

HIGH COURT OF CHHATTISGARH, BILASPUR
Judgment reserved on 4-9-2017
Judgment delivered on 6-10-2017
HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 497 of 2008

1. Shankarlal s/o. Phool Singh, aged about 25 years.
2. Itwari Ram s/o. Phool Singh, aged about 27 years.

Both residents of Gram Korgenda, Dharmutola, Police Station Gaindatola,
District Rajnandgaon (CG).

---- Appellants

Versus

- State of Chhattigarh through Police Statikon Gaindatola, District
Rajnandgaon (CG)

---- Respondent

For Appellants : Mr. Rakesh Thakur, Advocate.

For Respondent/State : Mrs. Smita Ghai, Panel Lawyer.

Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 3-3-2008 passed by the Sessions Judge, Rajnandgaon (for short, "the trial Court") in Sessions Trial No.101 of 2006, whereby the trial Court after holding the appellants guilty for commission of murder and causing disappearance of evidence of the offence, convicted the accused/appellants under Sections 302 read with Section 34, 201 of the IPC and Section 5 of Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005 and

sentenced them to undergo imprisonment for life and to pay fine of Rs. 2000/-, RI for two years and to pay fine of Rs.1000/- and RI for two years and to pay fine of Rs.1000/- respectively, with default stipulations.

2. In the present case, name of the deceased is Basanti Bai. The appellant No.1 Shankarlal is husband of the deceased and the appellant No.2 Itwari Ram is elder brother of Shankarlal. Death of Basanti Bai took place in the intervening night of 25/26-7-2006 at village Korguda (Dharmutola). On 26-7-2006 at about 2.20 pm one Gopal, uncle of the deceased gave information to Police Station Gaiindatola about the death of Basanti Bai whereupon merg intimation (Ex.P/3) was registered. After merg intimation Executive Magistrate of Chhuriya reached the spot and got prepared inquest report of the dead body which was lying on the mat in the bed room of the house as per Ex.P/2. Thereafter, post-mortem was conducted as per Ex.P/7-A and first information was lodged as per Ex.P/6.. During investigation, statements of the witnesses were recorded.
3. After completion of investigation, charge-sheet was filed against appellants before the Court of Judicial Magistrate First Class, Rajnandgaon, who in turn committed the case to the Court of Sessions. The trial Court framed charge under Section 302 of the IPC in alternate under Sections 304-B, 201 of IPC and Section 6 of the Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005, to which appellants did not plead guilty and trial was conducted.

4. To substantiate the charge, prosecution examined 13 witnesses in all. After recording the statements of prosecution witnesses, statements of the appellants were recorded under Section 313 of the Cr.P.C. The trial Court after considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.
5. Learned counsel appearing for the accused/appellants submits as under:

(I)	The cause of death of Basanti Bai is not established, as per post-mortem conducted by Dr. S.S. Devdas (PW/10), he simply mentioned in his report that cause of death was due to asphyxia and admitted in his statement that the same may be caused due to general disease, therefore, it cannot be held that death is homicidal.
(ii)	That if the evidence of the witnesses adduced by the prosecution is taken as it is, they are hearsay witnesses and the same is not legally admissible evidence and no finding can be recorded on the basis of such statements.
(iii)	Not a single witness of village Korguda (Dharmutola) where incident took place has been examined in support of the prosecution case and the witnesses adduced from other village are not real witnesses of the issues in question.

6. Per contra, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
7. We have heard counsel for the parties and perused the material on record.
8. Shyamlal (PW/1) is father of the deceased who has stated that after receiving information of death of the deceased, his brother

rushed to the place of incident. He further deposed that when her daughter (deceased) visited his house prior to the incident, she spoke about the quarrel by her father-in-law, mother-in-law, brother-in-law (Jeth) and sister-in-law (Jethani) and also informed him that they identified her as magician (Tonhi). PW/2 Guharam is uncle of the deceased, PW/3 Keshav, who is brother of the deceased, PW/5 Jaisingh, who is brother of the deceased, PW/6 Gopal, who is uncle of the deceased and Harichand (PW/12) who is uncle of the deceased have also deposed on the same line which was stated by PW/1 Shyamlal.

9. PW/10, Dr. S.S. Devdas conducted the post-mortem of the deceased on 27-7-2006 at Community Health Centre, Dongargan and after examination he noticed the following conditions of the deceased:

“A. on dissection of left side of lower jaw, upper end sub cutaneous haemorrhage seen.

B. On dissection of right side of lower Jaw upper end, sub cutaneous haemorrhage seen”.

He opined that deceased died due to asphyxia resulting from smothering.

10. The first point for consideration is whether the evidence of relatives of deceased as mentioned above can be used against the appellants to fasten criminal liability upon them. From the statements of the witnesses, it is clear that whatever spoken by the deceased during visit of their house had been reproduced by them before the Court and as per Section 60 of the Indian

Evidence Act, 1872, the same is hearsay evidence and is inadmissible evidence.

11. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri**, reported in **(2011)2 SCC 532**, Hon'ble the Supreme Court has held as under:

The reasons why hearsay evidence is not received as relevant evidence are:

- (a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me"
- (b) truth is diluted and diminished with each repetition and
- (c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible".

12. As the evidence adduced by the prosecution in this regard is inadmissible, the same cannot be basis for inference against the appellants and we have to go for other aspect of the matter. No one is examined by the prosecution from the village Korguda to give

persuasive evidence that at the relevant time the appellants were present in the house where incident took place. From the record it appears that initially five persons namely Shankarlal, Itwari Ram, Ahilya, Phool Singh and Kulwantinbai were charge-sheeted for the offence and their trial was conducted by the trial Court and three persons out of five were acquitted on the ground that inference cannot be drawn against these three persons.

13. In **Joydeb Patra and others vs. State of West Bengal**, reported in 2014 (12) SCC 444, Hon'ble the Supreme Court has held as under:

“We pointed out that [Section 106](#) of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.”

14. To invoke Section 106 of the Indian Evidence Act, the main point to be established by the prosecution is that the accused persons were present in the house at the relevant time. Out of 13 witnesses examined by the prosecution, no one has stated that any of the appellants was present in the house between 25-7-2006 to 27-7-2006 which is the time within which the death of the deceased occurred. As there is no iota of evidence to hold that any of the appellants was present during the period

of incident and no such question was asked by the trial Court during their examination under Section 313 Cr.P.C., regarding their presence in the house where the dead body of the deceased was found. When presence of any of the appellants is neither established by the prosecution and the trial Court has also not put any question regarding their presence in the house, Section 106 of the Act has no application in the peculiar circumstances of the case.

15. On an overall consideration of the evidence available on record, it would be, in our view, wholly unsafe to hold the appellants guilty of the charge of murder of Basanti Bai who is wife of the appellant Shankarlal. The circumstantial evidence adduced by the prosecution in our assessment falls short of the requirement in law to record a finding of guilt against the appellants without any element of doubt whatsoever.
16. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of "may be true" but has to essentially elevate it to the grade of "must be true". In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused/appellants.
17. On minute scrutiny of the evidence, we thus consider it to be wholly unsafe to maintain conviction of the appellants as recorded by the trial Court and benefit of doubt should be extended to them and they are liable to be acquitted.

18. In the result, the appeal succeeds and is, accordingly allowed. The impugned judgment is hereby set aside. The appellants are acquitted of the charges under Section 302/34, 201 of IPC and Section 5 of the Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005 framed against them. The appellants are reported to be in jail and they be released forthwith, if not required in any other case.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju