

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 875 of 2013

- Smt. Seema Soni, W/o Late Mannu Soni, Aged About 28 Years, R/o Shankar Nagar, Nawagarh, Thana Nawagarh, Rev. Distt. Bemetara, Civil Distt. Durg C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Nawagarh, Rev. Distt. Bemetara C.G.

---- Respondent

And

CRA No. 919 Of 2013

- Mahadev Krishe, S/o Ramcharan, Aged About 30 Years, R/o. Vill. Neurgaon, P.S. Kukdur, Civil & Rev. Distt. Kabirdham (C.G.)

---- Appellant

Vs

- State Of Chhattisgarh Through: SHO P.S. Nawagarh, Civil & Rev. Distt. Bemetara (C.G.)

---- Respondent

CRA No.875/2013

For Appellant : Shri V.A. Goverdhan & Shri Vipin Singh,
Advocates
For Respondent : Smt. Madhu Nisha Singh, Panel Lawyer

CRA No.919/2013

For Appellant : Shri Suryakant Mishra, Advocate
For Respondent : Smt. Madhu Nisha Singh, Panel Lawyer

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

Judgement

Per P. Diwaker, J

04/08/2017

1. Since the above appeals have been filed against the judgment dated 24.8.2013 passed in S.T. No.39/12 by which the Additional Sessions Judge Bemetara (CG) has convicted the accused/appellants herein under Sections 302/34 & 201/34 of the Indian Penal Code (for short 'the IPC') and sentenced each of them to undergo R.I. for Life and fine of Rs.1,000/- and RI for 7 years & fine of Rs.500/-, with default stipulations, respectively, the same are being disposed of by this common judgment.
2. In the present case name of deceased is Mannu Soni.
3. Case of the prosecution, in brief, is that appellant Seema Soni was residing with deceased Mannu Soni as his keep for the past 8-10 years. Accused/appellant Seema Soni was of 28, whereas deceased was of 42. Further case of the prosecution is that accused/appellant Seema Soni finding that Mannu Soni (deceased) is not capable of satisfying her sexually, she had developed physical relations with accused/appellant Mahadev, who was posted as Constable at PTS Mana, Raipur and as the deceased was a hurdle for both the accused/appellants to continue their illicit relationship, therefore, they have decided to eliminate him. Accordingly, in the night intervening 16th & 17th February, 2012 the accused persons have hanged the body of deceased from a tree after committing his murder by throttling. Next morning at 7 am merg intimation (Ex.P-27) was lodged by accused/appellant Seema Soni informing the police that in the previous night at about 10 p.m. deceased returned home and when she offered food to him, he asked her to go to sleep and that he will take food of his own. It is further informed in the merg that on 17.2.2012 when she woke up around 4 a.m. and was about to leave for answering the call of nature, she noticed that the deceased was hanging from the tree. Inquest on the body was conducted on 17.2.2012 vide Ex. P-2. Body was sent for post-mortem examination which was conducted

by Dr. Shashikant Swarnkar (PW-11) on 17.2.2012 and he noticed following injuries vide Ex.P-19;-

- Ligature mark present around the neck, transverse in direction above thyroid cartilage.
- Ligature mark is post mortem in nature. No bruise, abrasion was noticed over ligature mark.
- Contusion & abrasion on right side of neck 3cm above mid clavicular line.
- 2.5x 0.5 cm & 1 x 2cm 'L' shaped anti mortem in nature, red coloured.
- On dissection subcutaneous tissue congested.
- Multiple small contusion over right shoulder of 6 x 3.5 cm area.

The doctor has opined that cause of death was asphyxia due to throttling and the death was homicidal in nature. Accused/appellant Mahadev was also medically examined by Dr. T.N. Mahingleshwar (PW-13) and he noticed following injuries;-

- bruise of 5x1cm over left shoulder, brown in colour, caused due to hard and blunt object.
- Abrasion, two in numbers, of 3.5 cm x 0, 2.5x0cm over right side of neck.
- Abrasion at the throat.

The doctor has opined that injuries suffered by him were simple in nature.

4. On the basis of merg enquiry, FIR (Ex.P-20) under Sections 302 & 201 IPC was registered on 19.2.2012 against unknown person. Accused/appellant Seema Soni was interrogated on the basis of suspicion and during interrogation, she admitted having committed the murder of

deceased and also disclosed involvement of accused/appellant Mahadev. On 20.2.2012 memorandum statement (Ex.P-7) of accused/appellant Seema was recorded based on which recovery of clothing, broken bangles and bangles of accused/appellant Seema were effected vide seizure memos Ex.P-8 & P-9. Memorandum statement (Ex.P-3) of accused/appellant Mahadev was also recorded on the same day and based on which clothing & mobile of accused/appellant Mahadev was seized vide seizure memos of Ex.P-4 & P-5 respectively. Seized articles were sent for chemical examination to the FSL from where report of Ex.P-28 was received. The FSL report is negative regarding the blood stains on the articles so seized from the accused persons during the course of investigation.

5. On completion of investigation, charge sheet for the offence punishable under Sections 302/34 & 201/34 IPC was filed against the accused persons followed by framing of charges by the trial Court under those sections against them. The prosecution in order to bring home the charges levelled against the accused/appellants had examined 13 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
6. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted and sentenced them in the manner as described above.
7. Learned counsel for the accused/appellants submits that:-
 - conviction of appellants is solely based on the circumstantial evidence but none of the circumstances have been established by the prosecution in this case and the trial Court erred in law in holding that the circumstances relied upon by the prosecution were proved against

the appellants to the hilt.

- though certain recoveries have been effected on the basis of disclosure statements of appellants, but as per report of FSL, no blood has been detected on the articles allegedly seized at the instance of appellants and as such, the appellants are entitled to be acquitted.
 - even recovery of broken pieces of bangles from the house of appellant Seema cannot be taken as incriminating evidence against her because bangles are of common use and can be found in any house.
 - injuries found on the person of appellant Mahadev were duly explained by him in his statement recorded under Section 313 CrPC wherein he has stated that he suffered those injuries while undergoing training.
 - present is not a case of house murder because the dead body was found hanging from a tree standing outside the house and the brother & nephew of deceased had admitted the fact that there was a land related dispute between them and therefore the possibility that any third person or unidentified person killed the deceased cannot be ruled out.
8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
10. Chhannu Soni (PW-1), brother of deceased, has stated that accused/appellant Seema Soni was residing with the deceased as his keep. Accused/appellant Seema was 24 years old, whereas the deceased was of 45. He has further stated that accused/appellant Seema Soni used to provoke the deceased against his family members and that

she had grabbed lot of his properties. He is witness of memorandum (Ex.P-3 & P-7) and seizure memos of Ex.P-4, P-5, P-8 & P-9. He is also witness of inquest (Ex.P-3). He has admitted the fact that on account of accused Seema Soni, there was a land dispute between him and his brother (deceased). He has admitted that prior to incident he was not aware of the relationship between the accused persons and after the death of deceased only, he came to know about the same.

11. Rajesh Soni (PW-2) is the witness of seizure memos Ex.P-4 & P-5. However, he did not support the prosecution case and turned hostile.
12. Vijay (PW-3) is the nephew of the deceased. He has stated that he was informed by his father that the accused/appellants herein have illicit relationship. This witness has also admitted in Para-9 of his evidence that the deceased had lodged the report against his father over land dispute and on few occasions they had quarrelled. He is also witness of memorandum and recovery.
13. Vivek Soni (PW-4) is another nephew of the deceased and his statement is somewhat similar to that of PW-3. Awdhesh Kumar Patel (PW-5) is the Patwari who prepared the spot map of Ex.P-10.
14. Amit Soni (PW-7), son of deceased, has stated that accused/appellant Seema Soni and his father used to quarrel and that she was having illicit relationship with his father. He has admitted the fact he too was having dispute with his father over partition of land.
15. Rajeev Sharma (PW-8) & Kishan Lal Sahu (PW-9) are the police personnel who helped in the initial investigation. Dayanand Bhoi (PW-10) is the police Head Constable who was examined to prove the fact that accused/appellant Mahadev remained absent from his duties between 13th & 17th February, 2012.
16. Dr. Shashikant Swarnkar (PW-11) is the person who conducted post-

mortem examination over the body of deceased and opined that cause of death was asphyxia due to throttling and the death was homicidal in nature.

17. K.P. Banjare (PW-12) is the investigating officer who has duly supported the prosecution case.
18. Dr. T.N. Mahingleswar (PW-13) is the person who medically examined accused/appellant Mahadev and noticed the injuries as described above.
19. Close and careful scrutiny of the material on record would show that there is no material connecting the accused/appellants with the alleged offence of murder of deceased Mannu Soni. The only piece of evidence available to the prosecution to connect accused/appellants with the crime is alleged memorandum of accused/appellant recorded under Section 27 of the Evidence Act, which is a weak type of evidence and cannot be treated to be a conclusive proof for holding them guilty for committing the alleged offence. True, certain recoveries were effected on the basis of memorandums of accused/appellants, but the report of FSL (Ex.P-28) does not show presence of blood or human blood on those articles, therefore, these recoveries do not connect the accused/appellants with the crime.

So far as the presence of injuries on the person of accused/appellant Mahadev is concerned, it is the stand of accused/appellant Mahadev that he received injuries during the course of his official training. According to the doctor who had medically examined this accused/appellant, the injuries are caused to him by hard & rough object and the same were simple in nature. The treating doctor has admitted the suggestion that injuries No.2 to 4 may come due to fall on hard and rough object or during the course of work. Thus, having regard to the nature and size of injuries found on accused/appellant Mahadeo coupled with the

statement of treating doctor and the explanation offered by him, which appears to us probable and reasonable, it cannot be said that he received injuries during the course of occurrence in question.

True that accused/appellant Seema Soni was residing with the deceased at the relevant point of time and this fact creates deep suspicion upon her, but merely on this fact she cannot be convicted for the offence punishable under Section 302 IPC, particularly when nothing has been brought on record by the prosecution indicating that the deceased had been hanged from the tree after committing his murder inside the house. Presence of broken pieces of bangles from the house of deceased is also not sufficient to construe that breaking of bangles happened in the course of violent attack on deceased or that the attack took place in the house. There can be variety of reasons for breaking of bangles. It is settled proposition of law that suspicion, howsoever, strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence.

Furthermore, the evidence on record also go to show that the deceased had some land related disputes with many persons of his family and therefore, in the given facts and circumstances of the case, the possibility of committing murder of deceased by any third person can also not be ruled out.

20. From the above discussion, it is clear that the evidence is completely lacking to substantiate the involvement of accused/appellants in the commission of murder of the deceased, their conviction under Section 302/34 IPC is not sustainable and liable to be set aside.
21. As regards their conviction under Section 201 IPC, before the liability for offence under Section 201 IPC can be fastened on the accused, the principal offence of causing murder needs to be made out on the basis of

evidence on record. However, in the instant case, since the first and most important ingredient in order to attract the liability under Section 201 IPC i.e. offence of causing murder of the deceased, is missing, the conviction of accused/appellants under this section also cannot be allowed to stand.

22. In the result, the appeals are allowed. Impugned judgment convicting and sentencing the accused/appellants under Section 302/34 & 201/34 IPC are hereby set aside and they are acquitted of those charges. The appellants are reported to be in custody, therefore, they are directed to be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-