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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 580 of 2005

- Bhuri @ Johatri Bai @ Savita, D/o Firangi Sonkar, 35 years, R/o Village Barsantola, P.S. Dongargaon, Distt. Rajnandgaon (CG)
- Dukhiya Bai W/o Firangi Sonkar, aged 50 years, R/o Village Barsantola P.S. Dongargaon, Distt. Rajnandgaon (CG)
- Firangi S/o Latel Sonkar, aged 60 years, R/o Village Barsantola, P.S. Dongargaon, Distt. Rajnandgaon (CG)

--- Appellants

In Jail

Versus

- State Of Chhattisgarh through Police Station Dongargaon, Distt. Rajnandgaon (CG)

--- Respondent

For Appellants : Shri Manoj Mishra, Advocate.
For Respondent/State : Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

29/08/2016

This appeal arises out of the judgment of conviction and order of sentence dated 20.6.2005 passed by the First Additional Sessions Judge, Rajnandgaon, in ST No.19/2005 convicting the appellants under Sections 302/34 & 201/34 of IPC and sentencing each of them to undergo imprisonment for life, pay a fine of Rs.2000/- and RI for three years, pay a fine of Rs.500/- with default stipulations respectively.

02. Brief facts of the case are that on 10.1.2005 a written report (Ex.P/1) was lodged by the villagers of Village - Barsantola, P.S.

Dongargaon, Distt. Rajnandgaon, mentioning in it that husband of appellant No.1 Bhuribai had deserted her about 9 years back and since then she was residing at her parents' house. Few days back she had left her parents' house for earning her livelihood and when she returned, it was noticed by the villagers that she was carrying pregnancy and then she delivered a child. It is alleged that on the date of delivery of the child itself, the child was killed by appellant No.2 and thereafter, buried with the help of appellant No.3. According to the said report, this incident was witnessed by Sagavati (PW-3). The report further reflects that the accused persons were called in the village meeting where it was disclosed by Sagavati (PW-3) that accused/appellant No.1 had delivered a female child, who was killed by appellant No.2 and buried by appellant No.3. Based on this written report, FIR (Ex.P/19) was registered against the accused persons on 10.1.2005 itself under Sections 315, 201, 34 of IPC. Merg intimation (Ex.P/2) was also recorded on 10.1.2005 and vide Ex.P/3 exhumation panchanama was prepared, however, nothing could be recovered. Thereafter, at the instance of appellant No.2 Dukhiyabai, highly decomposed body of an infant was recovered vide Ex.P/4. Inquest report was drawn up vide Ex.P/6 on 11.1.2005 and thereafter, the body was sent for postmortem, which was conducted on the same day by PW-8 Dr. P. Goswami vide Ex.P/23A. As per postmortem report, hydrostatic test was found to be positive, however, the cause of death could not be ascertained due to high putrefaction of the body, and viscera was preserved for further histopathological and chemical examination, if required. As per query report (Ex.P/24A), the autopsy surgeon opined that the infant deceased was born alive. On 11.1.2005

accused/appellant No.1 Bhuri @ Johatribai was medically examined by PW-6 Dr. Sushma Kumre vide Ex.P/18 who found her to be a lactating mother and opined that no definite opinion regarding abortion or full term delivery could not be given but she suffered abortion or delivered a child between 15 to 30 days prior to her examination. After filing of the charge sheet, the trial Court framed charges against the accused persons under Sections 302/34 and 201/34 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined 12 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, 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 convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

- (i) that the appellants have been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for their conviction.
- (ii) there is no evidence that the infant deceased recovered by the police was of appellant No.1. No DNA test has been conducted by the prosecution and therefore, in absence of any evidence showing the kinship relation between the deceased infant and appellant No.1, the appellants cannot be connected with the crime in question.
- (iii) that there is no evidence that it is the accused/appellants who

committed murder of the deceased.

(iv) that cause of death of the deceased has not been ascertained and thus, it cannot be said that the infant deceased was killed by appellants. Therefore, in absence of definite opinion as to cause of death, the possibility cannot be ruled out that the infant expired after being born alive and then buried.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

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

08. PW-1 Sukhdev is a villager who lodged written report (Ex.P/1) along with other villagers. He has stated that after the village meeting, a written report was lodged. He states that exhumation panchanama Ex.P/3 was prepared and when nothing was found, on the disclosure statement of accused/appellant No.2, body of the deceased infant was recovered from the heap of hay. However, at later stage this witness has been declared hostile. In cross-examination, he does not support the memorandum given by accused/appellant No.2. He states that he is not aware as to whether the infant was born alive or dead.

09. PW-2 Dayaluram, a witness to inquest and seizure, has turned hostile. PW-3 Sagavati, the so-called eyewitness to the incident and also a witness to exhumation panchanama Ex.P/3, has turned hostile. Likewise, PW-4 Mangluram and PW-5 Jamunbai have also turned

hostile. PW-6 Dr. Sushma Kumre had medically examined accused/appellant No.1 Bhuri @ Johatribai and found her to be a lactating mother and further stated that though no definite opinion regarding abortion or full term delivery could not be given but she suffered abortion or delivered a child between 15 to 30 days from the date of her examination. PW-7 Navneet Patil, investigating officer, has supported the prosecution case. PW-8 Dr. P. Goswami conducted postmortem on the body of the deceased vide Ex.P/23A, however, the cause of death could not be ascertained due to high putrefaction of the body, and viscera was preserved for further histopathological and chemical examination, if required. According to the autopsy surgeon, hydrostatic test was found to be positive. He also gave query report (Ex.P/24A) wherein he opined that the infant deceased was born alive. PW-9 Dhanraj Markam is the Naib Tehsildar in whose presence exhumation was done, but nothing was recovered. PW-10 Bharat Singh Sivna, Patwari, prepared the spot map Ex.P/30. PW-11 Firturam is a villager. However, he has not stated anything specific against the appellants.

10. Admittedly, there is no direct evidence against the appellants to connect them with the crime in question and their conviction rests upon circumstantial evidence. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being

explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. 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.

11. Close scrutiny of the evidence makes it clear that there is no conclusive evidence to show that it is accused/appellant No.1 who gave birth to the infant deceased, which was allegedly recovered at the instance of appellant No.2 vide recovery memo Ex.P/4. Further, there is no evidence that the deceased was killed by the accused/appellants. The so-called eyewitness to the incident i.e. PW-3 Sagavati has turned hostile. Considering the evidence of PW-6 Dr. Sushma Kumre, who noticed appellant No.1 to be a lactating mother and opined that she had either suffered abortion or delivered a child 15-30 days prior to her examination, even if appellant No.1 had given birth to a child, this itself does not connect the appellants with the crime in question, especially in absence of any evidence showing kinship relation of the deceased infant with appellant No.1 by way of DNA test.

12. In a case based on circumstantial evidence, the Court must see that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all circumstances should be complete and there should be no gap left in the chain of evidence. In other words, in a case where an offence is said to have been established on circumstantial

evidence alone, indisputably all the links in the chain must be found to be complete. In the present case, though dead body of an infant has been recovered allegedly at the instance of appellant No.2; on medical examination appellant No.1 was found to have delivered a child or suffered abortion 15-30 days prior to her examination; the hydrostatic examination of the infant deceased proved that the infant was born alive, but even if all the aforesaid circumstances are taken together, they do not form a complete chain for the reasons stated above, which, in turn, could unerringly point towards the guilt of the appellants. In these circumstances, the prosecution has failed to prove its case beyond all reasonable doubt against the appellants and being so, they are definitely entitled to be acquitted of the charges by extending them benefit of doubt.

13. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellants are acquitted of charges under Sections 302/34 & 201/34 of IPC. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/-
Pritinker Diwaker
Judge

Sd/-
Chandra Bhushan Bajpai
Judge