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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 484 of 2006

- Horilal, aged about 36 years, S/o Shri Ramnath Satnami, resident of Amapara, P.S. Bilha, District Bilaspur (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Police Station Masturi, District Bilaspur (CG)

---- Respondent

For Appellant	:	Shri K.A. Ansari, Sr. Advocate assisted by Shri Devesh G Kela, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer

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

Judgement

P. Diwaker, J

11/01/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.4.2006 passed by the 1st Additional Sessions Judge, Bilaspur in S.T. No.304/05 convicting the accused/appellant under Sections 302, 394/397 & 457 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.200/-; RI for 10 years & fine of Rs.1,000/- & RI for 10 years and fine of Rs.1,000/-, with usual default clauses, respectively.
2. In the instant case, name of deceased is Shantibai, wife of Kedar Banjare. Accused/appellant is brother-in-law of deceased.
3. The prosecution story, in brief, is that on 29.5.2005 the accused/appellant along with his wife and other relatives went to the house of deceased

situated at Darrighat and he remained there for some days. On 2.6.2005 accused/appellant left the house of deceased along with Harbhajan (PW-3) and came with him upto Jairamnagar where the accused/appellant departed the company of said Harbhajan saying that he is going to house situated at Bilha, however, instead of going to Bilha, he had gone to the house of deceased, committed murder of the deceased by causing injuries to her by wooden log, took the key from the body of deceased of the almirah kept in her other house, went there and committed robbery of Rs.40,000/-. At the relevant time Girdhari (PW-19), Shyamlal (PW-5) & Sumritlal (PW-10) were playing harmonium and reciting bhajans in the ancestral house of the deceased. According to the prosecution, having found the room of ancestral house ransacked, Girdhari informed his uncle Shyamlal (PW-5) and thereafter both of them went to the house of deceased and found her lying dead on the ground. Blood was coming out from her head. Merg Intimation (Ex.P-2) was recorded on 3.6.2005 at 1.00 a.m. in the night at the instance of Girdhari (PW-19) based on which FIR (Ex.P-21) was recorded for the offence punishable under Section 302 IPC against unknown person. Inquest (Ex.P-2) was prepared on the body of deceased on 3.6.2005. Body of deceased was sent for post-mortem examination which was conducted by Dr.P.C. Banjare (PW-8) on 3.6.2005 vide Ex.P-5 who noticed following injuries;-

- Abrasion of 3" x 1/2" on the left side of neck.
- Abrasion of 1"x1/2cm on left side of neck.
- Abrasion mark on right side of neck of 1"x 1/2"
- Lacerated wound of 3"x3" on occipital region.

In the opinion of autopsy surgeon, cause of death was shock & haemorrhage as-a result of injury to head and it was homicidal in nature.

4. In the course of investigation, memorandum statement of accuse/appellant was recorded vide Ex.P-9 and based on which weapon of offence (wooden log) was seized vide Ex.P-10. In the memorandum statement the appellant has also admitted that as he was highly indebted and the deceased was possessed of sufficient amount, therefore, he has committed her murder by causing injuries to her by wooden log and thereafter robbed the money kept by her in the almirah of her another house and paid the said amount to the persons he owed. On the basis of disclosure statement of accused/appellant, a sum of Rs.10,000/- from Rajesh; Rs.14,000/- from Narmada Prasad; Rs.2000/- from Govind; Rs.10,000/- from Bhaiduram; Rs.1000/- from Jamuna Prasad vide Ex.P-3,P-4 & Ex.P-11 to P-13 respectively. One full sleeves shirt & full pant were seized vide seizure memo of Ex.P-14. One pass-book of saving bank account and blue colour terricot saree were seized vide Ex.P-15. Statements of the witnesses were recorded under Section 161 Cr.P.C.
5. On completion of investigation, charge sheet for the offence punishable under Sections 302, 394/397 & 457 IPC was filed against the accused/appellant and accordingly the charges were framed by the trial Judge against him. The prosecution in order to bring home the charges levelled against the accused/appellant examined 21 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
6. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
7. Counsel for accused/appellant submits that;a

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- conviction of the appellant is based on the circumstantial evidence i.e. recoveries at the instance of appellant, but in absence of any other clinching evidence connecting the appellant with crime in question, the trial Court was not justified in holding the appellant guilty for murder and robbery.
 - from the evidence collected by the prosecution it appears that the deceased was murdered by Shyamlal (PW-5) with the help of Girdhari (PW-19).
 - though the alleged weapon of offence (wooden log) is said to have been seized on the basis of memorandum of appellant, but the same is of no consequence as the prosecution has failed to produce report of FSL or Serologist to establish that stains found on the said wooden log were of human blood and that too of the blood group of the deceased.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. We have heard counsel for the parties and perused the evidence available on record.
10. Ramulal (PW-1) is the witness of inquest (Ex.P-2).
11. Harbhajan Lal (PW-3) is the person with whom the accused/appellant had left the house of deceased on the date of incident. He has stated that the accused/appellant accompanied him upto Jairamnagar and thereafter left his company saying that he will go to his house situated at Bilha. Next day he came to know that Shantibai has been murdered.
12. Shyamlal (PW-5), brother-in-law of the deceased, has stated that the deceased along with her sons Girdhari & Bihari was residing in the

house of Dr. Kaliram for which she was not paying any rent. On the fateful night, he saw a person going towards the house of deceased Shantibai but he did not see that person coming back. He has further stated that at that time he along with Jaggu, Sumrit & Girdhari has playing musical instruments. He has further stated that after playing musical instruments, Girdhari went to the house of Shantibai situated adjacent to the house of this witness and noticed that her house was ransacked. He immediately went to the house of Dr. Kaliram where the deceased was residing and on reaching there, he saw the deceased lying dead on the ground. This witness has further stated that the money kept by the deceased in almirah was also robbed.

13. Rajesh Kumar (PW-6) has stated that the police had seized Rs.10,000/- from him vide seizure memo of Ex.P-3. He has further stated that the accused/appellant gave the said amount to his father namely Vyas 15 days prior to the seizure. In the cross-examination this witness has admitted that on account of threat extended by the police, he has given Rs.10,000/- to the police which he had earned by working in a brick klin in Gujarat.
14. Narmada Prasad (PW-7) has also stated that the police had seized Rs.14,000/- from him vide seizure memo of Ex.P-4.
15. Dr. B.C. Banerjee (PW-8) is the person who conducted post-mortem examination over the body of deceased and noticed the injuries as described above.
16. Kaliram (PW-9) is the person in whose house the deceased was residing at the relevant time.
17. Sumritlal (PW-10) has stated that on the fateful night he was also playing musical instrument in the house of Girdhari and at that time they have seen a person going inside the house of the deceased.

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18. Ramesh Manhar (PW-11) is the witness of panchnama (Ex.P-6) and seizure memos Ex.P-7 & P-8.
19. Maniram (PW-12) is the witness of inquest (Ex.P-2).
20. Mukesh Bandhare (PW-13) is the witness of memorandum (Ex.P-9) & seizure memos (Ex.P-3, P-4, P-7, P-8, P-10 to P-15).
21. Rajkumari (PW-14) is the person who is said to have seen the appellant entering the house of deceased by wearing saree. However, in the cross-examination she has stated that it was dark therefore she could not see the face of the person wearing saree and as such she cannot say with certainty that it was the accused/appellant who entered the house of deceased.
22. Chandram Banjare (PW-15) is the Patwari who prepared the spot map vide Ex.P-16.
23. Biharilal (PW-17), son of the deceased, has stated that at the relevant time the deceased was having Rs.50,000/- with her.
24. Kedar Banjare (PW-18) is the husband of deceased. He has stated that he withdrew Rs.80,000/- from the bank and gave it to the deceased for purchasing the house of Dr. Kaliram. Next day of the incident, he was telephonically informed that his wife has been murdered and money kept in the almirah has been robbed. He has further stated that after the incident, they have called the accused but he did not turn up.
25. Girdhari (PW-19), son of deceased, has stated that 2-3 days prior to the incident accused/appellant came to his house and stayed there for a few days. On the fateful day, he returned along with Harbhajan who along with one Amarnath was making handcart for her mother (deceased). He has further stated that on the date of incident he along with Jaggu, Sumrit & Shyamlal was playing musical instruments and after playing instruments, when he went inside his room, he found his

room ransacked, almirah was open and money was missing from it. He immediately informed the said fact to his uncle Shyamlal who told him that a lady resembling his mother went inside the house. Thereafter they went to the house of Kaliram where the deceased was residing and found her lying dead on the ground. Blood was coming out from her head & nose. They called the doctor for her treatment but he declared her dead. Thereafter the matter was reported to the police.

26. Shahid Ali (PW-20) is the Investigating Officer and he has duly supported the prosecution case.
27. Manglu Prasad Tandon (PW-21) is the witness of memorandum (Ex.P-9) & seizure memos (Ex.P-3, P-4, P-7, P-8, P-10 to P-15)
28. In the instant case, the conviction of the appellant rests entirely on circumstantial evidence i.e. recovery of robbed money & weapon of offence at the instance of the accused/appellant. 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. It needs no reminder that legally established circumstances and not merely anguish of the court can form basis of conviction and more serious the crime the greater should be the care taken to scrutinize the evidence, least suspicion takes place of proof.
29. Minute scrutiny of the evidence available on record indicates that the prosecution had relied upon the recovery of alleged weapon of offence



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(wooden log) and looted money pursuant to the disclosure statement made by the accused/appellant under Section 27 of the Evidence Act, to connect him with the crime. Taking, however, the evidence as it stands, we are of the considered opinion that none of the circumstances relied upon by the prosecution and accepted by the trial Court can be said to be the probability of the appellant's guilt or involvement in the commission of crime. According to the prosecution case, the amount has been recovered from various persons vide Ex.P-3, P-4, P-11, P-12 & P-13 18.6.2005 i.e. after lapse of long delay, and said persons have also been cited as witnesses in the charge sheet, however, out of them only two persons have been examined for the reasons best known to the prosecution and out of these two, one admitted in the cross-examination to have given the money due to threat extended by the police, which itself make the recovery of money doubtful. Even otherwise in our view mere recovery does not establishes the guilt of the accused/appellant, when there is no other clinching evidence particularly about his presence in the house of the deceased when the occurrence took place. In the facts and circumstances of the case, non-attending of funeral of deceased by the accused/appellant is by itself not sufficient to raise a presumption of guilt against him.

As regards the recovery of alleged weapon of offence i.e. wooden log at the instance of accused/appellant, unfortunately report of FSL was not produced before the Court and even no explanation has been furnished as to why the FSL report has not been obtained and produced before the Court although it was necessary to ascertain as to whether said wooden log was actually used in commission of offence or not and as to whether the blood found on it was human blood and that

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too of the blood group of the deceased. Non-production of the FSL report in the Court by the prosecution is fatal as in the absence thereof it is difficult to reach to the conclusion that seized wooden log has been used in commission of offence. Thus, no presumption could be drawn that the accused/appellant was the guilty of murder and robbery.

30. On the basis of above discussion, we are opinion that the prosecution has not been able to establish its case beyond reasonable doubt that it is the appellant who committed murder of the deceased or robbery or house-breaking in night in order to commit offence.

31. In the result, the appeal is allowed. Conviction and sentence of accused/appellant under Sections 302, 394/397 & 457 IPC are hereby set aside and he is acquitted of the aforesaid charges by extending him benefit of doubt. The appellant is already on bail, therefore, his bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

for an/-