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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 486 of 2006

- Radhe @ Radheshyam, S/o Punau, aged about 21 years, Occupation - Cultivator, R/o Turandul, P.S. Korar, District Kanker (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station, Korar, District Kanker (CG)

---- Respondent

For Appellant : Shri Prakash Tiwari, Advocate.
For Respondent/State : Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

13/01/2017

This appeal arises out of the judgment of conviction and order of sentence dated 2.6.2006 passed by the First Additional Sessions Judge, Kanker, Distt. Kanker in ST No.440/2005 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.500/- with default stipulation.

02. In the present case, name of the deceased is Punaauram, father of the accused/appellant. As per prosecution case, the deceased was a habitual drinker, on account of which there used to be quarrel frequently in the family and the deceased used to beat his wife Khorinbai (PW-6). For this reason, Khorinbai was advised by the village head to live separately. On the date of incident i.e. 30.6.2005 deceased Punaauram was forcibly taking his wife along with him and on



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the way he also beat her. It is said that the accused/appellant intervened in the matter and caused club injury on the head of the deceased resulting in his death. FIR (Ex.P/23) was lodged on 1.7.2005 at 7.10 pm by PW-8 Jagatram, Village Patel, based on which offence under Section 302 of IPC was registered against the appellant. Immediately thereafter mereg intimation Ex.P/22 was recorded. Inquest over the dead body was prepared vide Ex.P/8 on 2.7.2005 and thereafter, the dead body was sent for postmortem, which was conducted on the same day by PW-7 Dr. P. Narethi vide Ex.P/14 wherein he noticed two cut wounds and opined that the cause of death was coma due to excessive bleeding. Injured Khorinbai (PW-6) was also medically examined by PW-7 vide Ex.P/16 who noticed simple injury on her hip joint. Memorandum of the appellant was recorded vide Ex.P/1, pursuant to which club and vest of the appellant were seized vide Ex.P/2 & P/3 respectively. As per FSL report (Ex.P/29), blood was noticed on the club and vest. However, there is no serological report. After investigation, charge sheet was filed against the appellant under Section 302 of IPC and accordingly, charge was framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 13 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

- (i) that PW-6 Khorinbai, wife of the deceased and mother of the appellant, has turned hostile.
- (ii) that PW-4 Budhram, PW-5 Phulsingh & PW-8 Jagatram are hearsay witnesses and as such, not reliable.
- (iii) that the appellant has been convicted mainly on the basis of seizure of club (Ex.P/2) and vest (Ex.P/3) on his memorandum (Ex.P/1), which contained blood as per FSL report (Ex.P/29), but in absence of serological report confirming origin of blood etc. the said circumstance is of no consequence.
- (iv) that it is the deceased who first caused injury to his wife (PW-6) as he was habitual drinker and used to quarrel with his wife for money.

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 its warranting interference by this Court.

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

08. PW-1 Dhanaji and PW-2 Punnuram are witnesses of memorandum Ex.P/1 and seizure (Ex.P/2 & P/3) of club and vest of the appellant. However, they have not fully supported the prosecution case. PW-3 Vijay Patel, Patwari, prepared the spot map Ex.P/5 & P/6. PW-4 Budhram, Village Kotwar, and PW-5 Phulsingh are hearsay witnesses. However, both these witnesses have stated that the deceased was in



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the habit of consuming liquor, he used to beat his wife, for which the matter was reported to the police. PW-6 Khorinbai, wife of the deceased and mother of the appellant, has turned hostile. She too has stated that as the deceased was a habitual drinker, he used to sell the paddy, on account of which there used to be quarrel in the family.

09. PW-7 Dr. P. Narethi conducted postmortem on the body of the deceased on 2.7.2005 vide Ex.P/14 and noticed following symptoms/injuries:

- (i) cut wound in left pinna,
- (ii) cut wound in back of left ear of size 5 x 2 x 1 cm,
- (iii) cut wound in forehead in frontal region of size 3 x 2 x 1 cm.

In his opinion, the cause of death was coma due to excessive bleeding and the death was homicidal in nature.

10. PW-8 Jagatram is the lodger of merged intimation and FIR. He is also a hearsay witness. He has not supported the prosecution case and has been declared hostile. PW-9 Dayaram, PW-10 Basant, PW-11 Gyan Singh and PW-12 Ramprasad have also turned hostile. PW-13 KR Pandey, investigating officer, has supported the prosecution case.

11. As per FSL report (Ex.P/29), blood was found on the seized articles i.e. club and vest of the appellant. However, there is no serological report on record confirming the origin of blood etc.

12. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence against the appellant connecting him with the crime in question. All the important prosecution witnesses have either turned hostile or are hearsay witnesses and as such, based on

their evidence no inference of guilt could be drawn against the appellant. Conviction of the appellant is based on the circumstantial evidence, mainly being the recovery of club and vest of the appellant, which was subsequently found to be stained with blood as per FSL report.

13. 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.

14. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that the trial Court held the appellant guilty on the basis of recovery of bloodstained club and vest at his instance. However, from perusal of the statements of memorandum and seizure witnesses i.e. PW-1 Dhanaji and PW-2 Punnuram, it is evident that they have not fully supported the prosecution case and no such disclosure statement was made by the appellant before these witnesses. This apart, though

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as per FSL report, blood was found on the aforesaid articles, but in absence of serological report, it could not be conclusively said that the blood so noticed on the articles was of the deceased. The prosecution ought to have been careful and vigilant in establishing its case, by proving each and every circumstance to the hilt, to negate the possibility of innocence of the appellant beyond all reasonable doubt. Unfortunately, it has not been done in the present case.

15. Thus, all the circumstances if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, though it raise suspicion against the appellant but merely on that basis it would not be safe to hold him guilty for a heinous offence under Section 302 of IPC. In these circumstances, the findings of guilt recorded by the trial Court are liable to be set aside and the appellant is entitled for acquittal of the charge by giving him benefit of doubt.

16. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charge under Section 302 of IPC. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-
(Pritinker Diwaker)

Judge

Sd/-
(R.C.S. Samant)

Judge