

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 627 of 2010

1. Jagunnath, aged about 25 years
2. Jagdish, aged about 23 years
3. Jagesar, aged about 21 years.

All S/o Jai Singh, R/o Village Jobtola, PS Ambagarh Chowki, Rajnandgaon

---- Appellants

Versus

- State Of Chhattisgarh, through P.S. Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellants	:	Smt. Kiran Jain, Advocate
For Respondent	:	Shri N.K. Mehta, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

P. Diwaker, J

14/12/2017

1. This criminal appeal is filed against the judgment of conviction and order of sentence dated 11.8.2010 passed by the learned 1st Additional Sessions Judge, Rajnandgaon in S.T. No.52/2009 whereby the trial Judge has convicted the appellants under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo RI for life with fine of Rs.500/- and RI for 1 year with fine of Rs.500/-, plus default stipulations, respectively.
2. In the present case name of deceased is Prahlad, who used to work along with appellant Jagannath in Raipur.

3. As per prosecution case, there was some dispute between appellant Jagannath & deceased Prahlad and on 17.1.2009 accused/appellant Nos.2 & 3 took the deceased alongwith them from his house, offered him food and thereafter forcibly administered poison in his mouth as a result of which he died. Body of deceased was found lying near the kitchen-garden of the accused persons. Merg intimation (Ex.P-1) was lodged by Gendlal (PW-1) on 18.1.2.009. Inquest over the body was conducted on 18.1.2009 vide Ex.P-20. Dead body was sent for post-mortem examination which was conducted by Dr. Nandlal Bhuarya (PW-10) and since the doctor was not of the definite opinion about the cause of death, viscera was preserved and the same was sent for chemical examination and as per report of chemical examiner, carbo-sulphas poison was found in the viscera of the deceased. After merg inquiry, FIR (Ex.P-23) was registered on 21.4.2009 against five accused persons under Sections 302, 201, 120B/34 of the IPC.
4. On completion of investigation, charge sheet under Sections 302, 201, 120B/34 of the IPC was filed against all the accused persons and accordingly the charges were framed by the trial Court against them. The prosecution in order to bring home the charges levelled against the accused persons had examined 11 witnesses in all. Statement of appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. On consideration of oral and documentary evidence, the trial Court by the impugned judgment while acquitting co-accused Jai Singh & Gautaharin Bai, who are parents of accused/appellants herein, convicted and sentenced the present appellants in the manner as described above.
6. Counsel for accused/appellants submits that;

- conviction of the appellants is based on the circumstantial evidence but none of the circumstances relied upon by the prosecution is of any conclusive nature and the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence.
 - Main piece of evidence against the appellants is so-called statement of last seen by PW-2, PW-3, PW-5 & PW-6, but the evidence of these witnesses is not consistent in respect of the fact that they have last seen the deceased alive with the appellants. From the evidence of these witnesses it is clear that though the deceased visited the house of appellants but after some time he returned back.
 - extra-judicial confession made by the appellants before PW-1 & PW-4 is also not admissible in evidence because it is apparent from the record that the police personnel were present when the confession was made by the appellant concerned in the meeting.
 - Statement under Section 161 CrPC of most of the witnesses have been recorded with inordinate delay and the prosecution had not explained the delay.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Gendlal (PW-1) is the person at whose instance merger intimation (Ex.P-1) was registered. According to this witness, Billu (PW-9), father of deceased, told him that his son Prahlad (deceased) is missing since last night after accused/appellants No.2 & 3 had called him. He has further

stated that on being questioned, accused/appellants No.2 & 3 admitted that they had taken the deceased with them but after some time the deceased returned to his house. Meanwhile, they came to know that body of deceased is lying near the field of one Gajruram. Thereafter, this witness informed the police about the death of deceased. This witness has been declared hostile by the prosecution and certain leading questions were put to him by the Additional Government Pleader with the permission of the trial Court and in response to said leading questions this witness has stated that during police interrogation, accused/appellant No.3 confessed that they have killed the deceased by administering pesticide to him and thrown his body in the kitchen-garden.

9. Pushpa (PW-2) has stated that on 17.1.2009 at about 8 in the night when she was serving food to the deceased, accused/appellants Jagdish & Jagesar came there and took the deceased with him by saying that they wanted to talk to him. Next morning body of the deceased was found lying in the kitchen-garden of the accused persons.
10. Kirtan (PW-3) is the elder brother of the deceased. He has stated that on 17.1.2009 at about 8.00 p.m. accused/appellant Jageshar & Jagdish took his brother (deceased) along with them. After some time on the saying of his mother he had gone to the house of Jagannath to see the deceased and on reaching there, he heard that the accused persons were talking about some money and they were also giving threat to the deceased. He has further stated that his brother (deceased) did not return in the night and next morning he came to know that body of his brother is lying in the kitchen-garden of accused Jagannath. In reply to a question put by the Court, this witness has admitted that he did not enter the house of Jagannath and had seen from the outside. He has admitted that when he reached the house of Jagannath, he found the door closed.

11. Madanlal (PW-4) is the witness of inquest (Ex.P-3), seizure memo (Ex.P-17) by which bottle, medicine etc. were seized. He is also a witness to confessional statement (Ex.P-7 & P-8). He has admitted that accused Jagannath had been interrogated by the police in his presence.
12. Rambai (PW-5) is the mother of deceased Prahlad. She has stated that the deceased along with accused Jagannath had gone to Raipur to earn livelihood for himself. She has further stated that accused Jagesar & Jagdish had taken her son (deceased) along with them to their house. After some time, she had sent her younger son Kirtam (PW-4) to the house of accused persons to call Prahlad and after returning from there, her son informed her that some dispute is going on between the accused persons and the deceased. She has further stated that she had gone to the house of accused persons and enquired from them about her son but they did not inform her anything. Her son did not return home in the night. Next morning she came to know that body of her son is lying at the back side of the kitchen-garden of accused persons.
13. Shishupal (PW-5) did not support the prosecution case and turned hostile.
14. Dinanath Verma (PW-7) & Dhaneshwar Bhagat (PW-8) are the police personnel who assisted in the investigation.
15. Billu (PW-9), father of deceased, has made almost similar statement as has been made by Rambai (PW-5).
16. Dr. Nandlal Bhuarya (PW-10) is the person who conducted post-mortem examination over the body of deceased and gave his report (Ex.P-20). This witness did not opine the cause of death and stated that opinion will be given after receiving viscera report.
17. B.S. Nishad (PW-11) is the investigating officer who has duly supported the prosecution case.
18. The case of the prosecution is based on circumstantial evidence. When a

case is based, on the circumstantial evidence, the Court is bound to be extra cautious, because the circumstantial evidence, has its own limitations. Before acting, on that evidence, the Court must first see, whether the circumstances, put forward, are satisfactorily proved, and whether the proved circumstances, are sufficient to bring home satisfactorily the guilt of the accused. The established circumstances, must not only be consistent with the guilt of the accused, but at the same time, they must be inconsistent with his innocence. While appreciating the circumstantial evidence, the Court should not view, in isolation, the various circumstances. On the other hand, it is necessary to take an overall view of the matter, but without substituting conjectures for legal inferences. Incompatibility with the innocence, besides compatibility with guilt, is called for, in such cases, because incriminating circumstances, can also be introduced, during the investigation, and it is a matter of common knowledge, that at times, they are falsely introduced, by way of padding, by the investigating Agency.

19. In the instant case, the first circumstance, on which reliance was placed by the trial Court to hold the accused/appellants guilty was that deceased Prahlad was taken by accused/appellant Nos.2 & 3 on 18.1.2009 at about 8.00 p.m. on the pretext of having some discussion with him and thereafter deceased did not come back to his house, and only his dead body was found on 19.1.2009. However, in our considered opinion, the trial Court was wrong in relying upon such a circumstance to hold that the accused/appellants were guilty for the reason that it has come in the statement of Shishupal (PW-6), cousin of deceased, that deceased Prahlad had left the house of accused/appellants by saying that he will not eat food at his house. This witness had also informed Rambai (PW-5), mother of deceased, that the deceased had already left.

According to Rambai (PW-5) also, when she reached the house of accused/ appellant in search of her son (deceased), she did not find her son there, whereas Shishupal (PW-6) and accused persons were there and they were eating food. From this evidence it is clear that the deceased had left the company of accused persons. This apart, the body of deceased was found at about 11 in the morning in the field and thus there has been a considerable time gap of approximately 14 hours when the deceased was last seen alive with the accused persons. Most importantly, there is no evidence brought on record by the prosecution to prove that the accused/appellants were in possession of poison prior to incident or had purchased the poison from any pesticide shop. Therefore, merely because accused/appellants No.2 & 3 took the deceased with them for the purpose of discussing on some issue, that did not mean that they committed the murder of said Prahlad. Had the dead body of Prahlad been found immediately after he was taken by accused/appellants, along with them, it would have been said that there was some live link and nexus between the circumstance of last seen of deceased Prahlad with the accused/appellants and his death. However, the time gap between the circumstance of last seen and recovery of dead body of deceased, being of about 12 to 14 hours, by no stretch of imagination it could be said that it were the accused and accused only who could be held guilty for commission of murder of the deceased.

20. Another incriminating circumstance projected by the prosecution is the statement made by the accused/appellant purporting to confess the fact that he had killed the deceased. In the instant case, it is apparent from the record that the confession was made in presence of the police as deposed by PW-1 & PW-4. According to Gendlal (PW-1) & Madanlal (PW-4), the police interrogated the accused persons in the verandah of Daman

where they have confessed to have administered pesticide to Prahlad (deceased) as a result of which he died. Record also goes to show that the accused/appellants were taken into police custody on 21.4.2009 vide Ex.P-12 to Ex.P-16 and the confessional statement (Ex.P-7 to P-11) were recorded on 24.4.2009. Thus, it is clear that at the time of recording of confessional statement, the accused/appellants had been in custody. A glance of the documents Ex.P-7 & P-8 also reveal that the alleged confession was not made in the immediate presence of a Magistrate. Therefore, in view of Section 26 of the Evidence Act the statement purporting to be the confession is inadmissible in evidence, as the same cannot be proved against the accused/appellant. Section 26 of the Evidence Act reads as follows:-

“26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

21. For the foregoing reasons, we are of the considered view that none of the circumstances relied on by the prosecution in the instant case has been proved and they do not form a complete chain unerringly proceeding towards the appellants as the author of the crime. It does not exclude hypothesis of innocence in favour of the appellants.
22. In the result, the appeal is allowed. Impugned judgment of the trial Court is hereby set aside. The appellants are acquitted of the charge under Section 302 IPC. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge