

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 530 of 2002

- Bhanu Pratap Dewangan @ Bhanu, S/o. Shri Chandulal Dewangan, Aged about 26 years, REsident of Shankar Nagar, Ambedkar Chowk, Thana Mohan Nagar, Durg CG

---- Appellant

Versus

- State Of Chhattisgarh, Through Officer Incharge, Police Station Purani Basti, Raipur (CG)

---- Respondent

For Appellant	: Shri Amiya Kant Tiwari, Advocate
For Respondent/State	: Shri Adil Minhaj. P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board by P.Diwaker

12/05/2017

This appeal arises out of judgment and order dated 18.04.2002 passed by the Second Additional Sessions Judge, Raipur in Sessions Trial No. 485/2001 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 5,000/- with default stipulations.

2. As per prosecution case, accused/appellant was maternal uncle of deceased Ganeshwari Bai in relation. They were neighbours at Durg however after marriage, deceased Ganeshwari Bai was residing along with her husband at Bhatagaon, Raipur. It is said that accused/appellant was in financial crisis and two days prior to the incident he came to the house of deceased Ganeshwari Bai and made

certain queries from her husband Pushkar Dewangan (PW-2) about the details of his working hours. Further case of the prosecution is that on 23.07.2001, in between 6.00-11.00 p.m. accused/appellant entered the house and after strangulating Ganeshwari Bai by tying up with lungi, had stolen the golden & silver ornaments and some cash kept in the *almirah*. At about 11.00 p.m. when husband of the deceased Pushkar Dewangan returned from his work place he found the dead body of deceased lying in the bedroom. Merg intimation Ex.P-3 was lodged by Pushkar Dewangan (PW-2) thereafter inquest on the body of deceased was prepared vide Ex.P-2 and body was sent for postmortem examination which was conducted by Dr. Arvind Neralwar (PW-03) vide Ex.P-06 on 28.02.02 and he opined that cause of death was asphyxia due to strangulation and death was homicidal in nature. On 26.07.01, memorandum of the accused/appellant Ex.P-7 was recorded by which recovery of cash of Rs. 1050/- vide Ex.P-8, recovery of gold and silver ornaments 12 in number, which were concealed by the appellant under the heap of stone boulders near the roadside at milestone 28/8 on Durg-Dhamdha road was made. Test Identification Parade Ex.P-5 was conducted by Arvind Sharma (PW-4) vide Ex.P-5 and Pushkar Dewangan (PW-2) husband of the deceased and Kumari Bai (PW-8) mother of deceased Ganeshwari Bai had identified the ornaments. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. In order to establish the guilt of the accused prosecution has examined 15 witnesses. Statement of the accused 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.

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

5. Contention of Shri Tiwari, counsel for the appellant is as under :

i) that the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction.

ii) that though on the alleged memorandum of the accused/appellant Ex.P-7 seizure of certain gold and silver ornaments are said to have been made vide Ex.P-4 but the memorandum witness Narhari Sahu (PW-6) had not supported the memorandum and has only supported the seizure.

iii) that the other witness to memorandum of seizure namely Rajeev Singh has not been examined

iv) that the ornaments have been seized from the open place.

v) that even assuming that certain ornaments of the deceased have been found in possession of the appellant, at best the appellant can be convicted for stealing the property as there is no other evidence to connect the accused/appellant with the murder of the deceased.

vi) Daya Bai (PW-9) has nowhere stated that on the date of incident uncle of the deceased had come to her house and she had seen the appellant.

vii) the possibility that it is the husband of the deceased Pushkar

Dewangan (PW-2) who committed murder, cannot be ruled out.

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. Mongra Bai (PW-1) is a witness to inquest Ex.P-2. Pushkar Lal Dewangan (PW-2) is husband of the deceased who lodged the merger intimation and *dehati nalishi*. He has stated that deceased was his wife and on 23.07.01 in the afternoon shift he had gone to the workplace and at that time his wife was all alone in the house. He has stated that at about 11.00 p.m. when he returned home and called his wife to open the door, she did not come and then he went inside and saw his wife lying on the ground near the cot and lungi was tied to her neck whereas the other side was tied to the cot-leg. He immediately informed about the incident to his neighbours and Sita Sahu (not examined) who informed him that she came to know from the deceased that as her uncle had come to her house and therefore she is going to market. She has stated that when she was going to market uncle of the deceased was strolling on the roof. He has stated that in the test identification he identified the ornaments that were stolen from his house and those worn by the deceased. He has further stated that on the date of incident deceased was wearing earrings and nose pin. Dr. Arvind Neralwar (PW-3) conducted postmortem examination on the body of the deceased and according to him, the cause of death was asphyxia due to strangulation and death was homicidal in nature. Arvind Sharma (PW-4) has conducted test identification vide memo Ex.P-5 and stated

that at the time of identification PW-2 and PW-8 have identified the ornaments. Narhari Sahu (PW-6) is a witness to memorandum Ex.P-7, P-8 and P-9. He has stated that the police has not enquired anything from the appellant however on his memorandum the stolen articles which were concealed under the heap of stone boulders near Shivrath river roadside on Durg-Dhamdha road at milestone 28/8 were recovered. Vasudeo Dewangan (PW-7) father of the deceased is a hearsay witness. Smt. Kumari Bai (PW-8) mother of the deceased and witness to identification memo Ex.P-5 has supported the prosecution case. Daya Bai (PW-9) neighbour of the deceased has stated that she met the deceased in the evening at about 5.00 p.m. while she was going to buy vegetables and on being asked as to why she was not going to market she informed that her maternal uncle had come from Durg. She has stated that thereafter she did not meet the deceased and at about 11.00 p.m. she came to know that the deceased was killed. Bholaram Nirmalkar (PW-10) is a witness to inquest notice Ex.P-2, inquest Ex.P-3 and seizure Ex.P-13. S.R.Kosariya (PW-11) assisted in the investigation. Ashok Kumar Dewangan (PW-12) is the maternal uncle of Pushkar Dewangan (PW-2). He has stated that on the date of incident, Pushkar came and informed him about the incident and then he went along with Pushkar to his village. Lalit Pal (PW-13) and Sanjeev Gupta (PW-14) have not stated anything against the appellant and have been declared hostile. D.S.Parihar (PW-15) is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that the accused/appellant has been convicted mainly on the basis of evidence of recovery of certain gold and silver ornaments allegedly belonging to

the deceased. However these articles have been seized from open place which is far off from the place of occurrence. The only seizure witness Narhari Sahu (PW-6) also does not appear to be fully trustworthy and reliable as his statement is doubtful. The other witnesses to seizure and memorandum have not been examined by the prosecution. As per Narhari Sahu (PW-6) the memorandum and seizure have been recorded on the next day i.e. 24.07.01 however as per prosecution the same are dated 26.07.01. Sita Bai who had allegedly seen the appellant strolling on the roof had not been examined by the prosecution. It has been well established by leading judicial precedents that where the prosecution's case is based on circumstantial evidence, only the circumstantial evidence of the highest order can satisfy the test of proof in a criminal prosecution. In order to base conviction on circumstantial evidence, the circumstantial evidence put forth by the prosecution should establish a complete unbroken chain of events so that only one inference is drawn out from the same. If more than one inference can be drawn then the accused should be entitled to the benefit of doubt.

10. In the present appeal we would evaluate the case of the prosecution in terms of the evidence brought on record and the statements and recovery made in the course of investigation. Unfortunately the prosecution has not been able to take the case beyond the realm of suspicion into the areas of proof. Unless and until that happens, the benefit would definitely go to the accused/appellant.

11. For establishing the guilt on the basis of circumstantial evidence, it is also to be taken into account that the chain of circumstantial evidence must be completed. It appears from the facts that the said chain of circumstantial evidence cannot be concluded in the manner sought to be done by the prosecution. The circumstances must be conclusive in nature. In the instant case, after analyzing the facts, it appears to us that there is a gap between the circumstances tried to be relied upon to hold the accused/appellant as guilty. Thus, we find many loopholes in the case of the prosecution and grounds on which the Court below has convicted the accused appellants. The circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one indicating the guilt of the accused.

12. Thus, there is too much doubt and the circumstances which could have led to the establishment of the prosecution case have not been proved. Therefore, for the reasons recorded hereinabove, the judgment impugned and order on sentence of the Court below is set aside; the appellant is given the benefit of doubt and is acquitted of the charges. Consequently 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