

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 86 of 2004

1. Salik Ram S/o. Sonau Ram, Gond, aged about 25 years
2. Jai Prakash S/o. Pyarelal Gond, Aged about 19 years
3. Shiv Kumr S/o. Brijlal Salam, aged about 19 years
4. Chhabilal S/o. Dukhawa Netam, aged about 21 years
5. Shrawan S/o. Kundan Mandavi Aged abut 22 years
6. Kundan Singh S/o. Mehtar Singh Mandavi, aged about 50 years
7. Brijlal S/o. Tulsingh Salam, aged about 55 years
8. Sadaram S/o. Raptu Markam aged about 70 years

All r/o. Village Bendhwapathara, P.S. Sihawa, district Dhamtari (CG)

---- Appellants

Versus

- State Of Chhattisgarh, Through SHO Police Station Shihawa, Tahsil Nagri, District Dhamtari (CG)

---- Respondent

For Appellants : Ms. Neha Verma, Advocate
For Respondent/State : Shri Avinash Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker,J.

16/08/2017

This appeal has been preferred against the judgment and order dated 30.12.2003 passed by the Additional Judge to the Court of

Additional Sessions Judge, Dhamtari in Sessions Trial No. 289/2001 convicting the accused/appellants No. 1 to 5 under Section 302 IPC and sentencing them to undergo imprisonment for life and to pay fine of Rs. 1,000/- whereas appellants No. 6 to 8 under Section 201 IPC and sentencing them to undergo RI for 5 years and to pay fine of Rs. 1,000/- with default stipulations.

2. As per prosecution case, there was old enmity between the accused persons and the deceased Devnath and it is said that on 11.02.2001 at night when the deceased was keeping guard on his agricultural field, accused/appellants 1 to 5 reached there and committed his murder by throttling. Body of the deceased was seen by his wife Rajai Bai (PW-11) and when she was about to lodge the complaint against unknown persons accused/appellants 6 to 8 reached there convinced her not to lodge report and panchayat meeting was called in the village where it was decided that the body of the deceased would be buried. Further case of the prosecution is that instead of burying the body it was cremated by the accused persons which was not liked by the wife of the deceased and she approached the police. A written and undated complaint Ex.P-21 was made by certain villagers making allegation mainly against accused Brijlal creating doubt on death of the deceased. The villagers sought enquiry and appropriate action against those who were involved in the commission of the murder of the deceased. After about 2 months of the incident, on 25.04.2001, in between 3.00 to 4.00 p.m., memorandum of accused/appellant Shrawan, Salik, Chhavilal, Shiv Kumar and Jai Prakash were recorded vide Ex.P-9, P-10,P-11,P-12 and P-13. Meanwhile, on the basis of written complaint unregistered merg Ex.P-

25 was recorded on 20.02.2001 and on the same day registered merged Ex.P-26 was also recorded. FIR Ex.P-23 was registered against four accused persons namely Basant Yadav, Brijlal Ramesh and Sukhlal under Section 302/201 IPC. As the body of deceased was already cremated, postmortem could not be conducted and the prosecution proceeded on the presumption that the deceased was murdered by the accused persons. While framing the charge, trial judge has framed the charge against appellants namely Salik Ram, Jai Prakash, Shiv Kumar, Chhabilal and Shrawan under Section 302 alternatively 302/149 IPC read with Section 120-B IPC whereas against accused/appellant Kundan singh, Brijlal and Sadaram the trial court has framed charge under Section 201 IPC.

3. The prosecution examined 16 witnesses to prove its case. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After conclusion of the trial, the trial Court vide its judgment impugned, found the accused/appellants guilty of the offences as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

i) that present is a case of no evidence but yet the accused/appellants have been convicted.

ii) there is no eyewitness account to the incident and the appellants have been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is

very weak and the chain of circumstantial evidence is not complete.

iii) that no postmortem on the dead body was conducted. The prosecution has utterly failed to prove the death of the deceased to be homicidal.

iv) that the FIR was registered against Basant Yadav, Brijlal, Ramesh Kumar and Sukhlal and out of them three have not been made accused except Brijlal. The prime suspect Sukhlal has been examined as defence witness.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellants 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. Sumer Singh (PW-1), Mannu Ram (PW-2), Mangal (PW-4), Ram Prasad (PW-9) and Arjun singh (PW-10) have not supported the prosecution case and have been declared hostile. Pulbai (PW-3) daughter of deceased has not stated anything specific against the accused persons. Mansha Ram (PW-5) has stated that prior to the cremation, he saw the deceased who died unnatural death and he also saw the finger marks on the neck of the deceased, his jaw was broken. He has stated that instead of burying the dead body it was cremated. He however has admitted the fact that as the deceased has no son, he was cremated by his nephew Arjun. He has further admitted the fact that before cremation of the body all the villagers were called and then it was decided to cremate the body of the deceased. Sheetal bati (PW-

6) younger daughter of the deceased has made almost similar statement as has been made by Mansha ram (PW-6). R.D.Singh (PW-7) is the ASI who did initial part of investigation. Maniram (PW-8) is the witness to memorandum Ex.P-9, 10,11,12 and 13 and seizure Ex.P-1 of a liquor bottle. Rajai Bai (PW-11) wife of the deceased has stated that she noticed marks of teeth on the neck of the deceased and she also saw injuries on his face. She has stated that when she informed the villagers that she would go to the police station she was stopped by accused Sada, Kundan and Nandlal stating that if she is having Rs. 10,000/- with her then she can lodge the report. She has stated that despite her wish to bury the body of the deceased, it was cremated. She has also stated that she and her family members were not agreed for postmortem as the body would be cut into pieces and therefore the FIR was also not lodged. Shivnath (PW-14) brother of the deceased has made almost similar statement as has been made by PW-5 and 6. Sahdev Singh Thakur (PW-15) had registered FIR. S.R.Kore (PW-16) is the investigating officer who had done the investigation. Sukhlal (DW-1) has stated that after the death of the deceased, village meeting was called and in presence of the wife of deceased and her family members, it was decided as to whether the body would be cremated or buried and for which consent was given by them.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the accused/appellants in commission of the offence. Though certain allegations have been made by the wife and relatives of the deceased that they had given consent for burying the dead body yet it was cremated but merely on the basis of the said statement

accused/appellants cannot be convicted for the charges levelled against them. Some of the witnesses have stated that they saw finger marks on the neck of the deceased but that itself is not sufficient to hold that the deceased died homicidal death or he was murdered by the accused persons. Unfortunately the body of the deceased was cremated before any investigation could be started and thus there is no legally admissible evidence connecting the appellants with the commission of the murder of the deceased. Though memorandum of some of the accused persons have been recorded and seizures have been effected but they have not been connected with the commission of the murder by the prosecution. Thus, there is no direct evidence to connect the accused with the crime in question. The law is well settled that conviction can be based even on circumstantial evidence provided the chain of circumstantial evidence is complete, incapable of being explained by any other hypothesis except the guilt of the accused and is of a conclusive nature unerringly pointing towards the guilt of the accused. In other words, there must be a complete chain of circumstantial evidence leaving no room for any doubt as to the accused/appellant being the only perpetrator of the crime.

10. Keeping in the mind the aforesaid principles of law relation to circumstantial evidence if we examine the facts and evidence of the present case we find that except for the memorandum of some of the accused persons, no seizure has been made from them and there is no other circumstance proved by the prosecution against the appellants which could conclusively and unerringly point towards their guilt. In the light of the above discussion, we are of the view that the prosecution has failed to establish its case beyond reasonable doubt against the

appellants and therefore they are entitled for the benefit of doubt. Accordingly, the conviction and sentence imposed on the appellants is set aside. As the appellants are on bail, no order regarding their surrender etc. is required. Their bail bonds stand discharged.

11. In the result, the appeal is allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge