
(2023) 05 CHH CK 0028
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 470 Of 2014

Dadu Sahu @ Ghaniram Sahu

APPELLANT

Vs

State Of Chhattisgarh,

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)

Indian Penal Code, 1860 — Section 34, 201, 302, 365, 379, 435

Citation : (2023) 05 CHH CK 0028

Hon'ble Judges : Sanjay K. Agrawal, J;Arvind Singh Chandel, J

Bench : Division Bench

Advocate : Priyanshu Gupta, Animesh Tiwari

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal under Section 374(2) of Cr.P.C. is directed against the impugned judgment dated 29.03.2014 passed by learned Additional Sessions Judge, Bhatapara, District Balodabazar in Sessions Trial No.30/2012, by which appellants herein have been convicted for the offences under Sections 302/34, 379, 201 and 435 of Indian Penal Code and sentenced as under with a direction to run all the sentences concurrently.

2. Case of the prosecution, in a nutshell, is that, in the intervening night of 7-8/06/2012 at Bhatapara, two appellants stolen the Truck No.CG-04-ZC-4805 loaded with 9 quintals of wheat owned by Gopal Sharma (PW-1) and wrongfully confined Bhupesh @ Golu, conductor of the truck, and assaulted him by iron pipe and thereby caused his murder and burnt the truck and wheat therein and thereby committed the aforesaid offences. Thereafter, complainant Gopal Sharma (PW-1) reported the matter to the police that he being transporter and owner of the truck in question, parked the truck loaded with wheat to be transported to J.D. Food Bilaspur, which he, in the morning, came to know at 8:30 that the

truck in question was burning near Hathbandh Railway crossing and thereafter, on the report of the complainant, offence under Sections 435 & 365 of I.P.C. has been registered. The spot map was prepared by Ex.P-3 and one Rohit Kumar (PW-10) lodged a Dehati Merg at Police Chowki Maro, District Bemetara that an unknown dead body is lying, pursuant to which, Merg No.0/12 was registered and shav-panchnama was conducted vide Ex.P-6 and dead body was sent for post-mortem, which was conducted by Dr. K.K.Dahariya (PW-20), who proved the post-mortem report Ex.P-25, in which cause of death was stated to be hemorrhagic shock due to multiple internal body organ laceration and death was homicidal in nature. Thereafter, Merg Intimation (Ex.P-24) was registered and memorandum statements of the appellants were recorded and pursuant to memorandum of appellant No.1, iron pipe was seized vide Ex.P-11 and from appellant No.2, bloodstained clothes was seized vide Ex.P-13, which were sent for FSL vide Ex.P-38 and the FSL report is Ex.P-40. After due investigation, the two appellants were charge-sheeted for the aforesaid offences before the jurisdictional criminal court, which was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which the appellants abjured their guilt and entered into defence stating that they have not committed any offence and they have been falsely implicated.

3. In order to bring home the offence, prosecution has examined as many as 21 witnesses and exhibited 40 documents alongwith Articles A-1 to A-11 and the appellant-accused in support of their defence have not examined any witness but exhibited the document Ex.D-1 i.e. statement of Kaleshwar Yadav @ Madan.

4. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellants herein for the aforesaid offences and sentenced them as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred.

5. Mr. Priyanshu Gupta, learned counsel for the appellants, would submit that the trial Court is absolutely unjustified in convicting the appellants for the aforesaid offences, as though pursuant to the memorandum statement of appellant No.1, iron pipe has been seized, but in FSL report, only blood has been found, human blood has not been found. Similarly, from appellant No.2, shirt has been seized, on which also blood has been found, not human blood and in view of the decision of the Supreme Court in the matter of Balwan Singh vs. State of Chhattisgarh (2019) 7 SCC 781 recovery is of no use in case no human blood has been found. He further submits that in the extra-judicial confession on which the trial Court has relied upon, of Rakesh Dewangan (PW-8), he has only stated that appellant No.1 told him that he had committed some marpeet with deceased, but he has not given any such extra-judicial confession. Furthermore, Kaushalya Bai (PW-7) has turned hostile and has not proved recovery of wheat and even the seized wheat from Kaushalya Bai (PW-7) could not be established that it was stolen by the appellants and, as such, the appellants are entitled for acquittal on the ground of benefit of doubt.

6. Per contra, Mr. Animesh Tiwari, learned State counsel, would submit that the prosecution has been able to prove the offence beyond reasonable doubt and the learned trial Court has rightly convicted the appellants for the aforesaid offences, as such, the instant appeal deserves to be dismissed.

7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

8. The first question for consideration as to whether the death of deceased Bhupesh @ Golu was homicidal in nature, has been answered by the trial Court in affirmative relying upon the statement of Dr. K.K.Dahariya (PW-20) who has proved the post-mortem report Ex.P-25. In our considered opinion, the said finding recorded by the trial Court holding the death of deceased to be homicidal in nature is correct finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and accordingly we hereby affirm the said finding.

9. Now, the next question is whether the appellants are the assailants of deceased Bhupesh @ Golu ?

10. The conviction is based on the circumstantial evidence. In this regard, the decision rendered by the Supreme Court in the matter of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 is worth noticeable in which the five golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence has been laid down by their Lordships of the Supreme Court in paragraph 153 as under: -

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

11. Now, a careful perusal of the judgment of the trial Court would show that pursuant to the memorandum statement of appellant No.1, iron pipe has been seized and pursuant to memorandum statement of appellant No.2, bloodstained shirt has been seized, which have been proved by Madan Yadav (PW-4) and Manmahendra Singh Chawla (PW-19) and were supported by Investigating Officer D.K.Netam (PW-21). However, the iron pipe and shirt have been sent for FSL to the FSL Laboratory and in FSL report vide Ex.P-40, blood has been found on the iron pipe and shirt of the appellant No.2, but it could not be ascertained whether it was human blood as blood group could not be ascertained.

12. The Supreme Court in the matter of Balwan Singh (supra) has clearly held that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood and held in Para-24 as under:

“24. In the instant case, then, we could have placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of recovery of the weapons and tabbal, and such recovery does not help the case of the prosecution.”

13. In that view of the matter, no human blood has been found either on the iron pipe or on shirt of appellant No.2, therefore, in our considered opinion, the recovery is of no use to the prosecution.

14. Next piece of evidence that has been relied upon by the trial Court is extra-judicial confession given by appellant No.1 to Rakesh Dewangan (PW-8). However, a careful perusal of the statement of Rakesh Dewangan (PW-8) would show that appellant No.1 has only stated that he has committed some marpeet with the deceased, but did not confess or given any extra-judicial confession to Rakesh Dewangan (PW-8). As such, the theory of extra-judicial confession projected by the prosecution and found proved by the trail Court is not borne out. Even otherwise, the extra-judicial confession is a weak piece of evidence, which cannot be relied upon unless it is corroborated by some other piece of

evidence. Similarly, recovery of wheat from Kaushalya Bai (PW-7) has not been proved and Kaushalya Bai (PW-7) has turned hostile. Even otherwise, it has not been proved that the recovered wheat from the possession of Kaushalya Bai (PW-7) is the very same wheat which was stolen by appellant No.1 along-with the truck of the complainant Gopal Sharma (PW-1).

15. In view of the aforesaid analysis, we are unable to hold that the prosecution has proved the five golden principles laid down by the Supreme Court in *Sharad Birdhichand Sarda* (supra). Consequently, we are unable to persuade ourselves to hold that the appellants are guilty of the aforesaid offences found proved by the trial Court. Accordingly, the judgment of conviction and sentence are hereby set aside. The appellants are acquitted of the charges under Sections 302/34, 379, 201 & 435 of I.P.C. It is stated that the appellants are in jail, we direct that they be released forthwith from jail, unless they are required in any other offence.

16. In the result, this criminal appeal is allowed to the extent indicated herein-above.

17. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned for necessary information and action, if any.