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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1660 OF 1999

Lal Sai & Another

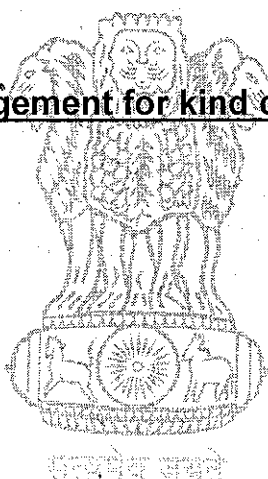
... Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh)

... Respondent

Judgement for kind consideration



सत्यमेव जयते

Sd/-

(P. Sam Koshy)
Judge
23/03/2016

Sd/-

Chief Justice

28/03/2016

Post for Judgement on : 29/03/2016

Sd/-

(P. Sam Koshy)
Judge
29/03/2016



(57)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1660 of 1999**

1. Lal Sai S/o Atal Gond, aged about 60 years.
 2. Smt. Sukhmantiya Bai W/o Lal Sai Gond, aged about 57 years.
- Both are resident of village Jalke, P.S. Pasan, District Bilaspur (CG)

---- Appellants

Versus

State of Madhya Pradesh through, P.S. Pasan, District
Bilaspur, CG

---- Respondent

For Appellants : None
For Respondent-State : Smt. Madhu Nisha Singh, Panel lawyer

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

C A V JUDGEMENT**Per P. Sam Koshy, Judge****29/03/2016**

1. The Appellants in the instant case are husband and wife and have challenged the judgment of conviction and sentence dated 23.03.99 passed by the Special Judge (Atrocities), Bilaspur in Sessions Trial No. 406 of 1992. Both the Appellants have been convicted under Sections 302/34 and 201 of IPC and sentenced to undergo life imprisonment u/s 302/34 and rigorous imprisonment for three years with fine of Rs.500/- u/s 201 with default stipulations.
2. Pending the Appeal before this Court Appellant No.1 Lal Sai died and as such the Appeal abates with regard to him and now the Appeal survives only so far as Appellant No.2 Smt. Sukhmantiya Bai is concerned.
3. As per the prosecution, on 17.01.1992 at around 10 O'clock in the morning the Appellants are said to have assaulted Indra Kunwar Bai (hereinafter referred as 'the deceased') by first dropping her on the floor and then the Appellant No.1 is said to have sat on the chest of the deceased and throttled her

to death. While Appellant No.1 was throttling, Appellant No.2 was said to be holding the feet of the deceased. It is alleged that after death of Indra Kunwar Bai, the Appellants with the help of PW-4, Purushottam hid the body inside the house and in the evening after it getting dark, the Appellant No.1 took the body with the assistance of PW-3 Kripal Singh to a place near the field of Bodhan and left it on a rocky road (path). They also left a bottle of liquor near the body so as to give it a picture of an accidental fall under the influence of liquor resulting in death. Merg Intimation Exhibit P-2 was recorded and the investigation started. The dead body was sent for postmortem to PW-7 Dr. K. S. Pendro on 19.01.1992. In the course of investigation, no internal or external injury was found on the body. The doctor has given a report stating that no definite opinion could be formed regarding the cause of death and that the death occurred nearly 36 to 72 hours prior to the time of postmortem.

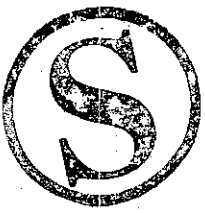
4. Subsequently, the matter was put to trial and the Court below after due consideration of the evidence which has come on record particularly that of the prosecution witnesses reached to the conclusion that Appellant No.1 was the main person to have assaulted the deceased and that the role of his wife i.e. Appellant No.2 was only of holding the feet of the deceased after she was thrown down on the floor by Appellant No.1 with a common intention of killing the deceased. Accordingly, the Court below holding Appellant no.2 guilty for the offence under Section 302 read with Section 34 of IPC convicted and sentenced her.

5. State counsel after taking the Court through the entire evidence on record submitted that the following grounds could be the submission in support of the surviving Appellant No.2:

In the instant case, the conviction of the Appellants is based on conjectures and surmises. That the prosecution has miserably failed to adduce proper, cogent and reliable evidence to substantiate their case and to prove the

charge beyond reasonable doubts. So far as Appellant no.2 is concerned, there is no allegation against the sole surviving Appellant of having played a major role in the commission of the offence under Section 302 of IPC and therefore Appellant no.2 should not have been convicted under Section 302 with the aid of Section 34 IPC. That the entire conviction is based on circumstantial evidence and in the absence of any direct eye witness's version, the secondary evidence of circumstantial in nature ought to have been carefully and cautiously scrutinized before giving a finding of conviction. That the conviction of the Appellants was on assumption and presumption and that the Court below has unnecessarily drawn presumption against the Appellants for basing the conviction.

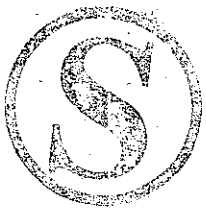
So far as the circumstantial evidence is concerned, the law is well settled that there has to be a complete chain of events starting from the period immediately prior to the time of death till death and the said chain of circumstances and links interconnecting the chain of events have to be cogent and reliable. If the entire prosecution case is accepted to be true, even then from the record it is evidently clear that the surviving Appellant No.2 had not played a vital role in commission of the offence except for the alleged holding of the feet when Appellant No.1 was assaulting the deceased and therefore her conviction under Section 302/34 IPC is totally uncalled for. That the prosecution story is also not worth relying for the reason that the deceased had gone to the house of the Appellants where the Appellants had offered food and drink to her. Subsequently, there was an altercation and dispute in respect of certain cattle which were sold by one family to the other. If there had been strained relationship, the deceased would not have gone to the house of the Appellants and if there was a fight among them, the question of providing food and drink to the deceased again is beyond imagination and therefore, the prosecution story itself leads to a great element of doubt. It is a settled position



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that even if there is a slightest doubt, the benefit of which is liable to be given to the Appellants.

6. However, the State counsel justifying the conviction taking the Court through the evidence submitted that this Court may keep in mind the fact that the Appellants had a motive to kill the deceased which stands established from the evidence of the prosecution witnesses who have stated of there being a dispute between the two families in respect of certain sale and purchase of cattle. The motive further stands established from the evidence of one of the prosecution witnesses stating to the extent of the Appellant No.1 going to the house of the deceased and bringing the cattle from her house by un-roping them which was the genesis of the dispute on the fateful day. It was submitted that on the same date when the deceased had gone to the house of the Appellants asking for her cattle, it is said that there was some altercation between them and later on, the Appellants offered food and drink to the deceased. Subsequently, both the Appellants got together and assaulted the deceased leading to her death. The said contention of the prosecution stands affirmed from the evidence of PW-3, PW-4 & PW-5. It was contended that the chain of circumstances in the instant case is thus complete that there could not have been any other inference but that of the Appellants alone having committed the said offence. Similarly, the prosecution evidence that has come on record clearly shows that when Appellant no.1 was assaulting the deceased, Appellant No.2 was holding the feet of the deceased which by itself is sufficient proof of the role played by the surviving Appellant No.2 in killing the deceased. Thus, there can be no hesitation that the role played by Appellant no.2 gets the aid of Section 34 of IPC and that the Court below has not committed any illegality or infirmity while convicting Appellant No.2 under Section 302/34 of IPC nor can the impugned judgment be said to be contrary to the evidence or perverse in any manner calling for an interference.



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7. Having perused the record and upon hearing the submission of the counsel for the State it is noteworthy to take note of the fact that PW-7, Dr. K. S. Pendro who conducted the postmortem has given a finding in his report Exhibit P-8 that there was no ligature or abrasion mark over the neck, abdomen and chest. The doctor further opined that no definite opinion could be given for the cause of death and that the duration of death was 36 to 72 hours. Again a query being made to the doctor he had replied that since decomposition of the body had started, no definite opinion could be formed about the cause of death. Likewise, the doctor in his Court statement has also made a categorical statement of not finding any injury on the body of the deceased in the course of postmortem specifically stating that there was no ligature or abrasion mark on the external part of the body. He further went on to state that in fact, there was no external marks on the body. Thus, from the medical evidence which has come on record it is hard to hold that the death of the deceased was homicidal or for that matter it took place because of the alleged assault made by the Appellants. In the absence of any medical evidence firstly ascertaining the cause of death, secondly ascertaining the fact that the death was homicidal in nature and thirdly the medical evidence not showing any injury mark both external or internal, the finding of guilty against the Appellants would not be proper, legal and justified.

8. Another aspect which has to be borne in mind is that even if the prosecution story is accepted in its face value, the allegation against Appellant No.2 is only that of holding the feet of the deceased when Appellant No.1 sat on the chest of the deceased and throttled her to death. The record reveals that none of the prosecution witness has given a cogent evidence of having witnessed the Appellants assaulting the deceased or she had done something predetermined to cause death of the deceased. Similarly, there is no evidence on record by which it could be conclusively said that the surviving Appellant

No.2 had a major role in the death of the deceased. Further, the evidence of PW-3 and PW-4 which has been strongly relied upon by the Court below while convicting the Appellants also would give rise to a great element of doubt for the reason that PW-3 and PW-4 have stated in their evidence that they had assisted the Appellants firstly in hiding the dead body and later in disposing off the same. But surprisingly for the reason best known to the prosecution, PW-3 and PW-4 were not even prosecuted even under Section 201 of IPC which further gives rise to doubt on the aspect whether these witnesses are planted witness or not or else they would have also been made an accused. The prosecution would have taken proper steps even at a later stage for adding them as accused.

9. The statement of PW-4 further strengthens the doubt as he has admitted in his cross-examination that his Police statement for the first time was recorded after about one month from the date of incident and that in between he had not disclosed this fact to any one in the village. Except for the deposition of PW-3 & PW-4 who are totally unreliable witnesses, there is no evidence to show as to how the deceased reached the place where the dead body was found. The version of PW-4 is highly improbable for the reason that if the relations between the Appellants and the deceased were strained, the deceased would not have gone casually to the house of the Appellants enquiring about the cattle and thereafter she would not have joined them in lunch. So far as the PW-3 is concerned, he has totally denied his original statement that he had given to the Police in his examination-in-chief which itself further creates doubt on the credibility of this witness. The possibility of the deceased had a natural death also cannot be ruled out from the over all evidence on record particularly the medical evidence and therefore also the benefit of doubt should go in favour of the Appellants. When all these facts cumulatively are taken into account, the prosecution story creates a strong doubt in so far as to incriminate the Appellant for the offence.

10. Thus, the prosecution has not been able to prove its case beyond all reasonable doubts against the Appellant 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 conviction. 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.

11. For the foregoing reasons, we are of the opinion that Appellant No.2, in the given facts and circumstances of the case, is entitled to be given the benefit of doubt. Accordingly, the judgment of conviction and sentence dated 23.03.1999 in respect of Appellant no.2 passed by the Special Judge (Atrocities), Bilaspur in Sessions Trial No. 406/92 deserves to be and is set aside. Appellant No.2 namely Smt. Sukhmantiya Bai is acquitted of the charges under Sections 302/34 and 201 of IPC. She is set at liberty subject to the conditions of Section 437A Cr.P.C.

12. The appeal stands allowed.

**Sd/-
Chief Justice**

**Sd/-
P. Sam Koshy
Judge**