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Division Bench

IN THE HON'BLE HIGH COURT OF CHATTISGARH, BILASPUR, (C.G.)

Criminal Appeal No. 107 /2007

APPELLANT

(In jail)

:

Jaspal Singh, S/o. Jagat Singh, aged
about 26 years, R/o. H.I.G. No. 2862,
M.P. Housing Board, Jamul, District
Durg (C.G.)

Versus

RESPONDENT

:

State of Chhattisgarh,
Through-The District Magistrate, Durg
District Durg (C.G.)

**CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF
CRIMINAL PROCEDURE, 1973.**

8/16/11/16

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 107 of 2007

- Jaspal Singh, S/o Jagat Singh, aged about 26 years, R/o H.I.G. No.2862, M.P. Housing Board, Jamul, District Durg (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, Through : The District Magistrate, Durg District Durg (C.G.)

---- Respondent

For Appellant.	:	Shri BMK Bajpai, Advocate.
For Respondent.	:	Shri Vivek Sharma, G.A.

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

Judgment On Board By

Pritinker Diwaker, J

26/10/2016

This appeal arises out of the judgment of conviction and order of sentence dated 25.01.2007 passed by the Sessions Judge, Durg in S.T. No.144/2006 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.500/- plus default stipulations.

02. As per prosecution case, accused/appellant Jaspal Singh and deceased Uma Shankar were good friends. On the eve of *Holi* i.e. on 15.03.2006, accused/appellant, after borrowing the motorcycle from his common friend Raj Kumar Bande (PW/2), had gone to the house of deceased in the afternoon. Both accused/appellant and deceased left

the house of deceased, they purchased liquor and went to Maitri Garden for consuming it, however, they found the Maitri Garden to be closed, then they decided to sit at Monument Park where they consumed liquor and while doing so it was said that deceased had asked the accused/appellant to kill his father so that he can grab their ^{his} property. On this, some altercation took place between them and then accused/appellant strangled the deceased by belt and came back to his house after returning motorcycle of Rajkumar (PW/2). On 16.03.2006 dead body of unknown person was found inside the Monument Park. Dehati merg (Ex.P/5) was recorded on 16.03.2006 after receiving the information from one D.P. Mishra-Security Guard. Thereafter, numbered merg (Ex.P/21) was recorded on 16.03.2006. Inquest on the dead body of deceased was conducted on 16.03.2006 vide Ex.P/10 and thereafter dead body was sent for postmortem to District Hospital, Durg vide Ex.P/12. After merg inquiry, FIR (Ex.P/22) was registered on 17.03.2006 under Section 302 IPC against the unknown person. After inquest, the dead body was identified to be the son of Netram (PW/1). On 17.03.2006 postmortem examination on the body of deceased was conducted by Dr. V.S. Baghel (PW/6) who gave his report Ex.P/13 and found following injuries/symptoms:-

- (i) Multiple abrasion with buries reddish black in colour present on neck in 14 cm breadth anterior and going laterally and posteriorly upward and breadth at occipital area, length is 36 cm.
- (ii) Four broken lines seen on front side of neck.
- (iii) Abrasion of 2x1 cm on right mastoid and 3x2 cm on left mastoid are.
- (iv) Abrasion of 1 ½ cm on right side of nose plus base of mark is whitish parchment like in some places.
- (v) Multiple small abrasion on dorsal of right hand, fingers and ventral aspect of right face plus old healed sears linear placed horizontal multiple in

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- numbers present on ventral aspect of left face.
- (vi) Bruises with abrasion of 2 x 1 cm on left side of lumbar area.
- (vii) Bruises with abrasion of 2 x 1 on left scapular area.
- Sole of foots and ankle soiled with mud.

The autopsy surgeon opined that the cause of death was asphyxia due to strangulation.

03. On 18.03.2006 memorandum of the accused/appellant was recorded vide Ex.P/11, based on which, belt, slipper and clay pile were seized from the spot vide Ex.P/6. Empty bottle of country made liquor, two disposable glasses and three nos. of empty water pouches were also seized vide Ex.P/7. After obtaining the finger prints of accused/appellant, same were sent to finger print expert and as per his (Ex.P/17), finger prints found on the empty liquor bottle were of the right middle finger of accused/appellant.

04. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the 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, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

07. Learned counsel for the appellant submits as under:-

- (i) that the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction;
- (ii) that the main circumstance which appears against the accused/appellant is the report of finger print expert, but the said report is not reliable as only one finger print has been noticed on the empty liquor bottle;
- (iii) that other piece of evidence against the accused/appellant is the evidence of last seen by Netram (PW/1) and Rajkumar Bande (PW/2), however, as per their statements, on 15.03.2006 the accused/appellant and deceased left the house of deceased, whereas body has been found on the next day i.e. on 16.03.2006 and as such there was huge time gap between it, therefore, it cannot be said that it is the accused/appellant who committed murder of the deceased.

08. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that:-

- (i) on 15.03.2006, after borrowing the motorcycle from Raj Kumar Bande (PW/2) the accused/appellant had gone to the house of deceased, he picked him up and both of them had gone to consume liquor at Monument Park where he committed murder of the deceased;
- (ii) Netram (PW/1) and Raj Kumar (PW/2) are the witnesses of last seen and have fully supported the prosecution case;
- (iii) It is not a case of defence that after taking deceased along with him, deceased was seen in the company of some other person;
- (iv) report of finger print expert (Ex.P/17) is fully reliable as he has categorically stated that finger print of the accused/appellant was there

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on the empty liquor bottle. That apart, other finger prints were also there on the bottle;

(v) though other finger prints available on the bottle were not prominent and clear but the finger print of right middle finger of the appellant matches with the one found on the said bottle that's why the expert has given positive opinion in respect of finger prints found on the empty liquor bottle to be the appellant's. State counsel further submits that it is, thus, apparent that bottle was being used by the accused/appellant and the same was found on the spot. That apart, postmortem report of the deceased also confirms the fact that he died due to strangulation and autopsy surgeon has stated that same could be by using belt.

09. We have heard learned counsel for the parties and perused the material available on record.

10. Netram (PW/1) is father of the deceased. He has stated that accused/appellant and his son were good friend. On the eve of Holi at about 12 noon, deceased along with accused/appellant after playing *Holi* returned to his house but the accused/appellant was sitting on his motorcycle in front of his house. Deceased consumed some sweets and took the same for accused/appellant which he consumed and, thereafter, both of them went on motorcycle, which was being driven by the accused/appellant. He has also stated that his son deceased did not come on the very day. This witness also went on to state that he searched the deceased at Housing Board till 7.00 pm, however, he stopped searching him thinking that his son deceased had gone with accused/appellant and he might have slept in the accused/appellant's

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house as very often he used to stay with him. He has further stated that on the next day one of the friend of deceased came to him with newspaper wherein he saw the photograph of his son reported to be dead, thereafter, he immediately rushed to police station and identified body of deceased in the mortuary of District Hospital to be of his son. This witness, in cross-examination, went on to state that the motorcycle on which the accused/appellant had taken his son was of Raj Kumar (PW/2). Further, in cross-examination no question has been put to this witness challenging his authenticity on the point of last seen by this witness.

11. Raj Kumar Bande (PW/2) is a person whose motorcycle was borrowed by the accused/appellant on the date of incident. He has stated that the accused/appellant had taken his motorcycle saying that he wanted to purchase liquor and gave it to the accused/appellant requesting him to return early. He has also stated that the accused/appellant was riding his motorcycle, whereas deceased was pillion rider. At about 3.00 pm accused/appellant returned his motorcycle and admitted that there was some delay in returning the motorcycle, however, after taking back his motorcycle he returned to his house. This witness has stated that he was not aware as to where accused/appellant had gone. In cross-examination, this witness has stated that he knew both accused/appellant and deceased and on the date of incident he found both of them in drunken condition but he was not aware as to where they had gone. In para 7, this witness has admitted that he did not raise any query to the accused/appellant about the deceased.

12. D.K. Sahu (PW/3) is a Patwari who prepared spot map vide

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Ex.P/4.

13. D.P. Mishra (PW/4) is private security guard at whose instance dehati merg (Ex.P/5) was recorded. He is also a witness to seizure made under Ex.P/6 and P/7 by which belt, slipper and empty liquor bottle were seized and has duly supported the prosecution case as far as it relates to seizure.

14. Kunti Bai (PW/5) is also a witness to seizure made under Ex.P/10, however, in her statement it appears that Ex.P/10 has wrongly been mentioned because Ex.P/10 is inquest. She is also a witness to memorandum of accused (Ex.P/11).

15. Dr. V.S. Baghel (PW/6) who conducted postmortem on the body of the deceased vide Ex.P/13 has opined that the cause of death of deceased was asphyxia due to strangulation. In cross-examination, he has categorically stated that strangulation could have been caused by the belt.

16. S.K. Jain (PW/7) is finger print expert and has given his report (Ex.P/17). According to him, finger print found on the empty liquor bottle was of accused/appellant's right middle finger. He has also stated that other finger prints were also present on the bottle but as one which was prominent tallied with finger print of the accused/appellant, he gave such report.

17. Purushottam Lal (PW/9) is Constable who helped in the Investigation.

18. Rohit Kumar Rajput (PW/11) is a witness to memorandum (Ex.P/11) of the accused/appellant and has supported the prosecution case.

19. Sachin Dev Shukla (PW/12) is Investigating Officer who has duly supported the prosecution case.

20. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the evidence of Netram (PW/1), Raj Kumar Bande (PW/2), report of finger print expert (Ex.P/17) against the accused/appellant and recovery made pursuant to his memorandum vide Ex.P/11 whereby one empty liquor bottle was seized with his finger print thereon.

21. 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.

22. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that on 15.03.2006 on the eve of *Holi* accused/appellant had gone to the house of deceased after borrowing motorcycle from Raj

Kumar Bande (PW/2), both accused/appellant and deceased consumed liquor in Monument Park and there some dispute cropped up between the two on the point of killing appellant's father and grabbing his property and accused/appellant out of anger strangled the deceased by belt. Admittedly, the case of the prosecution rests totally on the circumstantial evidence, and the chain of circumstantial evidence has been completed by the prosecution. Evidence of last seen Netram (PW/1) clearly goes to show that his son deceased Uma Shankar had come along with accused/appellant at 12.00 noon to his house, consumed some sweets and thereafter they went on motorcycle. This witness has also stated that thereafter his son deceased never came back and on the second day photo of deceased was published in newspaper reporting him to be dead. Likewise, evidence of Raj Kumar Bande (PW/2) also goes to show that his motorcycle was borrowed by accused/appellant for bringing liquor and deceased was also with him. Both these witnesses have seen the accused/appellant last time in the company of deceased and have fully supported the prosecution case. Defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially to the fact that they have not seen the accused/appellant last time in the company of deceased. Moreover, S.K. Jain (PW/7) - Finger Print Expert gave his report (Ex.P/17) categorically stating therein that he examined the finger print found on the back side of label of empty liquor bottle with the help of developing powder and the same was found to be of the right middle finger of the accused/appellant.

23. Considering all the surrounding circumstance, nature and quality

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of evidence adduced by the prosecution, it cannot be said that the evidence is weak in nature. The accused/appellant was seen last time in the company of deceased and, therefore, accused/appellant was under a legal obligation to offer reasonably convincing explanation in his statement under Section 313 Cr.P.C. as to when he parted with the company of deceased, but no such explanation whatsoever has been offered in his statement. Even he has not offered any explanation as to how the deceased died.

24. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be on bail, he be arrested and sent back to jail for serving remaining sentence imposed upon him by the trial Court.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S. SAMANT
Judge