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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 3174 of 1999**

Ranjit Singh, S/o Mohan Singh Rajput, aged about 24 years, R/o
Gatawa Talab, Shanti Para, Bhilai-III, Distt. Durg

----Appellant

Versus

The State Of Madhya Pradesh (Now the State of Chhattisgarh)
through P.S Bhilai-III, Distt Durg.

---- Respondent

For Appellant: Shri Anand Kumar Gupta, Advocate.
For Respondent/State: Smt Smita Ghai, Panel Lawyer

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

Judgment on Board**Per P.Sam Koshy, Judge****1/12/2015**

1. The present appeal has been preferred against the judgment of conviction dated 16.9.1999 passed by the 5th Additional Sessions Judge, Durg in Sessions Trial No.34/1999 whereby the Appellant has been found guilty for an offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with fine of Rs.2,000 and default stipulations.
2. The case of the prosecution is that on 7.7.1998 at around 1.45 p.m, the accused went to the police station Bhilai-III and said to have made a confession of killing his elder brother Inderjeet by strangulation using his towel. Based on the confessional statement of the accused, the First Information Report, Exhibit P-5 was registered, wherein it was stated that in the morning of 7.7.1998, after having tea with the deceased along with two neighbours, Chabi Kumar, PW-1 and Mukesh PW-6, who later

on left the house, the present Appellant is said to have used his towel and strangled the deceased to death. The reason that the Appellant mentioned was that the deceased was unemployed and used to sell the household articles to make money for his personal use. The deceased was also regularly fighting with the Appellant, claiming for a share in the retiral benefits that was received after their father had retired from service. In addition, it was also alleged that the deceased used to suspect the Appellant of having an illicit relationship with his wife. The dead body of the deceased was later on sent for postmortem to Dr. PC. Deshmukh, PW-4, who conducted postmortem and found the following injuries on the body of the deceased:

- I. Black deep groove all around neck passing over just above and below thyroid cartilage 12" x 1 ½" and transversely placed
- II. On dissection ligature mark while glistening
- III. Multiple tiny abrasions posterior aspect on the right elbow

The cause of death was opined to be asphyxia as a result of ante mortem strangulation.

3. The matter was put to trial before the 5th Additional Sessions Judge and the prosecution in all examined 11 witnesses and on the basis of the evidence which has come on record, the Trial Court held the Appellant guilty of having committed the murder of his elder brother and sentenced him as mentioned in the preceding paragraphs leading to the filing of the present appeal.

4. Learned Counsel for the Appellant challenging the conviction, submitted that the entire finding of the Trial Court is based on the confessional statement made by the Appellant-accused at the time of

lodging of the First Information Report and the recovery of a towel thereafter from the pond. According to the Learned Counsel for the Appellant the said confession is totally inadmissible as the extent of admissibility from the confessional statement would be only that what is permissible under Section 27 of the Evidence Act. The admission to the extent of his confession of committing murder of the deceased would not be an admissible piece of evidence, which otherwise has to be proved exclusively by the prosecution and which the prosecution in the instant case has failed.

5. It was further argued that even otherwise the recovery also would not in any manner strengthen the case of the prosecution for the reason that the towel allegedly used for murdering the deceased was recovered from an open place and that too from a pond. There was no test identification parade effected to prove the fact that the towel belonged to the Appellant himself.

6. Further, Learned Counsel for the Appellant also submitted that the evidence which has come on record also do not in any manner support the case of the prosecution to establish the Appellant alone of being the assailant. It was also contended by the Learned Counsel for the Appellant that only because the dead body of the deceased was recovered from the house where the deceased and the Appellant were staying together, would not by itself lead to infer that it was the Appellant alone who could have killed the deceased and that the provision of Section 106 of the Evidence Act would not come to the aid of the prosecution. That the prosecution ought to have proved their case independently establishing the fact that all the circumstances which have

come in the course of the investigation and during evidence lead to the only conclusion that it was the Appellant alone who has killed the deceased. He further submitted that even otherwise, the confessional statement made by the Appellant cannot be used against him as the same would be hit by Article 23 of the Constitution of India which says that no person shall be compelled to be a witness against him.

7. Per contra, Learned Counsel appearing for the State referring to the First Information Report, strongly contended that it is a case where after committing the murder, the Appellant straightaway went to the police station and has given a confessional statement and has also further led the police party to the spot where he has thrown the towel which was used for killing his brother and that the fact that the dead body was recovered from the house of the Appellant where the deceased was also staying lead us to the only inference of the Appellant himself committing the said offence. He further contended that the time gap between Chabi Kumar, PW-1 and Mukesh PW-6 having left the house with the Appellant and the deceased after having tea in the morning hour and the time of incident, there is no possibility of some third person coming into the house and committing the offence. In addition immediately after the offence having been committed, the Appellant reported the matter to the police authorities and thus, the case has been fully proved by the prosecution from the conduct of the Appellant himself thus calling for no interference of the judgment under challenge.

8. From the perusal of the record and also the evidence which has been led by the prosecution and also on going through the findings of the Court below, it is clear that the Court below had only relied upon the First

Information Report which was lodged on the confessional statement made by the Appellant himself. In addition, the Court below has also relied upon the statement of the investigating officer B.B.S Rajput, PW-8, who has proved the First Information Report and the other documents. The Court below did not have any other piece of evidence to substantiate the case of the prosecution. A perusal of the inquest report showing the picture of the place of incident shows that there was more than one entrance to the said house and that only because the dead body was recovered from within the house of the Appellant wherein, the deceased was also staying, it cannot be said that it was the Appellant who has committed the said offence. At best it could lead to suspicion but suspicion alone cannot be a strong proof for holding the Appellant to be guilty of the said act, unless it has been proved by the prosecution by leading cogent evidence which in the instant case, the prosecution has failed.

9. It is settled position of law that suspicion howsoever strong, cannot take place of a proof to be a base for conviction. In the instant case also, except for the confessional statement that to made before police is an inadmissible piece of evidence under Section 27 of the Evidence Act and beyond which there is no other evidence on the part of the prosecution to lead us to the conclusion that it was the Appellant who has committed the offence. Accordingly this Court is of the opinion that the finding so arrived by the Trial Court is not in accordance with law and therefore not sustainable and is based on inadmissible piece of evidence to convict the Appellant only on the basis of suspicion.

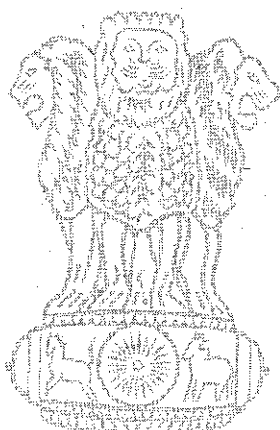


10. The impugned order accordingly is set aside and the Appellant stands acquitted from the charges leveled against him. The Appeal stands allowed subject to conditions enumerated under Section 437-A Cr.P.C.

Priya

Sd/-
Chief Justice

Sd/-
P. Sam Koshy
Judge



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