

(2012) 04 CHH CK 0057
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 181 of 2006

Basant Ram and Another

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 2 CG.L.R.W. 266 : (2012) 3 CGLJ 553

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Advocate : Shrawan Agrawal, for the Appellant; Jameel Akhtar Lohani, Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Shri Sunil Kumar Sinha, J.—These appeals are directed against the judgment dated 9th of January, 2006, passed in Sessions Trial No. 64/2005 by the Sessions Judge, Jashpur, District Jashpur (CG). By the impugned judgment, the appellants have been convicted under Sections 302, 302/34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 1000/- with default sentence of R.I. for 6 months. The facts, briefly stated, are as under :-

Deceased-Firdos and his mother Smt. T. Chouhan (PW-5), were jointly residing in village Marol, Tehsil-Bagicha, District Jashpur. On 27.3.2005, at about 7.00-7.30 am, dead body of the deceased was found at an open place behind his house. The villagers firstly informed his mother Smt. T. Chouhan (PW-5) and thereafter, village Chowkidar-Padumnath was called. Padumnath (PW-1) lodged Merg intimation (Ex. P/1). The Investigating Officer reached to the place of occurrence, gave notice (Ex. P/10) to the Panchas and prepared inquest (Ex. P/2) on the dead body of the deceased. A rope was found around the neck of the deceased. The dead body of the deceased was sent for postmortem to Community Health Centre, Kansabel. The postmortem examination was

conducted by Dr. Y.K. Toppo (PW-3). Though he noticed multiple injuries on the dead body of the deceased, but he did not find any ligature mark around the neck. The Autopsy Surgeon opined that the cause of death was asphyxia on account of throttling and it was homicidal in nature. In further investigation, on 3.4.2005, statement of Nanhuram (PW-2) was recorded u/s 161 Cr. P.C. Nanhuram (PW-2) stated that in the intervening night of 26.3.2005 and 27.3.2005, the appellants committed murder of the deceased in village Kerakachar and thereafter, his dead body was brought to village Marol and was thrown in the back portion of the house of the deceased. The case of the prosecution was entirely based on the eye-witness account of the sole eyewitness Nanhuram (PW-2). The learned Sessions Judge relied on the testimony of Nanhuram (PW-2) and held that it was proved beyond all reasonable doubts that the appellants committed murder of the deceased in the intervening night of 26.3.2005 and 27.3.2005, and thus, they were liable for punishment under the aforesaid Sections of the IPC.

2. Mr. Shrawan Agrawal, learned counsel appearing on behalf of the appellants, argued that the incident took place in the intervening night of 26.3.2005 and 27.3.2005 and 161 Cr. P.C. statement of the sole eye-witness Nanhuram (PW-2) was recorded on 3.4.2005, therefore, there was a long delay in disclosure by Nanhuram (PW-2), which makes his evidence unreliable. He also argued that Nanhuram (PW-2) was taken by the Police on 28.3.2005 and he was kept in custody up to 2.4.2005 and thereafter, his above statement was recorded. According to him, Nanhuram (PW-2) was available with the Police from 27.3.2005 itself. Therefore, there was no reason as to why he did not disclose the above facts to the Police up to 3.4.2005. He assailed the testimony of sole eye-witness Nanhuram (PW-2) on the above facts and circumstances of the case.

3. On the other hand, Mr. Jameel Akhtar Lohani, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

4. We have heard the learned counsel for the parties at length and have also perused the records of the Sessions case.

5. Unjustified and unexplained long delay on part of Investigating Officer in recording statement of material eye witness, u/s 161 Cr. P.C., during investigation of murder case will render evidence of such witness unreliable. Because the delay would give an opportunity to concoct a different version than what actually took place. It was held by the Supreme Court that where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eye-witness and this witness did not disclose the name of the assailant for a long time and no satisfactory explanation was offered for non-disclosure, such non-disclosure was a serious infirmity regarding credibility of the evidence of the witness. (See *Balakrushna Swain Vs. State of Orissa*, , *State of Orissa Vs. Mr. Brahmananda Nanda*, , and *Bachhu Narain Singh Vs. Naresh Yadav and others* AIR 2004 SC 3055).

6. In Pradeep Kumar Jaiswal Vs. State of Chhattisgarh, , this Court has held that no straight jacket formula can be applied in all cases of late disclosure by eye-witnesses and the credibility of the witnesses are to be judged in the prevailing facts and circumstances of each case. However, that judgment should be arrived at keeping in mind the normal human conduct and the probable circumstances including the explanation offered regarding non-disclosure of the facts relating to commission of such a heinous offence.

7. Nanhuram (PW-2) is the solitary eye-witness in this case. He deposed that in the fateful night, at about 8.00 pm, deceased-Firdos came and said him to go to village Kerakachar for a visit. Thereafter, they went to village Kerakachar. When they reached near the culvert in village Kerakachar, Sonki Bai (PW-6) also came there. Sonki Bai (PW-6) was previously known to the deceased. They were sitting over the culvert in village Kerakachar. The appellants came there and scolded Sonki Bai (PW-6) and send her to the house. Sonki Bai (PW-6) is sister of appellant Hemant Ram. Thereafter, they chased the deceased. After chasing the deceased, they caught and assaulted him. Appellants Hemant Ram and Arvind Ram put a rope around the neck of the deceased and tied the rope, due to which, the deceased fell down. At that time, appellants Ashok Kumar and Basant Ram were holding the hands and legs of the deceased. Thereafter, all the appellants took the dead body to the back portion of the house of the deceased in village Marol and threw the dead body. In cross-examination, in para 16, Nanhuram (PW-2) admitted that just 2 days after the Panchanama, he was caught by the Police and was taken to Police Station, Kansabel. He was kept in the Police Station for many days and ultimately, on 1st or 2nd of April, 2005, he was left by the Police. He further admitted in cross-examination that in Police Station, Daroga had interrogated him and on his statement, the accused persons were arrested. It is an admitted position that 161 Cr. P.C. statement of Nanhuram (PW-2) was recorded on 3.4.2005 i.e. on 9th day after the incident. When Nanhuram (PW-2) was present in the village since the date of incident, why he did not disclose the above facts to the Police at the occasion of inquest or at any subsequent occasion. Even he did not disclose the incident to the Police when he was taken by the Police and kept in custody for 4-5 days. No explanation relating to late disclosure, has been offered by the prosecution. Even Nanhuram (PW-2) has also not offered any explanation as to why he did not disclose all these facts to the Police for about 9 days. If, in fact, Nanhuram (PW-2) was knowing all these facts and he had witnessed the incident as claimed by him, in normal human conduct, he would have disclosed all these facts to the Police at the first instance, i.e. when the inquest etc. was being prepared by the Police and when the investigation of the case was going on in the village. Non-disclosure of the incident by Nanhuram (PW-2) to the Police and making disclosure on 9th day after 4-5 days of Police custody, makes his evidence unreliable. We are of the view that in light of the above conduct of Nanhuram (PW-2), the learned Sessions Judge would have discarded the testimony of Nanhuram (PW-2).

8. Version of Nanhuram (PW-2) is not corroborated by the medical evidence as

the Autopsy Surgeon though found a rope around the neck, but he did not find any ligature mark over the neck of the deceased. This falsify the manner of assault told by Nanhuram (PW-2).

9. We may also note an important feature appearing in this case. If the deceased was murdered by the appellants, as claimed by Nanhuram (PW-2), in village Kerakachar, which is at a distance of 2 km from the place where the dead body was found, why the appellants would carry the dead body from Kerakachar to Marol. It is not a case, in which, the alleged incident took place in the house of the appellants or in a place exclusively belonging to them; and they had a reason to throw the dead body away, so as to leave no evidence at their place. According to Nanhuram (PW-2), the incident took place in the outer area of village Kerakachar. The appellants firstly committed murder of the deceased and thereafter, they took the dead body to village Marol, also appears to be unnatural. If the appellants were trying to disappear the evidence of murder, why they will take the dead body of the deceased to such a long distance. They ought to have thrown the dead body at some other place and would not have made a choice for throwing it in the back portion of the house of the deceased, which was situated at a distance of 2 km from the place where the deceased was allegedly murdered.

10. For the above reasons, we do not rely on the testimony of Nanhuram (PW-2). We are of the view that the evidence of Nanhuram (PW-2) was wholly unreliable. The Sessions Judge has erred in law in relying upon the solitary testimony of Nanhuram (PW-2) and thereby, convicting the appellants under Sections 302, 302/34 IPC.

11. For the foregoing reasons, the appeals are allowed. The conviction and sentences awarded to the appellants under Sections 302, 302/34 IPC are set-aside. The appellants are acquitted of the charges framed against them. It is stated that appellants Basant Ram and Ashok Kumar are on bail. Their bail bonds are cancelled and sureties stand discharged. Appellants Hemant Ram and Arvind Ram are in jail. They be released forthwith, if not required in any other case.