

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1046 of 2012**

[Arising out of judgment/order dated 24.07.2012 in Sessions Trial No.54/2011 of the learned 1st Additional Sessions Judge, Durg, Dist. Durg C.G.)]

1. Puna Ram S/o Late Ram Prasad, aged about 78 years, R/o Nikumbh, P.S. Anda, District Durg (C.G.)
 2. Manrakhan S/o Diraj, Aged about 64 years, R/o Bharda, P.S. Pulgaon, District – Durg (C.G.)
- Appellants**

Versus

- State Of Chhattisgarh, through Police Station – Anda, District Durg (C.G.)
- Respondent**

For Appellants	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, Government Advocate

**Hon'ble Shri Sanjay Agrawal &
Hon'ble Shri R.C.S. Samant, JJ**

Judgment on Board**24.03.2018****Per Sanjay Agrawal, J.**

1. This appeal has been preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure, 1973 (for brevity, the Cr.P.C. in short) against the judgment passed by the 1st Additional Sessions Judge, Durg, District Durg in Sessions Trial No.54/2011 on 24th July, 2012 convicting both the appellants under Section 302 of the Indian Penal Code (henceforth, the IPC) and sentencing them to life imprisonment with fine of Rs.1000/- and under Section 201/34 IPC to undergo rigorous imprisonment for three years with fine of Rs.500/- and in default to under further RI for three months on each count.

2. In this case, it is not disputed that the appellants Puna Ram and Manrakhan are respectively the father and the father-in-law of deceased Kanhaiyalal.
3. Briefly stated, the case of the prosecution is that the appellants have confined the deceased Kanhaiyalal in the room on 17.10.2010 owing to his mental disorder by tying up his hands and feet with handcuffs as he often used to beat his wife and children on account of being mentally disordered. It is alleged that on 18.10.2010 at 04:30 AM, the appellants returned after attending call of nature and called the deceased but he did not open the room. The appellants, therefore, somehow with the aid of ladder managed to enter into his room and found the deceased hanged himself. Further prosecution story is that Puna Ram (father of deceased) with the help of Manrakhan (father-in-law of deceased) has brought down the deceased and were preparing to take him to Hospital but he has not survived.
4. Based upon the aforesaid incident, merg intimation (Ex.P.13) was lodged immediately by the appellant Puna Ram, father of deceased Kanhaiyalal, on 18.10.2010 at 09.15 AM. Inquest of the dead body was conducted on 18.10.2010 vide Ex.P.6. After inquest, dead body was sent for autopsy to District Hospital, Durg, where Dr. Lal Mohammed (P.W.1) has conducted post-mortem examination on the dead body of deceased Kanhaiyalal and submitted its report vide Ex.P.1 by opining that cause of death is due to asphyxia as a result of hanging and, death was homicidal in nature. F.I.R. (Ex.25) has been registered on the strength of merg enquiry, on 21.10.2010 against the appellants

by the Station House Officer, Anda, Dist. Durg under Section 302, 201 read with Section 34 of IPC. Disclosure statement (Ex.P.8) of appellant No.2 Manrakhan led to recovery of bamboo stick vide seizure memo (Ex.P.10) while “red shawl” was recovered from appellant No.1 Puna Ram vide seizure memo Ex.P.18.

5. After usual investigation of the matter as such, offence punishable under Section 302 and 201 read with Section 34 IPC has been registered against the appellants by concerned Station House Officer, who submitted its final report on 30.11.2010 before the Judicial Magistrate First Class, Durg. The matter was thereafter committed to the learned 1st Additional Sessions Judge, Durg, for its trial.
6. The trial Court, on the basis of materials available on record, framed charges under Section 302 and 201 read with Section 34 IPC against the appellants, who have pleaded not guilty in connection with the charges so framed and, claimed to be tried.
7. In order to prove the guilt of the appellants, the trial Court examined as many as 14 witnesses. In the examination under Section 313 Cr.P.C., both the appellants denied all the incriminating circumstances appearing against them and pleaded innocence and false implication. No evidence was led in defence.
8. After considering the evidence led by the prosecution, the trial Court has convicted and sentenced the appellants as aforesaid.
9. Being aggrieved, the appellants have preferred this appeal. Shri

Hanuman Prasad Agrawal, learned counsel for the appellants submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as it was passed without considering the evidence in its proper perspective. He submits further that there is no eyewitness in the case and based upon weak circumstantial evidence, the trial Court ought not to have convicted the appellants as such. He, therefore, submits that the judgment impugned be set aside and instead the appellants be acquitted of the charges so framed against them.

10. On the other hand, Shri Ravindra Agrawal, learned counsel for the State supported the judgment impugned by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence led by the prosecution, therefore, does not require to be interfered.
11. We have heard learned counsel for the parties and perused the entire record carefully.
12. Smt. Saraswati Bai (P.W.2) is the wife and Kusumlata Vishwakarma is the daughter of deceased Kanhaiyalal, however both have turned hostile without supporting the prosecution case. Likewise, Drone Kumar Deshmukh (P.W.3) is the neighbour of the deceased whereas Shankarlal (P.W.11) is the farmer both have also turned hostile without supporting the prosecution case. Maniram (P.W.4) is the witness of inquest (Ex.P.6) and Parmanand Verma (P.W.6) is Constable, who recorded the merger intimation (Ex.P.13) at the instance of deceased's father Puna Ram and, both these witnesses have assisted the prosecution case in this regard. Rajendra Deshmukh (P.W.8) and Vinod

Kumar Singh (P.W.15) are the Investigating Officers and they have also assisted the prosecution case.

13. Madhusudan (P.W.5) is the witness of disclosure statement (Ex.P.8) and also of seizure memos (Ex.P.9 and Ex.P.10) but has turned hostile. Harsevaklal (P.W.7) has also turned hostile without supporting prosecution case.

14. Jageshwar (P.W.9) is the cousin of deceased Kanhaiyalal and has prepared the alleged handcuffs, by which, hands and legs of the deceased were tied up. He has stated, after turning hostile, that if any person's hands and legs were tied up with handcuffs, then it would not be possible for him to hang himself. He has, however, stated further in his evidence that although the hands of the deceased were tied up, but hands could be moved up and down and, likewise, he could also move a little bit even if his legs were tied up with handcuffs. He is also the witness of seizure memo (Ex.P.18), by which, a red shawl was recovered from the appellant Puna Ram but has not supported the prosecution. Santosh Dewangan (P.W.10) is the Patwari, who prepared the spot map (najri naksha) vide Ex.P.20 and has assisted the prosecution case.

15. Jhanaklal Deshmukh (P.W.12) is the witness of inquest (Ex.P.6) and has not supported the prosecution case fully as he turned hostile. Jhamman (P.W.13) is the neighbour of deceased Kanhaiyalal, who stated in his evidence that on a fateful day, the wife of deceased, namely, Smt. Saraswati Bai called and informed him that her husband (Kanhaiyalal) is behaving abnormally while closing himself in the room from inside. He has

stated further that he entered into the room as per her (Smt. Saraswati Bai) request with the aid of ladder and saw that the deceased was hanging himself in the room. He immediately came out for informing the said fact to the appellants. According to him, family members of the deceased were sleeping in his house.

16. Dr. Lal Mohammed (P.W.1), who has conducted the post-mortem examination on the dead body of deceased Kanhaiyalal, has submitted its report vide Ex.P.1 by opining that the cause of death is asphyxia as a result of hanging, which is homicidal in nature. Thus, he has supported the prosecution case.
17. Upon close scrutiny of the entire evidence as adduced aforesaid by the prosecution, it is evident that the deceased Kanhaiyalal was a person of mental disorder and owing to his abnormal behaviour often used to beat his wife and children. It also emerges from the record that the appellants, who are father and father-in-law of the deceased, have tied up his hands and legs with handcuffs and at the relevant time, the deceased alone was in the room. Post-mortem report (Ex.P.1) suggests that there was no ante-mortem injury found on his body. Admittedly, there is no eyewitness to the incident and close relatives of the deceased have turned hostile without supporting prosecution case. The prosecution has thus failed to prove that under what circumstances, the deceased was found dead in the room. As per the statement of Jhamman (P.W.13), it is evident that the appellants and other family members were not at home as they were sleeping in his (Jhamman) house. Burden of proof

regarding the manner in which the deceased was found dead in the room, therefore, cannot be cast upon the appellants, as held by the trial Court while convicting them. The burden was unequivocally upon the prosecution but the prosecution has miserably failed to establish its case beyond reasonable doubt. Under such circumstances, the conviction of the appellants, as held by the trial Court, cannot be held to be sustainable. We are, therefore, of the opinion that the findings of the trial Court, under such circumstances, deserve to be set aside.

18. Consequently, the appeal is allowed and the impugned judgment dated 24.07.2012 convicting the appellants under Section 302 and 201/34 IPC and the sentence awarded thereunder passed in Sessions Trial No. 54/2011 by the trial Court are hereby set aside. The appellants are acquitted of the charges framed against them. The appellants shall be set free as of now forthwith, if not required in any other case.

Sd/-
(Sanjay Agrawal)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE