

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 51 of 2015

1. Rohit Lal Partoti, S/o Shivram Partoti Aged About 28 Years, R/o Village Nevari, Navapara, P.S. Gourela, District Bilaspur C.G.
2. Ramdayal Vishwakarma S/o Jairam Singh Vishwakarma Aged About 24 Years R/o Village Sadhwani, Bagdhabharra, P.S. Gourela, District Bilaspur C.G.

---- Appellants

Versus

- State Of Chhattisgarh S/o Through P.S. Gourela, District Bilaspur (CG)

---- Respondent

For Appellants	:	Shri Yogendra Chaturvedi & Shri Bharat Rajput, Advocates
For Respondent	:	Shri Arun Pillai, Dy. Advocate General.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

Judgement

Per P. Diwaker, J

02/08/2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.12.2014 passed by the Additional Sessions Judge Pendra Road, District Bilaspur in S.T. No.11/2014 whereby the learned Additional Sessions Judge has convicted the accused/appellants for the offences punishable under Sections 302 & 201 of the Indian Penal Code (henceforth 'the IPC') and sentenced each of them to undergo RI for Life with fine of Rs.200/- & RI for 3 years with fine of Rs.100/-, with usual default clauses, respectively.
2. Facts of the case, in brief, are that on 13.12.2013 accused/appellant No.1

along with family members, relatives and friends was celebrating the birth of his daughter. Deceased Manju Singh, son of co-brother of accused No.1 had also come there. The celebrations was going on during which some heated conversation took place between the deceased and accused/appellant No.1. After some time, the deceased went missing. On 16.12.2013 naked body of the deceased was found lying in the forest. At the instance of Pandulal (PW-6), Merg Intimation & FIR were recorded on 16.12.2013 vide Ex.P-9 & Ex.P-10 respectively. Inquest over the body was prepared vide Ex.P-2. Dead body was sent for post-mortem examination which was conducted by Dr. B.S. Paikra (PW-10) who noticed following injuries;-

- Abrasion on the waist of 5x2cm in size with multiple scratches on abdomen & chest.
- Abrasion at right armpit & shoulder of 5x2cm in size.
- Multiple abrasions in the neck and back.
- Abrasion on right cheek of 4x3cm in size.
- Multiple abrasions on the back.

The autopsy surgeon has opined vide Ex.P-11 that cause of death was throttling, mode of death was asphyxia and nature of death was homicidal. On the basis of memorandum statement (Ex.P-4) of accused/appellant No.1, one green colour Hero Jet Bicycle allegedly belonged to the deceased was seized vide seizure memo Ex.P-5. After completion of investigation, charge sheet was filed against the accused/appellants and accordingly, the charges under Sections 302, 201, 34 IPC were framed against them by the trial Judge.

3. So as to hold the accused/appellants guilty, the prosecution has examined 11 witnesses. After recording of the evidence for the prosecution was

over, the accused/appellants were examined under Section 313 of Cr.P.C. regarding the incriminating materials found in the evidence adduced on the side of prosecution. They denied such evidence to be false and once again reiterated their stand that they are not guilty of any offence.

4. After hearing counsel for the respective parties and considering the material available on record, the trial Court by the impugned judgement, convicted and sentenced them as described above.
5. Learned counsel for the appellants in both the appeals submits that:-
 - conviction of appellants is substantially based on the circumstantial evidence and in the cases of circumstantial evidence the prosecution is required to prove that the entire chain of circumstances is complete but in the present case the quality of evidence is not as such on which basis it can be said that chain of circumstances is complete.
 - only piece of evidence against the appellants is that there was a scuffle between deceased and appellants during the celebrations going on in the house of accused/appellant but there is nothing to show as to what had happened thereafter.
 - so far as recovery of bicycle at the instance of accused/appellants is concerned, the same has not been identified to be that of the deceased and therefore this evidence of recovery in absence of identification is not all relevant for the prosecution.
6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Sections 302 & 201 of IPC are based on due appreciation of the evidence on record and there is no infirmity in the same warranting interference in exercise of appellate jurisdiction.
7. We have heard learned counsel for the parties and perused the material

available on record.

8. Vishnu Rathore (PW-1) is the witness of inquest (Ex.P-2), map (Ex.P-3), memorandum (Ex.P-4), seizure memo (Ex.P-5) etc. but he did not support the prosecution case and turned hostile. Sujit Mishra (PW-2) is another witness of inquest and he too has not supported the prosecution and turned hostile. Munna Singh Uraon (PW-3) is the witness of memorandum (Ex.P-4) & seizure memo (Ex.P-5), however, he has not supported the prosecution case and turned hostile. Yashwant Kumar (PW-4) did not support the prosecution and turned hostile. Ravi Mariya (PW-5) is the witness of inquest (Ex.P-2). Pandulal (PW-6) is the person at whose instance Merg & FIR have been recorded. Samrath (PW-7) & Lalita Bai (PW-8) are the parents of the deceased and they have not stated anything incriminating against the accused/appellants. Satyanarayan Kureti (PW-9) is the Patwari who prepared the spot map (Ex.P-7). Dr. P.S. Paikra (PW-10) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as indicated above. He has opined that cause of death was throttling, mode of death was asphyxia and nature of death was homicidal. S.C. Shukla (PW-11) is the investigating officer who has duly supported the prosecution case.
9. Close scrutiny of the evidence available on record makes it clear that there is no legally admissible evidence on record connecting the accused/appellants with the murder of deceased Manju Singh. As per prosecution case, when accused/appellant No.1 along with family members, relatives and friends was celebrating the birth of his daughter, some heated conversation took place between the deceased and accused/appellant No.1, after some time, the deceased went missing and on 16.12.2013 his naked body was found lying in the forest. However, there is no evidence on record to show that at any time after the said

heated conversation, the deceased was seen in the company of accused/appellants and in absence of such evidence or any other circumstances to connect them with the crime, no adverse inference can be drawn against the appellants from the mere fact that a quarrel took place between them on the night when the deceased went missing.

So far as the recovery of bicycle of deceased at the instance of accused/appellants, the prosecution has relied on the evidence of Vishnu Rathore (PW-1) & Munna Singh (PW-3) to prove memorandum statement of appellant No.1 leading to the recovery of bicycle allegedly belonging to the deceased, but both these witnesses have not supported the prosecution case and turned hostile. According to them, accused/appellant No.1 had not given any memorandum before them. Furthermore, there is no identification that the bicycle recovered allegedly in pursuance to the information given by accused/appellant No.1 belonged to the deceased. Thus, it is apparent that the prosecution has failed to prove the recovery of bicycle beyond doubt, therefore, the same cannot be treated as an evidence so as to convict the accused/appellants for the alleged crime of murder.

10. In substance, we are of the considered view that the evidence led before the trial Court by the prosecution is not sufficient to establish the charge of murder for which the appellants were convicted and being so the appellants are entitled to be acquitted by extending them benefit of doubt.
11. Likewise, there is nothing on record to show that after the death of the deceased, the accused/appellants had in any manner caused disappearance of evidence of the offence with intent to screen themselves from 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.

12. Accordingly, the appeal is allowed. Conviction and sentence of the appellants under Sections 302 & 201 IPC are hereby set aside and they are acquitted of those charges by extending them benefit of doubt. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-