REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1245 OF 2009

Ganga Bai ... Appellant (s)

Versus

State of Rajasthan ... Respondent (s)

J U D G M E N T

KURIAN, J.:

1. The appellant-Ganga Bai was tried before the Additional Sessions Judge, Nimbahera, Rajasthan along with one Udai Lal and Daulat Ram under Section 302 read with Section 34 and Section 201 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') for the murder of her daughter-in-law and her two minor children. All the three were convicted under Section 302 IPC and were sentenced to undergo life imprisonment. There was also a sentence of fine with default clause.

2. In appeal, the High Court acquitted Udai Lal and Daulat Ram holding that the offences against them were not proved

beyond doubt. However, in the case of the appellant, the conviction was confirmed with no modification in sentence.

3. The incident is of the year 1999. First Information Report was registered on the complaint given by PW-29. It was stated that while he was in the field gazing cattle, he heard PW-3 crying loudly of having seen a dead body of a lady lying in a trench. Along with PW-4, they also found the dead bodies of two children dumped in the trench. On 06.09.1999, the appellant and Udai Lal were arrested, and Daulat Ram was arrested on 09.09.1999. All of them were charged under Section 302 read with Section 34 and Section 201 IPC.

4. Though at the trial, many of the witnesses turned hostile, the Sessions Court convicted all the accused holding that the circumstantial evidence, the evidence of recovery and the presence of blood stains on the clothes of appellant and Udai Lal, were sufficient to convict them for the offence under Section 302 IPC. The High Court acquitted Udai Lal and Daulat Ram, and hence, the appeal is only at the instance of Ganga Bai.

5. It is contented that the conviction cannot be sustained since the chain of evidence on circumstantial evidence is not

complete. It is further contended that Udai Lal, at whose instance, one of the blood stained weapons, viz., dhariya was recovered, having been acquitted, the appellant also is liable to be acquitted.

6. We have heard the Counsel appearing for the State also.

7. The prosecution has relied on the following evidence:

> "(1) The deceased was last seen in the company of appellant Smt. Ganga Bai.
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> (2) The verification of place of incident at the instance of appellant Smt. Ganga Bai.
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> (3) The recovery of weapon of offence namely Dharia, spade and kulhari.
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> (4) Recovery of blood-stained clothes of appellant Smt. Ganga Bai.
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> (5) Recovery of anklet of the deceased in pursuance of the information given by appellant Ganga Bai."

8. It has come out in the evidence of PW-5-Shanti Devi, who is the wife of PW-6-Naresh Kumar, the landlord of the deceased-Sunanda and her husband-Ratanlal (son of the appellant), that accused-Ganga Bai used to visit the deceased-Sunanda in her room. The said witness stated that she had seen Sunanda with appellant before her disappearance. It has also come out in her evidence that the appellant, after

the incident, came back to her, paid the rent and took away the belongings of the deceased. PW-6- Naresh Kumar has supported the version of PW-5. PW-7- is Sultana who has also stated that the deceased along with her children was seen with the appellant in the market and the deceased had told her that the appellant was taking them to *Morvan*. PW-8-husband of Sultana has supported her version. Thus, on the basis of the evidence of PWs-5 to 8, both the courts below have come to the conclusion that all the deceased were last seen with the appellant.

9. It has also come out from the evidence of PW-5 that the appellant was not happy with the deceased for two reasons, viz., (i) she had already been married to another person and he had left her with her two children born to him and (ii) she belonged to a different caste. Therefore, if the appellant had accepted them in their family, they would have been cast out from the village. It is because of that only the deceased along with her family had left the appellant's house and stayed in the rented accommodation provided by PW-5. It has also come out from her evidence that the deceased had given the phone number of paternal house and family photo of the deceased along with her husband and children to her to be handed over to her father in case she did not return. Yet another

incriminating circumstance is the conduct of the appellant, after the incident, of settling the rent with PW-5 and removing belongings of the deceased.

10. On the second circumstance on verification of the place of incident by the appellant, the High Court rightly discarded the same holding that the Police had already identified the place where the dead bodies were dumped. The other circumstantial evidence against the appellant is on the recovery of weapon of offence. It has come in evidence that the recovery was effected only on the basis of the disclosure made by the appellant as per Exhibit-P67. It has come in evidence that Exhibit-P53-dharia contained human blood. The third piece of circumstantial evidence found against the appellant is the recovery of blood-stained clothes belonging to her as per Exhibit-P66-disclosure. The appellant could not give any explanation of the presence of human blood on her clothes recovered as per Exhibit-P52. Though the anklet, said to be belonging to the deceased-Sunanda, was also recovered pursuant to her disclosure, the High Court has discarded the same on the ground that there was no proper identification.

11. Having gone through the records, we find it difficult to be persuaded to take a different view on the evidence against

the appellant which according to both the trial court and the High Court formed an unbroken chain which led only to one hypothesis, viz., the involvement of the appellant in the offences under Section 302 and Section 201 IPC. It has to be specially noted that even under Section 313 IPC statement, the appellant did not have any explanation on the presence of human blood stains on her clothes which were duly recovered on her disclosure.

12. In **Nana Keshav Lagad v. State of Maharashtra**[1], this Court had an occasion to consider a similar situation. Since the factual background, as such, is also explained therein, we shall extract the relevant paragraph as such:

> **"27.** The other submission made on behalf of the appellants was with reference to the human blood found on the clothes worn by A-1 and A-4. It was contended that the prosecution failed to satisfactorily establish through any independent evidence about the bloodstains found on the clothes of A-1, as well as the appellant in Crl. A. No. 1010 of 2008. In that respect instead of reiterating the details, it will be sufficient to refer to the conclusion reached by the trial court, while dealing with the said contention, which is found in para 63. The relevant part of it reads as under:
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> "*63*. In the present case, the evidence of API Padwal in this respect is not seriously challenged or shattered. After all the accused

[1] (2013) 12 SCC 721

were arrested under panchnama and at the time of arrest panchnama of accused Nana bloodstained clothes were seized. It is not in any way contended or for that matter even whispered that IO API Padwal was having any rancour against the accused or he was motivated or interested in one-sided investigation with the sole object of implicating the accused. As a matter of fact, the investigation in this case appears to be totally impartial. When it transpired that two accused by name Sandeep and Ganesh, the juvenile delinquent have not taken part in the assault, their names were deleted from the prosecution case by filing report under Section 169 CrPC. Therefore, here the investigation has proceeded impartially and it is also not even for the sake of it, is suggested to API Padwal that, no such bloodstained clothes were recovered from the accused Nana, moreover, as per the settled position of law, there is no presumption in law that a police officer acts dishonestly and his evidence cannot be acted upon. Therefore, here the evidence of API Padwal is sufficient to prove the recovery of the bloodstained clothes of the accused. His evidence also goes to prove that all these articles, bloodstained clothes, etc. were sent to CA and as per the CA report, Ext. 61 the blood was detected on the clothes of the accused and the deceased and this blood was human blood.... In the present case, though the CA report, Ext. 61 shows that, the said human blood was of Group B, CA report, Ext. 62 about the blood sample of the accused states that the blood group could not be ascertained as the results were inconclusive, moreover, there is no CA of the blood sample of the deceased to prove that he was having Blood Group B. However, the fact remains that, the stains of human blood were found on the clothes of accused Nana and he has not explained how these bloodstains were on his clothes and therefore, as observed in this authority, it becomes one more highly incriminating circumstance against the accused."

> In fact, as rightly noted by the trial court, it was for the appellants to have explained as to how the clothes worn by them contained human blood. In Section 313 questioning, no explanation was forthcoming from the appellants. In these circumstances, the said contention also does not merit any consideration."

13. The last contention is on parity. It is submitted that Udai Lal, whose clothes were duly recovered, also contained stains of human blood, for which also, there was no explanation and he had also given disclosure on the recovery of weapon of offence. Though we find that the acquittal made by the High Court could require a revisit, in view of the fact that there is no appeal by the State against the acquittal of Udai Lal and that the incident is of the year 1999, we do not propose to pursue the matter as against Udai Lal. However, we may state that only because Udai Lal was acquitted, in view of the clinching evidence on the involvement of the appellant in the offences of murder and destruction of evidence charged against her, she is not entitled for a similar treatment as that of Udai Lal. Merely because one or more of those charged with the substantial offences and also charged under Section 34 IPC have been acquitted, the one in the group who shared the common intention, in whose case

there is conclusive evidence of direct involvement, cannot claim parity.

14. Thus, we respectfully agree with the concurrent findings on the conviction and sentence of the appellant. We find no merit in the appeal and the same is accordingly dismissed.

15. It is brought to our notice that by virtue of the Order dated 09.04.2014 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Civil Writ Petition (Parole) No. 3026 of 2014, the High Court, taking note of the fact that the appellant had served more than fourteen and a half years of sentence in jail without parole and that she was aged about 79 years, has granted her permanent parole. We make it clear that dismissal of this appeal shall not, in any way, affect either the permanent parole or commutation of her sentence.

.....J.
(T. S. THAKUR)

.....J.
(KURIAN JOSEPH)

New Delhi;
September 30, 2015.