

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 99 of 2014

- Asman Singh, S/o Chain Singh, aged about 22 years, R/o Village Barra, O.P. Korbi, P.S. Pasan, Tahsil Katghora, District (Civil & Revenue) Korba (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station – O.P. Korbi, P.S. Pasan, Tahsil Katghora, District (Civil & Revenue) Korba (C.G.)

---- Respondent

For Appellant	:	Mrs. Kiran Jain, Advocate.
For Respondent/State	:	Mr. U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on 29-09-2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 18-04-2007 passed by the Additional Sessions Judge, Katghora, District Korba in Sessions Trial No.15 of 2006, whereby and whereunder, the trial Court, after holding the appellant guilty for causing homicidal death amounting to murder of deceased - Sampat Kumar and Mansingh, aged about seven and five years respectively and for concealing the criminal evidence, convicted the appellant under Sections 302 (two times) and 201 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.1000/-, in default of payment of fine to undergo additional R.I. for one month (two times) and to undergo R.I. for three years and to pay fine of

Rs.500/-, in default of payment of fine to undergo additional R.I. for six months. All the sentences were directed to run concurrently.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of prosecution, on 01-03-2005 appellant and his younger brothers, namely, Sampat Singh and Mansingh, aged about seven and five years respectively, went to forest for plucking *Dhawai* flower, but did not return till night. Thereafter, their father Chain Singh (PW-4) lodged one missing report at Police outpost, Korbi. After two days, accused/appellant came to house and made extra-judicial confession that while catching fish near Talwarmuda pond, he committed murder of his younger brothers by pressing their necks and drowning their heads into water and at night he himself stayed in the house of his sister situated at Badrapara. After getting this information, Rai Singh (PW-1) informed at Police Chowki, Korbi. On the basis of his information, *Dehati Mergs* were recorded vide Exs. P-1 & P-2. Initially FIR at zero was registered vide Ex.P-21 by outpost Korbi, thereafter numbered FIR was registered at Police Station, Pasan vide Ex.P-22.
4. Investigating Officer rushed to the place of occurrence and after summoning the witnesses vide Exs.P-6 & P-6A, inquests over the

dead bodies of deceased Sampat Singh and Mansingh were prepared vide Exs. P-7 and P-8 respectively. Spot map was prepared vide Ex.P-9. Dead bodies of deceased Mansingh and Sampat Singh were sent for autopsy to Primary Health Centre, Podi Uroda vide Exs.P-14A and P-15A where Dr. Pushpalata Singh (PW-9) conducted autopsy on the dead bodies of deceased Mansingh and Sampat Singh vide Exs.P-14 and P-15 respectively and found the injuries and symptoms over their dead bodies as mentioned below :

Dead body of deceased Mansingh :

Dead body is supine in position. Body is moderately decomposed & rigor mortis present all over body. Mouth is open, tongue is protruded, eyeball outside the orbit. In the neck, scratch & mark due to haemorrhage present, hypo-stasis present in the neck, lower arm & feet palms & feet are wrinkled & sodden, abdomen was swollen.

Cause of death was asphyxia due to drowning and death was homicidal in nature.

Dead body of deceased Sampat Singh :

Dead body is supine in position. Body is moderately decomposed. Rigor mortis present all extremities, hypo-stasis present in hand, eyeball outside the orbit, mouth open, tongue is protruded. In the neck, there is haemorrhagic mark present, abdomen is swollen, external genitalia swollen.

Cause of death was asphyxia due to drowning and death was homicidal in nature.

5. Patwari prepared spot map vide Ex.P-20. Accused/appellant was taken into custody, he made disclosure statement of the clothes of deceased Mansingh & Sampat Singh vide Ex.P-3, same were recovered at the instance of the appellant vide Ex.P-5. Clothes of the deceased were identified by the parents of the deceased vide Ex.P-4.
6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Katghora, who in turn committed the case to the Court of Sessions, Korba, from where learned Additional Sessions Judge received the case on transfer for trial.
7. In order to bring home the charges of the accused/appellant, the prosecution examined as many as fourteen witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. He has not presented any defence witness.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge has convicted and sentenced the appellant as aforementioned.

9. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
10. Learned counsel appearing for the appellant submits that it is a case, which is based on circumstantial evidence, but, prosecution has totally failed to establish the complete chain of circumstances which can prove that accused is a person who has committed murder of his younger brothers. She further submits that trial Court has convicted the appellant only on the basis of conjunctures and surmises, therefore, conviction and sentence are not sustainable under the law.
11. On the other hand, learned State counsel opposes the appeal and supports the judgment of conviction and order of sentence passed by the trial Court.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death of deceased Mansingh and Sampat Singh as a result of symptoms found over their bodies has not been substantially disputed on behalf of the appellant. On the other hand, it is also established by the evidence of Rai Singh (PW-1), Phool Kunwar (PW-3), Chain Singh (PW-4), Ganpat (PW-6), Sukhraj Singh (PW-7), Jadubar Singh (PW-8), Merg Intimations (Exs. P-1 & P-2), FIR (Exs.P-21 & P-22), Dr. Pushpalata Singh (PW-9), autopsy report (Exs.P-14 & P-15) that

the death of deceased Mansingh and Sampat Singh was homicidal in nature.

14. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of last seen, memorandum and seizure at his instance and also based on suspicious conduct of the accused/appellant during the incident. Case of the prosecution is totally based on circumstantial evidence, there cannot be any doubt that conviction can be based on circumstantial evidence, but for that the prosecution must establish the complete chain of circumstances consistently pointing towards the guilt of the accused and is inconsistent with his innocence. Circumstances, as well known from which an inference of guilt is sought to be drawn, are required to be cogently and firmly established.
15. Phool Kunwar (PW-3), mother of appellant and deceased Mansingh and Sampat Singh, has stated that appellant took his two younger brothers (later they found dead) Mansingh and Sampat Singh for bathing and collecting the flowers near the pond. After taking bath, appellant came alone and on being asked about other brothers, he replied that they were playing where he took them and after taking meal, appellant/accused absconded from his house. She searched for his sons, but could not find them. Villagers also searched them, but they also failed. Later on accused/appellant came to his house and stated that his

brothers were catching fishes. After coming of police, accused along with them went to pond site. She was not supporting prosecution on some particular facts, therefore she was declared hostile and was cross-examined by the prosecution and also by the defence. In her cross-examination, she admitted that when her sons were leaving the house she was busy in kitchen, therefore, she could not see them. She is totally firm in her statement that accused took his brothers from the house.

16. Chain Singh (PW-4), father of the deceased and the appellant, has stated that he had gone to Bandhapara and after coming back to house he came to know by his wife that accused had taken his two younger brothers for bathing to river side, appellant came alone from there and other two sons could not come to house. He also searched his sons with the help of villagers, but could not find them. Accused/appellant also absconded from the house, therefore, he lodged a missing report at outpost Korbi, then police came to village and enquired from the appellant, he took them to spot where dead bodies of deceased Mansingh and Sampat Singh were found lying in water. Police prepared inquest over the dead bodies of the deceased and after post-mortem, dead bodies were given to them on supurdnama.
17. R.K. Ratre (PW-14), Police Officer, has stated that Chain Singh (PW-4) has lodged a missing report at out post about missing of his three sons, which was numbered 2/2005. During search of

missing persons, one Rai Singh (PW-1) informed that dead bodies of two children of Chain Singh were lying inside *Nalah*. He also informed that accused made confession before him that he had killed his younger brothers.

18. Rai Singh (PW-1) has supported the statement of R.K. Ratre (PW-14). He has stated that he had given information about deceased, he also admitted that Dehati Merg Intimations (Exs.P-1 & P-2) were written according to his information.
19. Kailash Kumar (PW-2) and Chatur Singh (PW-5) are the witnesses of inquest memorandum, seizure and identification. They have stated that memorandum (Ex.P-3) was written on the basis of information which was given by the accused, thereafter, dead bodies of both deceased were recovered and identified. Clothes of deceased were also recovered at the instance of appellant vide Ex.P-5. They admitted their signatures on Exs.P-3 to P-8. They were cross-examined at length, but defence has not been able to elicit anything to discredit their testimonies.
20. Ganpat (PW-6), younger brother of deceased and appellant stated that his two brothers Mansingh and Sampat Singh died whose dead bodies were found from pond.
21. Sukhraj Singh (PW-7) is a person who had searched deceased along with Chain Singh (PW-4), father of deceased. He has stated that he heard about the death of deceased and went to spot and saw the dead bodies floating in water. He has not

supported the prosecution on some other facts, therefore, he has been declared hostile.

22. Sirpal Singh (PW-10) has stated that mother of appellant Phool Kunwar (PW-3) came to him and told that accused and her two younger sons, who went to forest for plucking flowers, had not returned. They searched them, but could not find them. When accused came to home, then police also came to village as report was lodged at outpost. Accused informed the police that his younger brothers were near the pond, he took the police to the spot and found the deceased. He has also not supported the prosecution on some other facts, therefore, he has been declared hostile.
23. Mangal Singh (PW-11) and Bifaiyabai (PW-12) are the hostile witnesses, who have neither supported the case of prosecution nor case of defence. Santosh Kumar (PW-13) is the Patwari who has prepared the spot map (Ex.P-20).
24. In the present case, the prosecution has proved the following chain of circumstances :
 - (i) By adducing the evidence of Phool Kunwar (PW-3) that the appellant had gone with deceased Sampat Singh and Mansingh from the house and thereafter deceased did not come back;
 - (ii) Dead bodies of deceased were found floating on water of Talwarmuda pond;

- (iii) By the disclosure statement of the accused/appellant clothes of the deceased were recovered at his instance;
 - (iv) Death of the both deceased was homicidal in nature; and
 - (v) Accused was making false and fabricated story about the missing of deceased.
25. Aforesaid chain of circumstances proved by the prosecution is sufficient for drawing an inference that only the appellant is author of crime and none else, which excludes the possibility of his innocence.
26. This is a case of double murder and is also a case of concealing the evidence of crime case. By convicting and sentencing the appellant as aforementioned, the trial Court has not committed any illegality.
27. On close scrutiny of the evidence available on record, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
28. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE