

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 999 of 2008

- Gorelal S/o Dhanwar, aged about 40 years, R/o Village – Birnarayanpur, Kasdol, Distt. Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh through Kasdol, Dist. Raipur (CG)

---- Respondent

For Appellant : Shri Raghvendra Pradhan, Advocate.
For Respondent/State : Shri V. Goverdhan, Panel Lawyer.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Sanjay S. Agrawal

Judgment On Board

Per The Acting Chief Justice,

06/03/2017

This appeal arises out of the judgment of conviction and order of sentence dated 24.9.2008 passed by the First Additional Sessions Judge, Baloda Bazar in ST No.34/2007 convicting the appellant under Sections 302 & 201 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.500/- and RI for five years, pay a fine of Rs.500/- with default stipulations respectively.

02. In the present case, name of the deceased is Rukhman, who was residing as tenant of the accused/appellant. It is alleged that on 17.9.2007 Rukhman was found lying near the tree in the village in drunken condition. When PW-3 Toranlal Yadav, Sarpanch of the village, was informed about the same, he asked the accused/appellant to take

the deceased to his house and provide him some medicine so that he could become normal. Since then the deceased was missing and on 18.9.2007 his dead body was found in the jungle near the village where the appellant and the deceased were residing. Merg intimation Ex.P/6 was recorded at the instance of PW-3 on 18.9.2007. Dehati Nalishi Ex.P/19 was recorded on 19.9.2007 on the basis of merg enquiry against the appellant and his wife Smt. Dhanmat Bai (acquitted accused) under Sections 302, 201 & 34 of IPC. Thereafter, FIR (Ex.P/21) was registered against the accused persons under the aforesaid sections. Inquest over the dead body was prepared vide Ex.P/8 on 19.9.2007. Thereafter, the dead body was sent for postmortem, which was conducted on 19.9.2007 by PW-1 Dr. Ashok Kumar vide Ex.P/1 wherein he noticed a lacerated wound at right side of face, over right ear pinna, contusions over right cheek, left arm, swelling over right front side of head. In his opinion, the cause of death was cardio-respiratory arrest. However, the doctor did not express his opinion whether the death was homicidal in nature or not. After investigation, charge sheet was filed against the accused persons under Sections 302, 201, 34 of IPC followed by framing of charges by the trial Court accordingly.

03. So as to hold the accused persons guilty, the prosecution examined 12 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them 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 while acquitting co-accused Smt. Dhanmat Bai of all the charges, convicted and sentenced the 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 the main piece of evidence relied upon by the trial Court for holding the appellant guilty is the statement of PW-3 Toranlal Yadav, who is said to have last seen the deceased alive in the company of the appellant. However, the evidence of this witness does not reflect so and therefore, he is not a witness of last seen.

(iii) that the other piece of evidence against the appellant is the so-called extra-judicial confession made before PW-5 Sukhram Sonkar and PW-11 Shankarlal but the statements of these witnesses are not reliable for being contradictory to each other and full of omissions as well.

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 illegality or infirmity in it warranting any interference by this Court.

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

08. PW-1 Dr. Ashok Kumar conducted postmortem on the body of the deceased on 19.9.2007 vide Ex.P/1 and noticed a lacerated wound at

right side of face, over right ear pinna, contusions over right cheek, left arm and swelling over right front side of head. In his opinion, the cause of death was cardio-respiratory arrest. However, in the Court he has deposed that the cause of death could not be stated with certainty. In the postmortem report he has also not mentioned whether the death was homicidal in nature. In cross-examination he has admitted that the injuries suffered by the deceased could be caused due to fall on blunt object.

09. PW-2 Ghasiram Sahu, Patwari, prepared the spot map Ex.P/5. PW-3 Toranlal Yadav, Village Sarpanch, lodged the merg intimation. He has stated that he knew the accused/appellant and the deceased. On the date of incident the accused/appellant came to him and informed that the deceased is there in his house in drunken condition, on which he advised the appellant to take him to doctor or give him some sour edibles. Thereafter, the appellant went back to his house and on the next day he came to know that the deceased has died. When he asked the appellant about the death of the deceased, the appellant told him that he died due to consumption of liquor. He states that body of the deceased was found in the jungle and then he lodged merg intimation. Subsequently, this witness was declared hostile.

10. PW-4 Tilak Yadav has stated that when the villagers enquired from the appellant about the deceased, initially the appellant did not disclose anything but later on informed that the deceased has expired in the jungle, however, he did not tell as to how the deceased expired. Thereafter, the villagers had gone to the jungle where dead body of the deceased with injury on his face was found. Though he was declared

hostile but further stated that he had disclosed everything to the police.

PW-5 Sukhram Sonkar is a witness before whom extra-judicial confessions is alleged to have been made by the appellant. He has stated that acquitted accused Dhanmat Bai came to his house and informed him that the deceased is lying in drunken condition near *mahua* tree. When he reached there he found the deceased alive, he advised Dhanmati Bai to take the deceased to doctor and thereafter went back to his house. He states that he is not aware as to what happened thereafter and on the next day he came to know from the villagers that the deceased has expired near the jungle. He further states that on being asked by the villagers the accused/appellant had only disclosed that the deceased is lying near Lamidogri. However, on being further questioned by the prosecution, this witness states that when the appellant was asked about the deceased by the Sarpanch and other villagers, he disclosed that dead body of the deceased is lying at Lamidogri and he has covered the dead body with leaves. He has denied the suggestion that acquitted accused Dhanmat had disclosed that the deceased was made to drink liquor mixed with poison. In cross-examination he states that the accused/appellant was tied with rope, however, he was not beaten. He states that at the spot acquitted accused Dhanmat Bai had provided lemon water to the deceased and then on being asked by the appellant, the deceased was shifted from sunlight to a shaded place and at that time the deceased was conscious. He further states that there are two groups in the village, the appellant was in one group whereas the Sarpanch was in another. He admits that there was no ill-will between the appellant and the deceased.

11. PW-11 Shankarlal, another witness before whom extra-judicial confession is alleged to have been made by the appellant, states that he saw the deceased lying near the tree and that the appellant was airing the deceased. He asked the appellant to provide treatment to the deceased and then the appellant disclosed to him that the deceased has consumed poison and thereafter he moved away from there. He states that on the second day the appellant disclosed before the villagers that the deceased has gone to his house. However, on being asked again to state the correct facts, the appellant disclosed that after committing murder of the deceased he has thrown his dead body because the deceased was having illicit relations with his wife Dhanmat Bai and that is why his wife Dhanmat had mixed poison in the liquor of the deceased. In cross-examination this witness has stated that the appellant also disclosed before him that for the past three days, the deceased had not eaten anything and that he was drunken. In para-15 he has stated that he did inform the police that the appellant also confessed that the acquitted accused had given poison to the deceased, however, when he did not die he also caused stone injury to him. If this statement is not recorded by the police he could not tell the reason. He admits that when the appellant was not disclosing anything to them, they caught hold of him and tied him with the rope. He states that body of the deceased was visible from the road. There are material contradictions and omissions in the statement of this witness from that of his diary statement.

12. PW-6 Sukhsingh, PW-8 Mohan, PW-12 Sohan have not stated anything specific against the appellant. PW-7 Bharatlal is a witness of inquest, patwari map and seizure. He has also not stated anything

specific against the appellant. PW-9 RS Joshi did MLC of acquitted accused Dhanmat Bai vide Ex.P/17 and found no injury on her person. PW-10 Binuram Mandavi, investigating officer, has supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that the main piece of evidence against the appellant in this case is the so-called extra-judicial confession made by him before PW-5 Sukhram Sonkar and PW-11 Shankarlal. It is a well settled principle of law that the evidence of extra-judicial confession is a weak piece of evidence and before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. In the present case, from the statements of these two witnesses it is apparent that before the appellant could make such statement, he was tied with the rope and was not free to make such confession. This apart, both these witness are not consistent and have deposed certain things which run contrary to each other. Thus, having given a thoughtful consideration to the evidence of these witnesses on the point of extra-judicial confession, we find it difficult to hold that the appellant had in fact made such confession before these witnesses voluntarily, without any coercion or pressure. Being so, this piece of evidence i.e. extra-judicial confession cannot be taken as an incriminating circumstance against the appellant.

14. As regards the evidence of last seen, the prosecution has cited PW-3 Toranlal Yadav as a witness of last seen. However, from perusal of his statement it is evident that he had not last seen the deceased alive with the appellant but in fact the appellant himself had come to

him and informed that the deceased is there in his house in drunken condition, on which he advised the appellant to take the deceased to doctor or provide him some sour edibles. From his entire statement, it does not reflect that he had last seen the deceased in the company of the appellant. Therefore, this circumstance of last seen has also not been proved by the prosecution against the appellant as required under the law.

15. Even the prosecution has failed to prove cause of death of the deceased. At some place, it is the prosecution case that wife of the appellant administered poison to the deceased whereas as per postmortem report, certain injuries were noticed on the person of the deceased and it was not a case of death by poison. The autopsy surgeon has merely stated that cause of death was cardio-respiratory arrest and has not stated anything further whether the death was homicidal or not.

16. 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.

17. Thus, keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that there is no legally admissible evidence on record to connect the appellant with the crime in question. All the circumstances even if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, none of the circumstances has been proved to the hilt by the prosecution beyond all reasonable doubt, be it extra-judicial confession or last seen. In a case resting on circumstantial evidence, the prosecution is required to take extra caution while collecting evidence and proving the same. It must be proved in such a manner which could lead only one inference that it is the accused/appellant alone who was the perpetrator of the crime in question. However, in the case in hand, the prosecution has utterly failed to establish a complete chain of circumstantial evidence against the appellant. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and he is entitled for acquittal of the charges by giving him benefit of doubt.

18. In the result, the appeal is allowed. The impugned judgment, insofar as it relates to the appellant, is hereby set aside and the appellant is acquitted of charges under Sections 302 & 201 of IPC by giving him benefit of doubt.

The accused/appellant was granted bail on 1.9.2009 by this Court, however, counsel for the appellant has informed that on account of poor financial condition, the appellant could not furnish bail bonds and

is still languishing in jail. If it is so, let the appellant be set free forthwith, if not required to be detained in connection with any other offence. After release of the appellant, the trial Court to inform the Registrar (Judicial) of this Court about the same.

Sd/

(Pritinker Diwaker)
Ag. Chief Justice

Sd/

(Sanjay S. Agrawal)
Judge

Khan