

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 433 of 2006

- Dharam Nishad, Aged about 30 years, Son Shri Malli Kenwat, Resident of Kosagondhi, P.S. Gurur, District Durg (Chhattisgarh)

---- Appellant

Versus

- State Of Chhattisgarh, Through Station House Officer Police Station Gurur, District Durg (CG)

---- Respondent

For Appellant	: Shri U.R.Khosley, Advocate
For Respondent/State	: Shri Adil Minhaj, P.L.

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

Judgement on Board

Per Pritinker Diwaker, J.

31/08/2017

This appeal has been preferred against the judgment and order dated 17.04.2006 passed by the Additional Sessions Judge, Balod, district Durg in Sessions Trial No. 260/2005 convicting the accused/appellant for the offence punishable under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- u/s. 302 and to undergo RI for three years with fine of Rs. 500/- u/s. 201 plus default stipulations.

2. In the present case, name of the deceased is Tameshwari, sister of accused/appellant. As per prosecution case, deceased Tameshwari used to reside in the room located at Kali mandir campus, village Kosagondi, Tahsil Gurur, District Durg. Case of the prosecution is that

there used to have some dispute between the appellant and deceased and on the date of incident, deceased had a quarrel with her mother Shakun (PW-4). After a while, her brother Dharam (Appellant) reached there and started quarreling and threatening the deceased, assaulted and committed her murder by strangulation. To give a different picture of the story, accused/appellant tied the neck of the deceased with a piece of sari and disclosed before the villagers that she died after committing suicide. On 19.07.05, at 5.00 p.m., merged intimation Ex.P-12 was lodged by the appellant informing that the deceased died after hanging herself and on seeing her, the appellant had cut the rope by a sickle and the body was brought down, however it was noticed by the villagers that she had died. Inquest on the body of deceased was prepared vide Ex.P-5 and body was sent for postmortem examination which was conducted by Dr. R.S. Bharadwaj (PW-8) vide Ex.P-10 on 20.07.2005 who opined that the cause of death was asphyxia, shock and venous congestion due to hanging and death was homicidal in nature. According to him, there were multiple injuries and as per query report Ex.P-11 injury No.1 could be caused by hard and blunt object while other injuries could be caused by nails of accused during resistance by victim. the presence of ligature mark above is not diagnostic of death from hanging. On 20.08.05m FIR Ex.P-14 was registered under Section 302 IPC against unknown persons. During investigation, the police reached to the conclusion that it is the accused/appellant who committed the murder of the deceased. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 and 201 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 9 witnesses. Statement of the

accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. This apart one defence witness has also been examined.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is very weak and the chain of circumstantial evidence is not complete.

ii) the main piece of evidence against the appellant is the so called extra judicial confession made before Bahoran Singh (PW-3) and Abhay Ram Sahu (PW-7). However these witnesses have not stated that accused/appellant has made extra judicial confession that he had killed the deceased.

iii) that even otherwise the extra judicial confession is a weak type of evidence and unless it is corroborated by some other piece of evidence, it would not be safe for this court to uphold the conviction of the appellant.

v) present is a case of no evidence but yet the appellant has been convicted.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is

in accordance with law and there is no infirmity in the same.

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

8. Bahoran Singh (PW-3) and Abhay Ram Sahu (PW-7) have been examined by the prosecution as witnesses to extra judicial confession however both these witnesses have nowhere stated that the accused/appellant made extra judicial confession before them that he had committed murder of the deceased. In fact both these witnesses have been declared hostile. Rupesh Kumar (PW-1) has stated that he saw the deceased and her mother quarreling when one old lady intervened and pacified the quarrel. After a while, Dharam brother of the deceased came and assaulted her, threw on the ground and slapped her. He has stated that thereafter the deceased went inside and locked the door which was broke open and she was found sitting in the room who was made to understand by him and then he returned to his house. He has further stated that after half an hour when he saw the accused/appellant coming out from the temple, he asked him as to from where he was coming, he informed that the deceased has committed suicide. Mehanguram Nishad (PW-2) is a witness to quarrel between the deceased and her mother. He has further stated that on the date of incident at about 1.00 noon, he saw the accused/appellant and his mother were gently rubbing the neck of the deceased and pouring water in the mouth and when he asked the appellant as to what happened, the appellant informed him that on coming to know that deceased was quarreling with his mother, he slapped her and on account of which she committed suicide by hanging herself. He has further stated that after hearing the noise that Tameshwari has hanged herself he also came out, reached the place of occurrence and saw the

deceased. Shakun Bai (PW-4) is the mother of appellant and deceased has not stated anything against the accused/appellant and has been declared hostile. Goverdhan Singh Dewangan (PW-5) is the patwari who prepared the spot map. Dr. R.S.Bharadwaj (PW-8) is the doctor who conducted postmortem examination on the body of deceased vide Ex.P-10 on 20.07.2005 and opined that the cause of death was asphyxia, shock and venous congestion due to hanging and death was homicidal in nature. According to him, there were multiple injuries and as per query report Ex.P-11 injury No.1 could be caused by hard and blunt objection while other injuries could be caused by nails of accused during resistance by victim. the presence of ligature mark above is not diagnostic of death from hanging. D.S.Dehari (PW-9) is the Investigating Officer who has done the investigation.

Doojram Nirmalkar (DW-1) has stated that earlier also twice the deceased made an attempt to commit suicide.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence regarding the involvement of the appellant in the commission of the offence. The entire case of the prosecution is based on circumstantial evidence. We may also make a reference to the various judgments on circumstantial evidence in the matter of ***Mustkeem v. State of Rajasthan* (4(2011)11 SCC 742:(2011) 3 SCC(Cri) 473**; in the matter of ***Sharad Birdhdichand Sarda v. State of Maharastra* (1984) 4 SCC 116 : 1984 SCC(Cri) 487, in para 153**, wherein some key principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient

features once again which are as under : (SCC p.185)

- i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely “may be” fully established;
- ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- iii) The circumstances should be of a conclusive nature and tendency;
- iv) they should exclude every possible hypothesis except the one to be proved and
- v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

11. In ***State of U.P. v. Ashok Kumar Shrivastava (1992) 2 SCC 86: 1992 SCC (Cri) 241: 1992 Cri LJ 1104***, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

12. A reference may be made to a later decision in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116: 1984 SCC(Cri) 487***, wherein while dealing with circumstantial evidence, it

has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established.

13. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence, the chain of circumstances must be so complete that they lead to the only conclusion, that is, the guilt of the accused. Taking the cumulative effect of the evidence we are of the view that the evidence led by the prosecution is a weak type of evidence and the prosecution had failed to establish its case beyond the shadow of reasonable doubt. Only on the basis of last seen the accused cannot be convicted for the offence of murder.

14. Thus, after taking all the facts and circumstances in consideration we do not find ourselves in conformity with the findings arrived at by the Learned trial court. Accordingly, the appeal filed by the appellant is allowed and the judgment impugned convicting and sentencing the appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. The appellant is on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge

