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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 265 of 2006

- Narayan Singh, S/o SS Chauriya, aged about 35 years, R/o Piparkhar, PS-Ambagarh Chowki, Distt. Rajnandgaon (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Police Station Ambagarh Chowki, Distt. Rajnandgaon (CG)

---- Respondent

For Appellant : Shri SC Verma, Advocate.
For Respondent/State : Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

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

Judgment On Board By Justice Pritinker Diwaker

18/01/2017

This appeal arises out of the judgment of conviction and order of sentence dated 3.1.2006 passed by the Sessions Judge, Rajnandgaon, in ST No.52/2005 convicting the appellant under Sections 302 & 201 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for three years and pay a fine of Rs.500/- with default stipulations respectively.

02. In the present case, name of the deceased is Suklal, father of the accused/appellant. As per prosecution case, a day prior to the incident i.e. 26.2.2005 there was some quarrel between the appellant and his father Suklal as the deceased was abusing mother of the appellant. It is alleged that on 26.2.2005 the appellant killed the deceased by



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throttling and threw his dead body in the village pond, which was subsequently discovered by the villagers who had gone there. Information about the death of Suklal was given by the villagers to Village Kotwar Sunderlal (PW-3), who lodged mereg intimation (Ex.P/3) on 27.2.2005. Inquest over the dead body was conducted vide Ex.P/2 on 27.2.2005 and the dead body was thereafter sent for postmortem which was conducted on 28.2.2005 by PW-9 Dr. RK Pasi vide Ex.P/18, who noticed irregular ligature mark below thyroid cartilage with reddishness all around the ligature mark, abrasions on both elbows and below left knee joint. In his opinion, the cause of death was asphyxia due to strangulation and the death was homicidal in nature. After mereg inquiry and postmortem, FIR (Ex.P/16) was registered on 1.3.2005 under Section 302 of IPC against unknown person. On 1.3.2005 memorandum of the appellant was recorded vide Ex.P/5, based on which his slippers from the spot and shirt were seized vide Ex.P/6 & P/7. On the same day, the appellant was also medically examined vide Ex.P/15A, according to the doctor there were abrasions on his right wrist and left elbow. After investigation, charge sheet was filed against the appellant under Sections 302 & 201 of IPC and accordingly, charges were framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and



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considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that there is absolutely no legally admissible evidence against the appellant showing his involvement in commission of the offence.

(ii) that the deceased was a paralytic patient and it appears that unfortunately he died due to drowning.

(iii) that the appellant has been falsely implicated just because a day prior to the incident there was some quarrel between the appellant and the deceased as the deceased was beating mother of the appellant.

(iv) that seizure of slippers from the spot of the appellant has no evidentiary value so far as alleged act of the appellant in committing murder of the deceased is concerned. Though shirt is allegedly seized from the appellant vide Ex.P/7, but there is no FSL report to connect it with the crime in question.

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 illegality or infirmity in it warranting interference by this Court.

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

08. PW-1 Smt. Umadevi, wife of Village Kotwar Sunderlal (PW-3), has stated that on 25.2.2005 deceased Suklal came to her house and enquired about her husband. He also told her that he wanted to have a village meeting as his wife and son (appellant) were quarrelling with



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him. She has stated that next day at about 12.30 noon when she had gone to village pond, where 2-3 women were taking bath, they found one dead body in the pond, they informed about the same to the villagers and the dead body was identified as that of the deceased. PW-2 Khilendra Kumar has stated that the deceased had requested him for calling village meeting. He is also a witness of inquest Ex.P/2. He has stated that there was no dispute between the appellant and the deceased. In cross-examination, he has admitted that the appellant used to serve his father well and was also getting the deceased treated for paralysis. PW-3 Sunderlal, Village Kotwar, lodged merged intimation Ex.P/3. He is also a witness of memorandum of the appellant Ex.P/5 and seizures Ex.P/6, P/7 & P/8. PW-4 Tikeshwar Deshmukh and PW-5 Bisouha Ram, police personnel, assisted in the investigation. PW-6 Bhanwar Singh, witness of memorandum and seizure, has turned hostile. PW-7 Sant Kumar is a witness of inquest Ex.P/2. However, he has denied his signature on the document. In cross-examination he has stated that dead body was examined in his presence and he did not notice any injury on the body of the deceased. PW-8 Sunil Devid, investigating officer, has supported the prosecution case. PW-9 Dr. RK Pasi conducted postmortem on the body of the deceased on 28.2.2005 vide Ex.P/18 and noticed following injuries:

- (i) 12 inch long irregular ligature mark below thyroid cartilage with abrasion all around the ligature mark. On dissection, internal neck muscles under the ligature mark were found cut.
- (ii) abrasion of size 2 x 1, 1 x ½ cm below left elbow,
- (iii) abrasion of size 1 ½ x 1 x ½ cm on right elbow,
- (iv) abrasion of size 3 x 2 cm below left knee joint.

Injury No.(i) could be caused by rope made of cloth or nylon whereas



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injuries No. (ii) to (iv) could be caused by hard and blunt object. In his opinion, the cause of death was asphyxia due to strangulation and the death was homicidal in nature.

09. PW-10 Dr. RS Gupta medically examined the appellant on 1.3.2005 and noticed abrasions on his right wrist and left elbow, which could be caused by hard and blunt object. The injuries were simple in nature.

10. Admittedly, there is no direct evidence against the appellant and his conviction rests upon circumstantial evidence. The circumstances relied upon by the trial Court for holding the appellant guilty are as follows:

(i) that the appellant was residing separately from the deceased and a day prior to incident deceased had requested PW-2 Khilendra, PW-3 Sunderlal and PW-6 Bhanwar Singh for calling village meeting as his wife and son-appellant were quarrelling with him.

(ii) that next day dead body of the deceased was found in the village pond and according to the medical evidence death was homicidal in nature.

(iii) recovery of appellant's slippers from the spot at his instance,

(iv) presence of injuries on the person of the appellant and the deceased, which suggests scuffle between the two at the time of incident.

11. 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.

12. Close scrutiny of the evidence makes it clear that the deceased was suffering from paralysis. It has come in evidence of the prosecution witnesses that the deceased was getting treated for this disease by the appellant, though there used to be quarrel between them over trivial issues but there was no serious dispute between them and the appellant was serving him well. PW-5 Sunderlal has further stated that no village meeting was ever convened in relation to any dispute between the appellant and the deceased. So far as injuries on the person of the appellant is concerned, as per Ex.P/15A the doctor (Dr. RS Gupta, PW-10) had noticed abrasions on right wrist and left elbow region of the appellant. From perusal of this document it appears that the appellant was medically examined on 1.3.2005 at 9.30 pm whereas according to arrest memo (Ex.P/8) the appellant was arrested on 1.3.2005 at 22:30 hours and in the arrest memo there is no mention of any injury on the person of the appellant. This creates doubt on the prosecution case and strengthens the defence of the appellant that he sustained those injuries on account of being beaten by the police. Furthermore, in the facts and circumstances of the case, recovery of slippers of the appellant cannot be taken as an incriminating



circumstance against him, particularly when one of the seizure witness Bhanwar Lal (PW-6) has been declared hostile and the memorandum itself becomes doubtful for non-mentioning of the injuries of the appellant in his arrest memo.

13. Thus, having examined the facts and circumstances of the present case in light of the aforesaid principles of law relating to circumstantial evidence, we fail to arrive at a definite conclusion that it is the appellant only who was the perpetrator of the crime. All the circumstances even if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, though it raise suspicion against the appellant but merely on that basis it would not be safe to hold him guilty for a heinous offence under Section 302 of IPC. In these circumstances, the findings of guilt recorded by the trial Court are liable to be set aside and the appellant is entitled for acquittal of the charges by giving him benefit of doubt.

14. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charges under Sections 302 & 201 of IPC. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge