

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25-1-2019

Delivered on 8-3-2019

Criminal Appeal No. 728 of 2011

- Deepak Ratre s/o. Agnuram Ratre, aged about 19 years r/o. Ramnagr, Police Station Gudhiyari, District Raipur (CG).

---- Appellant**Versus**

The State of Chhattisgarh Through Police Station Gudiyari,
Dist. Raipur (CG).

---- Respondent

For the appellant : Mrs. Kiran Jain, Advocate

For the respondent/State : Mr. Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is directed against the judgment of conviction and order of sentence dated 2-7-2011 passed by 4th Additional Sessions Judge, Raipur (CG) in Sessions Trial No. 50 of 2011 wherein the said Court convicted the appellant for the commission of offence under Sections 363, 304 Part I and 201 of IPC and sentenced him to undergo rigorous imprisonment for seven years, RI for ten years and RI for three years and to pay fine of Rs.100/- on each count with default stipulations.

2. In the present case, name of the deceased is Roshan Dongre. On 22-11-2010 there was marriage of daughter of Arun Suryavanshi where Roshan Dongre was present along with his family members at Krishna Nagar, Raipur to attend the marriage ceremony. Ratan Dongre returned to his house at about 9 pm – 9.30 pm and he found that his son Roshan Dongre who was along with him had not returned due to which he made search for him in nearby places and in the house of his relatives and friends. On the next day at about 10.00 am while he was going to police station for lodging a complaint, he received phone call on his mobile in which some unknown person had stated that life of his son is in danger and therefore he should come along Rs.5,00,000/- at over bridge and thereafter he disconnected the phone. This fact was intimated to the police station and on the basis of number received in his mobile phone investigation was started on which some suspicion cropped on the appellant and he was taken into police custody. The appellant had given a memorandum stating there that he was in love with one Manisha and he was in need of money for the purpose of marriage, therefore, he had kidnapped the deceased Roshan Dongre and when he tried to escape, he killed him. The matter was reported to the Police Station and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion

of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- I) There is inordinate delay of three months in making arrangement of identification parade and that delay is unexplained, therefore, benefit of doubt ought to have been extended to the appellant.
- II) Recovery of dead body from particular place is not proved, therefore, it is not proved that recovery of dead body is done at the instant of the appellant. The said place approachable to all and it is not in exclusive possession of the appellant, therefore, the act of keeping the dead body in that place by some other person cannot be ruled out.
- lii) PW/10 Komal Ramtak did not support recovery of dead body, therefore, finding arrived at by the trial Court is not liable to be sustained.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. Dr. R.K. Patel, (PW/11) examined the autopsy of the deceased on 13-5-2010 at Government Medical College and notice the following injuries.

- I) Contusion present on neck just above supra-sternal notch in the size of 5x3 cm over vertically y/n red colour echhymosis present. Contusion present on neck muscles, tracheal cartilages are fractured in area of 4 x3 cm vertical area all around echhymosis present.
- ii) Contusion present on neck left side just angle of mandible 4x2.5 cm traverse y/n red colour echhymosis present and neck muscles are contused.
- lii) Echhymosis present on thyroid cartilage 5 x 2 cm transverse thyroid and thyroid bone are broken.
- iv) Contusion present on upper lip in area of 3x0.5 cm transverse extending transverse from mid plane..
- v) Contusion present on lower lip in area of 3.5 x 1 cm transverse extending from mid plane on both sides.
- vi) Red colour ecchymosis present on occipital region in 4 cm diameters on occipital protuberance.
- vii) Contusion present on right shoulder anterior aspect 3x2 cm transverse y/n red colour echhymosis is present.

- viii) Contusion with friction abrasion on right side chest at level of nipple 5x3cm transverse area, ribs are intact.
- ix) Contusion present on right orbital fossa in 2 cm diameter area.
- x) Ecchymosis present on nasal bridge 2x1.5 cm transverse.

As per version of this witness, deceased died due to strangulation and injuries were sufficient in ordinary course of nature to cause death and nature of death is homicidal. He further deposed that duration of injuries were within 24 hours from examination. Version of this witness is unshaken during cross examination and there is no other expert's opinion contrary to the opinion of this expert, therefore, there is no reason to disbelieve he same. It is established that deceased died homicidal death due to strangulation.

7. As per version of Brijesh Kumar Tiwari (PW/14) Police Inspector, the appellant made discovery statement that he kept the dead body of the deceased inside his house which was in dilapidated condition. On the basis of his discovery statement dead body of the deceased was recovered. Version of this witness is supported by version of Chhedilal (PW/2), Sunil Bandre (PW/7) and Khemlal Sahu (PW/9). Their version is not rebutted during cross examination and it is established before the trial Court

that dead body was recovered at the instance of the appellant. PW/3 Bheem Kumar Sahu is a person who is running a shop of STD and PCO. As per version of this witness appellant made a call at about 8.30 pm in the night from his telephone booth.

8. Looking to the entire evidence the trial court opined that it is the appellant who kidnapped minor deceased Roshan Dongre aged ten years from lawful guardianship and committed culpable homicide and caused disappearance of the evidence. Though there is report of medical expert that injuries were sufficient in ordinary course of nature to cause death, but the finding of the trial Court is not challenged by the State therefore, it is not a case where finding can be modified and sentence can be enhanced. It cannot be said that finding of the trial court is not based on relevant material and it is based on irrelevant or extraneous material. Evidence against the appellant is clinching in nature and he has not explained any of the incriminating circumstances established against him. His version is plain denial which is meritless, therefore, this court has no reason to substitute contrary finding. Argument advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief for which the trial Court convicted the appellant. Conviction of the appellant is hereby affirmed. The trial Court awarded rigorous imprisonment for ten years for offence of culpable homicide which

cannot be termed as harsh, unreasonable or disproportionate. Sentence part is also not liable to be interfered.

9. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further arrest for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju