

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 662/2003

APPELLANTS
(IN JAIL)

224573
18/6/03
Filed on.....
by Sri..... Advocate

B. to D.R. (J)

78/603

VERSUS

RESPONDENT

- : 1. Ashok Kumar, Son of Ramesh Prasad Manikpuri, aged about 31 years, Occupation - Auto Rickshaw Driver, resident of village - Kanthi, Police Station - Darima, Dist : Surguja (C.G).
2. Ravidas, Son of Bhokadas, aged about 23 years, resident of village - Bhathu para, Ambikapur, Police Station - Ambikapur, Dist : Surguja (C.G).
- : State of Chhattisgarh through Police Station - Ambikapur, District : Surguja, (C.G).

MEMORANDUM OF APPEAL UNDER SECTION 374 (2) OF THE CODE
OF CRIMINAL PROCEDURE, 1973.

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.662 of 2003

APPELLANTS:

1. Ashok Kumar
2. Ravidas

Versus

RESPONDENT:

State of Chhattisgarh

{Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}

Present:

Mr. V.K. Pandey, counsel for the appellants.

Mr. Mahesh Mishra, Panel Lawyer for the State/respondent.

Division Bench: -

Hon'ble Mr. T.P. Sharma and
Hon'ble Mr. C.B. Bajpai, JJ

JUDGMENT
(10-2-2015)

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 14-5-2003 passed by the Sessions Judge, Surguja at Ambikapur, in Sessions Trial No.332/2001, whereby & whereunder learned Sessions Judge while acquitting co-accused Pitambar Ram, convicted the appellants under Section 302 of the IPC for causing homicidal death amounting to murder of Hariram and sentenced them to undergo imprisonment of life.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants and thereby an committed illegality.
3. As per case of the prosecution, on 15-4-2001, unfortunate deceased Hariram was going to Ambikapur along with Rampukar @ Munna (PW-7), Kalamram, Teju and Jagarnath, they took their breakfast in some hotel where appellants Ashok & Ravi were present, both the appellants also took their breakfast along with deceased Hariram and other witnesses, money was paid by deceased Hariram, thereafter, they left the hotel along with Hariram. After some time, appellants Ashok & Ravi came by tempo and took deceased Hariram with them, thereafter, Hariram did not come back to his house and his dead body was recovered on second day. Ajit Ram (PW-

5) noticed the dead body of the deceased, then he went to Police Station Ambikapur and lodged morgue vide Ex.P-4.

4. The investigating officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-2, prepared inquest over the dead body of the deceased vide Ex.P-7 as unknown dead body, thereafter, the body was identified as the body of Hariram, Spot map was prepared vide Ex.P-6. Bloodstained soil, plain soil and bloodstained cloth of the deceased were seized vide Ex.P-5.

5. Dead body of the deceased was sent for autopsy to District Hospital, Ambikapur vide Ex.P-13. Dr. S.K. Sinha (PW-18) conducted autopsy vide Ex.P-21 and found following injuries and symptoms: -

- Eyes are closed, mouth is partially open.
- Blisters are present over different parts of body.
- Lacerated wound over left side of forehead, size 10 c.m. x 1 c.m., dry blood is present over injured area.
- Lacerated wound over face below left eye, size 5 c.m. x 1 c.m. x 1.5 c.m. deep, surrounding area is bruised.
- Nasal bridge is broken.
- Lacerated wound over chin, size 3 c.m. x 1 c.m. x 1 c.m. deep.
- Depression over right side of forehead.
- Incised wound above left ear, size 7 c.m. x 1 c.m.
- Bruise over left elbow, size 6 c.m. x 2 c.m.
- Multiple bruises over left thigh.

Cause of death was coma and death was homicidal in nature.

6. Finally, FIR was registered vide Ex.P-24. Sealed clothes of the deceased were seized vide Ex.P-25. During the course of investigation, appellant Ashok was taken into custody, he made disclosure statement of auto vide Ex.P-12 and same was recovered at his instance vide Ex.P-11. Acquitted accused Pitambar made disclosure statement of stone vide Ex.P-9 and same was recovered at his instance vide Ex.P-10. Both the appellants were identified by Agarsai (PW-8) and Teju Ram vide Ex.P-8.

7. Statements of the witnesses were recorded under Section 161 of the CrPC. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Ambikapur, who committed the case to the Court of Sessions, Ambikapur where trial of the case was conducted.

8. In order to prove the guilt of the accused, the prosecution has examined as many as 19 witnesses. The accused were examined under Section 313 of

the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.

9. After providing opportunity of hearing to the parties, learned Sessions Judge while acquitting co-accused Pitambar Ram convicted & sentenced the appellants as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellants vehemently argued that conviction of the appellants is based only on the evidence of Agarsai (PW-8), his evidence does not inspire confidence and is not trustworthy. He was not known to the appellants. As per para 10 of his evidence, he has identified the appellants in the police station which is not admissible in evidence. In absence of identification of the appellants, conviction of the appellants is not sustainable under the law. Learned counsel further argued that even otherwise, there is long gap between the last seen theory and recovery of dead body, therefore, possibility of third person between the appellants and the deceased cannot be ruled out.
12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Agarsai (PW-8) by itself is sufficient to prove the fact that the deceased was not only in the company of the appellants before his death, but he was under the active control of the appellants before his death. Aforesaid circumstances alone are sufficient to prove the fact that the appellants were authors of the crime and none else.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Hariram has not been substantially disputed on behalf of the appellants. On the other hand also, it is established by evidence of Bandhan Ram (PW-1), Ajit Ram (PW-5), Deepak (PW-6), Rampukar @ Munna (PW-7), Agarsai (PW-8), morgue Ex.P-4, FIR Ex.P-24, evidence of Dr. S.K. Sinha (PW-18) and autopsy report Ex.P-21, that death of deceased Hariram was homicidal in nature.
15. As regards complicity of the appellants in the crime in question, conviction of the appellants is substantially based on the evidence of Agarsai (PW-8). As per his evidence, he along with Teju, Munna and deceased Hariram went to Ambikapur, both the appellants were present near Alakhnanda

Talkies, they jointly took refreshment, thereafter, they left the hotel along with Hariram, after some time, both the appellants came by tempo and picked-up Hariram with them, Hariram was known to them, and on second day morning, dead body of Hariram was found.

16. Defence has cross-examined this witness at length. In para 10 of his cross-examination, he has specifically deposed that he has identified the appellants in the police station. In para 11, he has further deposed that previously he was not knowing appellant Ravi, but he has denied the suggestion that he has seen appellant Ravi first time in the court. In para 13 of his evidence, he has deposed that he has seen the appellants first time in the police station, but as per paras 2, 3 and 5 of his evidence he has seen the appellants along with Hariram, they picked up Hariram with them by tempo and thereafter, Hariram was not seen alive. His entire evidence reveal that both the appellants have taken Hariram with them, by tempo. This shows that Hariram was under the active control of the appellants before his death.
17. Agarsai (PW-8) has admitted that he has identified the appellants in the police station, but he has specifically deposed that he was having sufficient time to identify the appellants. He has identified the appellants in the dock identification which has not been questioned by the appellants.
18. The purpose of test identification is only to ascertain whether the investigation is going-on in right side or not. Dock identification is an evidence of identification. In the present case, dock identification is unchallenged. Even otherwise, Agarsai (PW-8) was having sufficient opportunity to watch the appellants because he was with the appellants for long time in the hotel and even at the place from where they picked-up the deceased. Therefore, irregularity in the identification is of no use in the present case.
19. In these circumstances, heavy burden to explain as to when the appellants set free the deceased was upon the appellants, but the appellants have failed to offer any explanation or to discharge the burden. In absence of such explanation, the only inference would be possible that the appellants are authors of the crime and none else, and it also excludes the possibility of their innocence.
20. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellants. On close scrutiny of evidence, we



do not find any illegality or infirmity in the judgment of conviction and order of sentence.

21. Consequently, the appeal devoid of merit is liable to be dismissed and is hereby dismissed.
22. The appellants are on bail. They shall immediately surrender before the trial Court for serving remaining sentences imposed upon them. The trial Court shall also take immediate appropriate steps for sending the appellants to jail to serve remaining sentences imposed upon them.

Sd/-
T.P. SHARMA
Judge

Sd/-
Chandra Bhushan Bajpai
Judge

