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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 628 of 2005

1. Ashok Kumar Sahu, S/o Budwaram, aged about 28 years, R/o Vill. Soniadih, P.S. Bilaigarh, Distt. Raipur (CG)

---- Appellant

Versus

1. State Of Chhattisgarh through District Magistrate, Raipur.

---- Respondent

For Appellant : Shri Raja Sharma, Advocate along with the appellant.
For Respondent/State : Shri Neeraj Mehta, Panel Lawyer.

And

CRR No. 08 Of 2006

1. Gendlal Sahu, S/o Pilau Ram Sahu, aged about 26 years, R/o Village Piparbhawna, Police Station Sarsiwan, District Raipur, Chhattisgarh.

---- Applicant

Vs

1. Gautam Sahu, S/o Ghasiya Sahu, aged about 32 years,
2. Narayan Prasad Sahu, S/o Ghasiya Ram Sahu, aged about 38 years, Non-applicants No. 1 and 2 (accused persons) above, both residents of Village: Piparbhawna, Police Station Sarsiwan, District Raipur (CG)
3. State of Chhattisgarh, through the District Magistrate, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Applicant : None
For Respondents No.1 & 2 : Smt. Pratha Ghoshal, Advocate under the authority of Shri Awadh Tripathi, Advocate, along with respondents.
For Respondent No.3/State : Shri Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

19/10/2016

As both these cases arise out of a common judgment dated 7.7.2005 passed by First Additional Sessions Judge, Baloda Bazar in ST No.328/04, they are being disposed of by this common judgment.



02. As per the prosecution case, daughter of acquitted accused Narayan Prasad Sahu namely Padmini was having affair with deceased Doodhnath @ Guddu Sahu and this relation was not liked by Narayan Prasad. It is alleged that all the accused persons conspired together for eliminating Doodhnath and on 25.5.2004 convicted accused Ashok mixed sulphuric acid in the liquor which was consumed by Doodhnath as a result of which he died. Merg intimation Ex.P/2 was registered on 26.5.2004 at the instance of PW-3 Gendlal, brother of the deceased. Inquest over the dead body was performed vide Ex.P/4 on 26.5.2004 and the body was thereafter sent for postmortem which was conducted on 26.5.2004 itself by PW-8 Dr. Narayan Singh vide Ex.P/9A. According to the autopsy surgeon, the cause of death was asphyxia due to administration of corrosive poisoning (consumption of acid) and the death appears to be homicidal in nature. He, however, preserved viscera of the deceased and advised for its chemical examination for detailed information as to the cause of death. After investigation, charge sheet was filed against the accused persons under Sections 302, 328, 120B and 34 of IPC. However, while framing charge, the trial Judge framed charges under Section 302 & 120B of IPC against accused Ashok Kumar; under Section 120B of IPC against accused Narayan Prasad; and under Sections 120B & 302/109 of IPC against accused Goutam.

03. So as to hold the accused persons guilty, the prosecution examined 11 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case,

(iv) in fact, present is a case of no evidence, yet the appellant has been convicted on the basis of inadmissible evidence.

07. On the other hand, State counsel supporting the impugned judgment, insofar as it relates to conviction of appellant Ashok Kumar Sahu, has submitted that statement of PW-1 Pyarelal is good enough to uphold the conviction of the appellant. He, however, has failed to point out any evidence which could show that it is the appellant who purchased that poison or was in possession of the poison or mixed the same in the liquor of the deceased.

08. In criminal revision, it has been argued by counsel for the respondents/accused that there is absolutely no evidence against the acquitted accused Goutam Sahu and Narayan Prasad Sahu to show their complicity in crime in question. The view taken by the trial Court acquitting them of all the charge is one of the possible view based on proper appreciation of evidence the record, which is not required to be interfered by this Court.

09. Heard learned counsel for the respective parties and perused the material on record including the impugned judgment.

10. PW-1 Pyarelal has stated that he knew all the accused persons, on 25.5.2004 he accompanied the deceased on his motorcycle and on the way they met accused/appellant Ashok Kumar. While they were going to Village Bhobhri, they stopped in a liquor shop at Village Durang, liquor was purchased by accused/appellant Ashok Kumar and all of them consumed liquor. He has stated that while returning, they dropped Ashok Kumar at his house and thereafter, they went out for

pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Goutam Sahu and Narayan Prasad Sahu of all the charges, convicted accused Ashok Kumar Sahu under Section 302 of IPC and sentenced him to undergo imprisonment for life and fine of Rs.1000/- with default stipulation.

05. Against his conviction, accused Ashok Kumar Sahu has preferred Criminal Appeal No.628/2005 whereas against the acquittal of accused Goutam Sahu and Narayan Prasad Sahu, complainant Gendlal Sahu has preferred Criminal Revision No.08/2006.

06. Counsel for accused/appellant Ashok Kumar Sahu, submits as under:

(i) that the appellant has been convicted solely on the basis of statement of PW-1 Pyarelal but in his entire statement he has nowhere stated that he saw the accused/appellant administering poison/acid to the deceased by mixing the same in his liquor.

(ii) there is also no evidence on record to show that the poison was purchased by this appellant or he was in possession of the same.

(iii) that from the spot, some bottles were seized vide Ex.P/6 and in bottle - Article A, poisonous substance was found, however, the said bottle was found to be intact and liquid of the same was not consumed at all vide FSL report Ex.P/17. Further, poisonous substance has not been found in bottle - Article B, seized from the spot, from which some liquid is alleged to have been consumed or used.



fishing. He states that accused/appellant Ashok also reached there and again all of them consumed liquor there, but immediately after consuming liquor the deceased started complaining of nausea and after some time he fell unconscious. Looking to the serious condition of the deceased, he was taken to hospital where he was declared dead. He has stated that as the deceased was having affair with the daughter of acquitted accused Narayan, Narayan was defamed in the village and there was enmity between the accused persons and the deceased. He has stated that for this reason, the accused persons having hatched a conspiracy made the deceased drink poisonous liquor. However, he has further stated that he cannot say that these accused persons made the deceased drink poisonous liquor in furtherance of any conspiracy.

In his entire statement, he has nowhere stated that he saw accused/appellant Ashok Kumar mixing poison/acid in the liquor of the deceased and offering the same to the deceased.

11. PW-2 Ramashankar Soni is a witness of seizure Ex.P/1. PW-3 Gendral Sahu, brother of the deceased, is lodger of mere intimation Ex.P/2. PW-4 Pilauram, father of the deceased, is a hearsay witness. PW-5 Bhagwat Prasad is a witness of seizure Ex.P/6 whereby some bottles were seized from the place of occurrence. PW-6 Ishwar Prasad and PW-7 Kholbahra, witnesses of memorandum of accused/appellant Ashok Kumar (Ex.P/7) and seizure Ex.P/8, have turned hostile. PW-8 Dr. Narayan Singh conducted postmortem on the body of the deceased on 26.5.2004 vide Ex.P/9A at 11 am and according to him, poison was administered during previous 24 hours. In his opinion, the



cause of death was asphyxia due to administration of corrosive poisoning (consumption of acid) and the death appears to be homicidal in nature. He, however, preserved viscera of the deceased and advised for its chemical examination for detailed information as to the cause of death. PW-9 RR Sahu, PW-10 Praveen Kumar and PW-11 Manohar Singh Kanwar, police personnel, helped in the investigation. However, investigating officer has not been examined by the prosecution.

12. It is settled principle of law that in cases of murder by poisoning the prosecution must prove beyond reasonable doubt that (i) there is a clear motive for the accused to administer poison to the deceased; (ii) the deceased died of a particular poison; (iii) the accused was in possession of the same; and (iv) he had opportunity to administer the same to the deceased.

13. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence against accused/appellant Ashok Kumar Sahu showing his involvement in the commission of murder of the deceased. The only piece of evidence adduced by the prosecution against him is the evidence of PW-1 Pyarelal who has stated that he along with accused/appellant Ashok Kumar and the deceased consumed liquor together on two occasions on the date of incident and it is on the second occasion when they consumed liquor that the deceased began to feel uneasy and after some time fell unconscious and ultimately died. However, there is no evidence that the accused/appellant Ashok Kumar was in possession of the poison in question or he administered the same to the deceased by mixing it in the liquor offered to the

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deceased. There is no evidence on record which could suggest that the accused/appellant had prior information or knowledge that the deceased was with PW-1 at a particular place and he reached there with poison to mix the same in the liquor of the deceased. The prosecution has also failed to attribute any specific motive to the accused/appellant for commission of the offence.

Thus, having regard to the overall evidence on record, we are of the opinion that the prosecution has not been able to prove beyond all reasonable doubt that it is accused/appellant Ashok Kumar Sahu who administered poison/acid to the deceased which resulted in his death. Being so, the findings recorded by the trial Court holding him guilty under Section 302 of IPC are liable to be set aside and the appellant deserves to be acquitted of the charge under Section 302 of IPC by extending him benefit of doubt.

14. So far as criminal revision against acquittal of accused Goutam Sahu and Narayan Prasad Sahu is concerned, there is no one to press this revision despite repeated calls being made. Even otherwise, if their case is considered on merits, there is nothing incriminating against these accused persons. They appear to have been prosecuted merely on the basis of suspicion. Thus, we are of the considered opinion that the conclusion reached by the trial Court acquitting these accused persons of all the charges cannot be said to be such which has led to a miscarriage of justice. The trial Court has taken a possible view which could legitimately be taken on the basis of the inconsistencies in the evidence of the prosecution. The trial Court has acted in accordance with the well-known principle that if two views are possible on the

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evidence adduced, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused is normally to be adopted. We are in agreement with the view taken by the trial Court while acquitting these accused persons and as such, the revision filed by the complainant is liable to be dismissed.

15. In the result:

- Cr.A.No.628/05 preferred by accused/appellant Ashok Kumar Sahu is allowed. He is acquitted of the charge under Section 302 of IPC. He is on bail, therefore, his bail bonds stand discharged.
- Cr.Rev.No.08/06 preferred by complainant Gendlal Sahu, being meritless is liable to be dismissed and is hereby dismissed.

Sd/-
(Pritinker Diwaker)

Judge

Sd/-
(R.C.S. Samant)

Judge

Khan