

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 443 of 2008

1. Ranuram Kavasi, S/o Shri Mura Kavasi, aged about 40 years,
 2. Ramsu Kavasi S/o Bajju Kavasi aged about 23 years,
- Both R/o Vill. Marvedda, Thana Bande, Distt. North Bastar Kanker (C.G.)

---- Appellants

Versus

1. State Of Chhattisgarh through Police Station Bande, Distt. North Bastar, Kanker (CG)

---- Respondent

For Appellants	:	Shri Mukesh Shrivastava, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, Panel Lawyer.

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

Judgment On Board By Justice Pritinker Diwaker

12/01/2017

This appeal arises out of the judgment of conviction and order of sentence dated 19.3.2008 passed by the Additional Sessions Judge (FTC), Bhanupratappur, North Bastar, Kanker in ST No.165/2007 convicting the appellants under Section 302/34 of IPC and sentencing them to undergo imprisonment for life and pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, about 1 ½ months prior to the date of incident i.e. 9.4.2007 deceased Baburai @ Gopal eloped with Leelabai, daughter of appellant No.1 and they were living together in Raipur. On 8.4.2007 Baburai and Leela returned to their village and on 9.4.2007 it

is alleged that the accused/appellants took him along with them and beat him brutally resulting in his death. The incident was witnessed by Manorai (PW-3), wife of the deceased and soon thereafter dead body of the deceased was found near the house of appellant No.1. On 9.4.2007 itself at 6.15 pm FIR (Ex.P/11) was lodged by Manorai (PW-3) against the appellants under Section 302/34 of IPC and immediately thereafter merger intimation Ex.P/10 was registered at 6.20 pm. Inquest over the dead body was prepared vide Ex.P/2 on 10.4.2007. The dead body was sent for postmortem, which was conducted on 10.4.2007 by PW-7 Dr. DS Narethi vide Ex.P/15 wherein apart from other injuries he noticed fracture of frontal bone and in his opinion the cause of death was cerebral hemorrhage due to fracture of frontal bone and cardio-respiratory failure and that death was homicidal in nature. After investigation, charge sheet was filed against the appellants under Section 302/34 of IPC and accordingly, charge was framed by the trial Court.

03. So as to hold the accused/appellants guilty, the prosecution examined 8 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined Leelabai as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that the appellants have been convicted mainly on the basis of statement of PW-3 Manorai, however, she being wife of the deceased is an interested witness and has falsely implicated the appellants. Apart from interestedness, there are material contradictions in her statement, therefore, she cannot be relied upon. Furthermore, she has not seen the actual occurrence or the appellant killing the deceased. In the facts and circumstances of the case, she can at best be termed as a witness of last seen but considering the fact that evidence of last seen is a weak piece of evidence, in absence of any other corroborative evidence, the appellants cannot be convicted on that basis.

(ii) that the witnesses to extrajudicial confession i.e. PW-4 Namita and PW-6 Samren are also not reliable as they have not stated in specific term about the confession of crime by the appellants.

(iii) that PW-1 Modiram has categorically stated that the deceased was in the habit of taking young girls along with him for selling them and thus the story of the prosecution that the deceased eloped with Leela (DW-1) is an improbable story.

(iv) that DW-1 Leela who could have been the most important witness of the prosecution has not been examined by the prosecution and as a defence witness she has categorically stated that the deceased was killed by someone else and not by the appellants.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

(i) that PW-3 is a very natural witness as the accused/appellants had

taken the deceased along with them in her presence. She has categorically stated as to the manner in which the deceased was brutally beaten by the appellants and immediately thereafter his dead body was found near the house of appellant No.1. The time gap in between the incident of beating and discovery of dead body is not as such where it can be presumed that during this period the deceased might have been killed by some other person.

(ii) that witnesses to extrajudicial confession PW-4 & PW-6 are reliable witnesses and there is no reason to doubt their veracity. They are rustic villagers and therefore, minor contradictions in their statements are required to be ignored.

(iii) that cross-examination of PW-1 is of no help to the accused/appellants because this witness has been declared hostile and then suggestions have been put to him by the defence as per their choice.

(iv) that medical report of the deceased also supports the statement of PW-3, making it clear that the deceased was brutally beaten which led to his death.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Modiram, Village Patel, was a witness of extrajudicial confession and memorandum of the appellants. However, he has not supported the prosecution case and has been declared hostile. PW-2 Padum Singh, Police Constable, assisted in the investigation. PW-3 Manorai, wife of the deceased, has stated that her husband had eloped with Leelabai and they returned from Raipur after about 1 ½ months

and started living with her. She has stated that on the second day of arrival of the deceased at about 6 am, the accused/appellants came to her house and took her husband and Leela by beating them. They assaulted her husband with club. Thereafter her husband did not return, therefore, she went in search of him and near the house of appellant No.1 found his dead body with injuries on his head and nose. After returning home she narrated the incident to her family members and thereafter report was lodged. She has further stated that in the village on being asked by village Patel and other villagers, the accused/appellants admitted to have killed the deceased and it was also heard by her father Lingaram. She has stated that she lodged FIR (Ex.P/10) and merged intimation Ex.P/11.

In her lengthy cross-examination this witness remained very firm but for minor contradictions and has reiterated as to the manner in which her husband/deceased was brutally beaten by the appellants and then his dead body was found.

09. PW-4 Namita, mother of the deceased, has stated that upon coming to know about the death of the deceased she too had gone to the place of occurrence and found his dead body and that blood was oozing from his face. She has stated that the deceased had eloped with daughter of appellant No.1, for which village meeting was called where appellant No.1 said that he would kill the deceased if he is caught. She has stated that she was informed by PW-3 that in her presence the accused/appellants had taken the deceased by beating and on the same day his dead body was found. She has further stated that in the village meeting the accused/appellants confessed to have

committed murder of the deceased. Though there appears to be some improvement in the statement of this witness when she deposed that prior to the incident in a village meeting the accused/appellants had threatened for killing the deceased but so far as her statement regarding extrajudicial confession is concerned, the same remains intact and no such question has been put to her by the defence.

10. PW-5 Lingaram, father-in-law of the deceased, has stated that he came to know about the incident through PW-3. During investigation by the police, appellant No.1 had disclosed that the deceased was killed by him with a club. He is also a witness of memorandum of the appellant No.1 Ranuram (Ex.P/3), seizure of club made in pursuance thereof Ex.P/4, seizure of certain articles from the spot Ex.P/5 and arrest memo (Ex.P/6 & P/7) of the appellants.

11. PW-6 Samren is a witness of extrajudicial confession made by the appellants before the villagers including him. In para-2 he has categorically stated that he attended the village meeting where the appellants confessed that as the deceased had taken Leela against their wishes, they beat him by club resulting in his death. In cross-examination, this witness remained firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or shaky.

12. PW-7 Dr.D.S. Narethi conducted postmortem on the body of the deceased vide Ex.P/15 and noticed following symptoms/injuries:

“Mouth was open, eyes were closed, blood coming from mouth and nose, maggots present on mouth and nose, head turned to left side. Bruise marks present on scrotum which was about 4 cm long and 3 cm in width. The

scrotum is swelled. Injury may be caused by hard and blunt object, face is blackish in colour and fracture is present on left side of frontal bone. Fracture is about 3 cm long. Fracture may be caused by hard and blunt object, semen is present on underwear. Foecal matter is present on back side of buttock. The above mentioned injuries are antemortem. The duration of injuries is about 15 to 20 hours.”

In his opinion, the cause of death was cerebral hemorrhage due to fracture of frontal bone and cardio-respiratory failure and that death was homicidal in nature.

13. PW-8 MM Minj, investigating officer, has duly supported the prosecution case.

14. DW-1 Ku. Leela has stated that the deceased had taken her to Raipur where she lived with him for about a month and during this period, she was subjected to physical relation. She has stated that when the deceased asked her to go to Delhi with him, she refused as she had heard that tribal girls are sold by taking them outside. She has stated that after returning she was living with the deceased and his wife and on the second day appellant No.1 came to pick her up and while he was informing the villagers that the deceased had taken her, sister of the deceased Shantibai came there and said that deceased is being beaten by someone and requested for saving him. However, by the time the villagers reached there, the deceased had died.

15. Close scrutiny of the evidence makes it clear that about 1 ½ month prior to the date of incident, the deceased had taken away Leela (DW-1), daughter of appellant No.1 Ranuram to Raipur and they returned on

8.4.2007 to their village. It is for this reason that accused/appellants were annoyed with the deceased. According to PW-3 Manorai, wife of the deceased, on 9.4.2007 the appellants came to her house and took her husband by beating him with club and soon thereafter his dead body was found near the house of appellant No.1. Contention of counsel for the appellants that she being a relative and interested witness, her evidence cannot be relied upon, is not acceptable in the facts and circumstances of the case. The evidence of a witness cannot be discarded or thrown out solely on the ground of a mere relationship if his or her evidence is found to be correct and reliable. Normally, a near relative is the last person to ignore the actual culprit and to falsely implicate an innocent person. In this case, medical evidence also lends due support to version of PW-3, according to which injuries by blunt and hard object were noticed on his person. Thus there was a strong motive with the appellants to commit murder of the deceased and they were last seen with the deceased. The time gap between the appellants and the deceased being last seen and discovery of dead body is so small which negates the possibility of any third person being perpetrator of the crime, and rather strengthens the prosecution case that it is the appellants who brutally beat the deceased to death.

Yet another important piece of evidence against the appellants is their extrajudicial confession made before PW-4 & PW-6 in the village meeting where they admitted to have committed murder of the deceased as he had taken away Leela. These witnesses also remained firm in their cross-examination and there is no reason for this Court to disbelieve their testimony.

16. So far as evidence of defence witness Leela is concerned, a very improbable story has been put forth by this witness, which is not reflected from the evidence of any of the prosecution witnesses. According to her while appellant No.1 was talking with the elderly people of the village, sister of the deceased Shantibai came there and informed that someone is beating his brother/deceased and requested for saving him. However, neither Shantibai has been examined by the defence nor name of any such person has come in her evidence who had allegedly assaulted the deceased.

17. Thus taking the cumulative effect of all the evidence, ocular and medical, available on record, we have no hesitation in holding that it is the accused/appellants who committed murder of the deceased and as such, the findings of guilt recorded by the trial Court being based on just and proper appreciation of the evidence need no interference by this Court.

18. In the result, the appeal fails and is, accordingly, dismissed. The appellants are reported to be on bail, therefore, their bail bonds stand cancelled and they are directed to be sent back to jail forthwith to serve out the remaining part of their sentence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge