

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 399 of 2013

- Shankar Singh, S/o Late Kawal Singh Gond, Aged About 23 Years, R/o Thawaipur Katghora, Distt. Korba, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through – Station House Officer, Katghora, District Korba, Chhattisgarh.

---- Respondent

For Appellant	Ms. Shipra Biswas, Advocate.
For Respondent/State	Mr. Ashish Gupta, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

13/11/2019

1. The appellant would call in question the legality and validity of the judgment dated 30.10.2012 passed by the Additional Sessions Judge Kathghora, District Korba, C.G. in ST No. 11/12 whereby appellant stands convicted under Sections 302 and 201 of IPC and sentenced to undergo imprisonment for life, fine of Rs.500/- and 2 years rigorous imprisonment and fine of Rs.500/-, in default thereof to suffer additional R.I. for three months on each count.
2. The trial Court has convicted the appellant for committing murder of deceased Kawal Singh in between 9 to 10 pm on 2.07.2011 as also for concealing the evidence of crime. A written complaint Ex.P-1 was lodged with the concerned police on 12.10.2011 by (PW-1) Sanbar Singh, son of the deceased alleging that his father was working as a

Cook in a Primary School, Village-Nawapara (Dhanwaipur) and was residing there, however, for some time before the incident he started residing in the house. On 01.07.2011 deceased and appellant Shankar Singh, another son of the deceased had a quarrel. He went back to village Khamariya in the morning of 02.07.2011. His father reached back to the house at about 9-10 am and at this time Shankar Singh was waiting for his father's arrival and soon after the deceased entered the house, he started assaulting him by club which was heard by his handicapped brother Shekhar Singh. After the assault was over and the deceased died, his younger brother Jogendra Singh returned from the agricultural field, however, the appellant sent him back to the agricultural field for keeping vigil on the crop. When after some time Jogendra Singh (PW-2) again came back to house, he saw the appellant shivering and his eyes were red. He immediately sent Jogendra Singh to a different village. Thereafter, he kept the dead body in a *gunny* bag, took it to the garden and buried the same in the manure pit (*Ghurwa*). When the informant returned to his house after a month and enquired about his father, the appellant as well as Jogendra Singh did not provide any information out of fear. He went back to Khamariya and again came to the village after some days and enquired from his handicapped brother Shekhar Singh, who informed that the appellant has committed the murder. Hearing this the informant went back to village Khamariya and did not disclose this to anybody out of fear. Thereafter, his handicapped brother Shekhar Singh died and he again reached the village.

3. On receipt of the above complaint, the police reached the house of the appellant on 15.10.2011 and exhumed the skeleton vide Ex.P-2 which in fact is an identification memo of the dead body. The dead body

inquest was prepared vide Ex.P-4 and the skeleton was sent for postmortem which was conducted by (PW-4) Dr. Naresh Dewangan, who found multiple fractures over skull mainly on the left parieto temporal frontal and left occipital along with extending postly to right side occipital. He also found fracture of Zygomatic Bone and fracture of ulna. He opined that cause of death could be shock due to suspected head injury. According to him, the time passed since death was between 2 to 4 months.

4. Memorandum statement of the appellant was recorded vide Ex.P-8 consequent to which one iron spade (*Fawda*) and iron crow bar (*Geti*) were recovered from his possession. A wooden stick was also recovered from him vide Ex.P-11. His blue colour shirt was also recovered vide Ex.P-12. The seized articles were sent for FSL examination but report of the FSL is not on record. The charge sheet was filed on the basis of the case diary statements of the witnesses, the appellant's memorandum statement and the recovery. The trial Court has convicted the appellant mainly on the basis of statement of (PW-1) Sanbar Singh, (PW-2) Jogendra Singh and (PW-3) Ram Prasad.
5. It is argued by Ms. Shipra Biswas, learned counsel for the appellant that there being no eyewitness to the crime, the prosecution case is not at all proved. The witnesses have withheld vital information about death of their father for more than two months and there is no explanation for the said non-disclosure which is fatal for the prosecution.
6. Learned counsel for the State would submit that (PW-1) Sanbar Singh and (PW-2) Jogendra Singh are the brothers of the appellant yet they are deposing against him, therefore, it is case where the trial Court has rightly believed their statements for convicting the appellant.
7. The appellant, (PW-1) Sanbar Singh, (PW-2) Jogendra Singh and one

Shekhar Singh are four real brothers being sons of deceased Kawal Singh. From the evidence on record, it appears that (PW-1) Sanbar Singh was staying in a different village namely Khamariya. In the house at village Nawapara, Dhanwaipur, the deceased was residing with handicapped son Shekhar Singh, (PW-1) Sanbar Singh and (PW-2) Jogendra Singh. From the contents of the written complaint, it appears that on the date of incident (PW-1) Sanbar Singh was also in the house albeit he left for village Khamariya in the morning itself. Thereafter, appellant, (PW-2) Jogendra Singh and Shekhar Singh remained in the house. While Jogendra Singh had gone to the agricultural field, Shekhar Singh and appellant were in the house at about 9-10 am. Appellant allegedly committed murder during this time which was heard by his handicapped brother Shekhar Singh. Jogendra Singh has not seen the incident as he had gone to the agricultural field. When he came back from the field twice, on both the occasions the appellant sent him back firstly to the agricultural field and thereafter to another village. (PW-1) Sanbar Singh came to his house i.e. the village where the incident took place after about a month and at this time Shekhar Singh informed him about the incident, however, he did not lodge the FIR nor disclosed the same to any other person in the village. Similar is the case with (PW-2) Jogendra Singh, who says that he was informed about the murder by his brother Shekhar Singh, however, he too did not inform about this to any other person in the village. Surprisingly, (PW-3) Ram Prasad who is closely related to the family is the Sarpanch of the village yet he was also not informed by any of the three brothers namely Shekhar Singh during his lifetime or by (PW-1) Sanbar Singh and (PW-2) Jogendra Singh.

8. According to the evidence available in the case, Shekhar Singh died on

25.09.2011. During the 10th day rituals after his death, the entire family assembled and at this point of time Sanbar Singh and Jogendra Singh informed (PW-3) Ram Prasad about the entire incident and thereafter the written complaint was lodged. In the written complaint Sanbar Singh states that he was informed by his brother Shekhar Singh (since deceased) after a month of the incident but in his deposition he states that till the date when 10th day death rituals of Shekhar Singh was performed he was not informed by his two brothers about murder of his father. This is contrary to what is stated in the written complaint. It is also strange that the deceased was a Government Servant in the capacity of Cook in a Primary School yet nobody enquired about his whereabouts despite he being absent from his duties after 02.07.2011. Similarly, a close family member (PW-3) Ram Prasad was a Sarpanch yet he did not enquire about the deceased from 02.07.2011 till about 3-4 days prior to 12.10.2011 when the written complaint was lodged.

9. Although memorandum statement of the appellant has been recorded but the same is inconsequential for lack of report of FSL examination about the presence of human blood in the seized articles. The dead body has not been recovered at the instance of the appellant as the same was already exhumed in the morning of 15.10.2011 whereas the memorandum statement was recorded at 4 pm. The confessional part of the memorandum statement is not admissible in evidence, only the disclosure part is admissible but in the absence of corroboration in the form of FSL report, much credence cannot be given to the said memorandum statement. The iron spade and crow bar as well as Bamboo Stick were not used for committing murder as per the memorandum statement itself. The murder was allegedly committed by means of Bamboo stick but for that too there is no FSL report. Evidence

of (PW-2) Jogendra Singh is also hearsay for the reason that he was not present in the house at the time of incident but was informed about the incident by his brother Shekhar Singh who is not examined on account of his death prior to lodging of FIR. There is absolutely no reason as to why three adult sons of the deceased did not proceed to lodge any FIR soon after the commission of murder of their father. There is also no apparent reason as to why they did not inform about murder of their father to any other villagers including their close relative Sarpanch Ram Prasad (PW-3). The delay in disclosure is thus fatal for the prosecution for lack of proper acceptable explanation. The entire prosecution case particularly the evidence of (PW-1) Sanbar Singh and (PW-2) Jogendra Singh does not inspire confidence to rest conviction on the basis of their statements. In our considered view, the appellant is entitled to benefit of doubt.

10. Accordingly, the appeal is allowed and the impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted of the charges under Sections 302 & 201 of IPC. He is reported to be in jail, therefore, he is directed to be released forthwith, if not required to be detained in connection with any other offence, on his furnishing bail bonds for a sum of Rs.25,000/- with one equivalent surety to the satisfaction of the trial Court for his appearance before the higher Court as and when required. The bail bonds so furnished shall remain in force for a period of six months from today in view of provisions of Section 437A Cr.PC.

Sd/-

Prashant Kumar Mishra
Judge

Sd/-

Gautam Chourdiya
Judge

