

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 518 of 2010**

1. Amarsai, S/o Joleram Ghasiya, aged about 50 years,
2. Santram, S/o Gondtin, Ghasi, aged about 55 years,
3. Rudan S/o Santram Ghansi, aged about 30 years,

All resident of village Jheradih, P.S. Batoli, District - Surguja
(C.G.)

---- Appellants

Versus

- State of Chhattisgarh : Through Police Station Batoli, District
Surguja (C.G.)

---- Respondent

For Appellants	:	Shri Sunil Tripathi, Advocate.
For Respondent/State	:	Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

Per Pritinker Diwaker, J

30/11/2017

This appeal arises out of judgment of conviction and order of sentence dated 20.07.2010 passed by the 4th Additional Sessions Judge (FTC), Ambikapur, District Sarguja (C.G.), in Sessions Trial No.358/2006 convicting the accused/appellants under Section 302/34 IPC & sentencing them to undergo imprisonment for life with fine of Rs.1,000/- each, in default of payment of fine amount to further undergo R.I. for two months.

2. As per the prosecution case, on 12.05.2006 at about 3.00 pm, appellants committed murder of Brijlal by throttling and threw his body in a village pond. On 13.05.2006, body of the deceased was recovered from the village pond and merg intimation (Ex.P/1) was recorded at the instance of Mohar Sai (PW/1), brother of the deceased. Inquest on the body of deceased was conducted on 13.05.2006 and body was sent for postmortem examination which was conducted by Dr. N. Francis Beck (PW/7) who gave his report (Ex.P/6) noticing following injuries:-

- (i) Multiple burn injuries were seen over the body and both ear of pinna clotted with blood.
- (ii) Face was blacken, lower jaw depressed, teeth were showing and abdomen dis tented
- (iii) Both eyes epithelial cells were eaten by frost bite.
- (iv) Multiple nail like marks were present around the neck, more in left side of neck.

The Autopsy Surgeon opined the cause of death of deceased to be asphyxia due to throttling and the death was homicidal in nature.

03. After merg inquiry, FIR (Ex.P/9) was registered on 16.05.2006 under Section 302/34 of IPC against unknown person. Further case of the prosecution is that on 09.06.2006 and 10.06.2006, case diary statement of Sharan Sai (PW/10) and Rizo Bai (PW/13) respectively were recorded wherein they have stated that on 12.05.2006 they saw the accused persons committing murder of the deceased. According to 161 Cr.P.C. statement of PW/10, apart from accused/appellant No.1-Amar Sai, one Ravi was also there and all the four accused persons throttled the neck of the deceased. From the spot, Gamcha, vest, lungi, umbrella, axe and one pair

shoe were also seized vide Ex.P/5, however, there is no FSL report on record to prove presence of blood thereon. Even there is no evidence that these articles were of the deceased. After filing of the charge-sheet, the trial Court framed the charge against the accused/appellants under Section 302/34 of IPC.

4. In order to prove complicity of the accused/appellants in the crime in question, the prosecution has examined 13 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. That apart, one defence witness Amar Sai (DW/1) was also examined to substantiate its case. It is relevant to note here that no charge-sheet was filed against Ravi whose name has been taken by Sharan Sai (PW/10) in his diary statement recorded under Section 161 Cr.P.C..

5. After hearing the parties the Court below has convicted and sentenced the accused/appellants as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

6. Counsel for the accused/appellants submits :

(i) That the accused/appellants have been convicted solely on the basis of statement of Sharan Sai (PW/10), however, inordinate delay in disclosing the fact to police about seeing the incident by this witness has not been explained by the prosecution.

(ii) That Rizo Bai (PW/13) - deaf and dumb witness, has not supported the prosecution case.

7. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

8. We have heard learned counsel for the parties and perused the material available on record.

9. Sharan Sai (PW/10) is a important prosecution witness. He has stated that on the date of incident at about 7.00 am, he had gone to the deceased to collect his wages. Deceased asked him to collect the same at 12.00 in the afternoon. Thereafter, at about 2.30 pm, he again went to his (deceased) house, however, he was not there and it was informed by one Siyaram that the deceased had gone to graze his cattle. Thereafter, when he had gone to search the deceased, near the village pond he saw the accused persons and one Ravi pressing the neck of the deceased and the accused persons threatened him (this witness) not to come near to them otherwise he would also be killed. In cross-examination, he states that at the time of recording his diary statement, he did inform the police about threat being extended by the accused persons and if the same is not recorded, he could not tell reason. In cross-examination, he has further stated that apart from the accused persons, other persons were also present there whose voice he could hear but he could not identify them. He has also stated that he never informed any villager about the incident and after 2-3 days of the incident he informed the police everything about the incident. This witness has further stated that after the incident, he came to his house and on the day when body of deceased was recovered from the pond, he was there along with other villagers but he did not disclose the incident to anyone.

10. Rizo Bai (PW/13) is another eye-witness to the incident. As this witness was deaf and dumb, she has been examined in the Court with the help of interpreter. This witness has not supported the prosecution case.

11. Mohar Sai (PW/1) is a lodger of merged intimation (Ex.P/1). Dilesh Kumar (PW/2) is a hearsay witness. Patku (PW/3) and Roshni Bai (PW/4) turned hostile. Dhani Giri (PW/5) and Dharmaraj Singh (PW/6) are the witnesses to seizure made under Ex.P/5. Dr. N. Francis Beck (PW/7) conducted the postmortem on the body of deceased and gave his report Ex.P/6 opining the cause of death of deceased to be asphyxia due to throttling and death was homicidal in nature. Dev Kumar Jaiswal (PW/8) is Patwari who prepared spot map vide Ex.P/8. M. R. Bhagat (PW/9) - Investigating Officer has duly supported the prosecution case. Devnarayan (PW/11) - Assistant Sub Inspected did initial part of investigation. Sewak Ram (PW/12) is witness to inquest (Ex.P/4).

13. Amar Sai (DW/1) is accused No.1. He has stated that after the incident, after about 10-12 days, he was detained by the police, he preferred bail application before the Magistrate and the said document is Ex.D-1 and D-2.

14. Close scrutiny of the evidence makes it clear that the accused/appellants have been convicted solely on the basis of statement of PW/10. Undoubtedly, diary statement of PW/10 was recorded on 09.06.2010 i.e. almost after about one month of the incident but he did not assign any valid or excusable reason as to why he kept quiet for such a long period. In his Court statement, he admits that even when the body of deceased was taken out from the pond, he was present on the spot along with other villagers but he remained silent on this point as to why he did not disclose the incident to any villager. He further admits that after seeing the appellants committing murder of the deceased, he came back to his house. According to him, there was another accused along with the appellants i.e. Ravi but the prosecution case is silent

in respect of said Ravi. Yet another important aspect of the case is that as per PW/10, he could hear the voice of other persons also who were present at the place of occurrence but there is no reference of those persons in the entire prosecution case. The delayed statement of PW/10 does not inspire confidence of this Court and it will not be safe for us to uphold the conviction of the accused persons solely on the basis of statement of this witness. The another important prosecution witness is PW/13 (deaf and dumb) but she has not supported the prosecution case.

15. Considering the overall effect of the evidence adduced by the prosecution, we are of the view that there is no conclusive piece of evidence proving the guilt of the accused/appellants for commission of offence beyond all reasonable doubt and being so, the benefit of doubt, of course has to go to the accused/appellants.

16. Accordingly, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellants stand acquitted of the charge levelled against them. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge