

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 881 of 2007

Judgment Reserved on 09/11/2016

Judgment Delivered on 02/12/2016

1. Durga Kurre S/o Gend ram Kurre, aged about 25 years,
2. Krishna Kumar S/o Soan Singh Sidar, aged about 22 years,
3. Uma Shankar S/o Shriram Markam, aged about 20 years,

All are R/o Village Farhada, P.S. Akaltara, District Janjgir-champa (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, Through – P.S. Sarkanda, District Bilaspur (C.G.)

---- Respondent

For Appellants : Shri Neeraj Mehta, Advocate
For Respondent/State : Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV JUDGMENT

Per R.C.S. Samant

1. This appeal has been brought against the judgment of conviction and sentence passed by the III Additional Sessions Judge, Bilaspur in S.T. No. 67/07 on 22/08/2007, whereby the appellants were convicted under Sections 302 and 201/34 of

Indian Penal Code and sentenced to undergo imprisonment of life along with fine of Rs. 500/- and rigorous imprisonment of two years along with fine of Rs. 200/- respectively.

2. The case of the prosecution is this, that deceased Nilesh Krishnan was an employee of N.T.P.C. Seepat. It is alleged that his wife Meena Krishnan (PW-1) had illicit relationship with appellant Durga Kurre. Deceased saw them in compromising position on 13/10/2006 at his residence, due to which he turned out his wife from his residence who left for her parental home on 14/10/2006. On 22/11/2006 at 7.45 a.m. Shatrughan Kango (PW-4) gave intimation to Police Station, Sarkanda that dead body of unknown person has been found near Lagra Pipe Factory. Merg (Ex.P/14) was recorded. Inquest was conducted after identification of the dead body to be that of Nilesh Kumar Krishnan vide (Ex.P/17). Thereafter un-numbered FIR (Ex.P/27'A') was recorded on the spot against unknown person. On the basis of which a numbered FIR (Ex.P/28) was recorded against unknown person. During investigation appellants were apprehended and at their instance vide memorandum statement (Ex.P/2, P/3 and P/4), one shoe of deceased was recovered and seized vide memo (Ex.P/5), allegedly blood stained clothes were seized from appellant Durga Kurre vide (Ex.P/6). Similarly blood stained clothes were seized from Krishna Kumar vide (Ex.P/7), one crowbar was seized from appellant Krishna Kumar vide (Ex.P/8) and blood stained clothes were seized from appellant Umashankar vide (Ex.P/18).

Postmortem of deceased was conducted by Dr. Vijay Verma (PW-3) who reported that death was homicidal vide (Ex.P/10) and also examined the seized articles vide (Ex.P/11, P/12 and P/13). Clothes of deceased and viscera preserved by doctor conducting autopsy, were seized vide (Ex.P/20). One motorcycle was seized vide (Ex.P/21) and registration papers of motorcycle were seized from Mina Krishnan (PW-1) vide (Ex.P/22). Spot map (Ex.P/22) was prepared by revenue officer and spot map (Ex.P/24) was prepared by investigating officer. After completion of investigation appellants were charge-sheeted for prosecution under Section 302/34 of IPC.

3. Appellants were charged under Section 302, 201/34 of IPC. They pleaded innocence and false implication. Trial was conducted and impugned judgment was passed in which appellants have been convicted and sentenced as mentioned above.

4. Ground in this appeal are these, that the finding in impugned judgment is bad and perverse in law. Trial Court has failed to appreciate and scrutinize the evidence of prosecution which was not legally admissible. Appellants have been convicted only on the basis of suspicion. It is prayed that the impugned judgment be set-aside and appellants be acquitted of the charge.

5. It was submitted by counsel for the appellants that the case is based only on circumstantial evidence. The chain of

circumstances has not been proved by the prosecution beyond reasonable doubt. It was only on conjecture and surmises the finding of conviction has been given. No FSL report is on record to establish the relation of the seized articles with the incident, for these reasons appellants are entitled to benefit of doubt.

6. Counsel for the State has argued that prosecution has proved its case beyond reasonable doubt. The ground raised in this appeal are without substance. There is no infirmity in the impugned judgment.

7. The question before this Court is whether prosecution succeeded in establishing its case on the basis of proof beyond reasonable doubt, for which the evidence before the trial court is perused and finding is arrived at.

8. Mina Krishnan (PW-1) stated that from about more than a month she was living in her parental house, on the date of incident she was informed that her husband has met with an accident. On coming to Bilaspur on the next day she came to know that her husband was murdered. She has not supported the prosecution in any manner and declared hostile. Other witness Dilip Kumar (PW-2) who was examined as witness to memorandum (Ex.P/2, P/3 and P/4) and seizure memos (Ex.P/5, P/6, P/7,P/8 and P/9) to which he has denied and was declared hostile. Another witness Rajesh Kumar (PW-10) of the same proceedings has also turned hostile and not supported the prosecution.

9. Dr. Vijay Kumar Verma (PW-3) conducted the postmortem of deceased Nilesh Krishnan and found three incised wounds on the head of the deceased coupled with fracture and hemorrhage vide (Ex.P/10). He opined that the injuries on head of the deceased resulted in coma and later on the death was caused. The finding on death of deceased by the trial court in the impugned judgment is not under challenge.

10. Shatruhan Kango (PW-4) was the person who saw the body of deceased and on his information merged intimation (Ex.P/14) was recorded. He is not a witness to any other circumstance. Kush Kumar Kurre (PW-5) has stated about the incident when deceased saw his wife with appellant Durga Kurre in compromising position and then turned out his wife from his residence. He has stated, that wife of deceased said in his presence that if deceased would not keep him then she would get him murdered and after 2 – 4 days of this statement deceased was murdered. In cross-examination this witness was confronted with his previous statement (Ex.P/1), looking to which his statement in Court that wife of deceased gave such statement in his presence is an improved statement. On the other hand Meena Krishnan (PW-1) is wife of the deceased who is not an accused in this case.

11. Devendra (PW-6) has stated, that his mother Meena and appellant Durga have together got his father, the deceased, murdered. At one point of time he overheard them, that they were

planning to get the deceased murdered. In cross-examination this witness was confronted with his previous statement (Ex.D/2) on the basis of which his Court statement regarding over hearing the murder plan is an improved statement. Leela Bai (PW-7) stated that deceased had turned out his wife. Meena Krishnan (PW-1) the wife of deceased had a number of times approached this witness to say that she should make understand deceased to keep her, otherwise she will get him murdered. This statement is also an improvement vide her previous statement (Ex.D/3) which had been confronted to her in cross-examination. Hence the improved statement given by Kush Kumar (PW-5), Devendra (PW-6) and Leela Bai (PW-7) cannot be taken into consideration to arrive at any finding against the appellants.

12. R.B. Thawait (PW-8) and R.K. Khairkar (PW-9) are witnesses of inquest (Ex.P/17). Sheetal Prasad (PW-11) is the witnesses to seizure of one vehicle vide (Ex.P/18), involvement of this vehicle in offence has not been established by any evidence. Constable Kalyan Singh (PW-12) helped in investigation, in getting conducted the postmortem of the deceased. Bahorik Ram (PW-13), Maniram (PW-14) witnessed seizure of one motorcycle and registration paper vide (Ex.P/20 and 21). No connection has been established of the seized articles with the offence or with the appellants. Inspector D.K. Netam (PW-15) stated about the recording of the memorandum statement of appellants vide (Ex.P/3, P/4 and P/5) and seizure accordingly vide (Ex.P/7, P/8

and P/9) which is not supported by independent witnesses who have turned hostile. Patwari Pawan Kumar Choubey (PW-16) prepared the spot map (Ex.P/22), Sub Inspector Asha Lakra (PW-17) conducted the inquest and sent the body to CIMS Hospital for postmortem examination and also stated about other investigation procedures regarding seizure of one motorcycle from the spot vide (Ex.P/26). The recorded un-numbered FIR (Ex.P/27 'A') and later on recorded FIR (Ex.P/28) which is un-rebutted statement. Head Constable Vijay Shrivastava (PW-18) brought the articles preserved during postmortem which were seized by SHO vide (Ex.P/20). Constable Puniram Dhruv (PW-19) is also witness to this seizure. Prafull Kumar Pathak (PW-20) is witness to seizure (Ex.P/26).

13. The trial Court has relied on the statement of Leela Bai (PW-7) and Devendra Kumar (PW-6) and the seizure of the allegedly blood stained clothes from accused persons vide the statement of investigating officer D.K. Netam (PW-15) to convict the appellant-accused persons.

14. After going through the statement of the witnesses of prosecution in whole and considering the aspect of admissibility of the statements given by the witnesses, it is very clear that the statement of Devendra Kumar (PW-6), Leela Bai (PW-7) and Kush Kumar (PW-5) has been found to be improved statement before the Court compared to their previous statements before the Police

under Section 161 of Cr.P.C. which was duly confronted to them. This statement, that Meena Krishnan (PW-1) made a statement before the witnesses, that if her husband would not have her then she would get him murdered, is of no consequence, firstly because she is not an accused in this case, hence a ground of conspiracy cannot be raised by the prosecution on this basis. The only evidence on record is that that Meena Krishnan (PW-1) was found in a compromising position with appellant-accused Durga Kurre by the deceased at one point of time, which was the reason he turned her out from his house. Apart from that there is no evidence to show that the appellant-accused Durga Kurre was in continuous touch with Meena Krishnan (PW-1) or he had any interest that deceased should take back Meena Krishnan (PW-1) in matrimonial relationship. This piece of evidence if considered as a motive, it is a very poor and distant sort of motive, which cannot be considered as a circumstance against the appellant-accused persons.

15. The reliance by trial Court on the seizure of blood stained clothes is totally baseless. The seizure of blood stained clothes vide (Ex.P/6) from appellant Durga Kurre, from appellant Krishna Kumar vide (Ex.P/7) and from appellant Umashankar vide (Ex.P/9) were not conclusive. FSL report is not on record to establish that the clothes seized from the appellants were stained with blood, neither the origin of blood nor the grouping of blood is on record. Hence on what basis the seizure of allegedly blood stained clothes from the appellants were found connected with the death of

deceased Nilesh Krishnan by the trial Court is beyond imagination. In **Sunil Kumar Sambhudayal Gupta (Dr.) and Others v State of Maharashtra, (2010) 13 SCC 657** it was held by the Apex Court that the presumption of innocence is a human right. It is well established principle that when two views are possible then the view which is favourable to the accused has to be followed and benefit of doubt has to be extended to the accused persons. In this case prosecution has not succeeded to establish the guilt against the appellants-accused persons on the basis of proof beyond reasonable doubt. Hence for these reasons the finding of conviction against the appellants-accused persons is bad in law which cannot be sustained on the basis of foregoing discussions and the finding arrived at. Hence, this appeal is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court is hereby set-aside. The appellants are on bail. Their bail bonds shall remain enforce for six months from the date of this judgment, in compliance of Section 437 A of Cr.P.C.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge