

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 54 of 2010

1. Jirjodhan Verma S/o Babu Lla Verma R/o Village Salauni, Police Station Khairagarh, Rajnandgaon (CG)

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh, through Police Station Sahaspur Lohara, District Kabirdham

---- Respondent

For appellant
For Respondent

Shri Devesh Chandra Verma, Advocate
Shri Ashish Surana, Panel Lawyer

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

JUDGEMENT

Per Pritinker Diwaker, J

13/10/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 20.11.2009 passed by the Sessions Judge, District Kabirdham (Kawardha) in S.T. No.8/2009 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.25,000/-, in default to undergo additional R.I. for 2 years.
2. Accused/appellant is the real brother of deceased Jaikumar. As per case of the prosecution, family partition amongst accused/appellant, deceased Jaikumar and Dhoor Singh (PW-3) had already taken place and as the accused/appellant and deceased Jaikumar were steeped in wine & speculation in which their entire property received in family partition had to be disposed off. Further case of the prosecution is that deceased Jaikumar had taken an insurance policy of Rs.10 Lac in which accused/appellant

being his nominee was to be benefited in terms of money in case of accidental death of deceased. In the morning of 13.1.2009 the accused/appellant and the deceased were seen together by Dhursingh (PW-3) & Neelkumar (PW-7) and thereafter on 14.1.2009 the dead body of Jaikumar was recovered from under the bridge of Silhati river. One motorcycle was also found near the dead body of deceased. Chaturdas (PW-4), village Kotwar, had informed the police based on which Dehati Merg (Ex.P-6) was recorded at 9.55 a.m. and thereafter on the same day registered merg intimation (Ex.P-6A) was recorded. On the basis of merg, FIR (Ex.P-3) was registered on 15.1.2009 against unknown persons under Section 302 of the IPC. The Investigating Officer after summoning the witnesses prepared inquest over the body of deceased Jaikumar on 14.1.2009 vide Ex.P-2. Dead body was sent for post mortem examination to the Government Hospital, Lohara where Dr. Sanjay Kharsan (PW-9) conducted autopsy and noticed multiple injuries on his body. Cause of death was coma due to subdural haematoma. Duration of death was 10 to 15 hours before the examination. Accused/appellant was taken into custody and his memorandum statement was recorded on 15.1.2009 based on which stone used for committing the offence was seized vide Ex.P-11. Clothing of accused/appellant were seized vide Ex.P-10. Insurance policy was seized vide Ex.P-12. Seized articles were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-30 was received in which presence of blood on the clothing of accused/appellant and stone has been affirmed. Statements of witnesses were recorded under Section 313 of Cr.P.C.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302, 201, 120B, 34 of the IPC was filed against accused persons, however, the trial Court has framed the charge under Section 302

of IPC, in alternative 302/34 of the IPC. The prosecution in order to bring home the charge levelled against accused persons examined eleven witnesses in all. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court while acquitting co-accused from the charge, by the impugned judgment, convicted and sentenced the accused/appellant in the manner as described above.
5. Learned counsel for accused/appellants submits that conviction of the appellant is substantially based on the circumstantial evidence i.e. last seen, and in the cases of circumstantial evidence the prosecution is required to prove that the entire chain of circumstances is complete but in the present case the quality of evidence is not as such on which basis it can be said that chain of circumstances is complete. He further submits that evidence of Dhoor Singh (PW-3) & Neel Kumar (PW-7), who have allegedly seen the deceased last time alive in the company of accused/appellant, do not inspire confidence and trustworthiness as the time gap between the last seen by these witnesses and recovery of dead body of deceased is so long that possibility of any person other than the appellant being the author of crime cannot be ruled out. He further submits that dead body was recovered from under a bridge and motorcycle was lying on the body of deceased, therefore, possibility of accidental death of deceased cannot be ruled out. He further submits that as per medical evidence, duration of death was 10-15 hours from the post-mortem examination, meaning thereby the deceased must have died in the night of 13.1.2009, whereas he was allegedly seen with the deceased in the morning of 13.1.2009. He further submits that post-mortem report (Ex.P-30) does not reflect as to whether death was

homicidal in nature or not, whereas heavy burden lies on the prosecution to prove that death of deceased as homicidal. Though blood stains on almost all the seized articles were found in the F.S.L. report, but the prosecution has utterly failed to establish origin and blood group of the blood. He further submits that on the same set of evidence, the trial Court has acquitted co-accused of the charge. He further submits that relation between the appellant and the deceased were cordial and thus there was no motive with the appellant to commit his murder.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. There is no reason to disbelieve the testimonies of Dhoor Singh (PW-3) & Neel Kumar (PW-7) who had seen the deceased last time alive in the company of accused. He further submits that there is nothing on record suggesting that death of the deceased was the result of an accident. Had it been the accidental death, the articles i.e. cigarette packet, matchstick box, shell of boiled eggs, disposable glass, cap of country-made liquor bottle, motorcycle and bloodstained & plain soil, would not have been recovered from the place where dead body of deceased was found. He further submits that though no serological report could be filed on record, but FSL report confirms presence of blood on almost all the articles seized from the accused/appellant and he failed to offer any explanation as to how the blood came on the articles seized from his possession. He further submits that at the time of framing of charge itself, accused/appellant has admitted his guilt which itself is sufficient to uphold his conviction.
7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.

8. Tekram Sahu (PW-1) is the Patwari who had prepared the spot map of Ex.P-1. According to the spot map & other evidence available on record, the body of deceased was recovered from under a bridge and a motorcycle was lying on him.
9. Bharat Verma (PW-2) is the witness of inquest (Ex.P-2), notice (Ex.P-2A), spot map (Ex.P-3), seizure memos of Ex.P-4 & Ex.P-5.
10. Dhoor Singh (PW-3) is brother of accused/appellant and deceased. He has stated that accused/appellant and deceased were habitual drunkard & gambler. They used go to Khairagarh daily. Both were steeped in wine and speculation and their entire land had to be disposed off in the same. He has further stated that on 13.1.2009 at about 9.30 p.m. he had seen the accused/appellant and the deceased going towards Khairagarh by the motorcycle. On coming to know about the death of deceased, he had enquired about the accused/appellant, but he was not in the house and came only when the dead body was brought to home from the hospital. He enquired from accused/appellant but he did not disclose anything. In the cross-examination he has stated that relations between the deceased and accused/appellant were cordial and he had never seen them quarrelling.
11. Chaturdas (PW-4) is the village Kotwar at whose instance dehati merg and merg were registered.
12. Santosh Kumar (PW-5) is the agent of insurance company and he has proved the insurance policy seized from the possession of accused/appellant. This witness has stated that both the brothers i.e. accused and deceased, had come to him and deposited the amount of premium.
13. Rajwati @ Jaya (PW-6) is the wife of deceased. She has stated that her husband was steeped in wine & speculation and his entire land had to be disposed off in the same. She has further stated that when the body of her husband was brought to house at that time accused/appellant was not in the

village and he came next morning only when the last rites were to be performed. She has further stated that as the deceased used to beat her after consuming liquor, therefore, she had left the house of deceased. She has further stated that she is not aware about the insurance policy taken by her husband.

14. Neel Kumar (PW-7) is the another witness who had seen the deceased alive last time in the company of accused/appellant. This witness has stated that on the date of incident when he was standing in front of his house, he had seen the accused/appellant and the deceased going towards Khairagarh by the motorcycle. Thereafter the deceased did not return and next day he came to know that Jaikumar has died.

15. Shivcharan (PW-8) is the witness of memorandum of accused/appellant and seizure memos of Ex.P-10 & Ex.P-11. Though this witness has been declared hostile but he has admitted his signatures on the aforesaid documents.

16. Dr. Sanjay Kharsan (PW-9) conducted post-mortem examination on the body of deceased and noticed following injuries & symptoms;-

- Lacerated wound on the left side of forehead of 5x 1½x 1 inch in size.
- Lacerated wound on right eyebrow of 1x1x2" in size.
- Lacerated wound on parietal lobe of 5x ½ x ½ inch in size.
- Injury at the back side of skull. Clotted blood on collar bone. Left side forehead was fractured. Nasal bone was fractured. 2Nd , 3rd , 4th & 5th ribs of both the sides were fractured. Both the chambers of heart were empty.

This witness has opined that cause of death was coma due to subdural haematoma. Duration of death was 10-15 hours from the examination.

17. A.R. Sahu (PW-10) is the Investigating Officer and he has duly supported the prosecution case.

18. Chaindas Manikpuri (PW-11) is the witness of memorandum of Ex.P-8 and seizure memos of Ex.P-10, Ex.P-11, Ex.P-12 & Ex.P-13.

19. As noticed above, the prosecution case was not based on direct evidence of eye-witnesses but purely on circumstantial evidence i.e. last seen. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of accused and totally inconsistent with his innocence.
20. Close scrutiny of evidence makes it clear that the accused and the deceased- the real brothers, were seen together in the previous morning of 13.1.2009 by Dhoor Singh (PW-3) & Neel Kumar (PW-7) and in the next morning body of deceased was recovered from under a bridge. The theory developed by the defence branding death of the deceased to be an accidental one, does not convince to the conscience of this Court because undisputedly prior to the incident the deceased and the accused/appellant both were seen together and next day the body of deceased was recovered. Had it been a case of accident, the accused/appellant who is also said to have ridden the same motorcycle would have also received some injuries but nothing like this has happened in this case. What is important to mention here that from the place where the dead body was found, cigarette packet, matchstick box, shell of boiled eggs, disposable glass, cap of country-made liquor bottle etc. were seized and thus it can very well be said that after consuming liquor the accused/appellant might have committed murder of the deceased. Thus stand of the defence that it was case of accidental death has no substance and the same is hereby turned down. Secondly, the cause of death was the laceration noticed by the doctor on the forehead of the deceased and therefore non-mention of specific word

'homicidal' in the post mortem report is not in any manner of any benefit to the defence. More importantly, the doctor conducting the post-mortem examination has been very categorical while making statement before the Court that the injuries as have been received by the deceased in this case cannot occur by fall from the height of 20-25 feet. Even the defence has not been able to explain as to why the accused/appellant would be falsely implicated in this case. This apart, the stone used in the murder of the deceased was recovered vide Ex.P-11 and as per FSL report (Ex.P-30), blood was found on the articles seized by the prosecution including the said stone, however, no explanation as to its source has been offered by the defence. This facet also raises an accusing finger leading to the involvement of accused in crime in question.

As regards motive, it has come in the evidence that the accused and the deceased were steeped in wine & speculation in which their entire property received in family partition had to be disposed off. Evidence also goes to show that the deceased had taken an insurance policy of Rs.10,00,000/- in which accused/appellant being his nominee was to be benefited in terms of money in the event of accidental death of deceased. This apart, the accused/appellant himself has made confession at the time of framing of charge that on account of land dispute he has committed murder of the deceased.

21. Thus, if the cumulative effect of aforesaid analysis is kept in view, the prosecution appears to have proved its case beyond reasonable doubt and so also the court below has been conscious to the position by appreciating the evidence of the witnesses. The findings recorded by the court below being strictly based on the unfettered appreciation of the evidence of the witnesses require no interference in this appeal. The judgment impugned is

thus maintained and the appeal meets the fate of dismissal. Order as such.

Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan