

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 929 of 2008

- Ram Kumar Rathiya, S/o Shri Parmeshwar Rathiya, aged about 22 years.
- Parmeshwar Rathiya S/o Gada Rai Rathiya, aged about 47 years.
- Badri Prasad Rathiya S/o Bhitthal Rathiya, aged about 20 years.

All R/o Vill.-Deharidih, PS-Punjipathra,tah. & Distt.-Raigarh(CG)

---- Appellants

Versus

- State Of Chhattisgarh, through Police Station, Punjipathra, Distt. Raigarh.

---- Respondent

For Appellants	:	Shri M.K. Sinha, Advocate.
For Respondent	:	Shri Rahul Tamaskar, Panel Lawyer.

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

Judgement

Per P Diwaker, J

06/04/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 4.10.2008 passed by the Additional Sessions Judge, Raigarh in S.T. No.29/2008 convicting the accused/appellants under Sections 302/34 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing them to undergo R.I. for Life and fine of Rs.5,000/- & R.I. for 5 years and fine of Rs.2,000/- respectively, with usual default clauses.
2. As per case of the prosecution, the deceased was missing from 22.11.2007, the family members had searched for him but he was not found and therefore on 27.11.2007 a missing report was lodged by PW-1

Shiv Prasad, brother of deceased. Further case of the prosecution is that on 6.12.2007 said Shivprasad informed the police that a dead body is found floating in the Ratro Dam and later on, it was identified to be the body of deceased Deoprasad by PW-1 vide Ex.P-4. Merg Intimation (Ex.P-1) was recorded on 6.12.2007. Inquest on the body was prepared on 6.12.2007 vide Ex.P-2. Body was sent for post mortem examination which was conducted by Dr. Prem Bodalkar (PW-6) vide Ex.P-6 and according to the doctor, the cause of death was asphyxia as a result of throttling, the death was homicidal in nature and duration of death was about 15 days prior to the post-mortem examination. On the basis of merg enquiry, on 7.12.2007 FIR under Section 302/201 IPC was registered against unknown person. On 7.12.2007 diary statement of Narayan (PW-2) was recorded wherein he deposed that there was previous dispute between the accused/appellants and the deceased, on 22.11.2007 in the night as the deceased was hurling abuses, he was taken by the accused/appellants and since then his whereabouts were not traceable. 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 dam.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302, 201, 34 of the 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 nine 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.
4. 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.

5. Learned counsel for the accused/appellants submits that there is no direct evidence against the appellants and their conviction is recorded on the basis of circumstantial evidence i.e. last seen, but the prosecution has failed to prove this circumstance beyond a reasonable doubt. He further submits that the circumstances of 'last seen together' does not, by itself, necessarily lead to the inference that it was the accused who committed the crime and there must be something more to establish the nexus between the accused and the crime. He further submits that even as per Narayan (PW-2), he saw the appellants taking the deceased towards the house of accused Parmeshwar on 22.11.07, but he did not disclose this fact to anyone till the recovery of corpse of deceased and this makes his testimony unreliable and untrustworthy. He further submits that in the absence of any positive evidence to conclude that the appellants were responsible for the homicidal death of the deceased, the appellants are entitled to be acquitted of all the charges.
6. 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.
7. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
8. Shiv Prasad (PW-1), brother of deceased, is the lodger of merged intimation (Ex.P-1). He has stated that two days prior to the incident, there was a quarrel between him, his brother (deceased) and the appellants.
9. Narayan Prasad (PW-2) has stated that two days prior to 22.11.07 the appellants have committed *maarpeet* with the deceased as he had broken

the mercury bulbs fixed in the village by Jindal Industry. He has further stated on 22.11.2007 at about 9.30 p.m., on abuses being hurled by the deceased, the accused/appellants came out from their house, caught hold of him and took him inside the house of accused Parmeshwar. He has further stated that on the same day at about 10.30 p.m. in the night the mother & brother of deceased enquired from him about the whereabouts of deceased and he disclosed to them as to what he had seen. He has further stated that he along with Shiv Prasad had gone to the police station and lodged the missing report of the deceased. In the cross-examination this witness has stated that prior to 7.12.2007, either at the time of lodgement of missing report of deceased or during investigation of missing report of the deceased in the village, he did not disclose to the police about the incident occurred on 22.11.2007. He has further stated that the deceased was involved in number of cases of theft and that there was strong opposition against him. He has further stated that on the date of incident, the accused persons along with various other villagers had gone to watch Bojiya Mela in their tractor.

10. Lochan Prasad (PW-3) is the witness of identification memo Ex.P-4. Boondram (PW-4) did not support the prosecution and as such declared hostile. Telobai (PW-5), mother of deceased, has not stated anything against the accused/appellants. Dr. Prem Bodalkar (PW-6) is the person who conducted post-mortem examination over the body of deceased and opined that the cause of death was asphyxia as a result of throttling and the death was homicidal in nature. This witness has further opined that the duration of death was about 15 days prior to the post-mortem examination. Kedarnath (PW-7) is the police person who entered the complaint of the deceased regarding the incident of *maarpeet* occurred on 19.11.2007 in the *roznamcha sanha*. Prakash Narayan Pandey (PW-8) is

the police person who recorded missing report of the deceased. Kishore Kerketta (PW-9) is the Investigating Officer who has duly supported the prosecution case.

11. Close scrutiny of evidence available on record makes it clear that conviction of accused/appellants is based on the sole testimony of Narayan (PW-2) who has deposed that on 22.11.2007 he saw the accused/appellants taking the deceased along with them, but the testimony of this witness does not inspire confidence for accepting and acting upon it. According to Narayan (PW-2), his house is situated near the house of deceased; in the evening of 22.11.2007 he saw from the verandah of his house that the accused/appellants were taking the deceased along with them towards the house of accused Parmeshwar; on the same day the mother & brother of the deceased enquired from him regarding the whereabouts of the deceased and he disclosed to them as to what he had seen, but the version given by this witness did not find corroboration from the evidence of Shiv Prasad (PW-1) & Telobai (PW-5). None of these witnesses has stated that Narayan (PW-2) disclosed to them that the accused/appellants had taken the deceased with them. Rather it has come in the statement of Telobai (PW-5) that on being asked as to the whereabouts of deceased, Narayan (PW-2) showed his ignorance. Had it been true that PW-2 disclosed the aforesaid fact to the brother & mother of the deceased, they would have mentioned this fact specifically in the missing report lodged by them. This apart, Narayan (PW-2) was admittedly present at the time of lodgement of missing report and also available in the village when the police was making enquiry about missing of the deceased, but he did not disclose this fact to the police that he had seen the accused/appellants taking the deceased along with them. There is absolutely no explanation for this delayed disclosure

and this casts a serious doubt on the credibility of the last seen evidence given by Narayan (PW-2). Since there is no other evidence on record against the accused/appellants to connect them with the crime in question, we are of the opinion that it would be unsafe to sustain the conviction of accused/appellants on the sole testimony of PW-2 Narayan.

So far as the conviction of accused/appellant under Section 201 IPC is concerned, there is no evidence worth the name available against them and therefore they are entitled to be acquitted of this charge also.

12. Thus, considering the nature and quality of evidence adduced by the prosecution, we are of the opinion that the prosecution has failed to prove involvement of accused/appellants in the crime in question beyond reasonable doubt and they are definitely entitled to be acquitted of the charges by extending them benefit of doubt.

13. For the foregoing reasons, the appeal is allowed. Conviction and sentence of the appellants under Sections 302/34 & 201 of the IPC are hereby set aside and they are acquitted of those charges by extending them benefit of doubt. Presently the appellants are on bail. Their bail bonds are discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-