
(2017) 01 CHH CK 0050
In the Chhattisgarh High Court
Case No : 591 of 2007

Balram Sahu @ Balla

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
Indian Penal Code, 1860, Section 302,
Section 34 - Punishment for murder - Acts done by several persons in furtherance of common intention

Citation : (2017) 01 CHH CK 0050

Hon'ble Judges : Pritinker Diwaker, Rajendra Chandra Singh Samant

Bench : Division Bench

Advocate : Dharendra Pandey, Adil Minhaj

Final Decision : Allowed

Judgement

1. This appeal has been filed against the judgment of conviction and order of sentence dated 14.6.2007 passed by the Additional Sessions Judge, Bilaspur in S.T. No.388/06 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short "the IPC") and sentencing him to undergo R.I. for Life and fine of Rs.100/-, in default to undergo additional RI for 3 months.

2. In the instant case, deceased Manjubai was the first wife of accused/appellant, whereas acquitted accused Smt. Rekha Bai is the second wife of accused/appellant.

3. Case of the prosecution is that on 26.5.2006 at about 11-11.30 p.m. in the night the deceased was found lying dead in her room which was noticed by Bramhanand (PW-4), son of deceased. Receiving Intimation regarding death of the deceased, father of deceased (PW-1) immediately reached the place of occurrence and on 27.5.2006 a complaint was lodged by him based on which merg intimation (Ex.P-3) was recorded on the same day at 6.30 p.m. and

thereafter FIR (Ex.P-1) was registered against the present accused/appellant and acquitted accused under Section 302/34 IPC. Inquest on the body of deceased was prepared vide Ex.P-6. Body of deceased was sent for post-mortem examination which was conducted by Dr. Poonam Singh (PW-10) on 27.5.2006 vide Ex.P-9 who noticed following injuries;-

- * Incised wound about 2.5"x 1/2" depth throughout abdomen not piercing posterior wall of abdomen
- * Same size incised wound like above 2" below above wound towards right side.
- * Incised wound of 3 1/2" x 1.5" x depth whole abdominal cavity not piercing posterior wall.
- * Incised wound over scalp.

As per post-mortem report, the cause of death was injury to vital organs and shock due to haemorrhage and the death was homicidal in nature.

4. On completion of investigation, charge sheet for the offence punishable under Section 302/34 IPC was filed against the accused persons and accordingly the charge was framed by the trial Court against them.

5. The prosecution in order to bring home the charge levelled against the accused persons had examined 14 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. They have examined two witnesses in their defence.

6. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment while acquitting co-accused Smt. Rekha Sahu of the charge under Section 302 IPC, convicted & sentenced the accused/appellant in the manner as described above.

7. Counsel for accused/appellant submits that;

- * there is no direct evidence to the effect that it was the appellant who caused death of the deceased and therefore the trial Court ought not to have held the appellant guilty of committing the offence.
- * the prosecution has failed to adduce any evidence showing presence of the appellant in the house at the crucial time.
- * Apart from the appellant, his uncle Sadaram was also residing under the same roof; at the relevant time he was very much present in the house and even the weapon of offence was also recovered from his room and in these circumstances, the possibility that it is he who murdered the deceased cannot be ruled out. However, for the reasons best known to the prosecution, said Sadaram was not even suspected and charge sheeted by the prosecution.
- * Plea of alibi taken by the accused/appellant not only finds support from the

defence witness but also from the evidence of the prosecution witnesses i.e. Bramhanand (PW-4), who have stated in categorical terms that on the fateful night the appellant was watching "Krishna-leela" programme with them and during the programme he did not go anywhere.

* Though certain bloodstained articles were alleged seized on the basis of the memorandum statement of appellant but in absence of Serological report confirming that stains of blood found on these articles were of human blood and that too of the blood group of the deceased, it cannot be said that the same were used in commission of crime.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

9. We have heard counsel for the parties and perused the evidence available on record.

10. Haldhar Prasad (PW-1) is the father of deceased. He has stated in his statement that having been informed about the death of his daughter, he rushed to her matrimonial home and on reaching there, she saw her body lying on the cot. Injures were present on her body and blood was coming out from her nose. He has further stated that accused/appellant & acquitted accused used to quarrel with her and they have threatened her of life. However, in Para-9 of the cross-examination he has admitted that his daughter was living happily in her matrimonial home and that he did not disclose to anyone that the accused persons were harassing the deceased. He has further admitted that apart from accused/appellant, other inmates were also residing in the house.

11. Fekuram Sahu (PW-2) is a witness of seizure memo (Ex.P-7), Crime Details Form (Ex.P-8) & map Ex.P-9, but he has not supported the prosecution case and turned hostile.

12. Pardeshi Ram (PW-3) is the witness of memorandum (Ex.P-11), seizure memos (Ex.P-12, P-13, P-14, P-15, P-16).

13. Bramhanand (PW-4), son of deceased and appellant, is the first person who noticed the body of deceased. Though this witness has been declared hostile by the prosecution but he has stated that relations between the accused/appellant and the deceased were cordial and that he along with his father (present appellant) had gone to see "leela" and at that time Sadaram was in the home.

14. Sunil Sahu (PW-5) is another witness of memorandum (Ex.P-11), seizure memos (Ex.P-12, P-13, P-14, P-15, P-16), but he did not support the prosecution case and turned hostile.

15. Shrawan Sahu (PW-6) is the person who passed on the information to the father of deceased about the death of deceased.

16. Brihaspati Bai (PW-7) is a villager who had also gone to see "Leela". She has stated to have seen the accused/appellant going home and getting back from Leela twice or thrice, however, in the cross-examination she has admitted that she was asked to said like that.

17. Rajkumar Mishra (PW-8) is the witness of inquest (Ex.P-6) and map (Ex.P-8).

18. Srinivas (PW-9) is the witness of seizure memo of Ex.P-18 by which a saree, bed-sheet and blouse were seized.

19. Dr. Poonam Singh (PW-10) is the person who conducted post-mortem examination over the body of deceased and noticed the injuries as described above.

20. M.K. Dubey (PW-11) is the police person who helped in the investigation.

21. Dr. Sandeep Dwivedi (PW-12) has medically examined the accused/appellant vide Ex.P-22 and did not notice any mark of injury on his body.

22. Basant Rao Ingle (PW-13) is the Patwari who prepared the spot map vide Ex.P-9.

23. M.L. Chouhan (PW-14) is the Investigating Officer and he has duly supported the prosecution case. This witness has admitted in his evidence that Sadaram, uncle of deceased, was residing in the same house and weapon of offence was seized from his room. In Para-29 he further admits that Sadaram, his daughter and mother of appellant were also residing in the same house but he has not included their names in the list of witnesses etc. He further admits that he proceeded to investigate the matter on the basis of report of father of deceased who had alleged that relation between the deceased and the appellant were not cordial.

24. Accused/appellant examined himself as DW-1 and stated that on the date of incident he along with his mother, wife & son had gone to watch "leela". Shivkumar Sahu (DW-2) was also present with him. He has further stated that at the relevant time Sadaram and Lakeshwari, daughter of Sadaram, were in the house along with the deceased. He has further stated that after returning home, when his son Bramhanand went inside the room of the deceased for sleep, he noticed body of deceased.

25. Shivkumar (DW-2) has stated that at the relevant time the appellant was sitting in front of him and watching "krishna leela" programme. He has further stated that he did not go anywhere till the programme was over and the accused/appellant was also present there and during the programme he did not see the appellant going and getting back.

26. Present is the case of house murder and in such a case it is absolutely essential to first consider whether the prosecution has led any unimpeachable evidence to show that the accused was present in the house at the crucial point of time. If it is found that presence of appellant at the crucial time has not been

established, all other circumstances would not complete the chain of circumstantial evidence to lead any irresistible conclusion consistent only with the hypothesis of guilt of the appellant and inconsistent with their innocence.

27. In the instant case, the trial Judge taking note of the fact that the accused/appellant threatened the deceased of her life, as stated by Haldhar (PW-1), father of deceased,; bloodstained articles including weapon of offence were recovered at the instance of accused/appellant and that the accused/appellant failed to establish the plea of alibi beyond reasonable doubt, came to the conclusion that it was the appellant alone who committed the crime and none else and accordingly, convicted and sentenced him under Section 302 IPC. However, on close scrutiny of the entire evidence, we find that the conclusion of the trial Court is not correct for the reason that no positive evidence was led by the prosecution to prove that the accused/appellant was actually present at his house at the crucial time and committed the crime in question or that no member of the family was present in the house at the time of commission of offence except the appellant and the deceased or that the appellant had left the place where "Krishna-leela" programme was going on and had come to the house and committed the crime in question. On the other hand, it has come in the evidence of DW-2 Shivkumar that the accused/appellant was all along present in the Krishna-leela programme and he did not see him going and getting back. Evidence of this witness gets corroboration from the statement of PW-4 Bramhanand who has stated that after watching the programme (leela), his father (appellant) had returned home with him and during the programme, his father did not go anywhere. True it is that PW-7 Brishpati Bai, a child witness, is said to have seen the appellant going to his house and getting back 2-3 times during the programme (leela), but in the cross-examination she has admitted that she was asked to make such statement. Thus, in our opinion, the statement of Brahspatibai (PW-7) is not wholly reliable and cannot be accepted. Most importantly, nobody made any adverse remark on the relationship of the accused and the deceased save and except the father of deceased i.e. Haldhar (PW-1), but he too has admitted in the cross-examination that the deceased was living happily in her matrimonial home. Nothing has come on record to indicate or even suggest as to what was or could be the motive that impelled the accused/appellant to take such unnatural step of killing his wife.

28. Thus, unless it is proved beyond reasonable doubt that the appellant was present in the house at the relevant time only finding the deceased in dead condition in the house of accused/appellant, in the present facts and circumstances, would not be incriminating against him. Moreover, other inmates of the house i.e. Sadaram & Lakheshwari, daughter of Sadaram, were actually present in the house at the crucial time and therefore the possibility of involvement of other family members in the crime in hand cannot be ruled out. Likewise seizure of certain bloodstained articles including weapon of offence at the instance of appellant would also not be incriminating against him because the prosecution could not file Serological report to prove that the blood found on the

articles seized at the instance of accused/appellant were of the blood group of the deceased. Thus, the prosecution has not been in a position to prove that these articles were used in commission of crime in question.

29. In view of foregoing discussion, we are of the opinion that complicity of the appellant in the crime in question has not been established by the prosecution beyond reasonable doubt and consequently he is entitled to be acquitted of the charge of murder by extending him benefit of doubt.

30. In the result, the appeal is allowed. Conviction and sentence of the appellant under Section 302 IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. Appellant is reported to be on bail. His bail bonds stand discharged.