
(2015) 02 CHH CK 0029
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 596 of 2003

Ram Bhau

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2015) 3 CGLJ 386

Hon'ble Judges : T.P. Sharma, J; Inder Singh Uboweja, J

Bench : Division Bench

Advocate : Uttam Pandey, for the Appellant; Roshan Dubey, P.L., Advocates for the Respondent

Final Decision : Allowed

Judgement

T.P. Sharma, J—Challenge in this appeal is to the judgment of conviction and order of sentence dated 07.05.2003 passed by the 8th Additional Sessions Judge (F.T.C.), Durg in Special Sessions Case No. 321/1999 whereby and whereunder while acquitting the co-accused Noor Mohammed, the Court below convicted the appellant under Section 302/34 and 201 of the I.P.C. for causing homicidal death amounting to murder of Asha Bai in sharing common intention and for concealing the evidence and sentenced him to imprisonment for life and to undergo RI for three months. Conviction is impugned on the ground that without there being any iota of evidence against the appellant, the Court below has convicted and sentenced the appellant as aforesaid and thereby committed illegality.

2. As per case of the prosecution, deceased - Smt. Asha Bai was the wife of the appellant. Smt. Asha Bai was in the habit of drinking liquor and was also accustomed to leave the house without any intimation to the appellant. On 14.03.1996, she left the house of the appellant and thereafter she was found missing. Appellant lodged Rojnamcha vide Ex. P. 18-A on 18.03.1996. On 23.03.1996 at 07.00 p.m., the appellant along with co-accused and deceased

went to the Shivnath Cafeteria, thereafter, they left the hotel by Car. During course of travelling, the appellant along with co-accused strangled the neck of the deceased and caused her death and threw the dead body besides Junwani Road and also threw the towel, chappal and purse. During course of patrolling, dead body of deceased was noticed by the police. Merg was recorded vide Ex. P. 11.

3. After summoning the witnesses vide Ex. P. 20, inquest over the dead body was prepared vide Ex. P. 21. Spot map was prepared vide Ex. P. 2. Dead body was sent for autopsy to Government Hospital, Durg, vide Ex. P. 24, P.W. 8 Dr. S.A. Mandge conducted the autopsy vide Ex. P. 12 and found following injuries:

1. Abrasion of 4 x 1/2" over right side of neck.
2. Abrasion of 1 x 3/4" over right ear.
3. Abrasion of 1" x 1" over right maxillary prominence (Cheek).
4. Abrasion of 1 1/2 x 1/2" over right side forehead just above the right eyebrow.
5. Abrasion of 3/4" x 1/2" over left forehead.
6. Abrasion of 2" x 1" over chin.
7. Abrasion of 4" x 3" over left elbow (irregular).
8. Abrasions of 1 1/2" x 1/2" on left fore-arm, antero medially.
9. Apart from the above injuries, ante bite marks which stimulate ante-mortem abrasions present on nose, angles of mouth, right ear and also on eyelids.

No definite opinion was given by the Doctor regarding death of the deceased.

4. During course of investigation, appellant was taken into custody, he made disclosure statement of tower, purse and chappal vide Ex. P. 4. The same were recovered at the instance of the appellant vide Ex. P. 5, P. 6 and P. 7 along with cloth of the appellant. Appellant also wrote a letter Ex. P. 26 and handed over the same to the co-accused, which was sealed from the co-accused Noor Mohammed vide Ex. P. 8.

5. Cloths of co-accused Noor Mohammed were seized vide Ex. P. 9. Hairs found in the Car bearing No. M.P. 26-C/0116 were seized, bloodstained seat cover and bloodstained pillow cover were seized from the house of the appellant vide Ex. P. 10. Finally, registered merg was recorded vide Ex. P. 11. Patwary prepared spot map vide Ex. P. 17. Sealed viscera and cloths of deceased were seized vide Ex. P. 19. Finally, F.I.R. was registered vide Ex. P. 25. Seized document Ex. P. 26 (alleged letter) was sent for expert examination. After obtaining admitted specimen writing, vide Ex. P. 41 the expert has opined that the Ex. P. 26 has been written by the present appellant. Seized articles were sent for chemical examination to F.S.L. and presence of blood on cloths of the deceased and cloths of co-accused Noor Mohammed has been confirmed by the F.S.L.

6. Statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short "the Code") were recorded.

7. After completion of investigation, charge sheet was filed before the J.M.F.C. Durg, who in turn committed the case to the Sessions Judge, Durg. The learned Additional Sessions Judge received the case on transfer for its trial.

8. In order to prove the guilt of the appellant, prosecution examined as many as 17 witnesses. The accused persons were examined under Section 313 of the Code in which they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

9. After providing an opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.

10. We have heard the learned counsel for the parties and perused the record of trial Court and the judgment impugned.

11. Mr. Uttam Pandey, learned counsel for the appellant, vehemently argued that the trial Court has disbelieved the evidence of prosecution witnesses except seizure of letter Ex. P. 26 vide Ex. P. 8 and the evidence led by the prosecution that the appellant himself has written Ex. P. 26 admitting his guilt. The trial Court convicted the appellant on the basis of Ex. P. 26, i.e., admission of the guilt by the appellant which has not been proved by the prosecution. Even otherwise writing of the same has been admitted by the appellant under compulsion that it has been prepared under pressure of the police. Therefore, it was not voluntary admission of the appellant. Except this, the prosecution has not collected any other evidence to connect the appellant in crime in question.

Learned counsel for the appellant placed reliance in the matter of Krishna Govind Patil Vs. State of Maharashtra, AIR 1963 SC 1413 : (1964) 1 SCR 678 , in which, the Supreme Court has held that acquittal of accused who has committed the act in sharing common intention, conviction of other accused who has shared the common intention is not sustainable in law. Learned counsel further placed reliance in the matter of State of West Bengal Vs. Vindu Lachmandas Sakhrani alias Deru, AIR 1994 SC 772 : (1994) CriLJ 919 , in which, the Supreme Court held that acquittal of one of the accused charged with Section 34 and in absence of independent charge of Section 302 or independent evidence showing the commission of crime by other accused, conviction of other accused is not sustainable in law.

Learned counsel for the appellant further submits that as per initial case of prosecution, at the instance of present appellant, co-accused Noor Mohammed has caused homicidal death of deceased, i.e., virtually co-accused has caused homicidal death of deceased and the appellant has shared common intention. Therefore, in case of acquittal of main accused, the conviction of the appellant, who has shared common intention, is not sustainable under the law.

12. On the other hand, Mr. Roshan Dubey, learned Panel Lawyer for the State

opposed the appeal and submitted that the evidence of prosecution witnesses substantially relating to the admission of guilt by the appellant by writing letter Ex. P. 26 is sufficient to prove the guilt of the appellant. On the basis of aforesaid substantive evidence while convicting the appellant, the trial Court has not committed any error.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, the homicidal death as a result of fatal injuries found over the body of deceased - Baharta Bhaina has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of prosecution witnesses, especially evidence of P.W. 8 Dr. S.A. Mandge and autopsy report Ex. P. 12.

14. As regards complicity of the appellant in crime in question, the prosecution examined as many as 17 witnesses. As per evidence of P.W. 1 Sheikh Phirdos, appellant was sitting inside his office and was writing something. He has not deposed anything directly against the appellant. P.W. 2 Asim Kumar Shah, P.W. 3 Mohan Yadav P.W. 4 Ku. Sumitra Padhye, daughter of the appellant and the deceased, P.W. 5 Ajay Kumar, P.W. 6 Birendra Kumar Singh, P.W. 7 Bahadur Singh Pisda, P.W. 9 P.K. Shrivastava, P.W. 10 Vinayak, P.W. 11 Lokram Sahu, P.W. 12 Gangadas, P.W. 13 Shanti Prasad, P.W. 14 S.S. Negi, P.W. 15 Head Constable Arjun Lal Dewangan and P.W. 16 Head Constable J.S. Jangi have virtually not deposed anything against the appellant barring the seizure of Ex. P. 26, the alleged letter. As per evidence of P.W. 17 O.P. Balgaiya, Additional-State Examiner of disputed document, the person who has written Ex. P. 26 admitted his specimen writing and has written the disputed document, i.e. Ex. P. 26, alleged letter written by the appellant. Even otherwise, the appellant himself has admitted that he has written that document Ex. P. 26. The appellant examined D.W. 1 Prakash Tiwari, posted as clerk in the Court of Judicial Magistrate First Class, Durg, who has deposed that on 02.04.1996 one application Ex. D. 1 has been submitted by the appellant, which he has forwarded to police for investigation. Ex. D. 1 revealed that Investigating Officer has prompted and compelled the appellant to write a letter showing the date 23.03.1996 which he has written under compulsion and pressure. As per Ex. P. 26, which has been written on 23.03.1996, the same has been seized from the co-accused Noor Mohammed vide Ex. P. 8 on 29.03.1996, i.e., the contents of alleged letter and circumstances in which it has been written have been explained by the appellant on 02.04.1996, that is to say, within four days of such seizure. Ex. D. 3 further revealed that why it was not explained on 26.03.1996, i.e., on the date of his arrest, which does not appear to be unnatural. Except this evidence/the prosecution has not collected any other evidence.

15. Letter Ex. P26 is not disputed by the appellant as he has tried to explain the circumstances in which Ex. P. 26 has been written, that too, by handing over Ex. D. 1 to a responsible Government servant D.W. 1 Prakash Tiwari, Clerk to

J.M.F.C. Durg. As per evidence of D.W. 1, probably co-accused Noor Mohammed was present at the time of writing such letter. Co-accused Noor Mohammed would have been the best witness to unfold the story or even he would have been the best witness to prove the seizure of alleged letter, but, the prosecution has not been able to examine him after giving tender of pardon, especially; when there was no evidence against him.

16. As per record, the appellant is an Advocate. It may be safely presumed that at least he would not have admitted the guilt by such documentary evidence, that too, by handing over such document to any person and in case of admission he would have admitted the guilt before D.W. 1 Prakash Tiwari, Clerk to J.M.F.C. Durg, when he was produced for admission. But he has not only denied the admission but has tried to explain the circumstances which led to admission. These circumstances are sufficient to infer that the appellant has tried to explain the circumstances in which he has written the letter Ex. P. 26 and are also sufficient to explain the circumstances that he has not made voluntarily admission of the guilt.

17. While convicting the appellant, the Court below has not considered the aforesaid evidence. In the light of reasonable explanation offered on behalf of the appellant relating to such document Ex. P. 26, it would be difficult to hold that the appellant has made voluntary admission of the guilt by writing Ex. P. 26. In absence of such evidence, virtually, except this evidence prosecution has not collected any evidence to connect the appellant in crime in question.

18. In the light of aforesaid explanation whereby the appellant has not admitted his guilt voluntarily, the conviction of the appellant under Section 302/34 and 201 of the I.P.C. is not sustainable under the law. Even otherwise, as per initial case of prosecution, co-accused Noor Mohammed has caused homicidal death of deceased in sharing common intention with the appellant, but, he has been acquitted, therefore, his conviction is also not sustainable in the light of dicta of the Supreme Court laid down in the case of State of West Bengal Vs. Vinu Lachmandas Sakhrani alias Deru, AIR 1994 SC 772 : (1994) CriLJ 919 and State of West Bengal Vs. Vinu Lachmandas Sakhrani alias Deru, AIR 1994 SC 772 : (1994) CriLJ 919 . Consequently, the appeal deserves to be and is hereby allowed. Conviction and sentence of the appellant under Section, 302/34 and 201 of the I.P.C. is liable to be and is hereby set aside. The appellant is on bail. He need not surrender before the trial Court.