

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 154 of 2013**

1. Rai Singh S/o Piritram Kavar, Aged about 28 years,

2. Ubal Bai w/o Kuwar Singh, Aged about 30 years,

Both were the R/o Village : Metkulla, P.S. Kasdole, District Raipur
(CG)**----Appellants****Versus**State of Chhattisgarh Through Station House Officer, P.S.-
Bilaigarh, Distt:- Raipur (Now Baloda-Bazar-Bhatapara)**---- Respondent**-----
For Appellants : Mr.Anil Tripathi, Advocate
For Respondent : Mr.Arvind Dubey, Panel Lawyer
-----**Hon'ble Shri Justice Sanjay K. Agrawal**
Hon'ble Shri Justice Sanjay Agrawal**[Judgment on Board]****07/10/2017****Sanjay K. Agrawal, J.**

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 20.7.2012 passed by the Second Additional Sessions Judge, Balodabazaar in Sessions Trial No.30/2012, whereby appellant No.1-Rai Singh (A-1) and appellant No.2-Ubal Bai (A-2) have been convicted for the offences under Sections 302/34 and 201/34 of the IPC and sentenced them undergo imprisonment for life and fine of ₹ 1000/-, in default of payment of fine to further undergo R.I. for six

months and R.I. for three years and fine of ₹ 200/-, in default of payment of fine to further undergo R.I. for one month.

2. As per case of the prosecution, in the intervening night of 30/31.8.2017 the appellants are alleged to have committed murder of Kuwar Singh (since deceased), who was elder brother of A-1 Rai Singh and husband of A-2 Ubal Bai. In the intervening night of 30/31.8.2017 in between 9 p.m. to 5 a.m. Kuwar Singh was found murdered. Merg intimation Ex.P/16 was lodged by A-1 Rai Singh on 31.8.2010 at 10.30 p.m. and thereafter dehati nalsihi Ex.P/19 was registered on 1.9.2010 at 9.55 a.m. by Police Station-Bilaigarh at the instance of A-1 Rai Singh and thereafter First Information Report Ex.P/18 was registered on 3.9.2010 at 11 a.m. by investigating officer Dayakishore (PW-13) for the offences under Sections 302/34 and 201/34 of the IPC against the appellants. Inquest was conducted on 31.8.2010. Postmortem on dead body of the deceased was conducted by Dr.R.S.Joshi (PW-5) on 31.8.2010 vide Ex.P/5, who opined that mode of death was shown to be asphyxia and cause of death was due to tied neck by ligature. Death was homicidal in nature. Jurisdictional police after due investigation, charge-sheeted the accused (A-1 and A-2) for the offences under Sections 302/34 and 201/34 of the IPC. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 14 witnesses and brought on record documents Exs.P/1 to P/24.

3. The accused/appellants abjured the guilt and entered into defence. Statements of the accused/appellants were also recorded under Section 313 of the CrPC in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. The accused/appellants have not examined any of the witness in support of their case.
4. After appreciating oral and documentary evidence available on record, the trial Court by judgment impugned, has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence, the present appeal.
5. Mr.Anil Tripathi, learned counsel appearing for the appellants, would submit,

(i) That, the appellants have not committed any offence and they have falsely been implicated in crime in question. Even otherwise, the prosecution has failed to prove the offences beyond reasonable doubt, therefore, they are entitled to be acquitted.

(ii) That, learned trial Court having held that the prosecution has failed to prove memorandum statement by A-1 Rai Singh Ex.P/11 and memorandum statement by A-2 Ubal Bai Ex.P/12 and further held that Ex.P/13 seizure memo has not been established, yet on the basis of Ex.P/14 seizure of rope from A-2 Ubal Bai, the appellants have been convicted, which is unsustainable in law.

(iii) He would further submit that the impugned judgment is based on no evidence and as such, the appellants are entitled to be acquitted.

(iv) He would also submit that the appellants are in jail since 4.9.2010.

6. On the other hand, learned Panel Lawyer appearing for the State would submit,

(i) That A-1 Raj Singh and A-2 Ubal Bai had illicit relationship and that has been noticed by deceased Kuwar Singh and on account of that the appellants have murdered the deceased, which is duly established on record.

(ii) That Ex.P/14 seizure memo i.e. recovery of rope from A-2 Ubal Bai pursuant to her disclosure statement has also been found established by learned trial Court. Death was homicidal in nature, which is found established by the trial Court. Therefore, the impugned judgment deserves to be maintained.

7. In order to appreciate the rival contentions of learned counsel for the parties, we have independently scrutinized the oral and documentary evidence appearing on record.

8. The question for consideration in this appeal would be, firstly, whether death of deceased Kuwar Singh was homicidal in nature and secondly, whether the appellants (A1 and A2) are guilty of causing murder of deceased Kuwar Singh and also guilty of

causing disappearance of evidence under Section 302/201 of the IPC.

9. In the matter of Vithal Eknath Adlinge Vs. State of Maharashtra¹ the Supreme Court has observed as under:-

“15. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

16. In Hanumant Govind Nargundkar v. State of M.P.², it was observed thus: (AIR pp. 345-46, para 10)

"10.....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

17. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra³. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153)

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

¹ (2009) 11 SCC 637

² AIR 1952 SC 343

³ (1984) 4 SCC 116

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These aspects were highlighted in *State of Rajasthan v. Raja Ram*⁴, *State of Haryana v. Jagbir Singh*⁵ and *Kusuma Ankama Rao v. State of A.P.*⁶ ”

10. Autopsy has been conducted by Dr.R.S.Joshi (PW-5) on 31.8.2010 vide Ex.P/5 and has found the following injuries on his body:-

Face congested; eye closed; pupils dilated; cornea slight hazy; Rt. Eye ball congested+Lt Eye ball congested + mouth closed. Tongue inside. Mouth cow dug present both sole (in front side) semen like stain present in per urethra of penis and underwear. Suerly and upper back and middle and lower/3 neck present. Dorsiflexion of foot + Rigor mortis present. Ligature mark present skin over neck present, ligature mark measure around the neck 33cmx3cmx1/3cm. Lt. Side single and deep congested x bluish colour seen and Rt. Side of neck ligature mark double, measurement is the same. Knot mark present skin over neck + Upper part below chin, underneath the structure of ligature mark congested, ligature mark caused by rope.

⁴ (2003) 8 SCC 180

⁵ (2003) 11 SCC 261

⁶ (2008) 13 SCC 257

In the opinion of the doctor, mode of death was asphyxia and cause of death was due to tied neck by ligature. Death was homicidal in nature.

11. The trial Court has clearly found that death was homicidal in nature, which has not been challenged by the appellants, but they have been pleaded that they have falsely been implicated in crime in question. Thus, it is proved that deceased Kuwar Singh was murdered and his death was homicidal in nature.
12. This would bring us to the next question as to whether the appellants have murdered the deceased, for which we shall turn to discuss the testimonies of the prosecution witnesses.
13. Laxmin Bai (PW-1) is sister-in-law of the deceased. She has stated that dead body of Kuwar Singh was found in the courtyard. She turned hostile and was declared hostile. Sukhin Bai (PW-2) is wife of A-1 Rai Singh. She also turned hostile and declared hostile. PW-3 Rajni, who is daughter of the deceased and appellant No.2-Ubal Bai, has stated that 14 members used to reside jointly in the house. She was also declared hostile by the prosecution. Kumar (PW-4) is brother of A-1 Rai Singh and the deceased. He has also turned hostile and declared hostile.
14. Thus, Laxmin Bai (PW-1), Sukhin Bai (PW-2), Rajni (PW-3) and Kumar (PW-4) are relative witnesses, they have not supported the prosecution case and have turned hostile. They have made statement that the deceased and A-2 Ubal Bai had good relation and there was no illicit relationship between A-1 Rai Singh and A-

2 Ubal Bai and relation of the deceased and A-2 Ubal Bai was cordial.

15. P.L. Mishra (PW-6) is Assistant Range Officer who has prepared the spot map Ex.P/7. Sukhiram (PW-7) (brother-in-law of the deceased), who is witness of inquest Ex.P/9, has also stated that the deceased and A-2 Ubal Bai had good relation. He has also been declared hostile. Santram (PW-8) is the witness of inquest Ex.P/9. Parmeshwar is also the witness of inquest and the prosecution has declared him hostile. He has stated in his evidence that in the house of Kuwar Singh, 17-18 persons used to reside jointly. Upendra Kumar (PW-10) is the witness of inquest Ex.P/9. Ex.P/11 is memorandum statement of A-1 Rai Singh and Ex.P/12 is memorandum statement of A-2 Ubal Bai. Exs.P/13 and P/14 are seizure memos. Anandram (PW-11) is the witness of Exs.P/9, P/10, P/11, P/13, P/12 and P/15. S.L.Minz (PW-12) is the head-constable who has registered the First Information Report Ex.P/11. Dayakishore (PW-13) is investigating officer who has conducted investigation. PW-14 is Hiralal who has registered the merg intimation Ex.P/19.
16. At this stage, it would be appropriate to notice the finding on which the appellants have been convicted. The trial Court has held that Exs.P/11 and P/12 memorandum statements of A-1 Rai Singh and A-2 Ubal Bai has not been established by the prosecution. The trial Court has also held that recovery of parsul (sickle) has not been established, whereas recovery of mobile has

been established and further held that seizure of rope Ex.P/14 by which strangulation was made was proved by the prosecution. The trial Court has proceeded to convict the appellants merely on the finding that Ex.P/14 recovery of rope from A-2 Ubal Bai has been established and false explanation has been extended by A-2 Ubal Bai that ligature mark on the body of the deceased was old.

17. It is well settled that in order to prove the offence, there must be clearcut evidence and must be brought by the prosecution and merely on the basis of conjuncture and surmises conviction cannot be rested. In the instant case, there is no direct evidence against the appellants.
18. Motive imparted was that A-2 Ubal Bai had illicit relationship with A-1 Rai Singh has not been even established though suggestion has been given by the prosecution to Laxmin Bai (PW-1), Sukhin Bai (PW-2), Rajni (PW-3) and Kumar (PW-4), but they have refuted the illicit relationship between A-1 Rai Singh and A-2 Ubal Bai. They have stated in their evidence that relation between the deceased and A-2 Ubal Bai was cordial. Thus, motive for causing death has also not been established beyond doubt by the prosecution.
19. Next circumstance that has been held to be established against the appellants is that recovery of rope from A-2 Ubal Bai has been established. It is appropriate to mention here that memorandum statements Ex.P/11 and P/12 made by the appellants has not

been found established by the trial Court and merely on the basis of recovery of rope, the appellants cannot be convicted.

20. In the matter of **Abdulwahab Abdulmajid Baloch Vs. State of Gujarat**⁷ the Supreme Court has held that solely on the basis of recovery of weapon, conviction cannot be made. It was observed as under:-

“37. Be that as it may, we feel that only because the recovery of a weapon was made and the expert opined that the bullet found in the body of the deceased was fired from one of the weapons seized, by itself cannot be the sole premise on which a judgment of conviction under Section 302 could be recorded. There was no direct evidence. Accused, as noticed hereinbefore, was charged not only under Section 302 read with Section 34 of the Indian Penal Code but also under Section 302 read with Section 120-B thereof. The murder of the deceased was said to have been committed by all the accused persons upon hatching a conspiracy. This charge has not been proved.

38. The learned trial Judge itself opined that the recovery having been made after nine months, the weapon might have changed in many hands. In absence of any other evidence connecting the accused with commission of crime of murder of the deceased, in our opinion, it is not possible to hold that the appellant on the basis of such slender evidence could have been found guilty for commission of offence punishable under Section 302 of the Indian Penal Code.”

21. Following the principle of law laid down by the Supreme Court in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that merely on the basis of recovery of rope from A-2 Ubal Bai, conviction has been recorded by the trial Court and there is no other piece of acceptable evidence, which is unsustainable in law. The trial Court in our opinion was absolutely unjustified in holding that the appellants are guilty for

⁷ (2009) 11 SCC 625

the offences under Section 302/34 of the IPC for causing murder of deceased Kuwar Singh and under Section 201/34 of the IPC for causing disappearance of evidence of the offence.

22. On the basis of aforesaid discussion, we are of the considered opinion that the prosecution has miserably failed to prove the offences under Section 302/34 and 201/34 of the IPC beyond reasonable doubt by placing cogent and reliable evidence on record.

23. As a fallout and consequence of the above-stated discussion, the criminal appeal is allowed and the impugned judgment of conviction and order of sentence are set aside. They are acquitted of the said charges. The appellants are reported to be in jail, they be released forthwith, if not required in any other case.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Sanjay Agrawal)
Judge

B/-