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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 524 of 2003

- Satish Sahu, S/o Deenanath Sahu, aged about 20 years, Occupation - Private Work, R/o Village Janjgiri, P.S. Bhilai-3, Distt. Durg (CG)

---- Petitioner

Versus

- State Of Chhattisgarh, through P.S. Bhilai Bhatthi, Distt. Durg (CG)

---- Respondent

For Appellant	: Shri RK Jain, Advocate.
For Respondent/State	: Shri Adhiraj Surana, Dy. Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

28/06/2016

This appeal arises out of the judgment of conviction and order of sentence dated 8.4.2003 passed by the 7th Additional Sessions Judge (FTC), Durg in ST No.375/2001 convicting the appellant under Sections 302, 201 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.5000/- and RI for five years, pay a fine of Rs.1000/- with default stipulations respectively.

02. As per the prosecution case, deceased Vishnu Sahu expressed his desire to the appellant to have sex with his wife, as a result of which appellant got annoyed and for this reason, he committed his murder by drowning him in water tank till death on 26.7.2001 in between 9.15 pm and 9.30 pm. On 28.7.2001 dead body was found floating in the tank. Dehati merg Ex.P/5 was recorded on 28.7.2001 at the instance of PW-

7 Teejoram, a villager. Thereafter, Dehati FIR (Ex.P/14) was registered against the unknown person. Merg intimation Ex.P/15 was recorded on 29.8.2001 and thereafter, FIR (Ex.P/16) was registered on 29.7.2001 on the basis of merg enquiry against unknown person under Section 302 of IPC. Inquest over the dead body was prepared vide Ex.P/18. The dead body was sent for postmortem, which was conducted on 30.7.2001 by PW-5 Dr. Sanjay Kumar Dadu vide Ex.P/19 wherein he noticed no injury on the body of the deceased and even cause of death could not be ascertained as the body was in advance stage of decomposition. After investigation, charge sheet was filed against the appellant under Sections 302 & 201 of IPC and accordingly, charges were framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellants submits as under:

(i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for his conviction.

(ii) that on the memorandum of the appellant (Ex.P/8), seizure of

certain articles has been effected, including that of the alleged bag of the deceased vide Ex.P/11, but as the said seizure has been made from open place and the bag has not been identified properly, the said recovery cannot be made basis for convicting the appellant.

(iii) that PW-10 Dr. Kavita Shrinivas had medically examined the appellant vide Ex.P/12 and opined that the injuries sustained by the appellant could have been suffered by him within three days from the date of examination. It strengthens the specific defence of the appellant that he sustained those injuries on account of being beaten by the police for giving his memorandum.

(iv) that the chain of circumstantial evidence is not complete and merely on the basis of weak piece of evidence of memorandum and recovery made in pursuance thereof, the appellant cannot be held guilty.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Arjun Singh has stated that while he was crossing through the pump house, he heard the voice of some one "save, save, Satish is beating" and then he saw two persons there, however, he fled away from the spot. In cross-examination, he admits that there may be number of persons named Satish in the village.



09. PW-3 Ramji Sahu, father of the deceased, has stated that his son was having grocery business and apart from that, he was working as agent of Pulsegreen. He has stated that his son was missing for 2-3 days, enquiry was made by him and then he lodged a missing report before Bhilai Police Station. He has stated that he was informed by the police that one unknown dead body has been found and one slipper is lying there. He has stated that he identified the dead body on the basis of black thread tied around the wrist of the said body. He has further stated that accused/appellant Satish was friend of his son. In cross-examination, he admits that there are many persons named Satish in his village and he is not aware whether his son was having friendship with any other Satish or not. He admits that he identified the dead body only on the basis of black thread in his hand. He also admits that the police had not shown him any bag, pant or shirt for identification.

10. PW-4 Chandrika Prasad Verma, is a witness of Talashi Panchanama (Ex.P/2). PW-5 Dr. Sanjay Kumar Dadu conducted postmortem on the body of the deceased vide Ex.P/3. However, the doctor noticed no injury on the body of the deceased and even cause of death could not be ascertained as the body was in advance stage of decomposition. He has stated that face of the deceased was beyond recognition. PW-6 Koushal Kumar has turned hostile. PW-7 Teejaram Deshlahre, at whose instance Dehati merg was recorded, has been declared hostile. PW-8 Satyanarayan Koushik, Patwari, prepared the spot map Ex.P/7. PW-9 Shashikumar Sengar is a witness of memorandum Ex.P/8 and seizure Ex.P/9 to P/12. Vide Ex.P/9 one vest, one motorcycle was seized whereas as per Ex.P/10 piece of one

fullpant, vide Ex.P/11 one ragzine bag allegedly belonging to the deceased from the bushes around the place of incident and vide Ex.P/12 one belt and knife from the place of incident were seized.

11. PW-10 Dr. Kavita Shrinivas did medical examination of the accused/appellant vide Ex.P/12 and noticed scratch mark on the neck as also on the knee of the appellant. According to her, the injury found on the body of the appellant could have been caused to him within three days of his examination i.e. after 29.7.2001. It is relevant to mention here that death of the deceased occurred on 26.7.2001. PW-11 YS Mishra did part of investigation whereas PW-12 Pranesh Dubey is the investigating officer.

12. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the recovery made pursuant to his memorandum vide Ex.P/9 to P/12 whereby one vest, one motorcycle, piece of one fullpant, one ragzine bag allegedly belonging to the deceased, one belt and knife were seized.

13. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground

for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

14. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that the bag allegedly belonging to the deceased has been seized (vide Ex.P/11) from an open place accessible to everyone. This apart, there is no evidence that the bag so seized belonged to the deceased and that it has not been identified by anyone. Likewise, the other seizure and FSL report (Ex.P/26 & P/27) also do not establish any case against the appellant connecting him with the murder of the deceased. Though PW-1 has stated that on the date of incident, he heard the voice "save, save, Satish is beating", of somebody coming from near the pump house but the witnesses have also admitted the fact that there are number of persons in the village named Satish. This witness also does not appear to be very reliable. This apart, the other witness (PW-6) has not supported the prosecution case and turned hostile. Moreover, medical evidence in respect of injuries noticed on the body of the appellant is also in favour of the appellant.

15. Thus, all the circumstances if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, rather they seem to be consistent with the innocence of the appellant. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and the appellant is entitled for acquittal of the charges by giving

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him benefit of doubt.

16. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charges under Sections 302 & 201 of IPC. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-
(Pritinker Diwaker)

Judge

Sd/-
(C.B.Bajpai)

Judge

Khan