

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 697 of 2011

- Raghuvar Sahu @ Rakbar Sahu, S/o Kamal Sahu, Aged about 31 years, Vill. Devpuri, Thana Tikrapara, Distt. Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, Through Police Station Tikrapara, District Raipur (CG)

---- Respondent

For Appellant	: Shri Alok Dewangan, Advocate
For Respondent/State	: Shri Rahul Tamaskar, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgement on Board

Per Pritinker Diwaker, J

24/07/2017

This appeal arises out of judgment and order dated 25.08.2011 passed by the Sessions Judge Raipur, in S.T. No. 193/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.

2. As per prosecution case, deceased Poonam Das Manikpuri was having illicit relation with the wife of accused/appellant. It is stated that on the eve of holi (04.03.2010), deceased consumed liquor along with the appellant in his house and at that time appellant administered some pesticide in the liquor consumed by the deceased, resulting his death.

Dead body was found on the way towards Jain Public School near the canal which was about a distance of 3 kms. away from the house of accused/appellant. Merg intimation of unknown body was recorded on 5.3.2010 vide Ex.P-7 by Mahesh Sahu (PW-8). Inquest (Ex.P-1) was prepared and body was sent for postmortem examination which was conducted by Dr. Shivnarayan Manjhi (PW-7) vide Ex.P-10 and according to him, death was due to cardio respiratory failure. On 21.4.2010, written report Ex.P-4 was lodged by Ishwar Das Manikpuri (PW-1) father of the deceased showing the appellant to be suspect and murderer of the deceased. On 12.06.2010 after enquiry of the written report, FIR was registered against the appellant under Section 302 IPC. On 13.06.2010, memorandum of the accused/appellant Ex.P-5 was recorded wherein he had confessed that the deceased was having illicit relation with his wife Shanti Bai and when despite of repeated warning he did not correct himself he decided to eliminate him and on 4.3.2010 he administered Endosulphas in the liquor consumed by the deceased. He has further stated that he had destroyed the cell phone of the deceased and had thrown it in the nearby canal. Based on his memorandum Ex.P-6 seizure of one mobile battery, broken cabinet and some parts of the mobile was made. After filing of the charge sheet the trial court has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 16 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) there is no eyewitness count to the incident and the appellant has been convicted solely on the basis of circumstantial evidence.

ii) the nature of circumstantial evidence is so weak which cannot be made basis for conviction of the appellant.

iii) though on the basis of memorandum, seizure of certain articles have been effected but the said seizure has not been connected with the commission of the murder of the deceased.

iv) no poisonous substance has been seized from the possession of the appellant.

v) there is no evidence that the poison was administered by the accused/appellant, the said poison was in possession of the appellant or purchased by the appellant.

vi) the mere fact that the appellant and the deceased consumed liquor together on 04.03.2010 would itself not prove that it is the appellant who had administered some poisonous substance to the deceased.

vii) the appellant is in jail since 13.06.2010 thereby has remained in jail for about 7 years.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the

accused/appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material on record.

8. Ishwar Das Manikpuri (PW-1) is the father of the deceased who made a written report Ex.P-4 dated 21.04.2010. He has stated that on 04.03.2010 accused/appellant came and took him to his house and offered liquor but he refused for the same and at that time, the appellant said to his wife that nobody knows as to what will happen and was abusing her. After sometime he returned to his house but his son did not come home and then he made a search in the nearby places. On the next day at about 8.00 a.m. his uncle Umesh Das took him to the border line of the village and saw dead body of his son lying over there, his eyes were bleeding, clothes were torn and there was injury on the right side of his head. In cross-examination he has stated that he is not aware as to whether on the date of incident the appellant was there or not. Gopichand Sahu (PW-2) and Umesh Das (PW-3) have not stated anything and have been declared hostile. Smt. Chameli Bai (PW-4) and N. K. Sharma, (PW-5) have not stated anything specific against the appellant. Y. N. Sharma (PW-6) is a witness to inquest Ex.P-9. Dr. Shivnarayan Manjhi (PW-7) is the autopsy surgeon who conducted post mortem examination on the body of the deceased and opined that death was due to cardio respiratory failure. Ku. Roshni Netam (PW-9) and Ku. Durgesh have not stated anything against the accused/appellant and have turned hostile. Janki Manikpuri (PW-12) has stated that deceased was the son of her sister and he was having illicit relation with the wife of the appellant. She has stated that on the eve of holi, accused/appellant offered liquor to the deceased and both

of them consumed the same. It is relevant to note that this witness has not stated as to on what date and time she had last seen the accused/appellant and the deceased together. Smt. Sikundeeep (PW-13) on one occasion had seen the wife of the accused/appellant and the deceased in some objectionable condition. Amit Das (PW-14) has stated that deceased told him that he does not like the wife of appellant and it is she who was after him. Goverdhan Kosariya (Pw-15) has proved the seizure Ex.P-8 and one syringe was recovered which was lying near the body of the deceased. S.N.Akhtar (PW-16) is the Investigating Officer who had done the investigation.

9. Close scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellant there is no legally admissible evidence showing the involvement of the appellant in the commission of the offence. Though on the memorandum of the appellant seizure Ex.P-6 of mobile battery, broken cabinet and some parts of the mobile was made but it has not been proved by the prosecution that these articles belonged to the deceased. The witness of last seen Janki Manikpuri (PW-12) does not make it clear as to on what date she saw the accused/appellant and the deceased together. Furthermore, there is no FSL report in respect of the viscera. There are no eyewitnesses to the incident and the conviction is based on circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion except the guilt of the accused person, is discernible without any doubt. In the present case, in the first instance the appellant was roped in with suspicion mainly because his wife and the deceased were having illicit relation and despite repeated warning he did not

correct himself and therefore the appellant decided to eliminate him and on 4.3.2010 he administered Endosulphas in the liquor consumed by the deceased. There is absolutely no evidence that it is the accused/appellant who administered the poison in the liquor consumed by the deceased. Moreover, there is no evidence that the accused/appellant was in possession of the said poison and no such poison has been seized from the possession of the appellant. The evidence of last seen is also not established. If all these facts are seen in its entirety, in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the recovery of said articles. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof.

10. Overall scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellant based on which seizure of mobile battery, broken cabinet and some parts of the mobile was made, there is no evidence against him. Father of the deceased has stated that only on the basis of suspicion, the written report has been made and after enquiry, FIR was lodged against the appellant. Thus, we are of the opinion that the present is in fact a case of no evidence. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only at one conclusion, that is, the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the appellant in the present case on the basis of circumstantial evidence. The prosecution has failed to establish the accusation and therefore we allow the appeal

and set aside the conviction and sentence of the appellant. The appellant is in jail, he be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd/-
Pritinker Diwaker
Judge

Sd/-
Ram Prasanna Sharma
Judge

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