

(2023) 01 CHH CK 0031
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 462 Of 2013

Jairam @ Ajay @ Nanki

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2), 437A
Indian Penal Code, 1860 — Section 301, 302
Evidence Act, 1872 — Section 8

Citation : (2023) 01 CHH CK 0031

Hon'ble Judges : Sanjay K. Agrawal, J; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Maneesh Sharma, Soumya Rai

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This appeal under Section 374(2) of the CrPC is directed against the impugned judgment and order dated 23-3-2013, by which the appellant herein has been convicted under Sections 302 & 201 of the IPC and sentenced to undergo imprisonment for life & pay a fine of ₹ 2,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for six months and rigorous imprisonment for three years & pay a fine of ₹ 1,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for four months, respectively.

2. Case of the prosecution, in short, is that on 4-9-2010 at 6.15 p.m., at Village Regda Malidipa Tikra, Police Station Punjipathra, Distt. Raigarh, the appellant herein caused murder of Jitendra Sao by iron rod and in order to screen himself from the said offence, threw the dead body into the shrubs nearby and thereby committed the offence. Further case of the prosecution is that two days prior to the date of offence, the appellant had seen the father of the deceased – Kuldhar (PW-1) with his mother in compromising position and in one marriage party, the

deceased had slapped the appellant pursuant to which the appellant was unhappy and aggrieved and to take revenge of that, on 4-9-2010 at 6.00 p.m., when the deceased came near Jogi Dabri, after brief altercation on account of earlier dispute, the appellant assaulted the deceased by iron rod and murdered him and thereafter, thrown the dead body into the shrubs / nala nearby and sold his mobile phone to one Rahmatullah for a cash consideration of ₹ 1,500/-. When the deceased did not reach home, missing report was lodged vide roznamcha sanha Ex.P-22 by Kuldhar (PW-1) – father of the deceased and then uncle of the deceased Rupdhar Sao (PW-2) requested the accused / appellant, who is a baiga, to enquire the whereabouts of the deceased, then the accused asked for coconut, agarbatti and liquor and thereafter, after performing puja, the appellant informed about the place where the dead body was lying as well as the cycle and consequently, from the place as told by the appellant, dead body and cycle were seized by the police vide Ex.P-3 and thereafter, memorandum statement of the appellant was recorded vide Ex.P-5 pursuant to which iron rod was also recovered vide Ex.P-6 and it was sent for chemical examination to the Forensic Science Laboratory, but no FSL report has been brought on record. Pursuant to the recommendation of panchas, dead body was sent for postmortem which was conducted by Dr. Sunil Ratre (PW-17) vide postmortem report Ex.P-12 in which cause of death was stated to be due to haemorrhagic shock and homicidal in nature.

3. Statements of the witnesses were recorded under Section 161 of the CrPC.. After completion of investigation, charge-sheet was filed against the appellant before the jurisdictional criminal court and the case was committed to the Court of Sessions for trial from where the learned 2nd Additional Sessions Judge, Raigarh received the case on transfer for trial and for hearing and disposal in accordance with law.

4. The trial Court has framed charges against the appellant for offences punishable under Sections 302 & 201 of the IPC and proceeded on trial. The appellant abjured guilt and entered into defence stating that he has not committed the offence and he has been falsely implicated.

5. The prosecution in order to bring home the offence examined as many as 22 witnesses and exhibited 22 documents Exhibits P-1 to P-22. No witness has been examined on behalf of the defence and no document has been exhibited. Statement of the appellant was recorded under Section 313 of the CrPC in which he abjured the guilt and pleaded innocence.

6. The trial Court after completion of trial and after appreciating oral and documentary evidence available on record, convicted and sentenced the appellant in the manner mentioned in the opening paragraph of this judgment against which this appeal under Section 374(2) of the CrPC has been preferred by him calling in question the impugned judgment.

7. Mr. Maneesh Sharma, learned counsel appearing for the appellant, would

submit that the appellant has been convicted solely on the basis of circumstantial evidence, but the nature of circumstantial evidence is not as such which can be made basis for his conviction. He would further submit that the dead body of the deceased has not been recovered at the instance of the appellant and till the recovery of dead body, the appellant was not made accused. He would also submit that in absence of FSL report, seizure of iron rod cannot be used against the appellant. Even the mobile phone of the deceased has not been recovered at the instance of the appellant and the same has not been identified by any one and merely on the basis of presumption, the appellant could not have been convicted. As such, the impugned judgment deserves to be set aside and the appeal deserves to be allowed by acquitting the appellant of the charges levelled against him.

8. Mr. Soumya Rai, learned State counsel, would support the impugned judgment and would submit that conviction of the appellant is well founded and well supported by the circumstantial evidence leading to inference that the appellant has committed the aforesaid offence, as such, the prosecution has been able to bring home the offence against the appellant and the trial Court has rightly convicted the appellant and therefore conviction cannot be competently questioned by the appellant herein and the appeal deserves to be dismissed.

9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

10. The first question as to whether the death of the deceased was homicidal in nature has been answered by the trial Court in affirmative relying upon the statement of Dr. Sunil Ratre (PW-17) proved by his postmortem report Ex.P-12 holding the death of the deceased to be homicidal in nature, which is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record and we hereby affirm the said finding.

11. This brings us to the next question, whether the appellant is the author of the crime?

12. The trial Court has mainly considered the circumstance that as per the information given by the appellant, cycle of the deceased and his dead body were recovered and pursuant to the memorandum statement of the appellant, iron rod has been recovered and as per the query report Ex.P-13, injuries found on the body of the deceased could have been caused by the said weapon. Mobile set of the deceased was recovered from Rahmatullah and SIM card of the deceased was used by the appellant in the mobile set of one Saroj Sahu and immediately thereafter, the appellant has absconded from the village along with his parents. These circumstances are found proved beyond reasonable doubt. Therefore, the appellant is guilty of the offence.

13. It is apparent from the statement of Rupdhar Sao (PW-2) – uncle of the deceased that when he (PW-2) enquired about the deceased, the appellant

proposed him that he is baiga (witch doctor) and he will find out the deceased if coconut, liquor and other articles were offered to him and ultimately, it is brought on record that the appellant had knowledge about the body of the deceased as well as the cycle of the deceased and consequently, dead body was recovered vide panchnama Ex.P-4 proved by Rupdhar Sao (PW-2) and cycle was seized vide seizure memo Ex.P-3. True it is that the appellant did have the knowledge about the dead body of the deceased and his cycle, but mere knowledge of the place where the dead body of the deceased was lying along with cycle will not connect the appellant with the offence in question unless it is established by the prosecution that it is the appellant who has caused the murder of the deceased and thrown the dead body. There may be various reasons for coming to know about the dead body of the deceased, as the body was found near the kacha road and persons / pedestrians crossing the road may come to know about the said dead body and cycle, but it may cause suspicion on the part of the appellant that he might have caused the death of the deceased, however, suspicion can take the place of proof only when it is proved beyond reasonable doubt that only the appellant is the author of the crime.

14. The next circumstance pointed out is that from the possession of the appellant, pursuant to the memorandum statement, iron rod was recovered vide Ex.P-6 and it was sent for chemical examination to the FSL, but the FSL report has not been brought on record for the reasons well known to the prosecution. The Supreme Court in the matter of Balwan Singh v. State of Chhattisgarh and another (2019) 7 SCC 781 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 observed in paragraph 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."

15. In view of the fact that chemical analysis report has not been brought on record, though it was sent to the FSL, it cannot be conclusively held that the said blood stained article was used in the commission of offence. As such, recovery of iron rod has not been proved by the prosecution.

16. The next circumstance pointed out by the prosecution and proved by the trial Court is, the appellant has sold the mobile of the deceased to one Rahmatullah, which has been seized from Rahmatullah, but Rahmatullah has not been

examined to prove that it is the appellant who has sold the mobile to him and the said mobile was held by the deceased. There is no evidence to prove that the appellant has used the SIM of the deceased by placing it in the mobile of Saroj Sahu.

17. The next circumstance that has been pointed by the prosecution and proved by the trial Court is, immediately after the incident, the accused has absconded from the village along with his father & mother which is relevant under Section 8 of the Indian Evidence Act, 1872. Absconding from the village may be a relevant conduct under Section 8 of the Evidence Act, but that cannot be the basis for conviction of offence under Section 302 of the IPC.

18. In that view of the matter, in our considered opinion, the prosecution has failed to establish the five golden principles as laid down by the Supreme Court in the matter of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 to prove a case based on circumstantial evidence beyond reasonable doubt. Consequently, we are unable to sustain conviction and sentences imposed upon the appellant under Sections 302 & 201 of the IPC.

19. Accordingly, we set aside the conviction so recorded and the sentences so awarded by the trial Court to the appellant vide the impugned judgment dated 23-3-2013. The appellant is acquitted of the charges under Sections 302 & 201 of the IPC. He is already on bail. He need not surrender. However, his bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

20. The appeal stands allowed.