



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 822 of 2006**

1. Sant Ram Yadav S/o Jeet Ram Yadav, aged about 22 years, R/o village - Deori, Police Station - Seepat, District Bilaspur (C.G.)
2. Mahesh Yadav S/o Lahari Yadav, aged about 32 years, R/o village Kotmisonar, Police Station - Akaltara, District Janjgir-Champa (C.G.)

---- Appellants

Versus

- State Of Chhattisgarh, Through : Station House Officer, Police Station - City Kotwali, District Bilaspur (C.G.)

---- Respondents

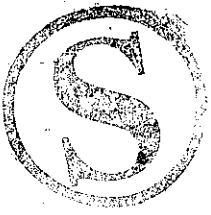
For Appellants	:	None even in the 4 th round.
For Respondent/State	:	Shri Neeraj Kumar Mehta, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****03/02/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 06.11.2006 passed by 9th Additional Sessions Judge (F.T.C.), Bilaspur in S.T. No.269/2006 convicting the accused/appellants under Section 302 read with section 34 IPC & and sentencing them to undergo imprisonment for life with fine of Rs.100/- each plus default stipulations.

02. In the present case, name of the deceased is Manoj Jhariya. As per prosecution case, deceased Manoj Jhariya was residing in the house of one Shail Bai (PW/2). On or around 19.04.2006, Shail Bai



29

(PW/2) had gone to her parent's house and deceased Manoj was residing all alone. It is said that on 19.04.2006 accused/appellants committed murder of the deceased and took his bicycle to village Devri in the house of Lakhanlal (PW/5). On 22.04.2006 Shail Bai (PW/2) returned to her house and noticed foul smell coming from it. While she was looking for the cause of this foul smell, she found dead body of deceased lying on the back side of her house. Merg intimation (Ex.P/4) was recorded on 22.04.2006 at the instance of Shail Bai (PW/2). Inquest on the dead body of deceased was conducted on 23.04.2006 vide Ex.P/7 and thereafter dead body was sent for postmortem to CIMS, Bilaspur vide Ex.P/14-A. On the same day, postmortem examination on the body of deceased was conducted by Dr. V.K. Verma (PW/6) who gave his report Ex.P/14 and found following injuries/symptoms:-

- (i) Whole body was extensive decomposed. Eyes were semi decomposed and protruded. Hair were not present. Tongue was semi decomposed and protruded. Peeling off of skin.
- (ii) Lacerated wound of 3 x 5 cm over left temporal region.
- (iii) Small bone deep wound on ankle of right leg.

The autopsy surgeon opined that the cause of death was asphyxia due to extensive throttling and complicated fracture of skull and mandible by heavy blunt object.

03. After receiving postmortem report and merg inquiry, F.I.R. (Ex.P/16) was registered on 24.04.2006 under Section 302 IPC against the unknown person. On 24.04.2006 memorandums of the accused/appellants were recorded vide Ex.P/8 and P/9, based on which, one bicycle allegedly belonging to deceased was recovered



vide Ex.P/10 from the house of Lakhan Lal (PW/5).

04. After investigation, charge sheet was filed against the accused/appellants under Section 302/34 IPC and accordingly charges were framed against them by the trial Court.

05. So as to hold the accused/appellants guilty, the prosecution examined as many as 10 witnesses. Statements of the accused/appellants 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.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has recorded the conviction of the accused/appellants mainly on the evidence of last seen by Paramjeet Singh (PW/4).

07. Learned State counsel supporting the impugned judgment submits that the conviction of the appellants is in accordance with law and there is no infirmity in the same.

08. We have perused the material available on record.

09. Chhatlal Kashyap (PW/1) is patwari who prepared spot map vide Ex.P/1. Shail Bai (PW/2) is lodger of merg intimation report in whose house the deceased was residing. She has stated that she was working in the house of Paramjeet and Jashpal Singh, and in the Jashpal's house deceased was also working. She used to treat the deceased like her son. She has further stated that she had gone to her parents' house, thereafter, she has been declared hostile. This witness, in para 3, has stated that she never made any statement before the police as recorded vide Ex.P/3. According to this witness, her thumb impression was taken

FBI

on the document but she never lodged any such report. Ku. Mona (PW/3) is daughter of PW/2. She too has been declared hostile.

10. Paramjeet Singh (PW/4) has stated that he resides near Punjab Tent House and near his house he has a small hut in which Shail Bai (PW/2) and her daughter were residing since 7-8 years. Shail Bai (PW/2) is her maidservant, he knows the accused persons as also deceased Manoj Jharia, who was working in Jashpal's house. He has further stated that deceased Manoj used to park his bicycle in the house of Shail Bai (PW/2) and he also used to have food in her house. This witness also used to park his motorcycle in a hut where Shail Bai (PW/2) was residing and used to keep one key of gate with him whereas another key was with Shail Bai (PW/2). On 19.04.2006, PW/2 had left her house handing over key to him saying that she was going to attend the marriage and on the same day at about 7-8 in the evening deceased Manoj took the said key from him. At about 9.00 pm when he had gone to park his motorcycle he found that lock of Shail Bai's house was in the gate and lock of gate was in the house of Shail Bai. As he was not having key of Shail Bai's house, he could not park his vehicle and returned to his house. Thereafter, he again went there at 10.00 pm to park his vehicle but came back as the lock was there in her house. He has also stated that while he was returning, he found son-in-law of PW/2, Mahesh Yadav to be there along with the deceased. He scolded deceased Manoj for exchanging lock of the door as he was fed-up, on this son-in-law of PW/2 came and opened the door, thereafter he parked his vehicle and came back to his house. On second day when he had gone to take his vehicle, he again found lock. As he was having key, he

opened the lock and found key bunch lying there on the ground which he took to his house. At that time there was no one in the house. He parked his vehicle till Saturday. This witness went on to state that on Saturday he received call from his brother to come early in the house. When he reached his house, his brother informed him that foul smell is coming from the house of Shail Bai (PW/2). On being searched, dead body of Manoj Jharia was found in the kitchen garden behind Shail Bai's house. Thereafter, this witness has been declared hostile. In cross-examination, this witness has stated that he identified the accused/appellant Sant Ram Yadav being the perpetrator of the crime at the instance of police in the identification, however, nothing was reduced to writing nor he signed any document. He has clarified that Tahsildar had not conducted any identification. This witness also went on to state that he identified the accused persons in the police station.

11. Lakhan Lal (PW/5) has turned hostile. Dr. V.K. Verma (PW/6) who conducted postmortem on the body of the deceased vide Ex.P/14 has opined that the cause of death of deceased was asphyxia due to extensive throttling complicated by fracture of skull and mandible by heavy blunt object. Jaspal Singh Chavda (PW/7) is witness to inquest (Ex.P/7). He, however, has stated that the accused persons had informed him that deceased was having illicit relation with Shail Bai (PW/2) and, therefore, deceased was killed. He is also a witness to memorandum of accused/appellants made under Ex.P/8, P/9, seizure of bicycle made under Ex.P/10 but has not supported the same. In the Court, he has failed to identify two accused persons and is not sure as to who is Sant Ram and who is Mahesh. R.S. Kushwaha (PW/8) is

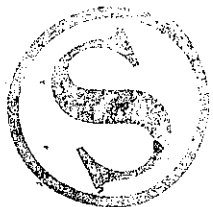


33

Investigating Officer who has duly supported the prosecution case. Jeevan Singh Jagat (PW/9) is constable who has helped in the investigation. R.N. Yadav (PW/10) did part of investigation.

12. Close scrutiny of the evidence makes it clear that but for doubtful evidence of last seen of Paramjeet Singh (PW/4) there is no other legally admissible evidence against the appellants. As per the evidence of Paramjeet Singh (PW/4), he has not specifically stated that on the date of incident he saw the accused/appellants in the company of deceased Manoj. On a combined reading of the entire deposition of this witness it appears that somewhat confusing statement has been made by this witness and from his statement it is not clear that he only saw the accused/appellants in the company of deceased. This witness has been declared hostile by the prosecution and thus it is wholly unsafe to base conviction of the appellant on the alleged single testimony of the last seen of this witness. His testimony does not inspire much confidence of this Court. Another aspect of this matter is the identification of the accused/appellants. PW/4 has identified the appellants in the Court and before that no identification whatsoever was conducted by prosecution to substantiate its case, thus, the identification of the accused/appellants create suspicion and is doubtful. On the strength of this witness, it would not be safe for this Court to uphold the conviction of the appellants.

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



F34

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. In the instant case, the deceased was seen last time in the company of accused/appellants on 19.04.2006 and after three days his body was found. There is three days time gap between last seen and death and, therefore, possibility of killing the deceased by someone else cannot be ruled out. The other piece of evidence against the accused/appellants is seizure of bicycle (Ex.P/10) from the house of Lakhanlal (PW/5) on the memorandum of the accused/appellants made under Ex.P/8 and P/9. Lakhanlal (PW/5), in para 1, has stated that neither accused/appellants had left any item in his house nor any recovery was made and has not supported the prosecution case at all. Even no identification of the bicycle establishing it to be that of the deceased is on record which could have been made a strong basis for convicting the appellants. Thus, the seizure of bicycle made under Ex.P/10 loses its significance. As per the evidence of PW/5, he has failed to identify the accused/appellants as to who is Sant Ram and who is Mahesh Yadav. The trial Court while considering the evidence of prosecution witnesses has assumed so many things which are not permissible in the eye of law.

15. Thus, considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Section 302/34 IPC is not based on due appreciation of the evidence available on record and that being so they are entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellants under Section 302/34 IPC is set aside and they are hereby acquitted of the charge levelled against them. The appellants are on bail, their bail bonds stand discharged.

16. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(R.C.S. Samant)
JUDGE

Vijay