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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1288 of 2003

Sukloram S/o. Veer Singh Gond, Aged about 55 years, R/o. Village
Borigaon, P.S. Bhanpuri, District Bastar (C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- P.S. Bhanpuri, District Bastar (C.G.)

---- RESPONDENT

And

Criminal Appeal No. 102 of 2009

Dhurva S/o. Joga Gond, Aged about 35 years, R/o. Village Van Gram,
Borigaon, Thana, Bhanpuri, District Bastar (C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- P.S. Bhanpuri, District Bastar (C.G.)

---- RESPONDENT

For Appellants :- Mr. Alok Dewangan, Advocate.

For Respondent /State :- Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Anil Kumar Shukla

Judgment on Board By
Prashant Kumar Mishra, J.

27. 02. 2017

1. The appellants have been convicted for committing murder of deceased Penda Gond at about 8.00 AM on 21.10.2002.
2. The FIR was lodged by Podiyami Sanni (PW-1) on 21.10.2002 at 20.15 hours, alleging that at about 8.00 AM her son Mosu had gone for ploughing the field and her husband (the deceased) was in the house. Kotwar Maniram Patel, Komar and Dhurva and other villagers came to her house and took her husband for a panchayat meeting. When she was going to fetch water from the village pond at about 9.00 AM, Sanmati informed her that when she went to fetch water from bore-well, she saw that Penda was being assaulted in the panchayat meeting. On this information, the informant rushed towards the place where panchayat meeting was convened and there she witnessed the incident from some distance that the appellants were twisting the neck of her husband. On seeing the informant, the appellants ran away. When she reached near the place of occurrence, her husband was gasping. On arrival of her son Mosu, the Kotwar and Mosu brought the deceased to the house, however, he succumbed to death midway. Mosu also informed them that the appellants had assaulted the deceased. Morgue intimation (Ex.P-6) was recorded at 20.20 hours. Regular First Information

Report was later on registered with the concerned police at 11.35 AM on 22.10.2002.

3. In view of the fact that the appellants had committed murder by assaulting the deceased by hands and fists and by twisting his neck, the investigation revolved around recording statements of the witnesses as there was nothing to be recovered from the appellants.
4. The appellants' conviction rests on the statements of Podiyami Sanni (PW-1), Mosu (PW-2) and Dr. K. S. Painkra (PW-4), who conducted the postmortem and submitted his report (Ex.P-3).
5. Mr. Alok Dewangan, learned counsel appearing for the appellants would vehemently submit that the statement of Podiyami Sanni (PW-1) is not trustworthy in view of paragraph-8 of her deposition. He would further submit that Mosu (PW-2) is not the eye-witness, therefore, in his statement there is no evidence to connect the appellant with the crime. In the alternative, he would submit that there being no evidence of previous enmity, in the absence of motive, the offence would fall under section 304 Part II IPC. Learned counsel for the appellants would place reliance on judgements in the matter of **Sompal Singh v. State of U.P. (2014) 7 SCC 316**, **Vijay Singh v. State of M.P. (2014) 12 SCC 293**, **Sunil Mahadeo Jadhav v. State of Maharashtra (2013) 15 SCC 177**, **Nagappan v. State (2013) 15**

SCC 252 and State of Rajasthan v. Santosh Savita (2013) 12 SCC 663.

6. Mr. Arun Sao, learned Dy. Advocate General for the State would submit that the appellants have committed the murder in cruel manner, therefore, the case is not covered under section 304 Part II IPC. He would also submit that the evidence of Podiyami Sanni (PW-1) narrates true incident in very spontaneous and natural manner and there being no contradiction or ambiguity in her statement, the conviction is well founded and no interference is called for with the impugned judgment.
7. We have heard learned counsel for the parties at length and perused the record.
8. The entire prosecution case rests on the statements of Podiyami Sanni (PW-1), Mosu (PW-2) and Dr. K. S. Painkra (PW-4). Dr. K.S. Painkra (PW-4), who conducted the autopsy on the dead body of the deceased, found the following injuries:-
 - (i) Irregular bruise mark with blackish skin hard on right side anterolateral part of neck in continue over right cheek at level of ear approximately 5-6 inches long and 1 to 3 inches wide on skin hard and white.
 - (ii) Two blackish regular with hard skin bruise over left lower mendable angle size is approximately $\frac{1}{2}$ inch round hard with white on section.
 - (iii) Abrasion linear crescentric approximately $\frac{3}{4}$ inch long on upper latero interior part on left side of neck approximately horizontal oblique.

(iv) Linear crescentric mark approximately ½ inch long, ½ inch below medial slightly to injury No.3.

(v) Linear crescentric mark abrasion approximately ½ inches below medial to injury no. 4. All the injuries are antemortem in nature, injury No. 1 and 2 are caused by hard and blunt object, injury No. 3,4 and 5 are caused by hard and blunt object.

He opined that the cause of death is asphyxia due to strangulation and the death was homicidal in nature. The period of death was 18 to 36 hours from the time of postmortem examination.

9. The above referred injuries suffered by the deceased fit into the oral statement of Podiyami Sanni (PW-1), who has categorically stated that just before the incident Maniram, Paru, Dhurva, Phoolchand, Santo, Rupsai and Ramu came to her house and took her husband for panchayat meeting. She went to the place of panchayat meeting after some time and witnessed that the appellants were assaulting the deceased. While Dhurva was pressing his neck, Suklo had pressed his testicles. The appellants ran away on seeing her at the place of occurrence. Although in paragraph-8 of her statement, she says that when she went near the place of occurrence she saw that her husband was lying beneath a tree yet the said statement need not be read in an isolation but the entire evidence is to be read as a whole. The suggestion made to her at paragraph-8 is an incomplete question, therefore, on such suggestion, the entire examination in chief would not be damaged. Mosu (PW-2) has

also supported the prosecution case by stating that her mother Podiyami Sanni (PW-1) informed him that she had seen the appellants assaulting the deceased and running away from the place of occurrence.

10. A conjoint marshalling of the statements of Podiyami Sanni (PW-1), Mosu (PW-2) and Dr. K. S. Painkra (PW-4) would reveal that Podiyami Sanni (PW-1) had seen the appellants assaulting the deceased from some distance, but in her Court statement, she exaggerated the version inasmuch as there was no mention in the FIR that Suklo was pressing the testicles of the deceased.
11. Similarly, Dr. K.S. Painkra (PW-4) has found the injuries on the neck of the deceased, but has not found any ligature mark over the neck.
12. Budhram (PW-5) is the son-in-law of the deceased. He has turned hostile. His case diary statement has been proved as Ex.P-4. From the case diary statement, it would appear that the deceased was moving in the village in the state of intoxication and he threatened a village lady to kill her by bow and arrow and on this dispute a panchayat meeting was called where the appellants allegedly assaulted the deceased. What comes out of the prosecution material is that there is lack of motive on the part of the appellants to commit murder of the deceased. It is true that where there is ocular evidence of commission of murder, motive may not be significant because it is in the mind of the offenders as to why they killed the deceased, but at the same

time absence of motive may play vital role in considering whether the offence committed by the appellants would fall within any of exception under Section 300 IPC. There is reason why we are compelled to consider the argument raised by the learned counsel for the appellants that the case would fall under Section 304 Part II IPC and the reason is that the offence appears to have taken place in the panchayat meeting and none of the persons who went to the house of the deceased to call him for panchayat meeting nor the appellants had even been alleged to be armed with any dangerous weapon or even with a club. They assaulted the deceased by hands and fists. The only stage where they might have crossed the boundary of a simple incident to cruel incident is that when they twisted the neck of the deceased. However, in the FIR, this allegation is against both the appellants, whereas in her Court statement Podiyami Sanni (PW-1) has attributed this part of act to appellant Dhurva alone, therefore, it becomes shaky as to who killed and twisted the neck of the deceased. Moreover, the cause of death has been described as strangulation, but there is no ligature mark over the neck of the deceased. If the alleged twisting of neck was of such intensity that it turned out to strangulation, there should have been evidence of fracture of hyoid bone or some other serious injuries over respiratory organ but there is no evidence of such injuries in the postmortem report. Dr. K. S.

Painkra (PW-4) has not found any deep (serious) external injury over the person of the deceased.

13. Taking cumulative view of the entire evidence, we are compelled to record that in absence of motive and serious injuries over the person of the deceased and for the fact that the appellants were not armed with any dangerous weapon, not even a club, it appears that there was no intention on their part to commit murder of the deceased. Both of them may have knowledge if the deceased is seriously assaulted he may die. Therefore, the act committed by the appellants would fall under the forth exception to Section 300 IPC and they have actually committed the act of culpable homicide not amounting to murder.
14. We are informed that Appellant Suklo has remained in jail for about 6 years where appellant Dhurva has remained in jail for about 6½ years.
15. In the facts and circumstances of the case, we hold that the jail sentence already undergone by the appellants should be the sentence with which they should be punished for committing the offence punishable under Section 304 Part II IPC.
16. Accordingly, the appeals are allowed in part. The conviction and sentence under Section 302/34 IPC is set aside. Instead, the appellants are convicted under Section 304 Part II IPC and they are sentenced with the period of imprisonment already undergone by them.

17. The appellants are reported to be on bail. Their bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in terms of Section 437-A Cr.P.C.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Anil Kumar Shukla