

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 837 of 2011

- Shobha Ram Sahu S/o Paraoo Ram Sahu, aged about 56 years, Occupation - Agriculture Labour.
- Vishwadev Sahu, S/o Shobha Ram Sahu, aged about 24 years, Occupation Agriculture Labour.
- Smt. Sonkunvar, W/o Shobha Ram Sahu, aged about 51 years, Occupation Agriculture Labour.

All R/o Village Banjari, Police Station Arjuni, District Dhamtari (CG)

---- Appellants

In Jail

Versus

- State Of Chhattisgarh through the Station House Officer, Police Station Arjuni, District Dhamtari (CG)

---- Respondent

For appellants : Shri Anand Gupta, Advocate.
For Respondent/State : Shri Ravindra Agrawal, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Judgment On Board by Shri Justice P. Diwaker

11/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 24.8.2011 passed by the Sessions Judge, Dhamtari in S.T.No.66/2010 convicting and sentencing the appellants as under:

Conviction	Sentence
(Appellant No.1 Shobha Ram Sahu)	
U/s 364 of Indian Penal Code.	RI for 10 years, fine of Rs.2000/- in default to suffer

	additional RI for 1 year.
U/s 302 of Indian Penal Code.	Life imprisonment, fine of Rs.5000/-, in default thereof to undergo additional RI for 1 year.
U/s 201 of Indian Penal Code.	RI for 2 years, fine of Rs.1000/-, in default thereof to undergo additional RI for 6 months.
(Appellant No.2 Vishwadev Sahu and appellant No.3 Smt. Sonkunvar)	
U/s 364 read with 120B of Indian Penal Code.	RI for 10 years, fine of Rs.2000/-, in default thereof to undergo additional RI for 1 year.
U/s 302 read with Section 120B of Indian Penal Code.	Life imprisonment, fine of Rs.5000/-, in default thereof to undergo additional RI for 1 year.
U/s 201 read with Section 120B of Indian Penal Code.	RI for 2 years, fine of Rs.1000/-, in default thereof to undergo additional RI for 6 months.

All the substantive sentences were directed to run concurrently.

02. Undisputedly, accused/appellant No.3 Sonkunvar is wife of accused/appellant No.1 Shobha Ram Sahu whereas accused/appellant No.2 Vishwadev Sahu is his son and acquitted accused Kenvrabai is wife of appellant No.2 Vishwadev and all of them were residing in one room house.

03. As per prosecution case, on 1.2.2010 accused/appellant Shobharam kidnapped minor Nohar Singh, S/o Rameshwar Singh, aged about 6 years, kept him in his house for about 11 days, which

was within the knowledge of appellants No.2 & 3 (Vishwadev Sahu & Smt. Sonkunvar). Thereafter, at the eve of Shivratri on 12.2.2010 they killed him at a separate place in the name of human sacrifice. As Nohar Singh was missing from his house since 1.2.2010, a missing report (Ex.P/19C) was lodged on 2.2.2010 by PW-1 Bhuneshwar Markam, uncle of the deceased. On 15.2.2010 dead body of Nohar Singh was found in a decomposed condition near the house of one Dukhram, which is adjacent to the house of appellant No.1 Shobharam. Merg intimation (Ex.P/1) was recorded on 15.2.2010 at the instance of PW-1. The dead body was identified by PW-2 Rameshwar, father of the deceased, and thereafter, inquest over the dead bode was prepared vide Ex./16. During inquest proceedings, both the legs and hands as well as private part of the deceased were found to be chopped. Postmortem on the body of the deceased was conducted on 16.2.2010 by PW-8 Dr. RK Singh vide Ex.P/17 wherein he noticed that the dead body was in moderate stage of decomposition, scalp present over head, both ears missing, facial soft tissues most of the parts missing, skull bones loosened from sutures, tooth absent, hyoid bone, thyroid cartilage and cricoid cartilage and trachea missing, neck vertebrae gap loosened, penis and scrotal region in circular manner amputated wholly with sharp cut leaving no remnant, left thigh bone broken, right and left humerus bones exposed, upper and lower limbs part missing, both tibia bones and fibula bone were also broken. It was also noticed that liver, spleen, kidneys, lungs and heart were decomposed. In his opinion, the cause of death and duration of death could not be determined. On the memorandum

(Ex.P/8) of appellant Shobharam, one iron axe was seized vide Ex.P/9 and one photograph of Goddess Kali stained with blood, bloodstained underwear and bloodstained soil as well as plain soil from the wall where the said photograph of Goddess Kali was affixed, were seized vide Ex.P/10. As per Ex.P/11 two ropes were seized from appellant No.2 Vishwadev. From the place of occurrence the soil, one plastic pipe and plastic bottle were seized vide Ex.P/14 & 15. After investigation charge sheet was filed against the appellants under Sections 302, 201, 120B, 364 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

04. The trial Court framed charge against appellant No.1 Shobharam under Sections 364 or 364/120B, 302 or 302/120B, 201 or 201/120B of IPC; against appellant No.2 Vishwadev Sahu, appellant No.3 Sonkunvar and acquitted accused Smt. Kenvrabai under Sections 364/120B, 302/120B & 201/120B of IPC.

05. So as to hold the accused persons guilty, the prosecution examined as many as 12 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Smt. Kenvrabai of all the charges leveled against her, convicted and sentenced the appellants as mentioned in para-1 of this judgment.

07. Learned counsel for the appellants submits as under:

(i) that the witness of last seen Mahendra Sori (PW-10) is not reliable as he is a resident of other village and his case diary statement was recorded after about a month.

(ii) that serological report (Ex.P/40) does not substantiate the prosecution case and likewise, as per DNA report, human blood was not found on the photograph of Goddess Kali.

(iii) that there is no evidence connecting appellants Vishwadev and Sonkunwar with the murder of the deceased and at best, considering the evidence on record, they can be convicted under Sections 364/120B and 201/120B of IPC. They are in jail since 6.3.2010 and therefore, after reduction of their sentence they may be set free forthwith.

08. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that so far as conviction of appellant No.1 Shobharam under Sections 364, 302 and 201 of IPC is concerned, the same is in accordance with law and there is no infirmity in it.

(ii) that PW-10 Mahendra Sori is a reliable witness, he has categorically stated that on the date of incident he had seen appellant No.1 Shobharam taking away the deceased with him.

(iii) that on the memorandum of appellant No.1 (Ex.P/8), seizure of axe was made vide Ex.P/9 and likewise, seizure Ex.P/10 of photo of

Goddess Kali was made, on which blood was found as per FSL report Ex.P/31. Though serological report and DNA report do not confirm presence of human blood on the said photograph but in absence of any explanation offered by appellant No.1 in his statement under Section 313 of Cr.P.C., the FSL report goes against him. This apart, as per FSL report blood was also found on the soil scratched from wall of the house of the appellants where photograph of Goddess Kali was affixed.

(iv) that the deceased was kept by appellant Shobharam for more than 10 days after tying him in his house, which has only one room, and it has come in the evidence that appellants Vishwadev and Sonkunvar were also residing in the said house and as such, they were also aware about the illegal confinement of the deceased and the purpose for which he was confined. This apart, from appellant Vishwadev vide Ex.P/11 two ropes were seized, which were used for tying the deceased, and FSL report is positive in respect of these ropes. Therefore, their conviction under Sections 364/120B, 302/120B and 201/120B of IPC is just and proper.

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

10. PW-1 Bhuneshwar Markam, uncle of the deceased, is lodger of missing report (Ex.P/19C) and merged intimation (Ex.P/1). He has stated that on 1.2.2010 the deceased had gone to Aanganbadi and when he did not return, he was searched and on 2.2.2010 a missing report was lodged. He has further stated that on 15.2.2010 dead body of the

deceased was found which was identified by him, his brother and sister-in-law. After postmortem of the deceased he was cremated. During investigation, appellant Shobharam was brought to the village by the police from Police Station Arjuni where he admitted that he had kept the deceased in his confinement for about 10-11 days after tying him and inserting cloth in his mouth and killed him at the eve of Mahashivrati in the name of human sacrifice. This appellant also admitted that after killing the deceased, he sprinkled his blood on the photo of Goddess Kali.

11. PW-2 Rameshwar Markam, father of the deceased, has stated that his son was missing since 1.2.2010 and then missing report was lodged by his brother Bhuneshwar (PW-1). On 15.2.2010 dead body of his son Nohar was found near the kitchen garden of Tularam, which was identified by him and thereafter, merg intimation was lodged by his brother (PW-1). He has stated that memorandum of appellant Shobharam was recorded by the police, in which he admitted that he had kept the deceased in his house for 10-12 days after tying him and inserting cloth in his mouth and then at the eve of Shivratri killed him by chopping both his legs, hands and private part and sprinkled his blood on the photo of Goddess Kali. This appellant further disclosed that the said fact is also known to his son, daughter-in-law and wife.

12. PW-3 Dr. Madhuri Wankhede had sent the blood sample of PW-2 Rameshwar and Smt. Radhika, father and mother of the deceased for the purpose of DNA examination. PW-4 SR Nirmalkar recorded merg intimation and FIR. PW-5 Alakhram is a witness to memorandum

Ex.P/8, seizure Ex.P/9, P/10 & P/11. He has duly supported the prosecution case. PW-6 Shankar Das is a witness of inquest (Ex.P/16) and seizure of soil (Ex.P/14) of the place where dead body was found. PW-7 Jankibai is the witness who first saw dead body of the deceased and then informed to the villagers. PW-8 Dr. RK Singh conducted postmortem vide Ex.P/17 of the deceased on 16.2.2010 and noticed that the dead body was in moderate stage of decomposition, scalp present over head, both ears missing, facial soft tissues most of the parts missing, skull bones loosened from sutures, tooth absent, hyoid bone, thyroid cartilage and cricoid cartilage and trachea missing, neck vertebrae gap loosened, penis and scrotal region in circular manner amputated wholly with sharp cut leaving no remnant, left thigh bone broken, right and left humerus bones exposed, upper and lower limbs part missing, both tibia bones and fibula bone also broken. It was also noticed that liver, spleen, kidneys, lungs and heart were decomposed. In his opinion, the cause of death and duration of death could not be determined. PW-9 Kamal Narayan, Head Constable, recorded missing report Ex.P/19.

13. PW-10 Mahendra Sori, is a witness of last seen. He has stated that on 1.2.2010 he had gone to Village Banjari to attend one wedding function and when he was sitting in front of house of Tulsiram, he saw a young boy playing there. At that time, one elderly person came there, after identifying accused/appellant Shobharam in the Court he has stated that he was the same person who had come there. He has stated that when the child refused to go with the said accused, he (Shobharam) offered him chocolate, then the child having succumbed

to the temptation went away with him. He has stated that after attending the wedding function, he had gone to some other village for his livelihood and there he saw in the newspaper highlighting the news of human sacrifice. In the newspaper photographs of appellant Shobharam and deceased Nohar were published. He has further clarified that it was the same child, whose photo was published in the newspaper, who was taken away by appellant Shobharam by offering him chocolate. In cross-examination, but for minor contradictions, this witness remained very firm and supported the prosecution case. PW-11 Santosh Kumar Jain, Inspector, and PW-12 Vijay Katre, Dy.S.P., did the investigation and duly supported the prosecution case.

14. Admittedly, there is no direct evidence in this case and conviction of the appellants is based on circumstantial evidence. It is settled legal position that in a case where conviction rests upon circumstantial evidence, the prosecution is required to prove guilt of the accused by a complete chain of circumstantial evidence leaving no room for any doubt as to innocence of the accused.

15. Close scrutiny of the evidence makes it clear that on 1.2.2010 deceased Nohar Singh went missing, he was searched at all possible places and ultimately, on the next day a missing report (Ex.P/19C) was lodged by his uncle (PW-1 Bhuneshwar Markam). On 15.2.2010 dead body of a child in decomposed condition was found near the kitchen garden of one Tularam and the same was identified by father of the deceased as that of his son Nohar Singh. From the evidence of PW-10 Mahendra Sori it is clear that on 1.2.2010 when he was sitting on the

platform in front of house of one Tulsiram where he had gone to attend the marriage function, he saw accused/appellant No.1 Shobharam taking away the deceased with him by offering him chocolate. In cross-examination, this witness remained firm on the point of last seen and the defence has failed to elicit anything from him to make his evidence on the said point doubtful.

16. The evidence of last seen further gets strengthened by the recovery of incriminating articles at the instance of appellant No.1 Shobharam. On his memorandum (Ex.P/8), one iron axe was seized vide Ex.P/9 and one photograph of Goddess Kali stained with blood, bloodstained underwear and bloodstained soil as well as plain soil from the wall where the said photograph of Goddess Kali was affixed, were seized vide Ex.P/10. PW-5 Alakhram, a witness to this memorandum and seizure, has fully supported the prosecution case. This apart, as per FSL report, blood was found on the said photograph and the soil. In his statement under Section 313 of Cr.P.C. appellant No.1 Shobharam has not offered any explanation as to how the aforesaid incriminating articles were seized from his possession, and has merely denied the same. Thus, on the basis of aforesaid evidence, it stands proved beyond doubt that it is accused/appellant No.1 Shobharam who kidnapped the deceased on 1.2.2010, then committed his murder and thereafter, in order to cause disappearance of the evidence of the crime, concealed the dead body in the bushes of the kitchen garden of one Tularam.

As regards the arguments of the appellants that presence of human blood has not been confirmed on the basis of serological report and

DNA report and therefore, prosecution has failed to prove guilt of appellant No.1, considering the un rebutted evidence of last seen, recovery of weapon of offence and other incriminating material at the instance of appellant No.1, which has been duly proved, his overall conduct as also his non-explanation in statement u/s 313 of Cr.P.C., as to such recovery, non-confirmation of human blood on the articles seized at his instance, in no way, can be held to be fatal to the prosecution case.

17. So far as conviction of appellant No.2 Vishwadev and appellant No.3 Sonkunvar is concerned, it has come in the evidence that they were also residing with appellant No.1 in the same house, which has only one room and as such, there is no denying the fact that they were also aware about the illegal confinement of the deceased by appellant No.1 as the deceased was kept there for about 11-12 days. However, on that basis alone it cannot be held that these appellants were also involved in commission of murder of the deceased or hatched a criminal conspiracy with appellant No.1 for his murder. There is no such evidence connecting them with murder of the deceased. In these circumstances, we are of the view that it would not be safe to hold them guilty under Section 302/120B of IPC. However, considering the overall evidence on record coupled with the conduct of these appellants, it can safely be inferred that they hatched a criminal conspiracy with appellant No.1 Shobharam for kidnapping the deceased and thereafter, for causing disappearance of the evidence of the offence. As such, their conviction under Sections 364/120B and

201/120B of IPC being based on proper appreciation of evidence needs no interference and the same is hereby maintained. However, considering the fact that they have remained in jail for about six years, in our considered opinion, the ends of justice would be served if their sentence under Section 364/120 of IPC is reduced to the period already undergone by them.

18. In the result, the appeal is allowed in part. Conviction of appellant No.1 Shobharam Sahu under Sections 364, 302, 201 of IPC and sentence imposed thereunder are hereby affirmed.

However, while acquitting appellants No.2 Vishwadev Sahu and appellant No.3 Smt. Sonkunvar of the charge under Section 302/120B of IPC, their conviction under Sections 364/120B and 201/120B of IPC is kept intact. As regards sentence, while maintaining the same under Section 201/120B of IPC, they are sentenced to the period already suffered by them under Section 364/120B of IPC. As such, these appellants be released forthwith if not required in any other case. The judgment impugned stands modified to the above extent.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge