

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 66 of 2012**

1. Ramawadhesh @ Rawan s/o. Shri Devbans Cherawa, aged about 22 years. R/o. Jamuatand, PS Balrampur, District Surguja (CG).
2. Sulachan @ Dhedhu S/o. Fenkuram Cherawa, aged about 20 years R/o. Jamuatand, PS Balrampur, District Surguja (CG).

---- Appellants**Versus**

- State of Chhattisgarh through Police Station Balrampur, District Surguja (CG).

---- Respondent

For Appellants : Shri A. Pandey, Advocate.
 For Respondent/State : Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J**01-09-2017**

1. This appeal arises out of the judgment of conviction and order of sentence dated 9-12-2011 passed by the First Additional Sessions Judge, Ambikapur, District Surguja in Sessions Trial No. 151 of 2010 convicting the appellants under Sections 302/34 & 201/34 of IPC and sentencing them to undergo imprisonment for life, to pay a fine of Rs.1000/- and to undergo RI for two years and pay a fine of Rs.500/- with default stipulations respectively.
2. In the present case, name of the deceased is Pintu @ Pramod Kumar. As per prosecution case, deceased was having affair

with one Chepti @ Surajpati (PW/3), sister of the accused/appellant No.1 Ramawadhesh. It is alleged that on 6-1-2010 deceased met Dewanti (PW/7) who is niece of Chepti @ Surajpati (PW/3) and after offering some sweets to her, he asked her to inform Chepti @ Surajpati (PW/3) to meet him. It is said that information was passed on by PW/7 Dewanti to Chepti @ Surajpati (PW/3) and while deceased and Chepti @ Surajpati (PW/3) were talking to each other in the field, the accused persons reached there and committed the murder of the deceased by causing club injury on his body and thereafter strangled him. Accused/appellants dragged the body of the deceased to nearby well and threw the same in it. As the deceased was missing from 6-1-2010, he was searched by his relatives and ultimately on 11-1-2010 his dead body was found in the well of one Gopi Cherwa and the same was first seen by PW/9 Bittu @ Cherwa. Merg intimation Ex.P/12 was recorded on 12-1-2010 at the instance of PW/5 Sukhram. Inquest on the dead body was conducted on 12-1-2010 vide Ex. P/8 and dead body was sent for postmortem which was conducted on 13-1-2010 vide Ex.P/10 by PW/16 Dr. N.K. Datta. Autopsy surgeon noticed the following five injuries on the body of the deceased;

- (i) Abrasion on right linear in the size of 3" x 1/2",
- (ii) Abrasion on left thigh linear 3" long,
- (iii) Abrasion on left shoulder 1" long,
- (iv) Multiple small abrasion on right side of forehead (all these injuries are antemortem) and
- (v) Multiple peding off (pericardium wound which in colour on

both buttocks and back of right thigh having postmortem putrefaction buttocks (all these wounds are postmortem due to start of putrefaction and according to him cause of death was shock and coma as a result of drowning.

3. After merging inquiry, First information report vide Ex.P/3 was registered on 13-1-2-2010 against the appellants under Sections 302, 201 and 34 of the IPC. On 13-1-2010 itself memorandum of the accused/appellant No.1 was recorded vide Ex.P/4, based on which seizure Ex.P/9 was effected and club, shirt and shawl of the deceased were seized. The shirt and shawl were put to identification vide Ex.P/24 and same were allegedly identified by PW/1 Sukwaro Bai, mother of the deceased. On the same day, memorandum of the accused/appellant No.2 was recorded vide Ex.P/5, however, no incriminating article has been seized from his possession. After filing of charge sheet, the trial Court framed charges under Sections 302/34 & 201/34 of IPC against the appellants.
4. So as to hold the accused/appellants guilty, the prosecution examined 18 witnesses in all. Statements of the accused/appellants 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.
5. 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.

6. Counsel for the appellants submits that the so-called witness PW/7 Dewanti has not supported the prosecution case and has been declared hostile. The other piece of evidence which has been relied upon by the trial Court against the appellants is the statement of PW/4 Pinky, however, even if the entire statement of Pinky (PW/4) is taken as it is, it does not speak anything against the appellants. It has been further argued that the seizure of shirt and shawl of the deceased cannot be used against the appellants as identification of the same has not been conducted, in accordance with law. More-over, witnesses to memorandum and seizure have also not supported the prosecution case.
7. 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 any interference by this Court.
8. Heard counsel for the respective parties and perused the material on record.
9. PW-7 Dewanti who is a child witness aged about 13 years has stated that on the date of incident she along with her friend had gone to market where they met the deceased. Deceased was asking her photograph which was initially refused by her but latter she agreed and accordingly she had gone to photographer where her photo was taken in a studio. She has stated that some sweet was offered by the deceased asking her to deliver it to PW/3 Chepte @ Surajpati and deceased further asked to call

PW/3 Chepte @ Surajpati in a field. She has stated that she informed PW/3 Chepte @ Surajpati about the message given by the deceased and accordingly she and PW/3 Chepte @ Surajpati met the deceased and in a field deceased and PW/3 Chepte @ Surajpati were talking to each other. She has further stated that deceased asked her to leave him and PW/3 Chepte @ Surajpati alone, however, she did not leave the said place and was hiding herself in a field and there the accused/appellants reached and caused injury to the deceased and thereafter they strangled him. In the cross examination this witness has taken somersault and has stated that she had not seen anyone beating the deceased nor she met the deceased in the said night. She has reiterated that she is not aware as to who had beaten the deceased.

10. PW/4 Pinky who has been examined as witness of last seen by the prosecution has stated that she had gone to market along with Dewanti (PW/7) and in a studio, one snap of Dewanti (PW/7) was taken and payment thereof was made by the deceased. She has further stated that the deceased had offered some sweets to Dewanti (PW/7) and thereafter she returned to her house. She has further stated that after that day, she had not seen the deceased and after about 9 – 10 days his dead body was found in a well. In her cross examination she has clarified that after returning from the market she is not aware as to where her friend had gone.
11. PW/1 Sukwaro bai, mother of the deceased has stated that when

his son (deceased) was missing, he was searched and latter his jeans pant was found in a fence. She has stated that merely on the basis of suspicion case of crime against the appellants was registered and in-fact, the appellants have not committed any such act. PW/2 Shrinath has stated that one Bandhiram had brought jeans pant and put the same near his house. PW/3 Chepti @ Surajpati is a witness with whom it is alleged that deceased was having affair has not supported the prosecution case and has been declared hostile. PW/5 Sukhram is a lodger of merg. PW/6 Bandhiram is a person who picked up the pant from the field and kept the same opposite to house of PW/2 Shrinath. PW/8 Manoj Manjhi is a witness of memorandum Ex.P/4, has turned hostile. PW/9 Bitu @ Cherwa is a person who first saw the dead body in a well. PW/10 Shivilal is a witness of inquest, has turned hostile. PW/11 Rajkumar is a witness of inquest. PW/12 Sukhan is a witness of seizure (Ex.P/9). PW/13 Tulsi is a witness of seizure of certain articles from the spot and PW/14 Balram is the witness of seizure of Ex.P/1, turned hostile. PW/15 Dilip Kumar Gupta is a photographer who took the photograph of PW/7 Dewanti.

12. PW/16 Dr.N.K. Datta conducted postmortem on the dead body of the deceased and found the injuries as mentioned above and opined that cause of death was shock and coma as a result of drowning. PW/17 Narayan Ram Minj is a witness who assisted in the investigation. PW/18 Anup Ekka is an Investigating officer.
13. Close scrutiny of the evidence makes it clear that there is no

clinching and reliable evidence against the appellants showing their involvement in commission of murder of the deceased. PW/7 Dewanti, a child witness has been examined as eye-witness to the incident, however, she has been declared hostile. After being declared hostile, though initially she has stated that she saw the accused/appellants beating the deceased, but when she was cross examined by the defence, she has stated that neither she met the deceased on the fateful day nor she saw anyone beating him.

14. The other piece of evidence against the appellants is the statement of PW/4 Pinky. She has not also stated anything showing involvement of accused/appellants in commission of offence. She has stated that in the market she and her friend met the deceased and from the market she returned to her house and after about 9 – 10 days, she came to know about the deceased whose dead body was found in a well.
15. So far as seizure of Ex.P/9 is concerned, both witnesses of seizure have also turned hostile and though as per identification memorandum (Ex.P/24), shirt and shawl of the deceased were allegedly identified by PW/1 Sukwaro Bai, mother of the deceased, in her court statement she did not say that she identified those articles. Even otherwise, merely on the basis of identification of the articles belonging to the deceased, the appellants cannot be convicted for committing the murder of the deceased.
16. After seeing the evidence, we are of the view that there is no

clinching and reliable evidence showing the involvement of the accused/appellants in commission of the offence.

17. In the result, the appeal succeeds and is accordingly allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charges under Sections 302/34 and 201/34 of IPC by extending them benefit of doubt. The appellants are reported to be in jail, therefore, they are directed to be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge

Raju