

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1801 of 2000**

1. Damaru S/o Panchram Sahu, aged 35 years.
2. Gokul S/o Panch Ram Sahu, aged 32 years.
3. Surubali W/o Damru Sahu, aged 25 years.
4. Bahartin Wd/o Panchram Sahu, aged 55 years.

All are resident of village Pandaripani, Thana Raigarh,
District Raigarh

---- Appellants**Versus**

The State of Madhya Pradesh Through the District
Magistrate, Raigarh (MP)

---- Respondent

For Appellants : Mrs. Indira Tripathi, Advocate
For Respondent/ State: Mr. Ravindra Agrawal, P.L.

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

CAV JUDGEMENT**Passed On :22.07.2015****Per P. Sam Koshy, Judge**

The instant appeal has been preferred by the Appellants challenging the judgment of conviction and order of sentence dated 30.06.2000 passed by the Second Additional Sessions Judge, Raigarh in Sessions Trial No. 233/1997. The Appellants have been convicted under Section 302/34 of IPC to life imprisonment with fine of Rs.500, in default of fine additional two months simple imprisonment. The Appellants have also been convicted under Section 201/34 of IPC to seven years rigorous imprisonment with fine of Rs.100, in default of which additional simple imprisonment for 15 days.

2. The facts relevant for adjudication of the instant appeal are that as

per the prosecution, the deceased Bhagirathi was having illicit relationship with the wife of Appellant no.1 i.e. Appellant no.3 Surubali. It is said that in the intervening night of 2/3.08.1997 the deceased had entered into the house of Appellant no.1 from the roof and noticing this the Appellants raised an alarm and locked the deceased from outside and went to call the nearby villagers so that the act on the part of the deceased could be witnessed red handed by the villagers. But, by the time the villagers reached the spot, the deceased is said to have escaped through the roof. However, in the morning dead body of the deceased was found lying in the field of his father Manbodh i.e. PW-3. It was the brother of the deceased Rajendra (PW-7) who had first seen the dead body of the deceased lying in the field near which a blade and insecticides were also found. There was fresh cut injury mark on the left palm of the deceased and also vomit consisting of cooked rice near the dead body. PW-7 Rajendra had informed his father PW-3 about the incident who in turn reported the matter to the Police on the basis of which merg was lodged on 03.08.1997 at around 9.30 a.m. marked Exhibit P-16. The body of the deceased was sent for postmortem and the report of the postmortem conducted by PW-1 Dr. M. D. Joshi is Ex. P-1. In the course of postmortem, the doctor found following injuries on the body of the deceased:

- i) Bruise over the posterior aspect of the chest obliquely placed crossing the midline 10" x 1" in the right side reaching to the left side.
- ii) Bruise over the Posterior aspect of the chest on the right side below the injury No.i size 9" x 1".
- iii) Bruise over the Posterior aspect of the Chest on the Right side 6" x 1" below the injury No.ii.

- iv) Bruise over the posterior aspect of the chest on the right side 8" x 1" below the injury No.iii.
- v) Bruise over the back on the right side 4" x 1".
- vi) Bruise over the back on the right side 3" x 1" x 2" below the injury No. v.
- vii) Incised wound over the left hand palm aspect 1" x 1/4" x 1/4" clotted blood present surrounding the wound.

The doctor opined the cause of death to be asphyxia and the death was homicidal in nature.

3. After due investigation, the Police Authorities registered the FIR on 09.08.1997 marked Exhibit P-13 which was lodged at the instance of PW-12 B. M. Puri, the Sub-Inspector, Police Line Bilaspur. Later on, charge sheet was filed before the concerned Court and the matter was registered as Sessions Trial No. 233 of 1997 and was put to trial before the Second Additional Sessions Judge, Raigarh.

4. During the course of trial, the prosecution examined as many as 13 prosecution witnesses and there was no witness examined on the part of the defence.

5. After completion of trial, finally vide its impugned judgment dated 30.06.2000, the trial Court found the Appellants guilty under Sections 302/34 and 201/34 of IPC. Accordingly, the trial Court sentenced all the four Appellants leading to the filing of the instant Appeal.

6. Counsel for the Appellants submitted that the entire case of the prosecution is based on circumstantial evidence and that there is no eye witness whatsoever to substantiate the case of the prosecution nor are there any concrete, cogent and reliable evidence led by the prosecution to

assertively hold that the charges levelled against the Appellants stand proved beyond reasonable doubt so as to convict the Appellant for the offence for which they have otherwise been convicted and sentenced. It was argued on behalf of the Appellants that in the merg itself it has been recorded that near the dead body, a blade, cut injury on left palm of the deceased with blood oozing from it, presence of smell of insecticide were found which would lead us to infer the fact that the deceased died by committing suicide. Counsel for the Appellants submitted that admittedly on an earlier occasion, the deceased was caught in the house of Appellant No.1 on the charge of having illicit relationship with Appellant No.3 for which a village meeting was held where the elders of the village meeting had expelled the Appellant from the village. It was only a day earlier when the deceased had again come to the village and committed the same misdeed. This time also, he was caught and because of the humiliation of being again produced in the village Panchayat, the deceased committed suicide. Counsel for the Appellants contended that there was no grievous injury on the body of the deceased which was caused by any hard and blunt object with which the death could have occurred. Counsel for the Appellants doubted the veracity of the evidence of PW-3 Manbodh, father of the deceased pertaining to the extra judicial confession as claimed by him. According to the counsel, the deposition of PW-3 is not trustworthy enough to be accepted as a strong piece of evidence in as much as the factor of extra judicial confession claimed by PW-3 in his deposition before the Court does not find place in his 161 Cr.P.C. statement marked Exhibit D-1 which was recorded immediately after the incident. Counsel for the Appellants questioned the authenticity of the prosecution case on the ground that the vomit and the blade

recovered and seized from the place of occurrence were not sent for forensic test. The viscera also was not preserved and thus according to the counsel for the Appellants, the prosecution has miserably failed to prove its case beyond reasonable doubt. Further, there are large number of omissions and contradictions in the deposition of the prosecution witnesses which itself render the entire case of the prosecution doubtful. Therefore, the counsel for the Appellants prayed for setting aside the impugned judgment of conviction and sentence and for honorable acquittal of the charges levelled against the Appellants.

7. State counsel, however, opposing the contentions of the counsel appearing for the Appellants submitted that there is no scope of any interference with the finding arrived at by the Court below in the course of convicting and sentencing the Appellants. State counsel referred to the evidence of PW-3 and that of PW-8 stating that there is an extra judicial confession made before these two witnesses which substantiates the case of the prosecution. State counsel also submitted that it is a case where the entire chain of event leads us to reach to a conclusion that it was only the Appellants who had assaulted the deceased. The reason for the assault was that the deceased was found to be maintaining illicit relationship with the wife of Appellant No.1 which was not acceptable to the Appellants and accordingly, they had done away with the deceased and thrown the dead body in the field of PW-3. He submitted that there was even blood marks on the wall of the house of the Appellants where the deceased is said to have entered at night which also establishes the fact that it was the Appellants who had assaulted the deceased. According to the State counsel, smell of insecticide, presence of blade and cut injury sustained by the deceased on his left palm were nothing but giving a

different picture to the case. According to the State counsel, the motive also has been established by the prosecution and further the previous night incident and the time gap lead us to a conclusion that it was the Appellants alone who could have committed the murder of the deceased. Lastly, taking the Court through the entire evidence of the prosecution witnesses, the State counsel requested for rejection of the appeal upholding the conviction and sentence of the Appellants.

8. Having considered the rival contentions put forth by the counsel appearing on either side what transpires or has been revealed through the evidence is that; (a) Admittedly the evidence discloses the fact that it was the talk of the town that there was a illicit relationship between the deceased and the wife of appellant No.1. (b) That on an earlier occasion, the deceased for the same allegation had been expelled from his village and was staying in his uncle's house in a different village from where he had returned only a day back and immediately on reaching back the Appellant committed the same offence. (c) That the Appellants and the deceased were all relatives as is proved from paragraph-3 of the deposition of PW-5 and that the deceased and his father were having a strained relationship with the Appellants. (d) The deceased is said to have entered the house of the Appellants through the roof and also left the house from the same way i.e. the roof.

9. Further, the extra judicial confession said to have been made before PW-3 as well as PW-8 cannot be accepted to be a voluntarily confession in as much as though PW-3 in his Court statement has accepted the Appellant No.1 of making an extra judicial confession but from the record it appears that in his 161 statement recorded by the Police

at the time of incident i.e. 03.08.1997, the mention of extra judicial confession is not reflected. It is for the first time the fact of extra judicial confession by PW-3 is being stated before the Court 1½ years later. Similarly, extra judicial confession made before PW-8 Dadulal also cannot be said to be a voluntarily confession for the reason that as per PW-8, the confession was made in the presence of the police personnel which by itself leads to the conclusion that it could not have been a voluntary confession. This also stands proved from the evidence of PW-8 that the Appellant had produced the weapon of assault on query of the Police Authorities. Thus, the extra judicial confession so made by the Appellants loses all its significance and cannot be taken as an incriminating material so as to convict the Appellants.

10. However, the statement made by PW-8 in respect of extra judicial confession also cannot be accepted to be true or it does not have enough strength for believing it to be true for the reason that such a statement is not available in 161 Cr.P.C statement of PW-8 which was recorded on 03.08.1997 marked Exhibit D-4. Since this fact of extra judicial confession is missing from the 161 Cr.P.C. statement, the version of PW-8 also pertaining to extra judicial confession cannot be given much weightage.

11. Likewise, the fact which is an admitted position is the recovery of a blade from the place of incident with the palm of the deceased having a cut injury. In addition, the presence and smell of insecticide at the place of incident coupled with sign of vomit consisting cooked rice. All these facts when compared with the postmortem report particularly the nature of injury sustained by the deceased would show that there was no such external injury found on the body of the deceased which could have

proved fatal. At the same time, from the presence of a blade along with a cut injury on the left palm of the deceased and the presence of insecticide and smell of insecticide at the place of occurrence along with vomit, it cannot be ruled out about the possibility of the deceased having committed suicide. The very fact that there is a possibility of the deceased having committed suicide for the reasons stated in the preceding paragraphs itself gives rise to a great element of doubt for holding the Appellants guilty of having committed the offence of murdering the deceased. The element of doubt further enhances from the evidence of prosecution witnesses particularly the villagers PW-4 Dilip Kumar, PW-5 Bhagirathi, PW-6 Jageshwar, PW-9 Dhasiya Ram and PW-10 Parmeshwar who were summoned on the fateful night on the information of the deceased having illegally entered into the house of Appellant no.1 with an intention of having physical relationship with Appellant no.3 who have stated that when they reached the house of the Appellants, the deceased had already escaped from the place of incident and thereafter his whereabouts were not known to anybody till the dead body of the deceased was recovered from the field of PW-3 next day. Further, so far as the presence of blood in the house of the Appellants is concerned, no evidence to substantiate the same to be of deceased is brought on record. Even otherwise the walls of the house may have blood stains of the deceased for the reason of the deceased receiving bruises while entering the house of the Appellants.

12. From the above given facts it cannot be conclusively held that the Appellants were the assailants of the deceased resulting in his death. Further, PW-9 in his cross-examination in paragraph-3 has categorically stated that the deceased was a man of loose character and had illegal relations with many persons. This witness has also stated that on an

earlier occasion, the deceased was scolded by the elders of the village Panchayat and that there had been many occasions where for the act of the deceased, people used to be called in the night also. This further gives sufficient indication that the deceased must be having inimical relations with many persons in the village who could have also killed the deceased.

13. So far as the case of circumstantial evidence is concerned, the prime requirement to be satisfied is (a) a circumstance from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (b) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (c) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and (d) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. This has been enunciated in the verdict of the Supreme Court in the case of Ashok Kumar Chatterjee v. State of Madhya Pradesh reported in AIR 1989 SC 1890.

14. From the above given factual matrix and legal position what gets carved out is that before an accused could be convicted on purely circumstantial evidence, it must be ensured by the Court that the evidence must be such by which all possibility of the accused being innocent gets excluded.

15. In the instant case, the prosecution has not been able to prove its

case beyond reasonable doubt against the accused persons of having committed the said offence as there are various broken links between the events which have been picked up by the Court below for convicting the Appellants. Whereas, unless the chain of event is complete and the evidence leads to irresistible conclusion that it was the Appellants alone who have committed the offence, it cannot be said to have proved the case of the prosecution.

16. In AIR 2006 SC 2152 (Umrao v. State of Haryana & Ors. with State of Haryana v. Babu Lal & Ors.) it has been held by the Supreme Court that wherever two views are possible in respect of an offence, the benefit of doubt will go in favour of the accused persons.

17. In the present case, admittedly, more than one view gets cropped up; one the possibility of the accused persons to have committed the offence and second the possibility of the deceased having committed suicide. Someone else could have also committed the offence considering the conduct of the deceased. Under such circumstance, it can be safely concluded that the prosecution has not been able to prove its case beyond all reasonable doubt. This proposition of law further gets fortified from the decision of Bomay High Court in the case of Surendra Gyanchand Chawla v. State of Maharashtra reported in 2006 CRI.L.J. 3694. In (1982) 1 SCC 426 (Prabhakar Jasappa Kanguni versus State of Maharashtra) it was observed that asphyxia could also be caused by consumption of insecticide. But the benefit was denied for reasons of marks on the neck. In the present case there are no ligature marks on the neck to suggest that asphyxia was due to throttling. It would therefore be reasonable to presume that the cause of asphyxia in the present case is consumption of insecticide.

18. For the foregoing reasons, we are of the opinion that the Appellants, in the given facts and circumstances of the case, are entitled to be given the benefit of doubt. Accordingly, the judgment of conviction and sentence dated 30.06.2000 passed by the Second Additional Sessions Judge, Raigarh in Sessions Trial No. 233/1997 deserves to be and is set aside. The Appellants are acquitted of the charges under Sections 302/34 and 201/34 of IPC. They are set at liberty subject to the conditions of Section 437A Cr.P.C.

19. The appeal stands allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd
(P. Sam Koshy)
JUDGE