

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 575 of 2005

- Dundka Muriya, S/o Sita Ram Muriya, aged about 41 years, R/o Village Singanpur, P.S. Parpa, Jagdalpur, Distt. Bastar (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through P.S. Parpa, Jagdalpur, Distt. Bastar (CG)

---- Respondent

For Appellant : Shri Vijay Deshmukh, Advocate.
For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

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

Judgment On Board By Justice Pritinker Diwaker

29/09/2016:

This appeal arises out of the judgment of conviction and order of sentence dated 4.6.2005 passed by III Additional Sessions Judge, Bastar at Jagdalpur in ST No.173/2004 convicting accused/appellant under Sections 302 and 201 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for five years, fine of Rs.1000/- with default stipulations respectively.

02. Brief facts of the case are that on 15.4.2004 merged intimation Ex.P/16 was lodged by PW-5 Daluram, brother of deceased Sahdev, alleging in it that on 14.4.2004 his brother Sahdev had gone along with the appellant to jungle for collecting bamboo and on the same day after return the appellant informed him that while returning the deceased

has jumped into well. On 15.4.2004 dead body of the deceased was taken out from the said well and some injury was noticed near his right ear. During merg enquiry it revealed that there was some dispute between the appellant and the deceased over a trivial amount of Rs.10/- and the appellant after assaulting the deceased threw him into the well and he also jumped into the well to ensure death of the deceased. It is said that the appellant could not come out from the well and he raised cries, which was heard by PW-3 Smt. Beni Bai and thereafter, the appellant was taken out from the well and he went away from there. On the basis of merg enquiry, unnumbered FIR (Ex.P/3) was recorded on 16.4.2004 at the instance of PW-5 Dalluram at Police Outpost - Bastar. Thereafter, numbered FIR (Ex.P/4) was registered on 17.4.2004 against the appellant at Police Station - Jagdalpur under Sections 302 & 201 of IPC. Inquest Ex.P/6 was prepared on the body of the deceased and thereafter, the body was sent for postmortem which was conducted on 16.4.2004 by PW-8 Dr. Ganesh Das vide Ex.P/12 who noticed no injury, internal or external, on the person of the deceased and also expressed his inability to give any opinion regarding cause of death of the deceased. However, he advised for sending viscera of the deceased for chemical examination so that cause of death could be ascertained. After completing investigation, charge sheet was filed against the accused/appellant under Sections 302 & 201 of IPC and accordingly, charges were framed by the trial Court.

03. So as to hold the accused guilty, the prosecution examined 10 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 accused/appellant as mentioned above.

05. Counsel for the appellant 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 there is absolutely no evidence against the appellant connecting him with the crime in question.

(iii) though on the basis of memorandum of the appellant Ex.P/8, seizure of one Tangia was made vide Ex.P/9, however, the prosecution has failed to prove as to how the said weapon was used in commission of the offence.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned convicting and sentencing the appellant under Sections 302 and 201 of IPC is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

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

08. PW-1 Buturam is a person in whose well the body of the deceased was found and was taken out. He has not stated anything against the appellant. PW-2 Pradeep Pandey, Patwari, prepared the spot map Ex.P/1. PW-3 Smt. Beni Bai has stated that there was a well near the mango tree and after hearing the cries of one person she went to the said well and with the help of villagers the person in the well was taken out by means of bamboo. She, however, has not made any allegation against the appellant and therefore, has been declared hostile. PW-4 RK Sinha, Asstt. Sub Inspector, recorded numbered FIR (Ex.P/4) on the basis of unnumbered FIR (Ex.P/3). PW-5 Dalluram, brother of the deceased, has stated that on the date of incident the appellant took the deceased with him and at about 7 pm after return the appellant informed him that the deceased has jumped into well and thereafter, the appellant hid himself. He has stated that along with the Village Kotwar he had gone near the well, called the police and thereafter, body was taken out from the well. He is also a witness of inquest Ex.P/6. He states that as his brother/deceased did not return along with the appellant, he is saying that he was killed by the appellant. He further states that it is his assumption that the accused/appellant might have killed the deceased.

09. PW-6 Nehru has stated that the deceased was taken by the accused/appellant and the appellant returned in the evening and informed that the deceased has jumped into the well. However, in cross-examination he also states that it is only on the basis of assumption that he is making allegation against the appellant. In para-6 he states that the appellant was brutally beaten by the police and

despite that he was not admitting that he has killed the deceased but ultimately after severe beating given by the police to the appellant by tying his hands and legs, he admitted that he has killed the deceased. PW-7 Parobai, wife of the deceased, also states that she assumed that the appellant killed her husband. She admits that there was some enmity between the appellant and the deceased. PW-8 Dr. Ganesh Das conducted postmortem on the body of the deceased on 16.4.2004 vide Ex.P/12 and did not notice any injury, internal or external, on the person of the deceased and also expressed his inability to give any opinion regarding cause of death of the deceased. However, he advised for sending viscera of the deceased for chemical examination so that cause of death could be ascertained. PW-9 Lambodar Patel recorded mereg intimation (Ex.P/15). PW-10 T.S. Thakur, investigating officer, has supported the prosecution case.

10. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction is based on 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 legally admissible evidence against the appellant connecting him with the crime in question. Though it is said that he had thrown the deceased into well and thereafter, he also jumped into the well and caused injury to the deceased but no such evidence is there on record. Even the medical evidence is not in consonance with the prosecution version. According to postmortem report, no injury, either external or internal, was noticed on the body of the deceased and the cause of death could also not be ascertained. Further, though as per memorandum of the appellant, one Tangia was seized but the said seizure is also of no help to the prosecution because the prosecution has utterly failed to prove as to in what manner the said weapon was used by the appellant or what nexus it has with the crime in question.

12. Thus regard being had to all the circumstances relied upon by the trial Court to hold the appellant guilty, we are of the considered view that they do not form a complete chain which could unerringly point towards the guilt of the accused/appellant. The prosecution has surely failed to prove the guilt of the appellant beyond all reasonable doubt and as such, he is entitled to be acquitted of the charges by extending him benefit of doubt.

13. In the result, the appeal is allowed. The impugned judgment is hereby set aside. The appellant is acquitted of the charges under

Sections 302 & 201 of IPC.

14. Before parting with the judgment, we wish it appropriate to mention here the information provided by counsel for the parties that in spite of an order being passed by this Court granting bail to the accused, he is still languishing in jail because of non-furnishing of bail by him. This fact has also been verified from report dated 24.9.2016 submitted by the Jail Superintendent, Central Jail, Jagdalpur and the incarceration of the accused as on date has been established.

15. It is really very shocking that despite being released on bail way back in the year 2006 i.e. almost a decade ago, the accused/appellant could not see the light of the day even as on date. This we have come to know only today when the case has been finally disposed of. How this sorry state of affair could be settled forever is a matter of concern and some method to liberate such persons has to be devised.

16. Earlier pursuant to order dated 25.4.2007 passed by this Court in Cr.A.No.1523/98 a circular dated 7.5.2007 was issued by the Registry of this Court directing all the District & Sessions Judges of the State that as and when an order is passed for releasing the accused on bail on furnishing bail bond to the satisfaction of the trial Court, it is the duty of the concerned trial Court to intimate this Court as to whether in compliance of this Court's order the accused has been released on bail or not or the accused failed to submit the bail bonds. All the subordinate Courts were directed to observe and follow the above directions scrupulously.

Registrar (Judicial) is directed to further communicate the aforesaid

circular to all the District & Sessions Judges of the State, who in turn shall communicate the same to their subordinate Courts forthwith. Registrar (J) is also directed to ensure strict compliance of this circular by the subordinate Courts.

17. In this view of the matter, we further deem it appropriate and therefore, direct all the District & Sessions Judges to call for information from the Additional Sessions Judges and the Central Jails of the State about the convicts languishing in jail on account of non-furnishing of bail bonds. Let this be done within two months from the date of receipt of copy of this judgment. District Judges shall forthwith pass on the said information to the Registrar (J) of this Court. Secretaries of District Legal Services Authorities are also directed to visit jail along with their counsel to collect such information and submit the same to the Secretary, State Legal Services Authority within two months from the date of receipt of copy of this judgment and the said authority to take appropriate steps in this regard.

Needless to say that on such report being received from the trial Court, the Registrar (J) shall, without wasting any time, place the matter before a Court dealing with the roster, for necessary orders.

Let widespread circulation of this order be made to all the District & Sessions Judges, Secretaries of District Legal Services Authorities as also the Secretary, State Legal Services Authority.

Sd/
(Pritinker Diwaker)
Judge

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