

42

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.955 of 1998

1. Lal Bahadur Singh, S/o Nankuram, Caste Kanwar, aged about 35 years, R/o Vill-Nawapara, Shivpur, P.S. Batauli, District Surguja, M.P. (Now Chhattisgarh)
2. Subodh, S/o Ramvilas, Caste Nagasia, aged about 29 years, R/o Village Nawapara, Shivpur, PS-Batauli, District Surguja, M.P. (Now Chhattisgarh)

---- Appellants

Versus

State of Madhya Pradesh Through PS. Batauli, Distt. Surguja (M.P.) (Now State of Chhattisgarh)

---- Respondent

For Appellants:

Shri AK. Prasad and Shri Ashok Patil,
Counsels for respective Appellants.

For Respondent/State:

Smt Smita Ghai, PL

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

15/04/2015

1. The Appellants stand convicted to life imprisonment under Section 302/34 IPC by order dated 28.3.1998 of the 2nd Additional Sessions Judge, Ambikapur in Sessions Trial No.56 of 1997 for the death of one Chamuru Ram.
2. The body of the deceased was seen by the Chowkidar in a ditch about 9:00 am on 2.10.1996. Merg was lodged by PW-1, Kalapnath the

same day at 12.30 p.m. marked Exhibit P-1. FIR was lodged against unknown by PW-19, Rungturam also the same day. The postmortem of the deceased, Exhibit P-9, was conducted on 3.10.96 at 6.00 p.m. by PW-18, Dr. S P Gupta, noticing one incised wound 5"x1"x2/5" deep, cutting the right mandible bone and other deep structures including cervical vertebrae on the right side of the upper part of the neck and lower part of face oblique in direction. One bruise 3"x2" on the right side of scalp in parietal region, one bruise 3"x2" on left side of scalp in parietal region. Injury No.1 was attributable to the sharp cutting weapon and the others to hard and blunt object. The time of death was estimated thirty six hours earlier.

3. Learned Counsel for the Appellants submitted that there is no eyewitness to the occurrence. The entire case of the prosecution is based on circumstantial evidence only. The prosecution cannot be said to have established its case beyond all reasonable doubt. The links in the chain of circumstances are not complete compatible with the only hypothesis for guilt against the Appellants. The possibility of the deceased having parted company with the Appellants cannot be ruled out. If there are any circumstances with regard to the death having occurred in some other manner or any other being responsible for the death is possible as a matter of doubt, the benefit must be given to the accused.

4. The deceased, according to the prosecution case is alleged to have left home at 2:00 pm for the house of Appellant No.1, three kilometers away to ask for return of money loaned to the latter. There is no evidence that the two were seen together at any time. The only

evidence available is that at about 4.00 p.m, Appellant No.2 came to the place of the Doctor and asked the deceased to accompany him. Appellant No.1 is stated to have come later to the place of the Doctor and enquired about them after which he went in the same direction. The two Appellants were thereafter alone seen together at 5.00 p.m. According to the postmortem report, death occurred about 36 hours earlier which approximates to 9.00 p.m. on 1.10.1996. If Appellant No.2 was seen with the deceased last at 4.00 p.m. an intervening time period of five hours is more than sufficient for the possibility that the deceased had parted company with them. The mere recovery of a weapon of assault on the confession of Appellant No.1 cannot lead to the inevitable conclusion of their being the assailant in a case of circumstantial evidence. The recovery could only be corroborative evidence and is not substantive evidence by itself. The extra judicial confession before PW-11, Budhusai is inadmissible in evidence as no name of the deceased was disclosed and PW-13, Bandhan Ram did not mention any confessional statement in his evidence-in-chief, but made vacillating and contradictory statements in his cross-examination. It was lastly submitted from the evidence of more than one prosecution witness that the police was groping in dark for the assailant and was using coercive action including assaulting the villagers in general who were petrified. The possibility that some of the witnesses may have simply named the Appellants merely out of fear to divert attention from themselves or any other cannot be ruled out completely. In the facts of the case it will be highly unsafe to sustain the conviction of the Appellants in the circumstances.

5. Learned Counsel for the State submitted that the conduct of the Appellants in absconding was unnatural and incompatible with their

48

innocence. The Appellants offered no explanation in their defence under Section 313 Cr.P.C which becomes an incriminating factor against them. The recovery of the blood stained 'tangi' on the confession of Appellant No.1, confirmed in the Forensic report, is a crucial piece of evidence against the Appellants. The chain of incriminating circumstances is completed from the evidence of prosecution witnesses that Appellant No.1 owed Rs.2,000 to the deceased and was required to return the same with interest for a total of Rs.5,000. The deceased had left home in the afternoon for the village of Appellant No.1. This may have provided the motive for the Appellants to kill the deceased because then the money would not have to be returned. Appellant No.2 came to the house of the Doctor at about 4.00 p.m. and left with the deceased. There is no evidence on record that they parted company at any time. Appellant No.1 is stated to have come soon after and after being informed proceeded in the same direction with a 'tangi' in his hand, which is a sharp cutting instrument. The postmortem report also confirms injury by a sharp cutting instrument.

सत्यमेव जयते

6. We have considered the respective submissions and also examined the evidence on record also.

7. Kalapnath, PW-1 proved the Merg Exhibit P-1, Kripanath, PW-2 the inquest report Exhibit P-3. Grampati Ram, PW-3 proved the confession of Appellant No.1 Exhibit P-4 and seizure of 'tangi' pursuant thereto Exhibit P-5, and also the knife from the house of Appellant No. 2. The sample of earth seized from the place of occurrence was marked Exhibit P-11. The witness also deposed that Appellants had fled the village when the police came. He further deposed in cross-examination

that the police was not sparing him also and released him only after the Appellants had been arrested. Jhamru, PW-4, the younger brother of the deceased deposed that the latter had left home about 2:00 pm the fateful day, stating that he was going to the village of Appellant No.1 for collecting his money and would return by evening. Appellant No.1 owed him a sum of Rs.5,000 including interest. In cross-examination, it was acknowledged that Appellant No.1 had come to their house the same day in the afternoon looking for the deceased. The witness also stated that the deceased and Appellant No.1 were very good friends. Samru Ram, PW-5, another brother of the deceased also deposed that the deceased left home for the house of Appellant No.1 to collect his money dues. He also stated of a property dispute in the house of his wife's parents who was missing herself for 3 ½ years and that the deceased was siding with one segment of the family.

8. Harprasad @ Dalpatia, PW-6 deposed that at about 5.00 p.m. the Appellants came from the jungle area, called him and when he refused to come, they proceeded to Bargidih. Sukhan, PW-7 deposed that the deceased came to him at the place of the Doctor about 4.00 p.m. While he was there, Appellant No.2 came and took him away. A little later, Appellant No.1 also came enquiring and on being told that the two had left, proceeded to his own house. His evidence, that Appellant No.1 picked up a 'tangi' from his own house and then proceeded towards Bargidih is unacceptable as the witness does state that he left his work place and followed Appellant No.1 to his home. There is no evidence available where Appellant No.1 went, either to his house, in the direction of the other two and who saw where the Appellant No.1 eventually went. The witness was only seeking to embellish his evidence by spinning

yarns in the interest of his own safety. It is significant to notice the statement of the witness that when the police came to the village for investigation, he was also suspected and beaten up for about a month because of which he had fallen ill. Chertu, PW-8 is a hearsay witness. Kharnu, PW-9 stated that on the fateful evening before sunset, the two Appellants had come to the house of Bandhan Ram, PW-13 and stayed the night at his house.

9. Budhsai, PW-11 stated that the Appellants made an extra judicial confession to him about having killed a man without disclosing the name or identity of the deceased. An extra judicial confession is otherwise an extremely weak piece of evidence and as a matter of prudence requires corroboration from other evidence. In a case of circumstantial evidence, it shall not be safe to rely upon an extra judicial confession unless all other evidence inevitably leads to the only hypothesis for the guilt of the accused. If the extra judicial confession is lacking in material particulars especially with regard to the name of the deceased it cannot be said to be inspiring confidence especially when more than one prosecution witness has deposed with regard to the indiscriminate conduct of the police in attempting to identify who the assailant was. The possibility of the confession being planted to deflect the attention of the police from oneself cannot also be ruled out. The confession is considered vague and does not inspire confidence for having been made voluntarily to be treated as piece of corroborative evidence. The conduct of the witness in acknowledging during cross-examination that he never disclosed the fact to any other in the village and made the statement before the police for the first time makes it suspicious.

10. Bandhan Ram, PW-13 confirmed the deposition of Kharnu, PW-9 with regard to the Appellants having coming to his house. He did not state anything about an extra judicial confession by the Appellants, in his evidence-in-chief but made vacillating contradictory statements in his cross-examination which is considered highly unsafe to be relied upon.

11. Significant again is the deposition of Chatu Pujari @ Burduram, PW-17 akin to that of Sukhan, PW-7 that the police was harassing a lot of people in the village because of the murder and several villagers had left the village because of the police harassment.

12. Rungtu Ram, PW-19 proved the First Information Report and B.S. Khutia, PW-20 was the Investigating Officer.

13. There is no eyewitness to the occurrence and the allegations against the Appellants are based on circumstantial evidence only. The extra judicial confession sought to be relied upon by the prosecution has already been held by us ~~not to inspire~~ ^{संशय उत्पन्न} confidence. Recovery of a blood stained 'tangi' on the confession of Appellant No.1 also does not leave us satisfied to consider it an incriminating material because it can only be a corroborative evidence and not a piece of substantive evidence by itself. It has already been noticed that Sukhan, PW-7 deposed that after making enquiries, Appellant No.1 left for his own house. There was no occasion for the witness therefore to know where Appellant No.1 went and from where he picked a 'tangi'.

14. To sustain an order of conviction on basis of circumstantial evidence only, all the evidence available must point to the only hypothesis for guilt of the accused. The deceased must have last been

seen in the company of the Appellants. The time gap between them being last seen together and recovery of the dead body should be so short so as to leave out any possibility of the accused having parted company with the deceased. There should be no other possibility for the occurrence to have taken place in any other manner or committed by any other.

15. The deceased is alleged to have left home at 2.00 pm for meeting Appellant No.1 in the latter's village 3 kms away. But Jhamru, PW-4, brother of the deceased deposed that Appellant No.1 had come to the house of the deceased the same day at about 2.00 p.m. The witness also deposed that the deceased and Appellant No.1 were very good friends. No evidence has come with regard to any previous animosity or incident between them. Appellant No.2 allegedly was with the deceased at 4.00 p.m. but Appellant No.1 was not seen together with them. Death is stated to have occurred 36 hours earlier to the postmortem which makes it approximately 9.00 p.m. i.e. after sunset and when it was dark but Kharnu, PW-9 has deposed that the Appellants had come to the house of Bandhan Ram, PW-13 in the evening before sunset. The deceased is not stated to have been with them at that time. The possibility that the deceased may have parted company with the Appellants cannot completely be ruled out.

16. If that were not enough, Sukhan, PW-7, Bandhan Ram, PW-13 and Chatu Pujari @ Burduram, PW-17 have also stated for the manner in which the police was behaving beating up villagers in search of the assailants because of which many of them ran away from the village. The fact that the Appellants also ran away from the village cannot be



50

considered an incriminating factor alone against them. In this background, the possibility that the Appellants were named by others to deflect any police atrocity against themselves while the police searched for the accused cannot be ruled out. The manner in which the police conducted itself leading to the Appellants being made accused in a case of circumstantial evidence, we do not think that it would be safe to uphold their conviction on basis of the aforesaid materials. The Appellants are entitled to the benefit of doubt.

17. The conviction of the Appellants is therefore held to be not sustainable. The order under appeal is set aside but subject to conditions incorporated under Section 437-A Cr.P.C in so far as the Appellants are concerned.

18. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE सत्यमेव जयते

Sd/-
P. Sam Koshy
Judge