

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 472 of 2011

- Ishwar, s/o Chaitram Darro, Caste – Gond, aged about 35 years, r/o Ward No. 21 back side of Gurudwara Rajhara, P.S. Rajhara, Distt. Durg (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through – Police Station, Rajhara, Distt. Durg (C.G.)

---- Respondent

For Appellant : Mr. A. N. Pandey, Advocate.
For Respondent/State : Mr. Adil Minhaz, Panel Lawyer

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

CAV JUDGMENT

Delivered on : 14/03/2016

Per, I.S. Uboweja, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 20.05.2011 passed in Sessions Trial No.70/2011 by the Additional Sessions Judge, Balod, whereby the appellant has been convicted under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.100/-, in default of payment of fine to undergo further R.I. for three months.
2. The facts, briefly stated, are as under :-
 - 2.1. That on 03.12.2010 when Sub Inspector M. L. Sahu (PW-9) during patrolling received the information that near the house of accused/appellant villagers are present, he along with his staff went there. Chaitram (PW-3), father of the accused stated that at 11.30 p.m. his son namely Ishwar Darro dragged him to his bedroom, took

out the dead body of Omprakash Sen (deceased) under the bed and showed to him stating that he has committed the murder of Omprakash, he scared and suspected that accused had strangled the neck of the deceased with the help of *Gamcha*.

2.2. On the basis of statement of Chaitram (PW-3), Police registered Dehati Merg vide Ex.P-14 and Dehati Nalishi vide Ex.P-15, thereafter numbered Merg was registered vide Ex.P-16 and FIR was registered vide Ex.P-17. Police had recovered the dead body of deceased Omprakash from inside the house of the appellant.

2.3. The Investigating Officer gave notice (Ex.P-1A) to the Panchas and prepared inquest (Ex.P-2) over the dead body of the deceased. The dead body was sent for post-mortem to Primary Health Centre, Chikhlakasa vide Ex.P-7A, where Dr. R. Ramteke (PW-4) conducted autopsy on the dead body of the deceased vide Ex.P-7 and found following injuries and symptoms :

- (i) Eyes congested pupils dilated; mouth closed; tip of the tongue is compressed between the teeth; from the mouth frothy mucous emerging; upper and lower limbs extended;
- (ii) Postmortal staining present at dependent parts of the body on back; Nails cyanosis present semen passed; Rigor mortis present;
- (iii) Ligature mark – wide, smooth, shallow hard in consistency. The mark present at full width of the neck. The mark is continuous transverse on front, both sides & posteriorly on the neck. Superficial veins of the neck are turgid.

- (iv) Some bruise abrasion marks irregular and multiple present on upper part of the neck lateral to thyroid on left side of the neck of size 2" x 1 ¼" where subcutaneous effusion of blood present;
- (v) Wind pipe ruptured. The tracheal rings detached & fractured on right side of the neck.

The autopsy surgeon opined that the above injuries were ante-mortem and cause of death was asphyxia due to strangulation and it was homicidal in nature.

2.4. In further investigation, police recovered and seized one *Gamcha* near the dead body of deceased vide Ex.P-12. Spot map was prepared vide Ex.P-13. Patwari prepared spot map vide Ex.P-3. Accused/appellant absconded, thereafter, he surrendered and was arrested. Seized "Gamcha" was sent to doctor for opinion vide Ex.P-8A and a report thereof was received vide Ex.P-8.

3. 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, Dallirajhara, who in turn committed the case to the Court of Sessions, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.
4. In order to bring home the charges of the accused/appellant, the prosecution examined as many as ten witnesses. Accused /appellant 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.

5. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
6. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
7. Learned counsel appearing for the appellant vehemently argued that conviction of the accused/appellant is wholly based on circumstantial evidence which is not clinching and conclusive; there is no cogent and trustworthy evidence; only on the basis of any circumstance, conviction of the accused cannot be sustainable in law. The court below while convicting and sentencing the appellant, has not considered the relevant aspects of the matter and thereby committed illegality.
8. On the other hand, learned State counsel opposing the appeal submitted that the evidence shows that dead body was recovered from inside the house of accused and he was absconded after committing murder of the deceased, he has taken plea of *alibi*, but could not prove it. Circumstances proved by the prosecution are sufficient to prove the guilt of the appellant, therefore, the appellant does not deserve to be acquitted from the charges.
9. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.

10. In the present case, the homicidal death of the deceased as a result of strangulation has not been substantially disputed on behalf of the appellant, even otherwise, it is also established by the evidence of Chandirkabai (PW-2), wife of the deceased, Dr. R. Ramteke (PW-4), autopsy report (Ex.P-7), Dehati Merg (Ex.P-14), Dehati Nalishi (Ex.P-15), Numbered Merg (Ex.P-16) and FIR (Ex.P-17) that death of deceased Omprakash was homicidal in nature.
11. As regards the complicity of appellant in committing crime in question, the conviction is based on circumstantial evidence. In case of conviction based on circumstantial evidence as held in the case of **Kusuma Ankama Rao v. State of A.P., 2008 AIR SCW 4669**, the prosecution is required to satisfy the following circumstances.
 - (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
 - (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
 - (iii) the circumstances should be of a conclusive nature and tendency;
 - (iv) they should exclude every possible hypothesis except the one to be proved; and
 - (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. As regard complicity of the appellant in crime in question, the conviction of the appellant is substantially based on circumstantial evidence. Firstly, wife of the accused, Geeta Darro (PW-1) has proved by her evidence that on 29th November, 2010 deceased came to their house and was talking to the accused about the job, then she went to the house of her elder sister-in-law for showering. After some time, her father-in-law informed her that person who was seating in their house was murdered and dead body was lying under the bed. She was not cross-examined on those facts which she narrated in her statement and her evidence is totally intact on those facts.
13. Chandrikabai (PW-2), wife of the deceased, has stated that she saw the dead body of her husband in the house of the accused, black mark was seen on his neck and one "Gamcha" was seen in tied condition, her evidence is also intact.
14. Chaitram (PW-3), father of the deceased, has stated that when he returned back from Society in the afternoon he saw the mob present in his house and one dead body was lying inside the house, he informed the police. Inquest (Ex.P-2) and Spot map (Ex.P-3) was prepared before him.
15. Ganeshram Darro (PW-7) stated that he heard that accused has strangled some one with the help of *Gamcha*.
16. Deepak Gupta (PW-8) who is the witness of inquest (PW-2) has stated that dead body of deceased Omprakash was lying inside the room of the accused house.

17. Dr. R. Ramteke (PW-4) has proved the autopsy report Ex.P-8 and opined that the injuries found over the dead body of the deceased were ante-mortem and cause of death was asphyxia due to strangulation and it was homicidal in nature.
18. Close scrutiny of the evidence makes it clear that on the date of incident the deceased came to the house of accused and was discussing for job, thereafter his dead body was found in short interval inside the room of the accused; his death was homicidal in nature, medical evidence clearly proved that deceased died due to strangulation; used "*Gamcha*" was also seized from the house of the accused/appellant and the appellant was last seen with the deceased by his own wife Geeta Darro (PW-1) and in short interval dead body of deceased was found inside the room of the accused. After the incident, accused absconded from the spot and thereafter, he surrendered in police station. His conduct is also supporting the prosecution case against him, he has taken plea of alibi, but could not prove it, therefore, it also adds to the chain of circumstances against him, no explanation about departing the company of the deceased has been given by the accused, death of deceased was especially in the knowledge of accused, but no explanation has been offered under Section 313 of the Code, all circumstances raised an accusing finger towards the accused that it is he, who by strangulation committed murder of the deceased.

19. Thus, on the basis of aforesaid circumstantial evidence, the prosecution has succeeded in proving involvement of accused/appellant in commission of the offence beyond reasonable doubt. The finding recorded by the Court below being strictly based on un-faltered appreciation of the evidence available on record requires no interference in this appeal. The judgment impugned is thus maintained and the appeal meets the fate of dismissal order as such.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE