

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 788 of 2004

- Smt. Tara Bai W/o Shivnarayan, Aged About 28 Years R/o Village Biroudidand, Police Station Kelhari, District Korla, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Kelhari, District Korla, Chhattisgarh.

---- Respondent

For Appellant : Shri H.S.Ahluwalia, Advocate

For Respondent/State : Shri Avlnash Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board by P.Diwaker

17/04/2017

This appeal arises out of judgment and order dated 03.09.04 passed by the Additional Sessions Judge, Manendragarh, District Korea

in Sessions Trial No. 384/2003 convicting the accused/appellant for the offence punishable under Section 302/201 IPC and sentencing her to undergo imprisonment for life and to pay fine of Rs. 1,000/- u/s. 302 and to undergo RI for two years with fine of Rs. 500/- u/s. 201 with default stipulations.

2. Facts of the case in brief are that accused/appellant Tara Bai was allegedly having illicit relation with Ram Narayan Sahu, husband of deceased Vimla Bai. Said Vimla Bai was the sister-in-law/Jethani of accused/appellant Tara Bai. It is said that deceased saw the appellant Tara Bai and deceased appellant Ram Narayan in an objectionable condition, some quarrel took place between the present appellant and deceased Vimla Bai, intimation was given to Ram Narayan Sahu by Tara Bai and thereafter deceased appellant Ram Narayan, Shiv Narayan-husband of Tara Bai and Banarsi, at first assaulted Vimla Bai with hands and fists and then committed murder by hanging her from the roof. The incident was allegedly witnessed by Bhoopesh Kumar (PW-9), son of deceased Vimla Bai and deceased accused Ram Narayan Sahu. On 17.07.03 itself statement of Bhoopesh Kumar, son of the deceased was recorded however in his statement, he has not made any allegation against any of the accused and has merely stated that the deceased was not well on account of which she fell down and sustained injuries resulting her death. After about three months of the incident, another case diary statement of Bhoopesh Kumar (PW-9) was recorded on 19.10.03 wherein he deposed that his mother was killed by his father Ram Narayan, aunt Tara Bai, uncle Shiv Narayan and grand

father Banarsi. At the instance of Chhatrapal (PW-1) entry was made in the rojnamcha sanha vide Ex. P-22 and thereafter *dehati merg* Ex.P-23 was recorded on 17.07.03, inquest on the body of deceased was prepared vide Ex.P-5 and body was sent for postmortem examination which was conducted by Dr. Puran Singh (PW-11) vide Ex.P-13 on 17.07.03 and he found mark of impact abrasion on the neck and marks of bruises on right leg, though no definite opinion was given by him regarding the mode and manner of death, however Viscera was kept for further examination. On 01.08.03, FIR (Ex.P-39) was lodged against accused/appellants under Sections 302,201,34 IPC. After investigation, charge sheet was filed against the accused/appellant and acquitted accused under Sections 302/201 IPC and accordingly charges were framed.

3. In order to establish the guilt of the accused persons prosecution has examined 15 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned has acquitted co-accused Shiv Narayan and Banarsi of the charges levelled against them but has convicted and sentenced the deceased/accused Ramnarayan and present appellant Tara Bai. Ram Narayan and Tara Bai both preferred the present appeal and were granted bail by this Court however during pendency of this appeal Ram

Narayan Sahu expired and therefore the present appeal confines only in respect of appellant Tara Bai.

5. Contention of Shri Ahluwalia, counsel for the appellant is that

i) the appellant has been convicted solely on the basis of the statement of Bhoopesh Kumar (PW-9) however considering the material contradictions and improvement in the statement of the witnesses, the appellant could not have been convicted.

ii) Bhoopesh Kumar (PW-9) in his earlier diary statement Ex.D-1A recorded on 17.07.03 has not made any allegation against the appellant and after about three months of the incident gave another statement dated 19.10.03 making allegation against the appellant and other accused persons.

iii) It has been argued that no justification whatsoever has been assigned by Bhoopesh Kumar (PW-9) for making another statement after an inordinate delay and implicating all the accused persons.

iv) the accused/appellant cannot be convicted solely on the basis of the statement of Bhoopesh Kumar (PW-9) who is completely unreliable and untrustworthy witness.

v) on the same set of evidence, Shiv Narayan Sahu and Banarsi have been acquitted and thus the accused/appellant Tara Bai ought not have been convicted based on the evidence adduced by the prosecution.

vi) no seizure has been affected from the accused/appellant.

vii) the autopsy surgeon has not given any definite opinion in respect of the cause of death.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Bhoopesh Kumar (PW-9) is son of the deceased and is the most important witness of the case. He has stated that deceased/appellant Ram Narayan Sahu was his father whereas acquitted accused Shiv Narayan is his uncle and acquitted accused Banarsi is his grandfather. He has further stated that the present appellant is his aunt whereas deceased Vimla Bai was his mother. According to him, his father was having illicit relation with the present appellant and it was seen by his mother and on the date of incident when his mother was taking bath, the present appellant called his father who was working in the field, gave some information to him and then his father started beating his mother with club and when he tried to intervene he was also slapped by his father. According to him, after sometime accused/appellant also started beating his mother and when he tried to intervene his father asked him to go away. Thereafter after removing her sari, he tied her neck and hanged on the roof. Thereafter present appellant and his father left for the fields and returned in the evening. He admits that in

his earlier diary statement he did not inform the police about the incident and the reason which has been assigned by him is that he was threatened by his father and out of fear he did not disclose about the incident to the police. When he was confronted by his case diary statement he has stated that for the first time he did not disclose to the police that his mother was killed by the accused persons. He has stated that twice the police came to record his statement and then he informed about the entire incident. According to him it was incorrect that he kept quiet for about three months. There are material contradictions in the court statement of this witness from that of his diary statement Ex.P-2. Jirjodhan (PW-2), Parasram (PW-3), Satyanarayan (PW-4), Laxman Prasad (PW-5), Rakesh Kumar (PW-6), Chhotelal (PW-7) & Kajal (PW-8) have not stated anything against the accused/appellant and have been declared hostile. Dr. Puran Singh (PW-11) conducted postmortem examination on the body of the deceased and found mark of impact abrasion on the neck and marks of bruises on right leg, though no definite opinion was given by him regarding the mode and manner of death. According to him, the exact cause of death could not be given and he has nowhere stated that the death was homicidal in nature. Pranvati (PW-14) has stated that about a month after the incident she was informed by Bhoopesh Kumar (PW-9) that it is the accused persons who had committed the murder of the deceased. Suraj Singh (PW-15) is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that but for the statement of Bhoopesh (PW-9) there is no other evidence against the

accused/appellant showing her involvement in the commission of the murder of the deceased. Diary statement of Bhoopesh Kumar (PW-9) was recorded twice i.e. on 17.07.03 and thereafter on 19.10.03. In his earlier diary statement he has not deposed anything against the accused persons and has stated that the deceased was suffering from some ailment on account of which she fell down and sustained injuries resulting her death. However, in the subsequent statement he has stated that his mother died due to the assault made by accused persons. In the court, Bhoopesh Kumar (PW-9) has admitted the fact that twice his statement was recorded by the police but no justification was given by him as to why there was delay in recording his statement Ex.D-2. That apart, there are material contradictions in the court statement of this witness from that of his diary statement. As per autopsy surgeon, no definite opinion could be given regarding the cause of death.

10. Considering the facts and circumstances of the case and the entire evidence as adduced by the prosecution, we are of the view that the prosecution has failed to establish its case beyond reasonable doubt against the appellant and she is entitled to get the benefit of doubt. Furthermore, the statement given by Bhoopesh Kumar (PW-9) who is the most important witness, is also not trustworthy which can be made basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt.

11. Generally in the criminal cases, discrepancies in the evidence

of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the Court, but if these contradictions create such serious doubt in the mind of the Court about the truthfulness of the witnesses and it appears to the Court that there is clear improvement, then it is not safe to rely on such evidence. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of eyewitnesses will not tilt the benefit of doubt in favor of the accused but when the contradictions in the evidence of prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases accused gets the benefit of doubt.. Hence we deem it appropriate to set aside the judgment of the Trial Court. Accordingly the appeal is allowed. Accused/appellant is reported to be on bail and therefore no further order is required.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge

