

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 614 of 2008

- Jagmohan, S/o Chhabil Satnami, aged about 21 years, R/o village Ameri, P.S. Chakarbhata, District Bilaspur (CG)

---- Appellant

Versus

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

---- Respondent

CRA No. 740 of 2008

- Hari Chand, S/o Sukalu Satnami, aged about 22 years, R/o village Ameri, Police Station Chakarbhata, District Bilaspur (CG)

---- Appellant

Versus

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

---- Respondent

And

CRA No. 1063 Of 2008

1. Jai Prakash @ Pintoo, S/o Ramdas Satnami, aged about 21 years.
2. Girish @ Manu, S/o Ramdas Satnami, aged about 22 years.

Both R/o Village-Ameri, P.S. Chakarbhatha, Distt.-Bilaspur (CG)

---- Appellants

Vs

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

---- Respondent

For Appellants	:	Shri Dharmesh Shrivastava, Advocate
For Respondent	:	Smt. Madhu Nisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

10/04/2017

1. Since the above appeals have been filed against the judgment dated 18.6.2008 passed in S.T. No.219/07 by which the 9th Additional Sessions Judge (FTC), Bilaspur (CG) convicted the accused/appellants herein under Sections 302/34 & 201 (1) of the Indian Penal Code (for short 'the IPC') and sentenced each of them to undergo R.I. for Life and fine of Rs.200/- & R.I. for 7 years and fine of Rs.200/- respectively, with usual default clauses, the same are being disposed of by this common judgment.
2. As informed at the Bar, appellant Hari Chand in Criminal Appeal No.740/2008 has expired, therefore, the criminal appeal filed on behalf of Harichand stands abated and this judgment shall govern disposal of criminal appeals filed on behalf of accused/appellant Jagmohan, Jaiprakash & Girish only i.e. Cr. Appeal Nos.614 & 1063 of 2008.
3. As per case of the prosecution, on 18.8.2007, in the evening hours, when Tattu Tandon (PW-14) returned to his village after completing his work, he saw that accused/appellant Pintoo was hurling abuses, he asked him not to do so. Likewise, some other prosecution witnesses have also tried to stop accused Pintoo from doing so. On this, accused/appellant Pintoo had threatened PW-14 saying that today one of the members of Tandon family would be killed. Further case of the prosecution is that Tattu (PW-14) asked his younger son Sonu alias Surendra (deceased) to drop his cousin Damini (PW-5) to her house. However, when said Sonu did not

return for long time then Tattu searched him for the whole night but failed to trace his whereabouts. Next morning a dead body wrapped in a gunny bag found lying in the Well and later on, it was identified to be the body of said Sonu. At the instance of Tattu (PW-14), un-numbered merger intimation (Ex.P-6), unnumbered FIR (Ex.P-7), numbered Merger (Ex.P-5) & numbered FIR was recorded against unknown person. Inquest was conducted on 19.8.2007 vide Ex.P-10. Body was sent for post mortem examination which was conducted by Dr. A.R. Banjare (PW-3) vide Ex.P-3 and he noticed following injuries:-

- Incised wound of 3"x ½" x2" size on the right side of zygomatic region.
- Incised wound of 7"x ½" x2½" size at the back of neck.
- Incised wound of 3"x ½" x2½" at the mid below of neck.

The cause of death assigned by the doctor was shock as a result of excessive haemorrhage due to cut of major vessels and duration of death was about 12 to 20 hrs prior to the post-mortem examination. During investigation, the accused/appellants were interrogated on suspicion and they disclosed that after committing murder of the deceased, they have thrown his body in the Well after wrapping it in a gunny bag.

4. On completion of investigation, charge sheet for the offence punishable under Sections 302/34 & 201 IPC was filed against the accused persons, however, the trial Court while framing the charges framed the charge under Section 302, in alternate 302/34 and 201 IPC against them. The prosecution in order to bring home the charges levelled against the accused/appellants had examined 16 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. After hearing counsel for the parties and considering the material

available on record, the trial Court by the impugned judgment, convicted and sentenced the accused/appellants in the manner as described above.

6. Learned counsel for the accused/appellants submits that there is no reliable evidence connecting accused/appellants with crime in question and therefore the case against them was not duly established by legally, reliable and unimpeachable evidence. He further submits that Damini (PW-5) has improved her statement in the Court to the extent that the deceased was followed by the accused persons, however, this fact did find place in her statement recorded under Section 161 Cr.P.C. Since her testimony in the Court is contrary to her statement made under Section 161 Cr.P.C., no reliance on her testimony ought to have been placed by the trial Court. He further submits that though certain articles including alleged weapons of offence were seized at the instance of the accused/appellants, but the human blood was not detected on the alleged weapons of offence seized from the possession of the appellants and therefore the recovery is of no consequence. He further submits that in absence of any positive evidence to conclude that the appellants were responsible for the homicidal death of the deceased, they are entitled to be acquitted of all the charges.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
9. Naresh @ Kallu Yadav (PW-1) & Lalit Kumar Joshi (PW-2) have not supported the prosecution and as such declared hostile.
10. Dr. A.R. Banjare (PW-3) is the person who conducted autopsy on the

body of deceased and noticed the injuries as described above. This witness has opined that the cause of death was excessive bleeding due to injuries on major vessels. The query - whether the injuries present on the body of the deceased could be caused by the chopper & knife has been answered by this witness in affirmative.

11. Shobharam Baghel (PW-4) is the Constable who helped in the investigation.
12. Damini Tandon (PW-5) has stated that on 18.8.2007 she had gone to the house of her uncle Tattu (PW-14) for cooking food. She has further stated that at about 7.30 p.m. when she was cooking food in the house of her uncle Tattu, she saw that the accused persons were hurling abuses at her uncle Tattu & Ganesh and they were saying that today they would kill one of the members of Tandon family. She has further stated that at about 9.00 p.m. in the same night when she was going to her house along with the deceased, on the way she saw five persons going on their foot and in the light of a motorcycle which was passing by, she saw that those five persons are the accused/appellants and one co-accused Jitendra. She has further stated that when the deceased was going back to his house after dropping her, she saw all the five accused persons following him. She has further stated that in the same night at about 10.00 p.m. her uncle Tattu & Tej Kumar had come in search of the deceased. This witness has denied the suggestion that she is falsely implicating the accused persons.
13. Puran Kurre (PW-6) has stated that while Tattu & his brothers were searching the deceased, he told them that in the night at about 9-9.30 p.m. he heard the voice of a boy ' आ दाई ' coming from the road side and next day he came to know that Sonu, son of Tattu, has been murdered.
14. Gopal Tande (PW-7) is the hear-say witness and came to know about the

incident from Tattu (PW-14). He is also a witness to the inquest (Ex.P-10).

15. Santosh Kumar Kurre (PW-8) is the witness of memorandum (Ex.P-12) of accused Pintoo and seizure memos (Ex.P-13, P-14, P-15, P-16, P-17 & P-18).
16. Sanjay Tando (PW-9) is the cousin of the deceased. He has stated that on 18.8.2007 when he was returning home from his work place, he saw the accused persons sitting near the pond in drunken condition. While he was passing from there, accused Jagdish hurled abuses at him, however, he did not react on it. He has further stated that when he was in his house, he saw that accused Pintu was hurling abuses at Tattu. At that time accused Pintu was having sword-cane in his attire. He has further stated that at the same time, his father Ganesh Ram reached the spot and tried to stop Pintu but he started abusing him also. He has further stated that accused Pintu had given a threat that he would kill any one member of Tandon family. After some time, accused Maanu & Jagmohan armed with stick & rod reached there and they also started hurling abuses at my father and uncle. He has further that on the same day at about 10.00 p.m in the night he came to know that the deceased is missing and next morning his dead body was recovered.
17. Rakesh Kumar Joshi (PW-10) is also the witness of the fact that accused/appellant Pintu was hurling abuses at Tattu (PW-14) and when he was asked not to do so, he had threatened that he would kill one of the members of Tandon family.
18. Manoj Kumar Tandon (PW-11) is the uncle of the deceased. This witness has stated that in the evening of 18.8.2007 he saw that the accused were hurling abuses at his father & uncle and accused Pintu was saying that today he would kill one member of Tandon family. He has further stated that next morning there was a rumour in the village that a dead body is

lying in the well and later on, it was identified to be the body of deceased.

19. Gulab Sonwani (PW-12) is the police person who recorded the Merg Intimation (Ex.P-6) and FIR (Ex.P-8).

20. Gorelal Kurre (PW-13) is the witness of inquest (Ex.P-10) and seizure memo Ex.P-22.

21. Tattu Tandon (PW-14) is the father of deceased. He is also the lodger of Merg Intimation (Ex.P-6) & FIR (Ex.P-8). He has stated that on abuses being hurled by accused Pintoo, he requested him not to hurl abuses. He has further stated that at the same time his brother Ganesh reached there and he also asked accused Pintoo not to hurl abuses, but instead of stopping from hurling abuses, accused Pintoo threatened that today he would kill any one member of Tandon family. He has further stated that next morning body of the deceased was found in the Well.

22. Arvind Kumar Dwivedi (PW-15) is the investigating officer who has duly supported the prosecution case.

23. Sanat Kumar Pandey (PW-16) is the Patwari who prepared the spot map of Ex.P-32.

24. At the outset, there is no eyewitness to the incident of killing the deceased and the whole case of the prosecution rests on the circumstantial evidence and to prove the case against the accused/appellants, on the basis of circumstantial evidence, the prosecution has relied upon the following circumstances:-

- On the day previous to recovery of body of deceased, accused Pintu while hurling abuses at the father & uncle of deceased had threatened that one of the members of Tandon family would be killed.
- On the day previous to recovery of body of deceased, accused/appellants followed the deceased while he was going to

drop her Damini (PW-5) at her house and getting back.

- Weapons of offence namely knife & chopper were recovered and seized at the instance of accused/appellants.

25. It is settled principle of law that in order to sustain conviction on the basis of circumstantial evidence, the prosecution must fulfil following three conditions:-

- (a) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (b) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (c) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation of any other hypothesis than that of the guilt of the accused. Further, in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The Court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

26. Keeping in forefront the aforesaid principles elucidated by the Supreme Court, we may now advert to the evidence adduced by the prosecution to find out whether the prosecution has successfully established the chain of evidence to base conviction on the basis of the circumstantial evidence

adduced by it.

27. The main circumstance relied upon by the prosecution is that while the deceased was accompanying Damini (PW-5) and getting back after dropping her at her home, the accused/appellants were following him throughout and to prove this charge, the prosecution had relied upon the evidence of Damini (PW-5), who has deposed in her Court statement that while the deceased was accompanying and getting back after dropping her, the accused/appellants were following him throughout. However, a careful analysis of her testimony in the Court and her statement recorded under Section 161 Cr.P.C., would show material contradictions which go to the root of the matter. According to the statement given by this witness (PW-5) to the police, while the deceased was going to drop her at her house, on the way she saw some persons going on foot as also on bicycle & motorcycle but she could not recognize them due to dark. It has nowhere come in her statement recorded under Section 161 CrPC that while the deceased was accompanying and getting back after dropping her, the accused/appellants had followed him throughout and that she saw in the light of a motorcycle, which passed by it, that the persons going on foot were the accused/appellants. Such a statement has been made by her for the first time in the Court which creates a serious doubt regarding the credibility and reliability of her version. In such circumstances, we feel that the trial Court ought not to have placed reliance on the evidence of Damini (PW-5) for the purpose of convicting the accused/appellants.

Now coming to the question of recovery of the weapons of offence namely knife and chopper at the instance of accused/appellants. None of the weapons of assault was found to be having the blood stains, which is clear from the report of FSL produced before the Court and thus, the

prosecution has utterly failed to prove their use in the commission of offence.

True it is that the life threat given by accused/appellant Pintu saying that he would kill one of the members of Tandon family gives rise to a strong suspicion that the accused/appellants may have committed the offence, but as is often said, suspicion howsoever, strong cannot be allowed to take the place of proof. Since the prosecution has utterly failed to prove the involvement of accused/appellants in the crime in question by leading cogent evidence, on mere suspicion they cannot be held guilty for the offence under Section 302 IPC. It is settled position of law that even if the evidence and circumstances conceivably give rise to the suspicion that the accused was involved in the incident, the same should not be allowed to form the basis of conviction.

As regards the conviction of accused/appellant under Section 201 IPC, to attract this section there should be concealment of evidence by the accused. In the present case, there is no evidence to show that the appellants have either screened or made any evidence to disappear and being so, the offence under Section 201 IPC is also not made out against the appellants.

28. Thus, the evidence adduced on behalf of the prosecution to establish the charges against the accused/appellants falls short of establishing reasonable doubt that the offence with which the appellants have been charged was committed by them. The learned trial Judge convicted the appellants on the basis of presumption and suspicion but the conviction cannot be based on suspicion nor on the conscious of the Court being morally satisfied about the complicity of an accused.

29. For the foregoing reasons, Criminal Appeals No.614/2008 & 1063/08 are allowed. The conviction and sentence awarded by the trial Court, to the appellants for the offence punishable under Sections 302/34 & 201 IPC are hereby set aside and they are acquitted of those charges. The appellants are in custody. They be set-free forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-