
(2022) 10 CHH CK 0050
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 549 Of 2012

Bhikham Deo Dwivedi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2), 439A
Indian Penal Code, 1860 — Section 302, 392, 449

Citation : (2022) 10 CHH CK 0050

Hon'ble Judges : Sanjay K. Agrawal, J;Deepak Kumar Tiwari, J

Bench : Division Bench

Advocate : Satya Prakash Verma, Anmol Sharma

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This Criminal Appeal preferred by the accuse/appellant under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and sentence dated 30.6.2012 passed by the 1st Additional Sessions Judge, Balodabazar, District Balodabazart in ST No.145/2011 by which the appellant has been convicted for offence under Section 302 of the IPC and sentenced to undergo RI for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo RI for 3 months. However, the appellant has been acquitted of the charge under Sections 392 and 449 of the IPC.

2. Case of the prosecution, in brief, is that in the intervening night of 19th / 20th January, 2011, at village Gatapar, the appellant trespassed the house of deceased Chandrika Bai and robbed silver anklet (Lachcha), golden chain etc. owned by the deceased and committed her murder. Further case of the prosecution is that the deceased was the wife of (PW-5) Janakram, mother of Ghanshyam (PW-10) & Uttara Bai (PW-13). Ramayan Verma (PW-2) is the brother of deceased Chandrika. The relations between Janakram and deceased

Chandrika Bai were not cordial, as Janakram was suspecting her character. It was alleged that the appellant and the deceased were having illicit relations and because of which the appellant had divorced his wife in a social meeting held at village Pausari and deceased Chandrika was living separately from her husband on the embankment of the tank by constructing a hut. The deceased used to visit the house of the appellant herein, but thereafter the deceased started pressurizing the appellant to keep her as his wife. On 19.1.2011, when the deceased came to the house of the appellant, the appellant committed her murder by strangulating the deceased and thrown the dead body in the courtyard of the house of the deceased. The silver and golden ornaments worn by the deceased were also thrown in the tank by the appellant. One piece of slipper (Chappal) belonging to the deceased was thrown in the field near the tank, whereas the other piece of the slipper was thrown near the house of Bharat Verma, which was an open place. Steel bucket owned by the deceased was also kept by the appellant in his house after scratching the name of the deceased which was imprinted on the bucket. Pursuant to Dehati Nalishi (Ex.-P/5) and merg intimation by the brother of the deceased (PW-2) Ramayan Verma, the FIR was registered. Thereafter inquest was conducted vide Ex.-P/2. The spot map was also prepared. The dead body of the deceased was sent for postmortem examination which was conducted by Dr. BS Dhruw (PW-6) and he gave his report Ex.-P/12 opining that the cause of death is strangulation of neck and the mode of death is asphyxia and the death is homicidal in nature.

3. Pursuant to the memorandum statement of the appellant, one set of ladies footwear and one bucket was seized vide Ex.-P/14 to P/16. After due investigation, the appellant was prosecuted for the aforesaid offences.

4. In order to bring home the charge, the prosecution examined as many as 16 witnesses and exhibited 21 documents.

5. The learned trial Court after appreciating the oral and documentary evidence available on record convicted and sentenced the appellant as mentioned above against which this Appeal has been preferred by the appellant. However, the appellant was acquitted of the charges under Sections 392 and 449 of the IPC.

6. Learned counsel for the appellant would submit that (1) there is absolutely absence of motive and only on account of the fact that the appellant was having illicit relations with the deceased, the appellant cannot be convicted under Section 302 of the IPC. (2) only on the basis that ladies footwear of the deceased which has been seized from the open place, as per the evidence of (PW-16) Hemlal Verma, the appellant cannot be connected with the crime in question, though the said footwear is alleged to have been identified during identification proceeding, as the footwear and the steel bucket are the articles, which are ordinarily and commonly available in every house in the villages and, therefore, conviction under Section 302 of the IPC cannot be sustained, and (3) lastly, recovery of footwear was effected from the field which is an open place and near the house of Samaru and, therefore, conviction of the appellant on that basis is

illegal and bad in law, whereas the identification proceedings of the footwear and the bucket were conducted by PW-14 and the articles have been identified by Ghanshyam Verma in the presence of Ramayan Verma and Bhuvneshwar Minj. As such, conviction imposed on the appellant under Section 302 of the IPC deserves to be set aside.

7. Per contra, learned State Counsel would support the impugned judgment of conviction and submit that the trial Court is absolutely justified in convicting the appellant for offence under Section 302 of the IPC and the Appeal deserves to be dismissed.

8. We have heard learned counsel for the parties, considered their rival submissions and have gone through the records with utmost circumspection.

9. The first and foremost question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded in affirmative relying on the postmortem report of Ex.-P/12 which is proved by (PW-6) Dr. B.S. Dhruv, stating that the death was homicidal in nature, and we do not find any illegality in the said finding, as the same is neither perverse nor contrary to the record.

10. Now the next question would be whether the accused/appellant herein is the author of the crime in question, which has been recorded in affirmative by the learned trial Court relying on the following incriminating circumstances :-

- the appellant had illicit relationship with deceased Chandrika Bai and the appellant used to visit the house of the deceased which has been proved by (PW-10) Ghanshyam, son of the deceased as well as by PW-5 Janak Ram and PW-13 Uttara Bai.
- Pursuant to the memorandum statement of the appellant (Ex.-P/13), one set of ladies slippers and bucket possessed by deceased have been recovered from the appellant vide Ex.-P/14 to P/16.
- Bucket and the footwear have been identified during the identification proceedings conducted by PW-14 to be belonging to the deceased.

11. We shall consider the aforesaid incriminating circumstances found proved by the trial Court one by one to find out whether the learned trial Court is justified in convicting the appellant for the offence under Section 302 of the IPC.

12. As regards the first circumstance, the same has been proved by the learned trial Court in para-34 of the judgment with regard to motive that the appellant had illicit relations with the deceased and, therefore, there was strong motive on the part of the appellant to commit the offence. It is settled law that in a case based on circumstantial evidence, the circumstances cannot take the place of conclusive proof. In the matter of Sampath Kumar Vs. Inspector of Police, Krishnagiri {(2012) 4 SCC 124} motive has been held to be established by the trial Court fully on the basis of the fact that the deceased and the appellant had

some relations. Ultimately, the Hon'ble Supreme Court observed that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.

13.As regards the next circumstance recorded by the trial Court, pursuant to the memorandum statement of the appellant, one steel bucket has been recovered from the house of the appellant and the same has been identified during the identification proceeding which was conducted by PW-14 Gautam Pradhan, vide his report Ex.-P/10. It is common knowledge that the steel bucket is commonly available in the market and is used by every villager. Merely because one steel bucket has been seized, the appellant cannot be connected with the crime in question on the basis of alleged recovery of steel bucket, which is ordinarily available in the market and used by the villagers. {See : Bharat Vs. State of MP [(2003) 3 SCC 106]}.

14.As regards the last circumstance, one set of ladies footwear which has been recovered pursuant to the memorandum statement of the appellant has also been made basis for his conviction. Careful perusal of the memorandum statement (Ex.-P/13) would show that the appellant has made a statement that the one piece of footwear of the deceased was thrown into the field near the tank and the other piece of the footwear was thrown near the house of Bharat Verma, however, witness to the said memorandum namely, Pramod Kumar (PW-11) has been declared hostile and he has not supported the case of the prosecution. Hemlal Verma (PW-16), other witness of memorandum, has also not supported the case of the prosecution.

15.Ramayan Verma (PW-2), brother of deceased Chandrika, has stated in para-9 that the bucket and the footwear were kept in Aanganbadi Centre whereas as per the memorandum statement of the appellant, the footwear were seized from the open place where the footwear is said to be thrown in the field near the tank and near the house of Bharat Verma. Since the footwear are alleged to have been seized pursuant to the memorandum statement of the appellant, it cannot be said to be recovered from the place which is in possession of the appellant. In that view of the matter, recovery of footwear of the deceased has not been established and even otherwise, alleged recovery of footwear would not connect the appellant with the crime in question. Furthermore, the footwear are common articles and are available in the market and used by the villagers, which are said to have been identified by Ramayan Verma (PW-2), brother of deceased Chandrika.

16.No other circumstance has been relied upon by the prosecution to connect the appellant with the crime in question.

17.In that view of the matter, we are unable to affirm the conviction of the appellant under Section 302 of the IPC.

18.In the result, the appeal is allowed. Conviction and sentence imposed on the

appellant under Section 302 of the IPC are set aside and he is acquitted of the said charge. The appellant is on bail. He need not surrender. The bail bonds furnished by the appellant shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC.