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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 793 of 2006

- Dileshwar S/o Karamdev, aged about 20 years, occupation labour, R/o village Parri, Sarnapara, P.S. Surajpur, Distt. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh through P.S. Surajpur, Distt. Surguja (CG)

---- Respondent

And

CRA No. 766 Of 2006

- Ram Surat @ Surit, S/o Darogi Ram, aged about 35 years, Occupation Agriculture, R/o Village Gopalpur, P.S. Surajpur, Distt. Surguja (CG)

---- Appellant

Vs

- State Of Chhattisgarh through P.S. Surajpur, Distt. Surguja (CG)

---- Respondent

And

CRA No. 850 Of 2006

- Radhe Singh, S/o Charku Singh, aged about 24 years, Occupation - Agriculture, R/o Village - Gopalpur, P.S. Surajpur, Distt. Sarguja (CG)

---- Appellant

Vs

- State Of Chhattisgarh through P.S. Surajpur, Distt. Sarguja (CG)

---- Respondent

For Appellant in Cr.A.No.793/06 :
For Appellants in Cr.A.Nos.766/06 :
& 850/06 :
For Respondent/State :

Shri Manoj Mishra, Advocate.
Shri D.N. Prajapati, Advocate.
Shri V. Goverdhan, P.L.



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

Judgment On Board By Justice Pritinker Diwaker

16/02/2017

As these three appeals arise out of the common judgment of conviction and order of sentence dated 27.9.2006 passed by the First Additional Sessions Judge, Surajpur in ST No.02/2006 convicting the appellants under Sections 302, 201, 34 of IPC and sentencing each of them to undergo imprisonment for life, pay a fine of Rs.100/- and RI for seven years, pay a fine of Rs.100/- with default stipulations respectively, they are being disposed of by this common judgment.

02. In the present case, name of the deceased is Gulab Singh. As per prosecution case, on 15.9.2005 the accused/appellants forcibly picked up PW-3 Krishna Kumari on their motorcycle and while they were trying to have sex with her, the deceased Gulab Singh intervened, on which he was killed by the appellants by throttling him and his dead body was thrown into a well. As the deceased was missing from 15.9.2005, on 18.9.2005 his father Ishwar Prasad (PW-1) lodged a report (unexhibited). On 19.9.2005 dead body of the deceased was found in the well. As soon as PW-1 came to know about the discovery of dead body of his son, he lodged merger intimation on 19.9.2005 (Ex.P/1). Inquest over the dead body was conducted 19.9.2005 vide Ex.P/2 and thereafter, the body was sent for postmortem which was conducted on 20.9.2005 by PW-10 Dr. R.S. Singh vide Ex.P/12 wherein he noticed fracture of hyoid bone and superior carno of thyroid cartilage and that trachea was congested. In

his opinion, the cause of death was asphyxia due to throttling and the death was homicidal in nature. In the meanwhile, on 19/20.9.2005 FIR (Ex.P/5) was registered under Section 302/201 of IPC against unknown person. After about 10 days of the incident, diary statement of PW-3 Krishna Kumari was recorded wherein she has stated that she was taken forcibly by the accused persons and the deceased, she along with them consumed liquor; the accused persons and the deceased had a quarrel for having sex with her first and then the accused/appellants committed murder of the deceased by throttling and threw his dead body in the well. She has stated that as she got scared, she went back to her house and did not lodge report. After investigation, charge sheet was filed against the appellants under Sections 302, 201, 34 of IPC followed by framing of charge by the trial Court accordingly.

03. So as to hold the accused/appellants guilty, the prosecution examined 11 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.

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 submit as under:

(i) that the diary statement of PW-3 Krishna Kumari has been recorded after about 10 days of the incident and the inordinate delay in recording

the statement of this witness has not been explained by the prosecution.

(ii) that in the Court PW-3 has narrated an entirely new story, contrary to her statement under Section 161 of Cr.P.C. and as such, no reliance can be placed on her testimony.

(iii) that the so-called witnesses of last seen PW-1 Ishwar Prasad and PW-2 Tibal Singh are also not reliable as their statements are self-contradictory and PW-1 has stated in the Court that whatever he is deposing in the Court is as per the advice of his counsel.

(iv) that in fact, present is a case of no evidence, yet the appellants have been convicted on the basis of some inadmissible evidence.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

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

08. PW-1 Ishwar Prasad Singh, father of the deceased, had lodged missing report (unexhibited) and the merged intimation. He has stated that on 15.9.2005 his son Gulab Singh and the accused persons were roaming in the village on motorcycle, they consumed liquor together in the house of Gulab Singh and till 3 in the afternoon they were together. He has stated that when his son did not return on the said date, he enquired from the appellants on the next day, however, they informed him that the deceased was not with them. He has further stated that on

18.9.2005 he lodged missing report and on the second day he came to know that dead body of his son is lying in the well. When he reached the well along with other villagers, he found dead body of his son, his slippers and T-shirt were also there in the well. In para-11, he has admitted that before making statement in the Court he had contacted his lawyer and is deposing in the Court as has been advised to him by his counsel.

It is relevant to note here that Court statement of this witness does not tally with his statement made while recording mereg intimation where he has merely stated that he saw the deceased with Ramsurat.

09. PW-2 Tibal Singh, another witness of last seen, has stated that he saw his nephew Gulab Singh entering the house of one Roopsai along with the appellants, however, he is not aware as when they left the house of Roopsai. He has stated that there was old dispute between Roopsaid and deceased and that once Roopsai had given threat to the deceased. In cross-examination, he has stated that when he saw the accused persons and the deceased together, it was the occasion of Karma festival and on that occasion, the villagers with their friends roam around in the village, consume liquor together and celebrate the festival.

10. PW-3 Krishna Kumari has stated that on the day of Karma festival, she was in the house of her grand-father in relation at Village - Parri. While she was going to the house of her maternal uncle at Surajpur on foot, all the three appellants, who were drunk, came there on motorcycle, asked her to sit on their motorcycle, when she refused,

they forcibly made her sit on the vehicle and took her to a godown. She has stated that one of the accused (Dileshwar) whom she does not know by name had gone to purchase liquor, they also offered liquor to her which she refused and by that time the deceased reached there and asked the accused persons as to what they are doing. She states that there was some quarrel between the deceased and the accused/appellants, the accused persons sat on the chest of the deceased and beat him to death and then threw his dead body in the nearby well. During this period, she hid herself behind the bushes.

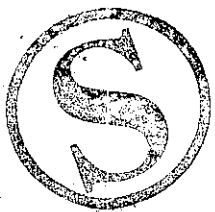
It is worthwhile to mention here that the Court statement of this witness is at variance with her diary statement where she has stated that the accused persons, the deceased and she herself had consumed liquor and thereafter, there was some quarrel between the accused/appellant and the deceased over having sex with her first which culminated into death of the deceased. However, while deposing in the Court she has changed her version and put forth an entirely different story. As per her diary statement, she knew all the accused persons but in her Court statement she has stated that she is not aware of their names. She has also not explained as to why her diary statement was recorded after an inordinate delay of 10 days of the incident. From her lengthy cross-examination, it is apparent that there are material contradictions and omissions in her Court statement from that of her diary statement, which renders her testimony doubtful.

11. PW-4 Sudama and PW-6 Parshuram have not stated anything specific against the accused/appellants. PW-5 Narad Vishwakarma

has not supported the prosecution case and has been declared hostile. PW-7 Mithlesh Kushwaha is a witness of inquest Ex.P/2 and seizure Ex.P/7. PW-8 Hemangal is a witness of spot panchanama and seizure. PW-9 Khooblal is a witness of seizure of sari Ex.P/11. PW-10 Dr. RR Singh conducted postmortem on the body of the deceased vide Ex.P/12 and noticed fracture of hyoid bone and superior carno of thyroid cartilage and that trachea was congested. In his opinion, the cause of death was asphyxia due to throttling and the death was homicidal in nature. PW-11 MS Rathiya, investigating officer, has supported the prosecution case.

12. In the present case, conviction of the appellants is based mainly on the evidence of PW-1 & 2 regarding last seen and the evidence of PW-3 who claims herself to be the eyewitness of the incident.

13. Close scrutiny of the evidence makes it clear that the evidence of so-called eyewitness PW-3 Krishna Kumari is not worth reliance for the reason that she has improved a lot on material particular while deposing in the Court. On the one hand, in her diary statement she has stated that on the date of incident she also consumed liquor with the accused/appellants and the deceased and thereafter, on account of there being quarrel between the accused and the deceased over having sex with her first, the deceased was done to death by the accused persons whereas while deposing in the Court she has changed her version and has put forth an entirely different story. This apart, in her diary statement, she has disclosed the names of all the accused persons but in her Court statement she pleaded ignorance



about their names. She has also not explained as to why she kept mum for 10 days after the incident and did not disclose the act of the appellants to the police.

14. As regards the evidence of last seen, PW-1 Ishwar Prasad in the Court has stated that the deceased was last seen roaming around with all the appellants whereas while lodging mere intimation he stated that on the date of incident he saw the deceased only with accused Ramsurat and after that the deceased did not return. In his cross-examination, this witness has admitted that whatever he is deposing in the Court is as per the instructions of his counsel whom he had contacted before making statement in the Court. Another witness of last seen i.e. PW-2 Tibal Singh has stated in the Court that he saw the deceased alongwith the appellants entering house of one Roopsai and thereafter, he went inside his house and is not aware as to when the appellants and the deceased left the house of Roopsaid. This witness has further stated that there was old animosity between the deceased and Roopsaid, and once Roopsaid had also given threat to the deceased. Court statement of this witness is quite at variance with his diary statement.

15. Thus, considering the overall facts and circumstances of the case, in particular the contradictions and omissions in the statements of PW-1, PW-2 & PW-3 on material points, and that apart from these witnesses, there is no other evidence on record against the appellants, we are of the opinion that the prosecution has not been able to establish its case against the appellants beyond the shadow of all



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reasonable doubt and as such, the finding of guilt recorded by the trial Court is not sustainable in the eye of law. Being so, the appellants deserve to be acquitted of the charges by giving them benefit of doubt.

16. In the result, the appeals are allowed. The impugned judgment is hereby set aside and the appellants is acquitted of charges under Sections 302, 201/34 of IPC by extending them benefit of doubt. They 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

Khan