaterial and insignificant details. To illustrate the omission which has been brought out in the statement of PW-1 Gauri they are that she had told in her statement before the police that her brother was studying in 9th class and before the incident he had gone with Lal Singh to watch Gata to Umralli, but these facts do not find place in the report lodged with the police by her. Suffice it to observe that it was not necessary to mention these things in the FIR. It is then indicated that in her statement it was not mentioned that she was standing outside her house. In our opinion such minor things or omission do not materially affect the case of the prosecution. Some contradictions here and there are quite natural. A reading of the statements of the witnesses in totality, does not indicate that they vary in any manner on any of the material facts.

Learned counsel for the appellant has then submitted that the medical report does not support the prosecution case and in that connection he has referred to the statement of Dr. Jai Prakash Joshi, PW-5. He has stated that legature marks were present on the left side of the neck of the deceased. It was one and a half inch in length. Apart from the said injury there was no other external injury on the body of the deceased. It is further stated by him that on close examination of the legature marks it was found that the sub tetanus tissue were found thin like paper and the blood arteries situated beneath it were congested. Our attention has also been drawn to the statement where he has said that he could not definitely say whether the deceased died due to suicide, homicide or due to accidental cause. He however stated during cross-examination that if neck is pressed by hand then the nail prints should also appear on the neck. There was no nail print on the neck of the deceased. To a suggestion made he also stated that if suicide is committed by hanging there will be suffocation. He then indicates some of the symptoms of the suicide. Later in the cross-examination he has said that definite cause of death cannot be ascertained. We fail to understand as to in what manner the statement of the doctor placed before us supports the theory of suicide as canvassed by the learned counsel for the appellant. It is highly improbable nor does it appeal to the reason that Magan will go to the house of Lal Singh to hang himself to commit suicide, as seems to be the suggestion on behalf of the appellant. It is thus imaginary exercise on the part of the defence to have

advanced such an argument on the strength of a sentence here and there in the statement of the doctor. So far the cause of death is concerned it can best be ascertained from the post-mortem report which clearly indicates that death was caused due to asphyxia. We do not find any substance in the submission made on behalf of the appellant. The doctor seems to be replying to the questions as put to him during his examination and cross-examination. It is difficult to understand as to how he could say in cross-examination that it was difficult to ascertain the definite cause of death having already indicated it in the post-mortem report as asphyxia.

Learned counsel for the appellant then submitted that the High Court has very cursorily dealt with the matter in an appeal against a life sentence in a murder case. It is true that the High Court is a court of appeal on facts as well while dealing with criminal appeals. It would have been certainly better if the High Court had dealt with the matter a bit more elaborately but we find that it is not a fit case to be remanded to the High Court, as prayed. In support of the above plea learned counsel for the appellant has also placed reliance upon a decision in Rama and others versus State of Rajasthan (2002) 4 S.C.C. 571. But the position in the present case seems to be different. The High Court took note of the facts of the case and also noted the witnesses who were examined on behalf of the prosecution and the defence as well. It has been observed that the statement of PW-1 Gauri the eye witness was corroborated by the FIR as well as by the medical evidence. It has also made some comments on merits as well though very briefly no doubt but at the same time it cannot be said that the High Court has failed to notice the merits of the case. In the case of Rama and others (supra) it appears that the High Court as indicated only observed that on re-appreciation of the evidence and re-scrutiny of the records the Court did not find any error apparent in the findings of the trial court. In our view in such circumstances the case deserved to be remanded as has been done but in the case in hand the position is different. More elaborate discussion would have been undoubtedly desirable but it is not a case where the Court has not noticed the material points of the case. It was aware of the merits of the matter while passing the order. Hence, we do not find any good reason to accede to the request made for remand of the case to the High Court more so when we have also considered the points raised on behalf of the appellant on merits..

Learned counsel for the respondent State referred to a decision reported in (1999) 9 S. C. C. 507 & 200\223 Sukhar versus State of U.P., on the point about the relevance of the statement made by an eye witness soon after the incident. Learned counsel for the State has drawn our attention to the statement of PW-2 Jagla where he has denied the suggestion made on behalf of the defence that Magan was scolded by the father or that he had committed suicide.

In view of the discussion held above, we find no merit in the appeal. It is accordingly dismissed.