

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 817 of 2008

1. Premi Bai, W/o Late Shri Rajesh Kumar Bariha, age about 36 years,
2. Prem Prakash @ Hari, S/o Late Shri Sarha Satnami, age about 50 years,
3. Anod Kumar Banjare, S/o Shri Chandra Prakash Banjare, age about 30 years,

R/o Gram – Bilai-dabri, Thana-Bhatapara (Gramin), Distt. Raipur (CG)

---- Appellants

Versus

- State Of Chhattisgarh through District Magistrate, Bhatapara, Distt. Raipur (CG)

---- Respondent

For Appellants	:	Shri PKC Tiwari, Sr. Advocate with Shri Yogesh Pandey, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, Panel Lawyer.
For Complainant	:	Shri Vishnu Koshta and Shri PP Sahu, Advocates.

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

Judgment On Board By Justice Pritinker Diwaker

18/04/2017

This appeal arises out of the judgment of conviction and order of sentence dated 22.8.2008 passed by the Additional Sessions Judge, Bhatapara in ST No.72/2007 convicting each of the appellants under Sections 302/34 & 120B/34 of IPC and sentencing them to undergo imprisonment for life and to pay a fine of Rs.500/- with default

stipulation.

02. In the present case, name of the deceased is Rajesh, son of Heeraram (PW-1). Accused/appellant No.1 Premin Bai is wife of the deceased, accused/appellant No.2 Prem Prakash @ Hari is father-in-law of the deceased whereas accused/appellant No.3 Anod Kumar Banjare is brother-in-law in relation of the deceased. As per prosecution case, deceased Rajesh was resident of Village – Thothapur and on 1.1.2007 he came to Village – Bilaidabri to attend the Dashgatra ceremony of elder brother of his father-in-law (appellant No.2). On 2.1.2007 there were about 15 persons in the house of appellant No.2, including the appellants, the deceased and the persons engaged for cooking food. It is said that at about 10.30-11.00 pm the deceased went inside the room for sleeping after informing the other inmates and at about 4 am when his son Pravin Kumar (PW-2) woke up, he found that his father was not responding. Thereafter, the deceased was immediately taken to hospital at Bhatapara, however, he was declared dead in the hospital. Unnumbered merg intimation Ex.P/1 was lodged on 3.1.2007 by PW-1 Heeraram, father of the deceased, at Police Station – Pathariya, Distt. Bilaspur and thereafter, merg intimation (Ex.P/35) was recorded on 14.1.2007 at P.S. Bhatapara. After merg inquiry and receipt of postmortem report, on 22.1.2007 FIR (Ex.P/27) was registered under Sections 302 & 201 of IPC against unknown person. In the meanwhile, on 3.1.2007 inquest over the dead body was conducted vide Ex.P/2 and thereafter, the dead body was sent for postmortem which was conducted on the same day by PW-18 Dr. D.R. Singhraul vide Ex.P/23 wherein he noticed injuries/symptoms,

as described in the succeeding paragraph, and opined that the cause of death was asphyxia resulting from strangulation (externally compressive pressure around the neck) leading to occlusion of air passage and also due to cardio-respiratory arrest as well as resulting from ingestion of some poisonous substance probably, and the death was homicidal in nature. On 24.4.2007 memorandum of accused/appellant No.3 Anod Kumar (Ex.P/6) was recorded, based on which hockeystick and BSC powder were seized vide Ex.P/29 and P/20 respectively. As per FSL report (Ex.P/34) insecticide was found in the viscera of the deceased. After filing of charge sheet, the trial Court framed charges against the accused persons under Sections 120B/34, 302/34 and 201/34 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined 24 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 one Ramkhilawan 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 while acquitting the accused/appellants of the charge under Section 201/34 of IPC, convicted and sentenced them as mentioned above.

05. Counsel for the appellants submits as under:

(i) that the appellants have been convicted solely on the basis of

circumstantial evidence but its nature is not as such which can be made basis for their conviction.

(ii) that in the room where dead body of the deceased was found, apart from appellant No.1 Premin Bai, mother-in-law of and son of the deceased were also sleeping and further, from the evidence of the witnesses it is found that the door of the room was not closed from inside.

(iii) that the house in question is having number of rooms including verandah attached to the bedroom where dead body was found; about 10-15 persons were cooking food the whole night and as such, it cannot be said with certainty that it is the accused/appellants who were the perpetrator of the crime.

(iv) that the prosecution has implicated as many as three persons as accused for commission of murder of the deceased, however, there is absolutely no evidence to show as to which of the accused committed murder of the deceased.

(v) that there is no evidence of conspiracy being hatched by the accused persons.

(vi) that in the given facts and circumstances of the case, the trial Court has erred in law in holding that present being a case of house murder, the burden lies upon the appellants and as they have failed to offer any explanation, they are liable to be convicted.

(vii) that the room where dead body was found, was easily accessible to anyone and thus, the appellants alone cannot be held liable for commission of murder of the deceased.

Reliance has been placed on the judgments of the Apex Court in the

matters of ***P. Mani Vs. State of T.N., (2006) 3 SCC 161; Vikramjit Singh Vs. State of Punjab, (2007) 1 SCC (Cri.) 732; Ashok Vs. State of Maharashtra, (2015) 4 SCC 393***; and decision of this Court in the matters of ***Dilip Kumar Sahu Vs. State of CG, 2012(2) C.G.L.J. 95 (DB)*** and ***Sunil Vs. State of CG, 2016(3) C.G.L.J. 203 (DB)***.

06. On the other hand, State counsel as well as counsel appearing for the complainant supporting the impugned judgment have submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

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

08. PW-1 Heeraram, father of the deceased, has stated that on 1.1.2007 his son had gone to his in-laws' house along with his wife and two children to attend the Dashgatra ceremony of elder brother of his father-in-law and on 2.1.2007 he was killed by the accused persons. He states that he received information about death of his son and his body was brought to his house. He has proved lodging of merger intimation. However, number of unnecessary questions have been put to this witness in his cross-examination wherein he has made some allegation against the accused persons including his daughter-in-law.

09. PW-2 Pravin Kumar, son of the deceased and appellant No.1 Premin Bai, has stated that he came to the house of his maternal uncle alongwith his father, mother and brother, in the fateful night he slept along with his father and at about 4 am he found him to be dead. In para-7 he has stated that about 7-8 months back there was some

quarrel between his mother and father. He was sleeping on the same cot along with his father and till 4 am his father was alive as he (deceased) was changing position on the cot and thereafter it was noticed by his mother that his father/deceased was not responding and then other persons in the house were called. He has stated that there was no dispute between the family of his father and that of his mother, and his father might have died of heart attack. He has further stated that he slept in the room along with his mother, elder brother, father, maternal aunt and that adjacent to the said room, there was a verandah and courtyard where 8-10 persons were cooking food.

10. PW-3 Deepak Kumar, son of the deceased and appellant No.1, was not present in the house in question at the time of incident. He, however, has stated that relations between his mother and the father were cordial. PW-4 Malikram was also not present in the house in question at the relevant time. PW-5 Ramprasad, a witness of inquest, memorandum and seizure, has not supported the prosecution case and has been declared hostile. PW-6 Veersingh was one of the cooks who was cooking food in the house in question at the relevant time. He has stated that the whole night food was being cooked in the house and the deceased was awake till 10-11 in the night and thereafter he (deceased) started feeling sleepy. PW-7 Budhariram was also cooking food in the house in question at the time of incident. He has not stated anything against the accused/appellants. PW-8 Ramesh Chandra, elder brother of the deceased, was also not present in the house at the time of incident. PW-9 Nandram, who was cooking food along with other cooks, has stated that he had offered food to the deceased in the

night but he refused to take the same saying that he was having some gastric problem. PW-10 Sunil Vohra has been examined by the prosecution to prove motive on the part of the appellants. This witness has stated that appellant No.3 was removed by him from service at the instance of the deceased. However, he has not stated anything specific regarding involvement of the accused/appellants in the crime in question.

11. PW-13 Narottam Das Vaishnav is a witness to inquest. PW-14 Ashwani Kumar Pal, seizure witness, has turned hostile. PW-15 SP Bhagat, Police Inspector, did part of investigation. PW-16 Reva Ram Kaushik, PW-17 TR Dewangan, PW-19 Laxmi Banjare & PW-24 Ghanshyam Mishra, Constables, helped in the investigation. PW-18 Dr. DR Singhraul conducted postmortem on the body of the deceased and noticed following symptoms/injuries vide Ex.P/23:

“The whole body turned bluish, eyes closed, eyelid swollen, blood oozed from both mouth and nostrils and running downwards the right cheek, foul smell coming out from mouth, teeth clenched, tongue dry and bitten between the teeth. There was swelling on the neck, diffuse swelling around the neck, specially more marked above and below the thyroid cartilage, on anterior and lateral aspects on right side of neck 4" x 3 ½" at anterior aspect and 3" x 3" on either side of neck right and left lateral aspect and 2 ½" x 2" on posterior aspect of neck, dark, bluish colour. Abrasion 1" x ½" on right shoulder and right scapula. Rigor mortis and stiffness present on both the hands and legs.”

In his opinion, the cause of death was asphyxia resulting from strangulation (externally compressive pressure around the neck)

leading to occlusion of air passage and also due to cardio-respiratory arrest as well as resulting from ingestion of some poisonous substance probably and the death was homicidal in nature. However, viscera was preserved for chemical analysis and needful expert opinion.

12. PW-20 Rajesh Vyas has been examined to prove the call details. PW-21 Malikram has been examined to prove that certain amount was due against appellant No.1, who was Sarpanch of the village. PW-22 Darmesh Kumar is a witness to inquest. PW-23 SN Sidar, investigating officer, has supported the prosecution case.

13. DW-1 Ramkhilawan has not stated anything specific and in fact, he was not present in the village at the time of incident.

14. Admittedly, there is no direct evidence against the appellants to show their complicity in the crime in question and their conviction rests upon circumstantial evidence, main being their non-explanation as to the circumstances in which the deceased died.

15. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely

indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

16. True it is that when an offence takes place inside the privacy of a house where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

It is equally true that when various links in the prosecution case have been satisfactorily made out pointing the accused as the probable assailant and the proximity of the accused to the deceased as regard the time and situation, and if the accused does not offer any explanation which might afford a reasonable basis for a conclusion consistent with his innocence, such absence of explanation or false explanation would be an additional link to the prosecution links. The principle underlying Section 106 of the Evidence Act which is an exception to the general rule governing burden of proof, applies only to

such matters of defence which were supposed to be specially within the knowledge of the party concerned. It cannot apply when the fact is such as to be capable of being known also by persons other than the party. To infer guilt of the accused from the absence of a reasonable explained (or a false explanation) where other circumstances are not by themselves enough to call for his explanation would be to relieve the prosecution of its burden.

17. In the present case, close scrutiny of the evidence makes it clear that on 1.1.2007 the deceased came to his in-laws' house along with his wife (appellant No.1) and two other children to attend the Dashgatra ceremony of elder brother of his father-in-law (appellant No.2) and on the next day at about 4 am he was found dead in the house. Admittedly, as per autopsy surgeon (PW-18) the cause of death was asphyxia resulting from strangulation as well as resulting from ingestion of some poisonous substance and the death was homicidal in nature and further, as per FSL report, some poisonous substance was found in the viscera of the deceased, but there is no legally admissible evidence to show involvement of the accused/appellants in commission of the offence. It has also not been proved as to who administered poison to the deceased. The prosecution has not been able to prove guilt of the appellant beyond reasonable doubt and the trial Court merely on the basis of non-explanation of the accused/appellants in their statements under Section 313 of Cr.P.C. with regard to the circumstances in which the deceased died, held them guilty of the offence under Sections 302, 201 read with 34 of IPC. True it is that the accused persons did not offer any explanation in their

statements under Section 313 of Cr.P.C., which in the facts and circumstances of the case, was expected from them in view of Section 106 of Evidence Act, but at the same time there is no denying the fact that in the house in question at the relevant point of time, apart from the accused/appellants there were other persons, 10-15 in number, and some of them were engaged in cooking food and as such, it cannot be said that the accused persons were the only inmates of the house where the incident took place. Further, it is not the case of the prosecution that the body of the deceased was found in a room locked from inside, rather present is a case where the deceased slept in the room along with his wife (appellant No.1), two children and mother-in-law (who has not been made accused). This apart, as per the prosecution case itself there was verandah and courtyard attached with the room in question where food was being cooked the whole night.

Furthermore, there is absolutely no evidence that the accused/appellants hatched any criminal conspiracy to commit murder of the deceased. The prosecution has failed to establish as to how and in what manner all the accused persons were involved in commission of the offence.

18. Keeping in mind the aforesaid principles of law relating to circumstantial evidence and also to applicability of Section 106 of the Evidence Act, if we examine the evidence adduced by the prosecution, we are of the opinion that the prosecution has utterly failed to prove guilt of the accused/appellants beyond the shadow of reasonable doubt. All the circumstances even if taken together do not conclusively and unerringly point towards the guilt of the accused/appellants. In a

case resiting on circumstantial evidence, the prosecution is required to take extra caution while collecting evidence and proving the same. It must be proved in such a manner which could lead only one inference that it is the accused/appellants alone who were the perpetrator of the crime in question. However, in the case in hand, the prosecution has utterly failed to establish a complete chain of circumstantial evidence against the appellants. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and the appellants are entitled for acquittal of the charges by giving them benefit of doubt.

19. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellants are acquitted of charges under Sections 302/34 and 120B/34 of IPC. The appellants are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge