

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 673 of 2011

1. Mathura @ Mahato, S/o Pawansai Cherwa R/o Village Badara PS Sonhat Distt. Korea Cg
2. Ramgopal S/o Pawansai Cherwa R/o Village Badara Ps Sonhat Distt. Korea Cg

---- Appellants

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Sonhat, District Korea (CG)

---- Respondent

For Appellant	:	Shri S. Koshta, Advocate
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement

P. Diwaker, J

08/03/2018

1. Challenge in this criminal appeal is to the judgment of conviction and order of sentence dated 9.8.2011 passed by the learned Sessions Judge, Koriya (Baikunthpur) in S.T. No.82/2009 thereby convicting the accused/appellants under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing them to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- & rigorous imprisonment for 7 years & fine of Rs.1,000/-, with usual default clauses, respectively.

2. Case of the prosecution is that deceased Nansai Pando had encroached upon the government land and was carrying out agricultural activities over it. On 18.6.2009 he had gone to the said land for agricultural purpose, but he did not return home and therefore a missing report (Ex.P-23C) was lodged by Banwarilal (PW-12), brother of deceased. During the search of nearby area, the villagers noticed blood in a pit beside the brook. The police was informed by the villagers about the land related dispute between the deceased and accused/appellants. On the basis of suspicion, the accused/appellants were arrested, interrogated and disclosure statement of accused/appellant No.1 was recorded vide Ex.P-5. Accused/appellant No.1 herein disclosed in the disclosure statement (Ex.P-5) that on the date of incident he caused axe injury to the deceased as a result of which he became unconscious and thereafter he along with acquitted accused brought him near the brook (chhota nala) and there he again caused axe injury on the head of deceased and caused his death. Thereafter they hid the dead body in a cove in Bamanbhata jungle. On the basis of information given by accused/appellant herein, the dead body was recovered from a cove situated near a brook in Bamanbhata forest vide dead body recovery memo Ex.P-6. On the basis of disclosure statement of accused/appellant No.1, rope & axe were also seized vide seizure memos Ex.P-8 & P-9 respectively. On the basis of memorandum statement (Ex.P-5) of accused/appellant No.2, one club was seized vide Ex.P-10. Inquest over the body of deceased was prepared vide Ex.P-14 on 19.6.2009. Dehati Nalishi (Ex.P-21) was recorded on 19.6.2009 at 4.30 p.m. Dehati Merg was recorded vide Ex.P-22. Based on dehati nalishi, offence under Sections 302, 201, 34 of IPC was registered against the accused persons. Numbered merg was recorded vide Ex.P-30. Dead body was sent for post-mortem examination vide Ex.P-22 which was

conducted by Dr. N.P. Bhargawa on 20.6.2009 vide Ex.P-32 and noticed fracture in occipital bone & frontal zone, abrasion over the back of body in 4" x 2" in size. The doctor has opined that cause of death was coma due to cardio respiratory arrest and death was homicidal in nature. Statements of witnesses were recorded under Section 161 CrPC.

3. After investigation, charge sheet was filed by the police against the accused persons under Sections 302, 201, 34 of IPC followed by framing of charges by the Court below under those sections. In order to prove its case the prosecution has examined 15 witnesses in support of its case. Statements of accused persons were also recorded under Section 313 of the CrPC in which they denied their guilt and pleaded innocence and false implication in the case.
4. After hearing the parties, the trial Court, by the impugned judgment, has convicted and sentenced the accused/appellants herein as described above.
5. Counsel for the appellants submit that;
 - there is no eyewitness to the incident and the entire case of the prosecution is based on the circumstantial evidence.
 - the circumstance relied upon by the prosecution does not speak of direct involvement of accused/appellants in the murder of deceased but even then the trial Court has held them guilty for the same which is palpably illegal.
 - recovery of body of deceased is highly doubtful as the body was already recovered by the police before the alleged pointing out by accused/appellants, which is clear from the testimony of PW-12. Furthermore, witnesses of body recovery memo (Ex.P-6) have also not supported the prosecution case which also creates a doubt on the prosecution case regarding recovery of dead body of deceased

pursuant to the information allegedly furnished by accused/appellants.

- recovery of alleged weapon of offence i.e. axe, at the instance of appellant No.1 is also of no consequence in view of the fact that there is no report of FSL confirming presence of blood on it.
6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that although the prosecution case is based upon circumstantial evidence but it has been proved beyond reasonable doubt on the basis of reliable evidence of recovery of dead body and motive, therefore, the findings of the learned trial Court do not call for any interference. He further submits the findings recorded by the trial Court convicting and sentencing accused/appellants, as described above, are strictly in accordance with law and there is no illegality or infirmity in the same.
 7. Heard counsel for the parties and perused the evidence available on record.
 8. Demaniya (PW-1), younger sister of deceased, has deposed that on the fateful day her brother (deceased) had gone to the field and when he did not return till evening, they went towards the field in search of him. While searching the deceased in nearby area, they noticed blood in a small pit which created doubt in their mind regarding involvement of accused persons as there was a land related disputed between the deceased and accused persons. She has further stated that despite extensive search, they could not find the deceased. Thereafter the police arrested the accused persons and they led the police party to the place where they have concealed the body of deceased i.e. cove situated in the forest, and got recovered the body of deceased.
 9. Pannalal (PW-2) did not support the prosecution case and turned hostile.

10. Dularasai (PW-3) has deposed in his examination-in-chief that he along with other villagers had searched the deceased and noticed blood in the field. Thereafter, he had also gone to the police station to lodge the report. In the cross-examination this witness has admitted that the police did not interrogate the accused persons in his presence and that he does not know as to at whose instance the body was recovered.
11. Hanuman Singh (PW-4) did not support the prosecution and as such declared hostile by the prosecution.
12. Samarlal (PW-5) is the witness of memorandum statement (Ex.P-4) and seizure memos Ex.P-7 & P-8. He has stated that no recovery of dead body took place in his presence. He has further stated that neither accused persons make any disclosure statement nor anything was recovered from them in his presence. Therefore, this witness has been declared hostile by the prosecution.
13. Bhaiyalal (PW-6), son of the deceased, is a hearsay witness and he has not stated anything incriminating against the accused/appellant.
14. Tulsiram (PW-7), brother of deceased, is the witness of memorandum (Ex.P-4) of accused/appellant, body recovery memo (Ex.P-6), seizure memo (Ex.P-7, P-8, P-9, P-10 & P-16), arrest memos Ex.P-11 & P-12, identification memo Ex.P-17, however, he did not support the prosecution case and turned hostile.
15. Rajkumar (PW-8) has deposed about the recovery of dead body at the instance of accused persons. He has further stated that inquest over the body of deceased was prepared by the police vide Ex.P-13 and thereafter the body was sent for post-mortem examination. In the cross-examination he has admitted that taking clew from the blood lying in the field, the police went in search of the dead body and recovered it.
16. Ramashankar Pathak (PW-9) is the person who prepared the spot map

vide Ex.P-1. Shesh Narayan Singh (PW-10) & Santos Singh are the police personnel who assisted in the investigation.

17. Banwari Lal (PW-12) is brother of deceased and lodger of missing report & dehati nalishi. He has deposed that on the date of incident his nephew Mewalal came to him but did not inform him anything. He has further deposed that the accused persons had beaten the deceased. They knocked him down. He has further deposed that due to fear, he returned back to his home and did not inform about the incident to anyone. He has further stated that when the villagers returned to village after collecting *sarai* seeds, he informed them about the incident and thereafter he along with others had gone in search of the deceased towards the field situated at Baghdeva Brook, but they did not find the deceased there. However, they noticed blood in the field. Thereafter they returned back to home. He has further deposed that they went to the forest in search of the deceased and during the course of search, they noticed head of the deceased in a cove and thereafter they lifted the body. On being informed that there was a land related dispute between the deceased and accused persons, the Inspector called the accused persons by sending police personnel and thereafter the body and accused persons were taken to the police station. In Para-9 of the cross-examination he has admitted that on mere guessing, he raised suspicion upon the accused persons being the persons responsible for murder of his brother (deceased).
18. Dipak Minj (PW-13) is the police personnel who assisted in the investigation. A.R. Manikpuri (PW-14) is the investigating officer who has duly supported the prosecution case.
19. Umashankar Sharma (PW-15) is the person who has been examined by the prosecution to prove the post-mortem report (Ex.P-32). This witness has identified the handwriting and signature of Dr. N.P. Bhargawa on the

MLC (Ex.P-4) and post-mortem report (Ex.P-32) as he worked with him as Dresser.

20. Material available on record discloses that in this case there is no direct evidence showing involvement of accused/appellants in commission of offence and conviction is solely based on the circumstantial evidence i.e. recovery of dead body and axe upon confession of accused/appellants, but on a close and careful scrutiny of the evidence it is clear that the prosecution has not been able to prove by leading cogent and reliable evidence that axe and dead body of deceased were recovered as per disclosure statement of accused/appellant No.1 for the reason that the witnesses namely Samarlal (PW-5) & Tulsidas (PW-7), who alleged to have witnessed the recovery, did not support the prosecution case and turned hostile. Both these witnesses have flatly denied that any proceeding relating to memorandum and recovery was carried out before them. Thus, the trial Court has wrongly found the memorandum and seizure proved.

That apart, Banwari Lal (PW-12), lodger of FIR and brother of deceased, has admitted in his cross-examination that after recovery of dead body and on coming to know about the land related dispute between the accused persons and the deceased, the accused persons were called by the police at the spot and thereafter they were taken to the police station. Evidence of this witness shows that discovery of dead body had already been made when present accused/appellants were called by the police and as such, the alleged statement of accused/appellants leading to the recovery of dead body will not be admissible. In these circumstances, it cannot be believed beyond reasonable doubt that body of deceased was seized on the memorandum of accused/appellants. Apart from this there is no other evidence against present

accused/appellants to sustain his conviction under Section 302 of IPC.

21. Likewise, there is nothing on record to show that after the death of the deceased, accused/appellants had in any manner caused disappearance of evidence of the offence with intent to screen themselves from the legal punishment and being so their conviction under Section 201 IPC is also not sustainable in the eye of law and they are entitled for acquittal of this offence also.
22. For the foregoing discussion, we are of the considered view that the prosecution has not been able to prove beyond doubt that body of the deceased was recovered pursuant to the disclosure statement of accused/appellants and being so, the benefit has to go to them. Finding of the trial Court against the appellants is not in conformity with the evidence led by the prosecution and therefore the impugned judgment is liable to be set aside.
23. Accordingly, the appeal is allowed. Conviction and sentence of the appellants under Sections 302 & 201 of IPC are hereby set aside and they are acquitted of those charges by extending them benefit of doubt. As the appellants are already on bail, no further direction regarding their release etc. is necessary. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

roshan/-