

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 12-10-2017

Judgment delivered on 17-11-2017

CRA No. 242 of 2010

1. Jaglal Ekka s/o. Premsay Ekka, aged about 35 years, resident of Patrapalio, Police Station Patthalgaon, District Jashpur (CG).
2. Ajay @ Makhan Kaushik S/o Malikram Kaushik aged about 27 years, R/o Patrapali Jheradeeh, PS Pathalgoan, District Jashpur (CG).

---- Appellants.

Versus

- State of Chhattisgarh through Police Station Deobhog, District Raipur (CG).

---- Respondent

For Appellants : Mr. U.K.S. Chandel, Advocate.

For Respondent/State : Mrs. Smita Ghai, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 25-2-2010 passed by the Additional Sessions Judge, Gariyaband, Sessions Division Raipur, (CG), in Sessions Trial No. 9 of 2009 whereby the trial court after holding the appellants guilty for commission of murder of Prem Narayan, convicted them under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment and to pay fine of Rs.5000/-each with default stipulations.

2. As per prosecution case, the accused/appellant Jaglal Ekka was posted as Rural Agriculture officer at village Dhurvagudi. The said accused was living with one lady namely Oliba Ekka (PW/5) as husband and wife. Deceased Prem Narayan was resident of Kodobhata and opened a grocery shop at village Dabriguda 7 – 8 years ago. Oliba Ekka used to visit his grocery shop and developed some relation with deceased, to which accused/appellant Jaglal Ekka objected. Some time in the month of May 2008, grocery shop of the deceased caught fire and the deceased made suspicion for setting the shop on fire against accused/appellant Jaglal Ekka and Oliba Ekka. On 1-11-2008 deceased took his meals at about 1.00 pm in his house at village Kodobhatga and thereafter went to his grocery shop situated at village Dabriguda at about 3.00 pm. He used to return from the shop daily at about 7.00 pm., but on the said day when he did not return, his brother and other near and dears started searching for him and found his dead body near a canal of village Dabriguda.
3. Tukaram Naik (PW/2) lodged first information report vide Ex.P/24 at Police Station Deobhog. After receiving the said information Police swung into action. On discovery statement of accused/appellant Jaglal Ekka certain articles were seized. Inquest report of the deceased was prepared vide Ex.P/2 and body was sent for post-mortem. After post-mortem Dr. Anju Sonwani (PW/28) opined that

cause of death is asphyxia due to strangulation. The matter was investigated under Section 302 of the IPC.

4. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of the investigation charge-sheet was filed before the trial Court.. The trial Court framed charges under Sections 302 read with Section 34 against both the appellants to which they did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statements of the appellants under Section 313 of the Cr.P.C., were recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.
5. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 32 witnesses before the trial Court in support of its case and exhibited documents (P/1 to P/25). To nullify the same, defence side has examined Devlal Maitri (DW.1).
6. Learned counsel appearing for the accused/appellants submits as under:

(i)	That on 1-11-2008 after the incident no one claimed to be eye-witness of the incident, but after two months and 20 days i.e., on 21-2-2009 one Jhumuklal has claimed to be eye-witness of the incident and he is a got up witness and his version cannot be relied upon as per settled principles of criminal jurisprudence;
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(ii)	That the seizure of certain articles from the accused/appellant Jaglal Ekka is of no help to the prosecution because the same is not incriminating circumstance against any of the appellants in the peculiar facts and circumstances of the case;
(iii)	That there is no evidence regarding relation between Oliba Ekka and deceased and, therefore, there is no reason for the accused/appellant Jaglal Ekka to commit any criminal act against the deceased. .

In support of his arguments, he placed reliance on the decisions of the Hon'ble Apex Court in the matters of **Bachhu Narain Singh vs. Naresh Yadav and others with State of Bihar vs. Naresh Yadav and others**¹ and **State of Orissa vs. Brahmananda Nanda**².

7. As against the aforesaid submission, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
8. We have heard counsel for the parties and perused the material on record.

¹ AIR 2004 SC 3055

²AIR 1976 SC 2488

9. Dr. Anju Sonwani (PW/28) conducted post-mortem of deceased Prem Narayan on 2-11-2008 at about 1.00 pm vide Ex.P/19 and after post-mortem he noticed the following injuries/symptoms.

i)	Both eyes closed light bitten tongue, mouth closed.
ii)	Lacerated wound in the size of 4 cm x 2 cm over right temporal region.
iii)	Lacerated wound just below left eye in the size of 5 cm x 3 cm x1 cm. Clotted blood present

10. He opined that cause of death of deceased is asphyxia due to strangulation and died since 12 - 24 hours from the examination. Version of this witness is unshaken during cross examination and there is no other expert's opinion in this regard to rebut the same and there is no reason to disbelieve the same. It is established that he died homicidal death.
11. Laxmi Bai (PW/1) is wife of deceased Ramnarayan. She deposed that accused/appellant used to threaten her husband to kill, but this version is not stated by her before the Investigating Officer while recording her statement under Section 161 of the Cr.P.C and the same is exaggerated version. She further deposed that Nurse posted at village Debriguda used to write letters to her husband and Oliba Ekka (PW/5) who is a Nurse deposed that she had written a letter to the deceased that he should not go to the road of village Mudagaon

because accused/appellant Jaglal went in the same road. She deposed that she has written a letter to the deceased because she was his friend and it came to the knowledge of accused/appellant Jaglal Ekka and he advised her not to maintain any relation with deceased.

12. From the evidence of Laxmi Bai (PW/1) and Oliba Ekka (PW/5), it appears that accused/appellant was annoyed of relation between Oliba Ekka and Prem Narayan, but the same is not sufficient to draw inference against the accused/appellant Jaglal Ekka for commission of any criminal act. Tukaram Naik (PW/2) is a witness of inquest. Bisulal (PW/3) is a witness who has seen the accused/appellant Jaglal with the other appellant going to one Prahari square from motor-cycle. Bhagmat (PW/4) deposed in same line. Sushil Kumar Agrawal (PW/6) deposed that accused/appellant Jaglal came for election duty at about 1.30 am from motor-cycle. Padulochan (PW/7) deposed that he has seen the accused/appellant with one person in motor-cycle. Shobharam (PW/9) deposed in same line. Chetan Markam (PW/10) is a witness of seizure of rope, slipper and motor-cycle from the spot. Nepal Yadav (PW/11) deposed that out of relation between Jaglal Ekka and Oliba Ekka one daughter was born and Oliba Ekka denied to give daughter to accused/appellant Jaglal Ekka. PW/12 Manohar Ram Naik is a witness who has seen the dead body of the deceased near canal. PW/13 Sadashiv Ram Naik deposed in same line. Other witnesses of the prosecution have deposed on same

line that they have seen the dead body of the deceased near canal. PW/20 Gorelal deposed that accused/appellant Jaglal advised the deceased not to maintain relation with Nurse Oliba Ekka. PW/21 Golvind Tamrakar is a witness of discovery statement.

13. From the evidence adduced by the prosecution, it can be inferred that relation between accused/appellant Jaglal Ekka and deceased were strained due to relation of the deceased with Nurse Oliba Ekka, but this theory makes suspicion only. It is settled principle of Criminal jurisprudence that suspicion however strong cannot take place of proof. Again it is settled principle of law that there is a long mental distance between may be true and must be true and a person can be convicted only when fact established by the prosecution comes within the category of must be true.
14. As per the prosecution, PW/8 Jhumuklal is a star witness who has seen the incident. He deposed that he went to forest on 1-11-2008 at about 2.00 pm for collection of wood and when he was returning at about 7 pm, he saw that one person was struggling and when he focussed his torch towards that direction, he saw that accused/appellant Jaglal Ekka pressed the neck of the deceased Prem Narayan and accused/appellant Ajay was in the company of accused/appellant Jaglal Ekka. He has admitted that he did not state about the incident even after 3 ½ months of the incident to anyone and he explained that he did not state the incident to any one due to fear.

15. Now the point for consideration is whether version of this witness can be acted upon. The date of incident is 1-11-2008 and no one of the locality has lodged the first information report in the matter. First information report was lodged by one Police Officer against unknown person. There is no plausible explanation by the witness as to why the report was not lodged by him when he has seen the commission of crime. Accused/appellant Jaglal is a public servant posted as Rural Agriculture Officer and he is not a known criminal. There could be no question of any fear because he was an ordinary public servant. It is also not clear from the statement of this witness as to when he overcame fear. Police Officers have reached the place of occurrence after the incident and there is no reason for this witness to not present himself before the Police Officers for statement. It is also not clear from the version of this witness as to what prompted him to go to Police Station after three months and twenty days of the incident. His silence for three months and twenty days and his statement after a long lapse of time makes version unreliable and statement is concocted and it is made after deliberations and does not inspire confidence. If the evidence of this witness is excluded from evidence of prosecution, the only evidence is that there is some strained relation with accused/appellant Jaglal Ekka and deceased and that could not possibly furnish adequate motive for exhibition of violence.

16. Considering all the facts and circumstances of the case and the evidence available on record, we are of the view that the judgment of the trial Court is not sustainable. Accordingly, the appeal is allowed and the conviction of the appellants is set aside and they are acquitted of the charge framed under Section 302 read with Section 34 of the IPC. As both the accused/appellants are reported to be on bail, no fresh order is required to be passed for their release or arrest and their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju