

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.236 OF 2006

BABU & ANR.

.....APPELLANTS

VERSUS

STATE OF M.P.

.....RESPONDENT

O R D E R

1. The appellants having been convicted under Section 302 of the Indian Penal Code and sentenced for imprisonment for life have preferred this appeal on grant of leave by this Court.

2. According to the prosecution, on 22nd December, 2010, the Station House Officer of Police Station, Alot received telephonic information that a dead body of a young boy is lying near Gharola Temple. The aforesaid information was recorded in the Station Diary and the Station House Officer along with the police force reached the place of occurrence. There they found the dead body of a boy aged between 13-14 years. The inquest report was prepared and the dead body was sent for post-mortem examination. Dr.B.L.Chaturvedi (P.W.10) conducted the post-mortem examination and found that the deceased died of strangulation.

3. During the course of investigation, it transpired that the deceased was last seen in the company of the appellants at a liquor shop and a jilebi shop and thereafter he was not seen alive. The appellants were arrested and their disclosure led to the recovery of the pajama of the deceased and underwears of the accused which were seized and sent to the Forensic Science Laboratory for examination. According to the report (Exhibit-21), pajama of the deceased and underwears of the appellants

contained human blood and spermatozoa.

The police, after usual

investigation submitted charge-sheet under Sections 302 and 377

of the Indian Penal Code and the appellants were ultimately

committed to the Court of Sessions.

The appellants denied to

have committed any offence and claimed to be tried.

There is no

eye witness to the occurrence and the prosecution sought

appellants' conviction relying on the circumstantial evidence.

It mainly relied upon the evidence of P.W.1 Bheru, P.W.2 Jujhar

and P.W.5 Madan, who had seen the deceased wearing pajama in the

company of the appellants in the night before the dead body was

recovered. It also relied on the evidence of P.W.4 Md.Khan, who

had proved the memorandum leading to the recovery of the pajama

and the underwears of the appellants and the Forensic Science

Laboratory report.

4. The trial Court relying upon the evidence of the aforesaid

witnesses and recovery of the pajama of the deceased and the

underwears of the appellants and Forensic Science Laboratory

report came to the conclusion that the chain of circumstances is

complete and accordingly held the appellants guilty under Section

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302 of the Indian Penal Code and sentenced them to undergo

imprisonment for life but acquitted them of the charge under

Section 377 of the Indian Penal Code.

5. Appeal preferred by the appellants has been dismissed by

the High Court.

6. Ms.Binu Tamta, learned Counsel appearing on behalf of the

appellants submits that to bring home the charge on the basis of

circumstantial evidence, the prosecution has to establish that

the circumstances proved complete the chain and once it is

broken, the appellants are entitled to be given the benefit of

doubt. She points out that the deceased was seen in the company

of the appellants in the night and his dead body was found in the

morning and in between somebody else might have killed t

deceased. Mr.S.K.Dubey, learned Senior Counsel appearing on

behalf of the respondent, however, supports the judgment of conviction and sentence.

7. We have considered the rival submissions and we do not find any substance in the submission of Ms.Binu Tamta. P.W.1 Bheru had stated in his evidence that he had seen the deceased alongwith the appellants in the evening at 7.30 P.M. at the Government Liquor Shop. According to this witness, the deceased was wearing a pajama and all of them went towards the Government School and his dead body was found on the next morning lying by the side of the culvert near Shankarji Temple. P.W.2 Jujhar is

the owner of a hotel and according to his evidence, appellants along with a boy wearing pajama purchased 200 gms of jalebi between 8.00-8.30 P.M. on the previous evening, when the dead body was recovered. P.W.5 Madan is another witness who had seen the deceased in the evening. According to this witness, he along with his guests were at the Government Liquor Shop at 8.00 P.M. where he saw the appellants and a boy at about 8.00 P.M. there, whose dead body was found in the next morning. All these witnesses are independent witnesses and there is nothing in their cross-examination to discredit their evidence. Thus the prosecution has proved beyond reasonable doubt that in the previous night the deceased was in the company of the appellants.

8. The deceased died a homicidal death is evident from the evidence of Dr.B.L.Chaturvedi (P.W.10), who has stated that the deceased died due to strangulation. Deceased died a homicidal death, in fact, has not been questioned at any stage.

9. P.W.5 Md.Khan is a witness to the seizure memo (Exhibit 6) and according to his evidence, appellant Babu disclosed that he had concealed the pajama beneath sand at Bagar. This information led to the recovery of pajama. He is also a witness to the seizures of underwears of the appellants. The underwears of the appellants and pajama were seized and sent to Forensic Science Laboratory, which found human blood and sperms on these articles.

Appellants did not explain presence of human blood and sperms on these wearing apparels. We are of the opinion that the circumstances proved by the prosecution lead to one and the only conclusion that it is the appellants who had committed the crime.

We are of the opinion that the judgment of conviction and

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sentence passed by the Courts below is in accordance with law and do not call for interference in this appeal.

10. We do not find any merit in the appeal, which is accordingly dismissed.

.....J.  
( G.S.SINGHVI )

.....J.  
( CHANDRAMAULI KR. PRASAD )

NEW DELHI;  
MAY 20, 2011.

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ITEM NO.104

COURT NO.4

SECTION IIA

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). 236 OF 2006

BABU & ANR.

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

(With office report)

Date: 20/05/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD  
(VACATION BENCH)

For Appellant(s)

Ms. Binu Tamta,Adv.

For Respondent(s)

Mr.S.K.Dubey, Sr.Adv.  
Mr.Vikas Bansal, Adv.  
Ms.Kusumanjali Sharma, Adv.  
Ms. Vibha Datta Makhija,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master

( Signed order is placed on the file )