

(3)

Division Bench

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

CRIMINAL APPEAL NO. 774 /2007

APPELLANT:-

(IN JAIL)

Manmohan Kunte Khunte

S/o- Firat Ram Khunte,

Aged about 20 years

R/o Village Gorba,

Police Station- Bilaigarh,

Distt- Raipur (C.G.)

Filed on 22/08/07
by Shri. Vivek Patil
Advocate
B. to D. S. G.
22/08/07

VERSUS

RESPONDENT:-

State of Chhattisgarh

Through: Station House Officer

Police Station- Sarsiwa,

Distt- Raipur (C.G.)

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MEMO OF APPEAL

UNDER SECTION 374 OF THE CODE OF CRIMINAL
PROCEDURE.

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 774 of 2007

- Manmohan Khunte, S/o Firat Ram Khunte, aged about 20 years, R/o Village Gorba, Police Station - Bilaigarh, Distt. Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through : Station House Officer, Police Station - Sarsiwa, Distt. Raipur (CG)

---- Respondent

For Appellant
For Respondent/State

Shri Y.C. Sharma, Advocate.
Shri Avinash Mishra, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

02/12/2016

This appeal arises out of the judgment of conviction and order of sentence dated 16.8.2007 passed by the First Additional Sessions Judge, Baloda Bazar, in ST No.15/2007 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, name of the deceased is Vimla Bai, wife of the accused/appellant. It is said that the mother of Vimla Bai had given some money to Mahavir and at the time of harvesting crop, the appellant and his wife Vimla Bai had gone to the house of Mahavir to realize the said amount either in cash or in the form of crop. On 11.11.2006 dead body of deceased was found in the house of Mahavir and the room was locked from outside. Upon coming to know about the

said fact, on the same day at about 4 pm mereg intimation Ex.P/13 was lodged by Village Kotwar Ganeshram (PW-11) and immediately thereafter FIR (Ex.P/14) was lodged against the accused/appellant by Ganeshram, on the basis of which offence under Section 302 of IPC was registered. Inquest over the dead body was prepared vide Ex.P/2 on 11.11.2006. The dead body was sent for postmortem, which was conducted on 12.11.2006 by PW-13 Dr. KK Gandharv vide Ex.P/23 wherein he noticed as many as seven lacerated wounds and in his opinion, the cause of death was haemorrhagic shock and that the death was homicidal in nature. After investigation, charge sheet was filed against the appellant under Section 302 of IPC and accordingly, charge was framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 13 witnesses in all. Statement of the accused 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.

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 appellant as mentioned above.

05. Counsel for the appellants submits as under:

- (i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for his conviction.
- (ii) that on the memorandum of the appellant (Ex.P/4), seizure of Tangi

and his clothes was made vide Ex.P/5 & P/6 and as per unexhibited FSL report though blood has been found on the Article E1 i.e. shirt of the appellant and Article F i.e. tangi, but in absence of serological report confirming the origin of blood, the said FSL report loses its significance.

(iii) that the other piece of evidence which has been considered against the appellant by the trial Court is his conduct where he is alleged to have locked the door from outside after committing murder of the deceased and fled from the spot on bicycle. In this regard it has been argued that the appellant was very well present in the said house and as he embraced the dead body, blood was found on his clothes.

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 Ku. Reshma, daughter of Mahavir in whose house the appellant and the deceased were staying at the time of incident, has turned hostile. PW-2 Mahavir, PW-3 Milanbai and PW-4 Baleshwar, the other important witnesses of the prosecution, have not supported the prosecution case and have been declared hostile. PW-5 Anirudha Kumar, a witness of memorandum of the appellant Ex.P/4 and seizure Ex.P/5, has stated that before effecting seizure it was informed to him by the police that tangi is there in the kitchen garden of Mahavir as has

been informed to them by the appellant. PW-6 Mangluprasad Jangde, another witness to memorandum and seizure, has supported the prosecution case. PW-7 Makhan is the Sarpanch, who had identified the bicycle vide Ex.P/12. PW-8 Jagdish Mishra, investigating officer, has supported the prosecution case. PW-9 Jitendra Kumar Mishra, Police Constable, helped in the investigation. PW-10 Ramratan, Kotwar is a witness to seizure Ex.P/22 of the bicycle. PW-11 Ganeshram, Kotwar, is the person at whose instance merg intimation and FIR were registered. PW-12 Ram Nivas, Patwari, prepared the spot map Ex.P/11. PW-13 Dr. KK Gandharv conducted postmortem on the body of the deceased on 12.11.2006 vide Ex.P/23 and noticed following injuries:

- (i) lacerated wound with margin clear and compound fracture of right side of right eye, 7 cm x 2 cm x 1 ½ cm,
- (ii) lacerated wound, margin clear, cutting of upper lobules, 2 ½ cm, bone visible right side behind the ear,
- (iii) lacerated wound 5 cm x 2 cm with bone deep of maxilla just below the left eye,
- (iv) lacerated wound 2 x 2 cm with bone fracture above temporal bone in the head,
- (v) lacerated wound 5 x 2 cm with fracture of upper jaw with ala of right nose with soft palate with maxillary synous,
- (vi) lacerated wound 2 ½ cm x 2 cm present in anterior portion of tongue,
- (vii) lacerated wound 4 x 2 cm with bone visible, present in right side of head.

All the above injuries were caused by hard and sharp object. In his

opinion, the cause of death was hemorrhagic shock and the death was homicidal in nature.

As per unexhibited FSL, blood was found on the seized articles i.e. shirt of the appellant (Art. E1) and tangi (Art. F).

09. 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 recovery of bloodstained articles i.e. tangi and his shirt made pursuant to his memorandum.

10. 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. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that all the important witnesses of the prosecution (PWs 1 to 4) have not supported the prosecution case on material particulars and

have been declared hostile. True it is that witnesses to the memorandum and seizure (PW-5 & PW-6) have supported the prosecution case and as per FSL report (unexhibited), blood was found on the seized articles i.e. tangi and shirt of the appellant, but merely on that basis it cannot be said conclusively that it is the accused/appellant who was involved in commission of murder of the deceased, especially when the said circumstance has not been proved to the hilt by the prosecution. It was the duty of the prosecution to prove the said circumstance beyond all reasonable doubt by producing serological report in respect of origin of the blood found on the seized articles. However, that has not been done in the present case.

12. Thus, all the circumstances if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, rather they seem to be consistent with the innocence of the appellant. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and the appellant is entitled for acquittal of the charge.

13. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charge under Section 302 of IPC. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S. SAMANT
Judge