

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 671 of 2011

- Gopal Lakda, S/o Ramsai Lakda, aged about 20 years, case Uranw, Occup. Agriculture, R/o – Village – Kuma, Thana – Kapu, Tah. Dharamjaigarh, Distt. Raigarh (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through – Police Station, Kapu, Tah. Dharamjaigarh, Distt. Raigarh (C.G.)

---- Respondent

For Appellant : Ms. Sharmila Singhai, Advocate.
For Respondent/State : Mr. Avinash K. Mishra, Panel Lawyer

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

CAV JUDGMENT

Delivered on : 09/03/2016

Per, I.S. Uboweja, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 30.06.2011 passed in Sessions Trial No.11/2010 by the Sessions Judge, Raigarh, whereby and whereunder the appellant has been convicted for committing murder of Sunil Rathia and also for committing attempt to murder of Madan Singh Rathia (PW-2) and Hari Prasad Khunte (PW-9), under Sections 302, 307 & 307 of the Indian Penal Code (for short, 'the IPC') and sentenced to undergo life imprisonment and to pay fine of Rs.10,000/-, R.I. for 5 years and to pay fine of Rs. 5,000/- and R.I. for 5 years and to pay fine of Rs.5,000/-. All the sentences were directed to run concurrently.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 02.09.2009 due to enmity the appellant along with other co-accused after mixing poison in the liquor gave the same to Sunil Rathia, Hari Prasad Khunte and Madan Singh Rathia who consumed the same on presumption that it was liquor and after some time they started vomiting and were admitted in serious condition in Government Hospital, Dharamjaigah, where Sunil Rathia died during the course of treatment. It was informed by Dr. L.K. Soni to Station House Officer, Dharamjaigah vide Exs. P-16 & P-17. Police Officer rushed to Hospital. Doctor referred Hari Prasad Khunte (PW-9) and Madan Singh Rathia (PW-2) to District Hospital for further treatment vide Exs.P-18 & P-19. Morgue (Ex.P-24) was registered towards the death of deceased Sunil Rathia and after summoning the witnesses vide Ex.P-4, inquest over the dead body of the deceased was prepared vide Ex.P-5. Spot map was prepared vide Ex.P-11. Dead body of the deceased Sunil Rathia was sent for autopsy to Government Hospital, Dharamjaigarh vide Ex.P-22, where Dr. B.L. Bhagat (PW-20) conducted autopsy on the dead body of the deceased vide Ex.P-23 and found following injuries and symptoms :
 - (i) Rigor mortis all over the body;
 - (ii) Eyes open and mouth closed;
 - (iii) A whitish froth coming out from both nostril;
 - (iv) A bluish discolouration of finger's nail in both hand;

(v) No any other external injury was seen on body.

According to the Doctor mode of death was asphyxia and no definite opinion was given about the death of deceased.

4. Numbered Morgue (Ex.P-25) was registered at Police Station, Kapu and after some inquiry, First Information Report (Ex.P-26) was registered under Sections 302, 307, 328 of the Indian Penal Code against the accused/appellant. He was taken into custody, he made disclosure statement about ampule of injection and one empty bottle of liquor vide Ex.P-1, same were recovered at his instance vide Exs. P-2 & P-3. Memorandum statement of Smt. Mukti Lakda was taken vide Ex.P-7 and at her instance two bottles of poisonous substance were recovered and seized vide Ex.P-9. One letter written by the accused/appellant was seized vide Ex.P-10. Three steel glasses and the soil on which the victims vommitted were seized from the spot vide Ex.P-12. Two bottles of Topgun brand liquor were seized from Dharamjaigarh liquor shop vide Ex.P-15. Viscera of deceased was seized vide Ex.P-13. Seized articles were sent for chemical examination to FSL, Raipur vide Ex.P-21 and a report thereof has been received vide Ex.P-32.
5. 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, Dharamjaigarh, who in turn committed the case to the Court of Sessions Judge, Raigarh.

6. In order to bring home the charges of the accused/appellant, the prosecution examined as many as twenty three 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.
7. After providing opportunity of hearing to the parties, learned Sessions Judge convicted and sentenced the appellant as aforementioned.
8. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
9. Learned counsel for the appellant vehemently argued that the learned Sessions Judge has erred in holding that it was the appellant who administered the poison in liquor bottle and by consuming the same deceased Sunil Rathia died and two other persons namely Hari Prasad Khunte (PW-9) and Madan Singh Rathia (PW-2) became serious. She further argued that if the presence of accused/appellant near the house of Bhobhali Bai (PW-10) was not proved, then no liability can be fastened upon him and it can not be held that he had an opportunity to administer the poison to the deceased and some others.
10. On the other hand, learned State counsel opposed these arguments and supported the judgment passed by the Sessions Judge.
11. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.

12. The contents of the post-mortem report (Ex.P-23) as also viscera report (Ex.P-32) would show that the deceased had died on account of consumption of poison "Phosphamidan" (an organo phosphorus insecticide).
13. In **Sharad Birdichand Sarda v. State of Maharashtra (1984) 4 SCC 116**, the Supreme Court has held that in cases of death by poisoning the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction :-
- (1) there is a clear motive for the accused to administer poison to the deceased;
 - (2) that the deceased died of poison said to have been administered;
 - (3) that the accused had the poison in his possession;
 - (4) that he had an opportunity to administer the poison to the deceased.

The instant case was based on circumstantial evidence.

14. In a case based on circumstantial evidence, the circumstances must be fully established; the circumstances should be of conclusive nature and tendency; the circumstances, so established, must not be capable of being explained and the chain of circumstantial evidence also must be complete. This is what the Supreme Court has said time and again vide many judgments including **Dhananjay Chhatterjee -Vs- State of W.B. (1994) 2 SCC 22** and **Bodh Raj alias Bodha and others -Vs- State of Jammu and Kashmir, AIR 2002 SC 3164**.

15. Jagannath Tiger (PW-1) deposed that on 02.09.2009 in the night he along with Madan Rathia, Hari Prasad Kunthe and Sunil Rathia (deceased) was sitting for taking meals in the house of Bhobhali Bai (PW-10), Madan, Hari Prasad and Sunil started vomiting because they had consumed the liquor, thereafter they were shifted to Dharamjaigarh Hospital, where Sunil Rathia was declared dead and two other persons were referred to District Hospital, Raigarh.
16. Madan Singh Rathia (PW-2), who has accompanied the deceased and Hari Prasad (PW-9) on the spot, has stated that he brought out the liquor from his bag, drunk with deceased Sunil Rathia and Hari Prasad, thereafter, they visited to the house of Bhobhali Bai (PW-10) where all of them were vomiting, he became unconscious at Raigarh Hospital and when he became conscious he came to know about the death of Sunil Rathia.
17. Hari Prasad Khunte (PW-9), who had accompanied the deceased and Madan Rathia (PW-2) on the spot, has stated that he went to the house of Madan Rathia, where he along with Madan Rathia and deceased Sunil Rathia had consumed the liquor, thereafter they reached to the house of Bhobhali Bai (PW-10), where they were vomiting and feeling unwell. They were brought to Dharamjaigarh Hospital in unconscious condition. During the treatment Sunil Rathia died. He and Madan Rathia were referred to District Hospital, Raigarh.

18. Bhobhali Bai (PW-10), who is the assistant of Anganbadi, has stated that she and Prabha Lakra had purchased two quarter bottles of liquor and kept one-one each of them. She heard about Sunil Rathia that he died due to consuming the liquor. She was declared hostile and cross-examined by the prosecution, but has not supported the prosecution case.
19. Prabha Lakra (PW-23), who is mother of accused/appellant, has stated that on 3rd September, 2009, deceased – Sunil Rathia, Madan Rathia (PW-2), Hari Prasad (PW-9), Jagannath Tiger (PW-1) and one Jagannath Kosle were vomiting in the house of Bhobhali Bai after consuming liquor and taking food. She was declared hostile and cross-examined by the prosecution, but has not supported the prosecution case.
20. Investigating Officer, K.L. Yadav (PW-22) has stated that he has prepared memorandum of accused vide Ex.P-1 and at his instance one injection bottle vide Ex.P-2 was recovered and one liquor bottle vide Ex.P-3. He has also taken memorandum of Mukti Bai vide Ex.P-7 and at her instance one liquor bottle was recovered vide Ex.P-9. Two Topgun brand liquor bottles were also seized from liquor shop vide Ex.P-15, one letter written by the accused was also seized from Mukti Bai vide Ex.P-10 and the same was marked as article “A” in the Court.

21. Memorandum and seizure witnesses Narayan Prasad (PW-3) and Jagdish Kurre (PW-5) have not fully supported the documents, but they have admitted the signature on those documents.
22. FSL Report (Ex.P-32) shows that substance of poison was seen in the body of deceased and his death was due to consuming the poison.
23. Investigating Officer, K.L. Yadav (PW-22) has wrongly taken memorandum of Mukti Bai vide Ex.P-7 and seizure (Exs.P-9 & P-10) because she was not made accused in this case, therefore, the exercise done the Investigating Officer has become futile. Hence, these documents cannot be considered in favour of the prosecution.
24. On close scrutiny of the evidence available on record, it is clear that deceased died due to consumption of poison said to have been administered, but prosecution has failed to prove that poison was purchased by accused or accused had the poison in his possession, there is no single evidence that accused had an opportunity to administer the poison to the deceased and others namely Madan Rathia and Hari Prasad, no motive has been proved for the accused to administer poison to the deceased. Although one injection bottle and M.T. Bottle were recovered at the instance of the accused, but this is not enough for his conviction, no other incriminating or supporting evidence has been adduced by the prosecution. On the material available on record, there may be some suspicion against the

accused, but as is often said suspicion, howsoever strong, cannot take the place of proof.

25. On due appreciation of the entire evidence, we find that none of the circumstances was fully established. They were not of conclusive nature and tendency, and almost all the circumstances were capable of being explained and the chain of circumstantial evidence was also not complete. In the totality of the circumstances, we are of the view that the prosecution has not proved its case against the appellant who is, in our opinion, entitled to acquittal giving him the benefit of doubt.
26. In the result, the appeal succeeds and is hereby allowed. Conviction and sentence awarded to the appellant under Sections 302, 307 & 307 of the IPC are set aside. The appellant shall stand acquitted of the charges framed against him giving him the benefit of doubt. It is stated that the appellant is in jail, he be released forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE