

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 976 of 2011

1. Surit Ram, S/o Dokari, aged about 50 years, Occupation-Agriculture, R/o Aamgaon, Thana- Dharamjaigarh, Distt. Raigarh (CG)

---- Appellant (In Jail)

Versus

1. State Of Chhattisgarh, through Station House Officer, Thana- Dharamjaigarh, Distt. Raigarh.

---- Respondent

For appellant:
For Respondent:

Shri Suresh Verma, Advocate.
Shri Arvind Dubey, Panel Lawyer.

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

Judgement

19/02/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 14.10.2011 passed by the 1st Additional Sessions Judge, Raigarh in S.T. No.12/11 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life and RI for 7 years respectively.
2. The prosecution story, in brief, is that on 13.10.2010 after committing murder of deceased Pandripanhin @ Sukwaro Bai, the accused/appellant had buried her body in his kitchen-garden. On 18.10.2010 the villagers have noticed that body of deceased except her head was buried. The villagers asked the accused/appellant to lodge report but instead of doing so, he fled from the spot. Further case of the prosecution is that thereafter the matter was reported to the police by the villager but the dead body was not found in the kitchen garden of accused/appellant rather it was

recovered on 19.10.2010 from the forest in rotten condition. Merg intimation (Ex.P-1) was recorded on 19.10.2010 by Veer Sai (PW-1). Inquest on the body of deceased was prepared vide Ex.P-2 on 19.10.2010. Dead body was sent for post-mortem examination which was conducted by Dr. B.L. Bhagat (PW-8) on 19.10.2010 vide Ex.P-18 and according to the doctor, dead body was in the advance stage of petrification, skull & both upper & lower limbs of the body converted into skeleton and no external injury is visible. He opined the cause of death to be syncope as a result of injury chest and the death was homicidal in nature. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 201 of the IPC was filed against the accused/ appellant and accordingly the charges were framed against him by the trial Court.

3. In order to hold the accused/appellant guilty, the prosecution had examined as many as 11 witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case 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. Learned counsel for the accused/appellant submits that;
 - present is a case of no evidence and merely on the basis of suspicion accused/appellant has been arrested and prosecuted.
 - the identification of dead body itself is in dispute as the half of the body converted into skeleton and there is no clue to identify the body.
 - In absence of FSL report, recovery of Bhonsala (an agriculture

equipment) and spade, commonly found in every house of a villager, on the disclosure statement (Ex.P-4) of accused/appellant is of no help to the prosecution.

- According to the prosecution witnesses, the body was noticed by them in the kitchen-garden of accused/appellant, whereas the same was recovered from the forest and any of the prosecution witnesses has not stated that he had seen the accused/appellant shifting the dead body from kitchen-garden to the forest i.e. open place accessible to anyone.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
 7. We have heard learned counsel for the parties and perused the material available on record.
 8. Veer Sai (PW-1) is the lodger of merged intimation (Ex.P-1). He has stated that there was rumour in the village that wife of accused/appellant is missing and after about a week he came to know that dead body of deceased lying in the kitchen-garden of accused/appellant, whereupon he along with other villagers went there and saw the dead body, but the dead body was recovered by the police from the forest. He is also witness to the memorandum (Ex.P-4) of accused/appellant, seizure memos Ex.P-5, arrest memo Ex.P-10. However, this witness has been declared hostile by the prosecution and in the cross-examination he has denied the fact of seeing the body of deceased in the kitchen-garden of accused/appellant. This witness has further denied making of any confessional statement by accused/appellant to him. In para-21 of cross-examination he has stated that spade and Bhonsala (an agriculture equipment) are normally found in

each house of the village. He has further stated that the deceased used to create nuisance in the village after consuming alcohol.

9. Thakur Ram (PW-2) has not supported the prosecution case and turned hostile. However, he too has stated that the deceased used to consume liquor.
10. Dokriram Rathia (PW-3) is the father of accused/appellant. This witness has also been declared hostile by the prosecution. In the cross-examination by the prosecution he has stated that accused/appellant informed him that the deceased had gone somewhere else. He has further stated that relations between the deceased and accused/appellant were cordial and the deceased was habitual drunkard.
11. Jagar Sai (PW-4) has also not supported the prosecution and turned hostile.
12. Sagar Sai (PW-5) is the witness of memorandum Ex.P-4 and seizure memo Ex.P-5, but he too has not supported the prosecution case and turned hostile. However, he has admitted his signature over the aforesaid documents.
13. Manmohan Singh Rathia (PW-6) is the witness of inquest Ex.P-2 but he has also not supported the prosecution and turned hostile.
14. Babulal Patel (PW-7) is the Patwari who prepared the spot map (Ex.P-8). This witness has stated that kitchen-garden of accused/appellant is not surrounded by wall but by small pieces of wood and the same is accessible to anyone.
15. Dr. B.L. Bhagat (PW-8) is the witness who conducted post-mortem examination on the body of the deceased and gave his report of Ex.P-18. According to this witness, the dead body was in the advance stage of putrefaction and opined the cause of death due to syncope as a result of injury to head and the death was homicidal in nature.

16. H.R. Chandra (PW-9) is the Sub Inspector who did the entire investigation but before he could file the challan, he was transferred and finally the challan was filed by K.P. Jaiswal (PW-11).
17. Chaituram (PW-10) is the witness of inquest (Ex.P-2) but he has not supported the prosecution case and therefore declared hostile.
18. Present is a case of blind murder. There are no eyewitnesses and conviction is based on the circumstantial evidence. It is by now well settled that in a case relating to circumstantial evidence, the chain of events has to be established pointing out the culpability of accused. The chain should be such that no other conclusion except the guilt of accused, is discernible without any doubt. 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.
19. Keeping in my mind the aforesaid principles, we shall now proceed to examine the evidence led by the prosecution to see whether the prosecution has been able to prove the offence against the appellant in conformity with the above principles.
20. The first circumstance adduced by the prosecution is that dead body of deceased was seen by the villagers in the kitchen-garden of accused/appellant. Merg intimation (Ex.P-1), lodged on 19.10.2010 at the instance of Veer Sai (PW-1) is to the effect that upon hearing rumour that the dead body of deceased is lying in kitchen-garden of accused/appellant, on 18.10.2010 they went there and saw the body of deceased, but in the spot map (Ex.P-8) prepared by Patwari (PW-7) there is no whisper about any pothole where a human dead body can be buried. Veer Sai (PW-1), lodger

of mere intimidation Ex.P-1) and other prosecution witnesses who have allegedly seen the dead body of deceased in the kitchen garden of accused/ appellant have not supported the prosecution and turned hostile. It is admitted fact that the dead body was recovered from the forest and not from the kitchen garden of accused/appellant and there is no whisper in the statements of the prosecution witnesses that any of them has seen the accused/appellant shifting the dead body from kitchen-garden to the place where from it was seized. Thus, it has not been conclusively established by the prosecution that dead body was buried in the kitchen-garden of accused/appellant or it is the accused/appellant who exhumed the dead body from the kitchen-garden and planted it in the forest.

21. Another circumstance adduced by the prosecution is recovery of alleged weapons of offence at the instance of accused/appellant, however, the prosecution made no endeavour to have it chemically examined to establish the presence of blood on it and thereby failed to establish that the weapons seized at the instance of accused/appellant were used in commission of offence by him. Even Veer Sai (PW-1) & Jagar Sai (PW-4), witnesses to seizure memos, have turned hostile and not supported the prosecution case.

22. It has come in the evidence that relation between the accused/appellant and the deceased were cordial and he used to keep her nicely. Evidence further goes to show that the deceased used to leave her house in the night after consuming alcohol and quarrel with the people of vicinity. According to autopsy surgeon, if any person falls on the hard and blunt object, he/she may sustain injury as noticed on the body of deceased. Thus, the possibility that the deceased died on account of injury sustained by her as a result of fall on a hard and blunt object in a drunken condition cannot be ruled out. 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 culprits, the prosecution is required to give minute consideration to all the surrounding circumstances available against them.

23. That apart, according to post-mortem report (Ex.P-18), the dead body was in stage of advance putrefaction, skull & the upper & lower limbs converted into skeleton and in the inquest (Ex.P-2) there is no mention that any article belonging to the deceased was found at the scene of crime. Being so, it was bounden duty of the prosecution to first establish the identity of the dead body from the oral evidence of the prosecution witnesses who claimed to have identified the dead body to be of wife of accused/appellant, however, the prosecution has failed to do so thereby raising suspicion as to identity of the dead body.

24. Considering the nature and quality of evidence adduced by the prosecution, we are of the opinion that the prosecution has failed to prove involvement of accused/appellant in the crime in question beyond reasonable doubt and he is definitely entitled to be acquitted of the charges by extending him benefit of doubt.

25. In the result, the appeal is allowed. Conviction and sentence of accused/appellant under Sections 302 & 201 of the IPC are hereby set aside and he is acquitted of those charges by extending him benefit of doubt. He is reported to be in custody, therefore, he be released forthwith if not required to be detained in connection with any other offence.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Uboweja)
Judge

roshan/-