

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 942 of 2011

- Ishwar Jain, S/o Shiv Charan Jain, aged about 57 years, Occupation- Labourer, R/o Patod, Thana & Distt. Kanker (CG)

---- Appellant (in jail)

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Kanker, Distt. Kanker (CG)

---- Respondent

For Appellant:
For Respondent:

Shri Sanjay Patel, Advocate.
Shri Ashish Surana, Panel Lawyer.

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

Judgement

Per Pritinker Diwaker, J

06/04/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 12.10.2011 passed by the Sessions Judge, Kanker in S.T. No.77/11 whereby the accused/appellant has been convicted under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for Life and fine of Rs.500/-, in default to undergo additional R.I. for 01 month.
2. Brief facts of the case are that on 17.4.2011 at about 12.00 in the noon merg intimation (Ex.P-1) was lodged by Harakram Jain (PW-1), father of deceased, alleging therein that on the fateful day having come to know that something had happened to the deceased, he reached the house and found her lying in dead condition in the verandah. He

noticed injury marks on her knees and neck. Inquest on the body was prepared on the same day vide Ex.P-9 and the body was sent for post-mortem examination which was conducted by two doctors namely Dr. Hemlata Sahu (PW-7) and Dr. D.K. Kashyap (not examined) vide Ex.P-6 and they noticed multiple abrasions all over the body in the size of 0.5 x 0.5cm to 1x2.5cm. They have opined that cause of death was asphyxia due to throttling and the death was homicidal in nature. On completion of investigation, charge sheet for the offence punishable under Sections 302 of the IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

3. The prosecution in order to bring home the charge levelled against the appellant had examined 08 witnesses in all. Statement of appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - there is absolutely no material to connect the appellant in any manner with the murder of the deceased.
 - conviction of accused/appellant is based on extra-judicial confession which is a very weak type of evidence and therefore he could not have been convicted on the basis of so-called extra-judicial confession made before Yashwant Kumar (PW-2) & Ramdayal Darro (PW-5).
 - Apart from accused/appellant, other persons were also residing in the house and thus it cannot be said that it is the accused/appellant who murdered the deceased.
6. On the other hand, supporting the impugned judgment learned counsel for

the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that dead body was found in the house of accused/appellant where admittedly the deceased was also living but no reasonable explanation has been offered by accused/appellant regarding the same, therefore, his conviction under Section 302 of IPC is fully justified. He further submits that the accused/appellant has admitted before the prosecution witnesses that he has killed the deceased.

7. We have heard counsel for the parties and perused the evidence available on record.
8. Harakram (PW-1) is the father of the deceased and son of accused/appellant. He has stated that he works at Gyani Dhaba and on the date of incident, he was informed by the owner of dhaba that he is being called at home and on reaching home, he found the deceased lying dead. He had noticed black colour mark in the neck of the deceased. This witness has not supported the prosecution and therefore declared hostile by the prosecution.
9. Yashwant Kumar (PW-2) is the village Kotwar and also neighbour of PW-1 Harakram Jain, father of deceased. This witness has been declared hostile and in the cross-examination by the prosecution he has denied that he informed the police that accused/appellant told him that he gave 2-4 slaps to the deceased.
10. Kuntibai (PW-3) has also not supported the prosecution and declared hostile.
11. Yogita (PW-4) is the police constable who helped in the investigation.
12. Ramdayal Darro (PW-5) is the former Sarpanch of the village. He has stated that on the fateful day at about 9-10.00 a.m. village Kotwar

informed him that grand daughter of accused/appellant had died. He has also stated that he came to know that accused/appellant had given 2-3 slaps to the deceased for allowing plucking of mangoes from the tree. He has further stated that on being asked, accused/appellant told him that he has not killed the deceased. At this stage, this witness has been declared hostile and in the cross-examination by the prosecution stated admitted that his case diary statement was recorded by the police.

13. Prem Singh (PW-6) is the Patwari who prepared the spot map (Ex.P-13), .
14. Dr. D.K. Kashyap (PW-5) is one of the doctors who conducted post-mortem on the body of deceased and opined that cause of death was asphyxia due to throttling and the death was homicidal in nature.
15. Lakhesh Kumar Gangesh (PW-8) is the Investigating Officer and he has duly supported the prosecution case.
16. It is accepted position that there is no eye-witness in the present case and the prosecution case is completely based on the circumstantial evidence. In a case of circumstantial evidence the facts to be 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. Also there must be 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. This is what the Supreme Court said in many cases. Therefore, we have to be satisfied that the circumstances on which the prosecution relies leave no option but to hold that the crime imputed to the appellant has been established beyond a reasonable doubt.
17. The main circumstances which the learned Additional Sessions Judge appears to have taken note of, are that the deceased was last seen in the

company of accused/appellant and that he made extra judicial confession before PW-2 & 5 that he has killed the deceased.

18. Close scrutiny of the evidence available on record makes it clear that the body of deceased was found lying in the verandah of the house where she was living along with her father & accused/appellant and the medical evidence showed that death of the deceased was due to asphyxia by throttling, but there is no proper evidence in this case to show that the accused/appellant alone was present in the house at the crucial time when the offence occurred. Rather the evidence available on record goes to show that apart from accused/appellant, Harak Jain (PW-1), father of deceased, was also residing under the same roof, but he has been neither suspected nor charge sheeted. Thus, when it is apparent that there were other inmates also in the house, it would not be justified to draw presumption against one to the effect that he is the author of crime in question, more so, when it is not the prosecution case that accused/appellant was nurturing ill-will or had any motive for taking such unnatural step of killing her granddaughter. Even at the time of recording of statement under Section 313 Cr.P.C. the prosecution has not put any question to accused/appellant that at the relevant time he was only inmate in the house with the deceased. It is settled position of law that howsoever strong the suspicion is, it cannot take the place of proof and to establish a case against the culprit, the prosecution is required to give minute consideration to all the surrounding circumstances available against him.

As regards the statement made by accused/appellant before PW-2 & PW-5 that he gave 2-3 slaps to the deceased, both the aforesaid witnesses were called at trial but each of them became hostile and being so, the so-called statement made by the accused/appellant before the aforesaid witnesses has no evidentiary value in the eye of law.

19. For the foregoing reasons, we are of the view that the circumstantial evidence based on which murder sought to be proved by the prosecution did not form the complete chain where hypothesis of innocence of the accused/appellant could be ruled out and therefore he is entitled to be acquitted of the charge under Section 302 of IPC by extending him benefit of doubt.

20. In the result, the appeal succeeds and the impugned judgment of conviction and order of sentence is hereby set aside. The appellant is acquitted of the charge levelled against him by extending him benefit of doubt. The appellant is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-