

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 394 of 2014

- Golak @ Pratap S/o Gourang Goldar Aged About 31 Years, by caste Kayasth, Occupation Mechanic in Hotel, R/o U.V. 18, No. Karagaon Taragaon, P.S. Dabgaon, Distt. Navrangpur, Civil And Revenue Distt. Navrangpur Orissa.

---- Appellant

Versus

- State Of Chhattisgarh Thru- Station House Officer, P.S. Kotwali, Jagdalpur, Distt. Bastar C.G.

---- Respondent

For Appellant	:	Shri SK Verma, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Sharad Kumar Gupta, JJ

Per P. Diwaker, J

07/04/2018

This appeal arises out of the judgment of conviction and order of sentence dated 13.3.2014 passed by the Sessions Judge, Bastar at Jagdalpur in ST No.49/2013 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/-.

02. In the present case, name of the deceased is Shankar @ Motu. Accused/appellant Golak @ Pratap, deceased Shankar, PW-1 Ramchandra and one Raju (not examined) were working as cook/helper in the hotel of PW-2 Paritosh Mandal. In the night, the accused/appellant and deceased Shankar used to sleep in the room

outside the hotel whereas PW-1 and Raju used to sleep inside the hotel in the room attached to kitchen. It is also not disputed that on both sides of the hotel, there are doors which were bolted when they went to sleep and there is a stair in the outer room to access the terrace. It is alleged that about 6-7 months prior to the date of incident, accused/appellant had taken Rs.5000-6000 from PW-2 Paritosh Mandal for going to his house, however, in the night out of the said amount the deceased had stolen Rs.2000/- and went to his house. Next morning the appellant noticed the said theft and missing of the deceased. After few days, the deceased returned to hotel and confessed before PW-2 and the appellant that he had taken Rs.2000/- from the money of the appellant and assured of returning the said amount. Further case of the prosecution is that in the night intervening 2/3.1.2013 the appellant and the deceased slept in one room whereas PW-1 and Raju slept in another room. Next morning while the appellant was working in the hotel, dead body of the deceased was found lying on the terrace, however, the appellant even after coming to know about the same, remained busy in his work and did not get shocked even a bit. Unnumbered FIR (Ex.P/2) was lodged by PW-2 on 3.1.2013 against unknown person. Unnumbered merged Ex.P/1, numbered merged Ex.P/12 and numbered FIR (Ex.P/13) were registered against the unknown person on the same day under Section 302 of IPC. Inquest over the dead body was prepared vide Ex.P/4 on 3.1.2013. The dead body was sent for postmortem, which was conducted on the same day by PW-3 Dr. Ramesh Vasnik vide Ex.P/7 who noticed incised wound over face, fracture of mandible bone, deep incised wound on neck, lacerated wounds on dorsal aspect of right hand and contusions on

right hand. In his opinion, the cause of death was hemorrhage and shock due to injury to blood vessels of neck and face, and the nature of death was homicidal. On the memorandum of the appellant Ex.P/9 recorded on 6.1.2013, one axe and his clothes worn at the time of crime were seized vide Ex.P/10. As per FSL report Ex.P/22, blood was found on all the seized articles, however, there is no serological report. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 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 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 no eyewitness account to the incident and conviction of the appellant is based on circumstantial evidence but none of the circumstances from which inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that it was the appellant who committed murder.

(ii) that in two adjacent rooms, apart from the appellant and the deceased, PW-1 and one Raju were also sleeping and thus, the possibility of any person other than the appellant committing murder of

the deceased cannot be ruled out.

(iii) that FSL report is though positive but in absence of serological report confirming the origin and group of the blood, the same is of no consequence.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

(i) that there was a motive with the appellant to commit the crime as the deceased had stolen Rs.2000/- from the amount of the appellant for which he was scolded by the appellant and ultimately, the deceased had assured of returning the same.

(ii) that in the fateful night, the appellant and the deceased were sleeping in one room outside the hotel whereas PW-1 and Raju were in another room; there was no access to the terrace except through stair attached to the outer room.

(iii) that conduct of the appellant is very important as despite coming to know about the dead body of deceased lying on the terrace, he did not get shocked even a bit and continued to do his work.

(iv) that on the memorandum of the appellant Ex.P/9, certain articles including axe have been seized which as per FSL report Ex.P/22 were stained with blood.

(v) though no serological report is there on record, but recovery of bloodstained articles at the instance of the appellant coupled with his non-explanation to this circumstance can safely be taken as an additional evidence against him.

(vi) that there can be no possibility of any other person committing murder of the deceased because deceased was sleeping in the company of the appellant and most importantly, blood has been found on the clothes of the appellant for which no explanation has been offered by him.

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

08. PW-1 Ramchandra Baghel, co-worker who was sleeping in other room in the fateful night of the incident has stated that in the outer room the deceased and the appellant were sleeping and in the morning he found dead body of deceased lying on the terrace. After being declared hostile he admits that after consuming liquor there used to be quarrel between the appellant and the deceased; the deceased had stolen money of the appellant in the past as a result of which they were having inimical relations; on the previous night of the incident the deceased had taken half day leave and when he returned he consumed liquor and cooked meat. He further states that after theft incident, the deceased used to remain afraid of the appellant.

09. PW-2 Paritosh Mandal, hotel owner, has stated that he was informed by Ramchandra (PW-1) about death of the deceased and then he saw his dead body lying in pool of blood on the terrace. He also states about the theft committed by the deceased. He further states that in the night it is the appellant, deceased, Ramchandra and Raju who were in the hotel and that the accused/appellant and deceased Shankar used to sleep in the room outside the hotel whereas

PW-1 and Raju used to sleep inside the hotel in the room attached to kitchen. On both sides of the hotel, there are doors which remain closed at night and there is a stair in the outer room within the hotel premises to access the terrace. He further states that about 6-7 months prior to the date of incident, accused/appellant had taken Rs.5000-6000 from him for going to his house, however, in the night out of the said amount the deceased stole Rs.2000/- and went to his house. Next morning the appellant noticed the said theft and missing of the deceased. After a month, the deceased returned to hotel and confessed commission of theft of Rs.2000/- from the money of the appellant and assured of returning the said amount and the present incident occurred some days after the theft incident.

10. PW-3 Dr. Ramesh Vasnik conducted postmortem on the body of the deceased on 3.1.2013 vide Ex.P/7 and noticed incised wound over face, fracture of mandible bone, deep incised wound on neck, lacerated wounds on dorsal aspect of right hand and contusions on right hand. In his opinion, the cause of death was hemorrhage and shock due to injury to blood vessels of neck and face, and the nature of death was homicidal. PW-4 Kartik Chakravarti and PW-5 Piyush, witnesses to memorandum and seizure, have partially supported the prosecution case. PW-6 Vipin Vishwas is a witness to seizure memo Ex.P/5 by which certain articles were seized from the spot. PW-7 TP Pandey, Patwari, prepared the spot map. PW-8 Sukhram Panth, ASI, assisted in the investigation. PW-9 Dr. Pawan Tekade, gave query report that the injuries suffered by the deceased could be caused by the axe seized. PW-10 Pramod Shrivastava, ASI, assisted in the

investigation. PW-11 Suresh Pillai has turned hostile. PW-12 Vishwas Chandrakar, investigating officer, has duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that few months before the present incident, the deceased had stolen Rs.2000/- of the appellant and went to his house and after about a month deceased returned to his workplace, confessed commission of theft and assured the appellant of returning the amount. On account of this incident, there was animosity between the two. It has also come in the evidence that in the fateful night, the appellant and the deceased were sleeping together in one room outside the hotel and that there is a stair attached to the said room to access the terrace. It is not in dispute that dead body of the deceased was found lying in pool of blood on the terrace of the hotel and according to the medical evidence, the same was homicidal in nature.

12. Another important thing to be considered is the conduct of the appellant subsequent to the incident. When the appellant was informed about the body of the deceased lying on the terrace in pool of blood, he did not get shocked even a bit and remained neutral as if nothing unusual has happened and continued to do the work he was engaged in. This unnatural conduct of the appellant also points towards his guilt. This apart, on his memorandum (Ex.P/9), his wearing apparels and axe have been seized (Ex.P/10), which were subsequently found to be stained with blood as per FSL report Ex.P/22. True it is that there is no serological report to prove origin or group of the blood so found, however, on that basis alone this circumstance would not lose its

significance, particularly when the witnesses to the seizure have supported the same and the appellant has failed to offer any explanation as to how blood was found on his clothes and axe. Thus, in the given facts and circumstances of the case, the FSL report can safely be taken as an additional link in the chain of circumstances to rule out the possibility of innocence of the appellant. Medical evidence also lends due corroboration to the prosecution case, according to which corresponding injuries were noticed on the person of the deceased and the fatal injuries could be caused by the weapon – axe seized from the appellant.

13. Thus, all the circumstances if taken together unerringly point towards the guilt of the accused and rule out the possibility of any person other than the appellant being the perpetrator of the crime in question. Being so, the findings of guilt recorded by the trial Court cannot be held to be faulty and deserve to be maintained.

14. Resultantly, the appeal being bereft of any substance is liable to be dismissed and is hereby dismissed. The appellant is already inside the jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(Sharad Kumar Gupta)
Judge