



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.305 of 2011

Shyam Kali Dubey

...Appellant

Versus

State of Madhya Pradesh

...Respondent

J U D G M E N T

K. VINOD CHANDRAN, J.

The appellant along with her husband was convicted for an offence under Section 302 of the Indian Penal Code, 1860¹ and sentenced to life imprisonment. The allegation was that the couple beat the deceased with sticks/*lathi*/*danda* in the premises of a temple and the victim succumbed to the injuries sustained. The motive was said to be an altercation that occurred in the afternoon when the appellant attempted to graze her cattle in the field of the deceased. The objection of the deceased

¹ the 'IPC'

regarding the land having not been harvested was ignored, upon which the deceased pushed the appellant ,who fell down and then took a stick from her son and beat the deceased, twice on his leg. The appellant's son and mother-in-law took her away from the scene of occurrence upon which the appellant warned the deceased that she will come back with her husband. The threat levelled was then executed, which led to the death of the victim.

2. The case of the prosecution that the death was homicidal has been clearly established by way of evidence of PW-6, the Doctor. PW-6 spoke of 13 injuries on the body of the deceased and opined that the death was due to acute circulatory failure and asphyxia, due to regurgitation of blood in bronchus and trachea. Death was also opined to be due to the head injury caused by a hard and blunt object.

3. In cross-examination, PW-6 stated that the autopsy was conducted at 4 in the evening of 24.03.1999 and the death could have been caused between 10 to 12 in the night i.e. the night of 23.03.1999. We specifically noticed

this since the incident, as the prosecution alleges in front of a number of eyewitnesses, was stated to be at 7 O'clock in the night.

4. PW-1, PW-2 and PW-4, neighbours and PW-7, the father of the deceased were eyewitness to whom the victim had also spoken of the attack on him by the couple. The statement of the deceased about the perpetrators, has the force of a dying declaration. However, this was not reckoned either by the trial court or by the High Court; presumably due to the improbability of such a statement having been made. We have to notice that the father of the deceased PW-7, whose house is nearby, deposed that he not only witnessed the attack by the accused, but he also heard the victim shouting that he was being beaten to death by the accused. The other eye-witnesses who also came to the scene of crime, hearing shouts, do not speak of any persons having been named. It is the specific case of PW-7, who is said to have reached the scene of occurrence and witnessed the attack that he along with his

daughter witnessed the incident and the victim in an unconscious state was taken to the house, by PW-1, PW-2 and another person and after 10 minutes, the victim stopped breathing. Later, at 9:00 pm, a report was lodged in the police post Semaria which is marked as Exhibit P-4. The medical evidence is categoric in so far as the death having occurred sometime between 10 to 12 O'clock in the night while the deposition of PW-7 would indicate the time of the death to be before 9 at night.

5. Be that as it may, PW-1 and PW-2, neighbours of the deceased and also related to the deceased spoke of their coming to the scene of occurrence on hearing cries when they saw the accused running away from the scene, carrying sticks and the victim lying on the ground, bleeding. Both spoke about the dying declaration as did PW-4, another neighbour who come to the scene of occurrence after the incident.

6. Pertinent is the fact that the victim who was bleeding was taken from the scene of occurrence to his house, where

his body was found by the police after registration of the FIR. PW-10, the Investigating Officer speaks of two recoveries, one from the husband of the appellant; a *danda* and a blood stained shirt and the other from the appellant; a blood stained *danda*. PW-9 the witness to recovery declined to prove the prosecution story of a recovery from the husband of the appellant but affirmed the recovery of a *danda* from the appellant. Though, the *danda* recovered on the confession statement of the appellant was spoken of as blood stained, it was not sent for any chemical examination. The *danda* was also not confronted to PW-6, the Doctor to get his opinion whether the injury which led to the death could have been caused by the said weapon.

7. As we noticed, the body of the deceased was found by the police in the courtyard of his own house, while the incident is said to have occurred near the temple. When the incident occurred at 7 O'clock, there is no explanation as to why the injured victim was taken to the house and not to the hospital. At the cost of repetition, we have to reiterate the Doctor's opinion that the death took place between 10

to 12 O'clock while the incident is said to have occurred at 7 O'clock and the victim having died 10 minutes after being brought to the house.

8. One of the very disturbing circumstance is the injury found on the body of the father and mother of the deceased. PW-6, the Doctor who conducted autopsy and spoke of the death being homicidal, also examined the father and mother of the deceased on the same day. Incised wounds were found on both their bodies which were opined to have been caused by a sharp-edged weapon like an axe or a knife. The Doctor also opined that the aforementioned injuries sustained by PW-7 and his wife could have been self-inflicted. The defence had in fact, spoken of a rift between the family of the deceased and the deceased. PW-7 in his cross-examination admitted that his son, the deceased had been abusing and threatening him, and his other children were sent to Rampur due to such threats. Though, PW-7 asserted that he had no enmity with his son, he admitted that there was a quarrel with regard to partition. This has to be looked at, in

juxtaposition with the unexplained injuries on the body of the father and mother of the deceased; which the prosecution ought to have explained.

9. The trial court and the High Court had relied upon a number of decisions which declared that merely because the witnesses were related, that would not make them interested witness. We fully agree with the proposition for general application. However, in the present case, a defence is setup of an enmity between the victim and his family which has been spoken of by the father of the victim. Admittedly, there were unexplained injuries on the parents of the victim which were also caused by a cutting weapon. Coupled with this is the fact that the body of the deceased, was found in the courtyard of his own house; when the scene of occurrence, as per the prosecution, was elsewhere. There is also no clarity as to the time when the death was occasioned, so as to garner support from the medical evidence.

10. The very same eyewitnesses had spoken of a scuffle between the appellant and the deceased in the evening. It

was also alleged that the said witnesses had heard the appellant threatening to bring her husband to settle scores. Admittedly all these witnesses are related and are residing in the same neighbourhood and their presence cannot at all be doubted. However, the fact that the body was found in a different place from the scene of occurrence; at the house of the deceased, the unexplained injuries on the body of the father and mother of the deceased, the admitted dispute on partition in the family of the deceased and the lack of clarity on the exact time of death creates a reasonable doubt. The eye-witness testimony of a frontal assault is only of PW-7, who did not have a very good relationship with the deceased, his son. The other eyewitnesses converged on the scene of occurrence, hearing cries and spoke of having seen the accused fleeing from the site with sticks in their hands. None other than PW-7, witnessed the alleged attack on the deceased victim. The dying declaration was not even noticed by the trial court or by the High Court and we also find it to be improbable.

11. In the conspectus of the above findings, we are of the opinion that the appellant should be given the benefit of doubt. The order of conviction entered into by the trial court and confirmed by the High Court stands set aside. The appellant, hence, stands acquitted and she shall be released forthwith, if she is not wanted in any other case, and if she is on bail, the bail bonds shall stand cancelled.
12. The Appeal is allowed.
13. Pending application, if any, shall stand disposed of.

..... J.
(K. VINOD CHANDRAN)

..... J.
(N. V. ANJARIA)

**NEW DELHI;
AUGUST 08, 2025.**