

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1948 of 1998

- Madanlal, S/o Laxman Sahu, aged about 19 years, R/o Village- Manpasar, Police Station- Sarsiwa, Distt. Raipur

---- Appellant

Versus

- State of Madhya Pradesh, through Police Station Sarsiwa, Distt. Raipur.

---- Respondent

For Appellant	:	Shri V.A. Goverdhan, Advocate.
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

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

Judgement

Per P. Diwaker, J

12.5.2017

1. By this criminal appeal, the accused/appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 14.8.1998 passed by the Additional Sessions Judge, Balodabazar in S.T. No.373/94 by which he has been convicted for the offence punishable under Section 302/201 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and RI for 3 years and fine of Rs.1,000/-, with default stipulations, respectively.
2. In the present case name of deceased is Laxman Prasad, father of accused/appellant Madanlal.
3. Briefly stated, the case of the prosecution is that the deceased was living all lone in his house situated at village Mapasaar, whereas his only son

(accused/appellant Madanlal) was working in a hotel at village Bhatgaon and residing there. He used to come to meet his father now and then. On 5.9.1993, the villagers noticing that foul smell is coming out from the house of deceased reported the matter to the police whereupon the police directed to verify by going inside the house of deceased and therefore villagers had gone inside the house of deceased and saw his body which was half buried in one feet deep pit. Ultimately, Merg Intimation (Ex.P-16) was lodged on 5.9.93 at 8.30 p.m. and FIR (Ex.P-17) was registered on that day itself against accused/appellant Madanlal and co-accused persons namely Shankar, Shani & Samaru under Sections 302, 201, 34 IPC on the basis of merg inquiry. Dead body was exhumed on 5.9.93 vide Ex.P-19. Inquest on the dead body was prepared vide Ex.P-2. Body of deceased was sent for post-mortem examination which was conducted by Dr. Chandra Sekhar Patel (PW-10) vide Ex.P-14 and as the body was highly decomposed, no injury could be noticed on the body. The cause of death assigned by the doctor was asphyxia and shock and the death was homicidal in nature.

4. After completion of investigation, charge sheet was filed against the accused persons under Sections 302, 201, 34 IPC showing co-accused Shani & Samaru absconding and therefore the trial Judge has framed the charges under Sections 302, 201/34 IPC only against accused Madanlal & Shankar and not against absconded accused Shani & Samaru, as is evident from the record.
5. The prosecution in order to bring home the charges levelled against accused Madanlal & Shankar examined 28 witnesses in all. No person was examined as a witness on the side of the defence. Statements of accused Madanlal & Shankar were recorded under Section 313 of Cr.P.C.

in which they abjured their guilt and pleaded innocence & false implication.

6. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
7. It is relevant to note here that accused Shani & Samaru have not been put to trial but as in the impugned judgment it has been mentioned by the trial Judge that all the accused persons are convicted, accused Shani & Samaru have also preferred criminal appeal bearing No.1711/00 and their appeal has also been entertained by this Court. During the pendency of said appeal, accused Shani expired on 20.12.2007 and therefore Criminal Appeal No.1711/00 is now only in respect of accused Samaru. Considering the fact that Samaru has not been put to trial, we have de-linked the present appeal from that of appeal filed by co-accused Samaru and only deciding the appeal filed by accused Madanlal.
8. Counsel for accused/appellant Madanlal submits that;
 - conviction of appellant is solely based on the circumstantial evidence but the circumstances relied upon by the prosecution are inconclusive and inconsistent and no reliance could be placed on those circumstances so as to draw a conclusion that present appellant had committed the crime in question.
 - though Setu Prasad (PW-1) had seen accused/appellant Madanlal jumping over the door of the house of deceased but it has not come in his evidence as to on which date he saw the accused jumping over the door and therefore the evidence of this witness is of no relevance.
 - Mere falsity of an explanation given by the accused/appellant during recording of statement under Section 313 Cr.P.C. is not sufficient to

convict the appellant for the serious offence like murder.

- Recovery of spade, crowbar and certain utensils vide Ex.P-7A, which are commonly available articles in villages, is of significance as the autopsy surgeon had not noticed any injury on the body of deceased.
 - post mortem of the deceased was done but the doctor could not succeed to give his opinion regarding cause of death of the deceased i.e. homicidal, and therefore, the prosecution could not succeed to prove cause of death of the deceased.
 - As per memorandum of appellant Madanlal, he throttled the deceased after administering poison to him, but there is no report of chemical analyst suggestive of presence of poison in the body of deceased.
 - Appellant Madanlal has already remained in jail for more than nine years.
9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant Madanlal is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
10. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.
11. Setu Prasad (PW-1) is the person who saw accused Madanlal jumping over the gate of his house. He is also witness to inquest Ex.P-2. This witness has stated that one day he saw that accused Madanlal was jumping over the door of his house and being asked as to why he is doing so, accused Madan informed him that his father (deceased) is ill and he is going to bring medicine for him. He has further stated that even after on being asked by the Kotwar, it was told by accused Madanlal that on account of his father being indisposed, he was not in a position to shut the door from inside and therefore he went out by jumping over the doors. He

has further stated that as accused Madanlal did not return, the Kotwar informed the police and thereafter the body of Laxman was taken out after breaking open the doors in presence of the police. He has further stated that the body was lying in the verandah in a pit. In the cross-examination this witness has stated that since childhood accused Madan was residing at Sarsiva and used to come to meet his father at times. He has further stated that as the financial status of the deceased was not good, he had gone out to earn livelihood.

12. Jheeturam (PW-4) is the village Kotwar and lodger of Merg Intimation (Ex.P-16). He is also witness to seizure memos of Ex.P-4 & P-5. He has stated that about 2-3 years ago when he was in his house, Tesram, neighbour of deceased, came to him and informed that foul smell is coming out from the house of deceased. He has further stated that when he enquired from accused Madanlal, he informed that there is a wound in the leg of his father and that he is going to take medicine for him, however, he did not return. He has further stated that the matter was reported to the police and after being instructed by the police, he along with other villagers went to the house of Laxman and saw that his body was half-buried from waist below in one foot deep pit in the verandah. In the cross-examination he has stated that at the age of 8-9 years accused Madan had gone out of the village to earn. He has further stated that at the relevant point of time accused Madan was working in a hotel at village Bhatgaon and about a month prior to the incident the deceased informed him that the accused was insisting for marriage but he advised him to first save some money and then to go for marriage. He has further stated that the spade, crowbar etc. were seized by the police in his presence vide Ex.P-7A. He has further stated that the deceased was ostracised by the villagers. He has admitted that the spade and crowbar are commonly

found in the houses of the villagers.

13. Tiharu (PW-15) has stated that the deceased died two years back. At about 10 a.m. while he was returning his home from the field, he saw the accused jumping over the doorpost of his house, however, we did not ask anything from him nor Madan told us anything. He has further stated that after that he did not see accused Madan. At this stage, this witness has been declared hostile by the prosecution.
14. Ganesh Ram (PW-19) has also stated that Setu Prasad (PW-1) informed him that he (Sethu) saw accused Madan jumping over the door of his house. However, this witness has also been declared hostile by the prosecution.
15. Dr. Chandra Sekhar Patel (PW-10) is the person who conducted post-mortem examination over the body of deceased vide Ex.P-14 and opined that cause of death was asphyxia and shock. According to this witness, the deceased was patient of tuberculosis & anaemia and his liver was also weak due to its enlargement. He has opined that the aforesaid diseases could have led to asphyxial death of the deceased.
16. Lakhneshwar (PW-3), Jaaliram (PW-20), Ramji (PW-24) have not supported the prosecution case and as such declared hostile.
17. Chhoturam (PW-5) is the witness of seizure memo of Ex.P-7 & P-8. Amritlal (PW-7) is the witness of memorandum Ex.P-9. Khemlal (PW-9) is the Patwari who prepared the spot map of Ex.P-13. Ghasidas (PW-13) is the witness of memorandum (Ex.P-9) & seizure memo Ex.P-7. Manohar Das (PW-26) & Rajesh Tiwari (PW-27) are the persons who helped in the investigation.
18. Evidence of Pukram (PW-2), Lachhidas (PW-6), Pradeep (PW-8), Chetan Kumar (PW-11), Constable Bhajanlal (PW-12), Ghanshyam Prasad (PW-14), Laxmi Narayan (PW-16), Karra Yadav (PW-17), Satya Narayan Kedia

(PW-18), Udairam Sahu (PW-21), Balmati (PW-22), Bachhram (PW-23), being formal in nature do not call for a detailed reference.

19. Ambrish Sharma (PW-28) is the Investigating Officer and he has duly supported the prosecution case.
20. From the impugned judgment it would reveal that the only circumstance on which the prosecution relies and which the trial Judge finds to be proved, is the circumstance of last seen of accused Madanlal in the company of deceased. The prosecution in this regard relies on the evidence of Setu Prasad (PW-1) & Jeethuram (PW-4). According to Setu Prasad (PW-1), on some day he saw accused/appellant Madanlal jumping over the door of house of deceased and being asked, he informed that his father (deceased) is ill and he is going to bring medicine for him. According to Jeethuram (PW-4), on being asked, it was told by accused Madan that on account of his father being indisposed, he would not be in a position to shut the door from inside and therefore he went out by jumping over the door. Thus, taking the evidence of these witnesses at their face value, it is clear that there is no date or time mentioned in the testimonies of these witnesses as to on which date they had seen the appellant jumping over his house and at what time he had left the house for bringing medicine to his ailing father (deceased). It has also not come in the evidence of these witnesses as to whether the body of deceased was recovered on the same day when they saw accused Madanlal in the house of deceased. Normally, the evidence which is regarded as 'last seen' evidence is such where the person is last seen alive and after that it is only his dead body which is recovered. Thus, if the version of PW-1 & PW-4 are accepted in its entirety, we are of the view that the evidence that accused/appellant Madanlal was last seen with the deceased was not within a proximate time and being so, this singular piece of circumstantial

evidence is not enough for branding accused/appellant Madanlal as perpetrator of the crime. Even otherwise, it is admitted fact that accused Madanlal, son of deceased, was residing in village Sarsiva and he used to come to meet his father (deceased) at times. Therefore, merely because on some day he was seen by the witnesses jumping over the house of deceased, cannot be made the basis for his conviction. It is settled proposition of law that the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.

Apart from above, the medical evidence brought on record does not conclusively show that the deceased suffered a homicidal death as is evident from the autopsy report, which we have noticed herein-before. Rather, according to the autopsy surgeon, the deceased was patient of tuberculosis & anaemia, his liver was also weak due to its enlargement and the aforesaid diseases could have led to asphyxial death of the deceased. Furthermore, the viscera preserved by the doctor, who carried out the post-mortem, was sent to the Chemical Analyser to ascertain as to whether any poisonous substance has been administered to the deceased, but the prosecution, for the reasons best known to it, has failed to produce the report of Chemical Analyser disclosing presence of any poisonous substance in the viscera of deceased, which rules out the . In these circumstances, even presuming, for the sake of argument only, that appellant Madanlal was last seen in the house of deceased, in absence of proof of homicidal death due to poisoning or throttling and in the light of possibility of asphyxial death of deceased on account of diseases suffering by him, accused Madanlal cannot be convicted merely on the basis of last seen theory.

As regards the false explanation given by accused Madanlal in his statement recorded under Section 313 Cr.P.C., since it has already been held above that the prosecution has failed to prove the main circumstance (last seen) relied upon it to connect the accused/appellant with the crime in question, the explanation given by accused/appellant in his statement recorded under Section 313 Cr.P.C. cannot be termed as false explanation.

Likewise, there is nothing on record to show that after the death of the deceased the accused/appellant had caused disappearance of the body and that way his conviction under Section 201 IPC is also not sustainable in the eye of law.

21. Thus, considering the nature and quality of evidence adduced by the prosecution, we are of the opinion that the prosecution has failed to prove involvement of accused/appellant Madanlal in the crime in question beyond reasonable doubt and he is definitely entitled to be acquitted of the charges by extending him benefit of doubt.
22. For the foregoing reasons, the appeal is allowed. Conviction and sentence of appellant Madanlal under Sections 302 & 201 IPC are hereby set aside and he is acquitted of those charges by extending him benefit of doubt. Presently, appellant Madanlal is on bail. His bail bonds are discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge

roshan/-