

(2012) 03 CHH CK 0037
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 663 of 2011

Guharam and Prakash Patre

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2012) 03 CHH CK 0037

Hon'ble Judges : Sunil Kumar Sinha, J; Manindra Mohan Shrivastava, J

Bench : Full Bench

Advocate : G.S. Ahluwalia, for the Appellant; Neeraj Mehta, Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 17th of August, 2011 passed in Session Trial No. 16/2011 by the Additional Session Judge, Bemetara. By the impugned judgment the appellants have been convicted u/ss 302/34 & 201/34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.500/- and R.I. for 5 years and to pay fine of Rs.300/- with a direction to run the sentences concurrently. The facts, briefly stated, are as under:-

Deceased- Babulal Chaturvedi was residing in village Gopalpur. His son Gopal Prasad Chaturvedi (PW- 5) was residing at a different place. The deceased was missing since 4.12.2010. This came in the knowledge of his son- Gopal Prasad Chaturvedi (PW-5) on 5.12.2010. Gopal Prasad Chaturvedi made search of the deceased, but the deceased could not be traced. On 8.12.2010, the dead body of the deceased was seen in the well of Sharad Kumar. Utra Kumar Chaturvedi (PW-1 - another son of the deceased), lodged merged intimation (Ex.- P/1). The Investigation Officer reached to the place of occurrence; the dead body was

taken out from the well; notices (Ex.-P/2) were given to the Panchas; and inquest (Ex.-P/3) was prepared. The dead body was sent for post-mortem to Govt. Hospital, Nawagarh. Post-mortem examination was conducted by Dr. T.N. Mahingleshwar (PW-10). The post-mortem report is Ex.- P/16. There were multiple injuries on the dead body. The Autopsy Surgeon opined that the injuries were caused by sharp, hard & blunt object and the death was homicidal in nature.

In further investigation, the appellants were taken into custody and their memorandum statements u/s 27 of the Evidence Act were recorded. Memorandum statement of appellant- Guharam (Ex.-P/7) was recorded on 11.12.2010 and a tangia (kulhadi) was seized at his instance vide seizure memo Ex.-P/8. Memorandum statement of appellant- Prakash Patre (Ex.-P/13) was recorded on 18.12.2010 and a lathi was seized at his instance vide seizure memo Ex.-P/14. Clothes of the appellants were also seized. The seized articles were sent for their chemical examination to Forensic Science Laboratory (FSL), Raipur vide memo Ex.-P/23. The FSL report is Ex.-P/26. Though blood stains were found on tangia, danda and clothes of the appellants, but no report relating to their origin and group etc. could be filed. The prosecution came with the case that the deceased had illicit relations with younger sister of appellant- Guharam namely- Tetki Bai, therefore, the appellants committed murder of the deceased.

The learned Session Judge relied on the memorandum statements and the discoveries made thereunder and held that on account of the above motive, the appellants had committed murder of the deceased and the dead body was thrown in the well with an intention to cause disappearance of the evidence.

2. Mr. G.S. Ahluwalia, learned counsel appearing on behalf of the appellants, argued that the memorandum statements and seizures were not properly proved; tangia (kulhadi) and lathi are common articles; though blood stains were found on these articles, but origin and group of the blood were not detected; therefore, conviction based on the solitary circumstance of discoveries and seizures cannot be sustained.

3. On the other hand, Mr. Neeraj Mehta, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Session Court.

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

5. Admittedly, there is no direct evidence in this case and the case of the prosecution is based on circumstantial evidence. In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have to be fully established and all the circumstances so established should be of conclusive nature and tendency. They must point only towards the guilt of the accused. The circumstances should not be capable of being explained and the chain of the circumstantial evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the

accused. This is what the Supreme Court said in many cases. Therefore, we ought to be satisfied that the circumstances on which the prosecution relies leave no option but to hold that the crime imputed to the appellant has been established beyond a reasonable doubt.

6. Firstly we shall consider the above 'motive'. In a case based on circumstantial evidence, motive has greater relevancy or significance, however, the motive has to be established like any other circumstance by positive evidence. The case of the prosecution is that the deceased had illicit relations with the sister of appellant- Guharam. Jagmohan (PW-9) and Gopal Prasad Chaturvedi (PW-5) have been examined by the prosecution to prove the above motive. Jagmohan (PW-9) deposed in Para-1 of his evidence that prior to 3rd & 4th December 2010, deceased- Babulal had telephonically informed him that he had developed illicit relations with Tetki Bai and the villagers have seen him with Tetki Bai, therefore, he is frightened of the situation. In Para-7 of his cross-examination, he admitted that he had not told these facts to the police and he is telling all this for the first time before the Court. The deceased was the father-in-law of the sister of Jagmohan (PW-9). Even otherwise also, looking to the relations, it does not appear to be reasonable that the deceased would disclose such things to Jagmohan (PW-9). Gopal Prasad Chaturvedi (PW-5) deposed in Para-6 that he had heard in the village that Tetki Bai was seen along with his father by Bhawanchand. Bhawanchand has also been examined as PW-4. He was village Patel. He deposed in clear words, in Para-2 of his evidence, that he never knew regarding illicit relations of the deceased and Tetki Bai. In fact, he was declared hostile and was cross-examined by the prosecution, but nothing material could be elicited in his cross-examination. Even Gopal Prasad Chaturvedi (PW-5) admitted in Para-15 of his cross-examination that the above facts regarding illicit relations between the deceased and Tetki Bai were not told to the police at the time of recording of his statement. We are of the view that in the above facts and circumstances of the case, the motive set-forth by the prosecution was not established by positive evidence.

7. In Jackaran Singh Vs. State of Punjab, , the Supreme Court held that "The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded u/s 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement.

8. In the instant case, we find that the 2 memorandum statements recorded u/s 27 of the Evidence Act do not have signatures or thumb impressions of the appellants. The question relating thereto were asked from the Investigation Officer, K.P. Banjare, (PW-12), who replied in Para-24 of his evidence that since those statements were recorded u/s 161 Cr.P.C., therefore, it was not necessary to take the signatures of the accused persons.

9. Section 27 of the Evidence Act provides that "When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether

it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved". Therefore, only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which has to be rejected. Even if we take the memorandum statements to be proved, they lead to discovery of tangia and lathi. These are the common articles found in the house of the villagers. Though blood stains were found over these articles in FSL report, but, there is no evidence to prove their `origin" or `group". We are of the view that even if solitary circumstance of discovery and seizure is held to be proved, in absence of proof of `origin" and `group" of the blood stains found over these articles, allegedly seized at the instances of the appellants, would not be sufficient to hold them guilty of the offence punishable u/ss 302/34 & 201/34 IPC.

10. On due consideration of the entire evidence, we find that the above solitary circumstance was not fully established, neither it was of conclusive nature and tendency so as to point only towards the guilt of the appellants. The above circumstance was capable of being explained, and thus the chain of circumstantial evidence was not complete. We are of the view that the conviction based on the above solitary circumstance cannot be sustained. For the foregoing reasons, the appeal is allowed. The conviction and sentences awarded to the appellants u/ss 302/34 & 201/34 IPC are set-aside. The appellants are acquitted of the charges framed against them. It is stated that the appellants are in jail since 11.12.2010 & 18.12.2010. They be released forthwith, if not required, in any other case.