
(2011) 01 CHH CK 0012
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 766 of 1993

Santosh Singh	Vs	APPELLANT
State of M.P. (now State of Chhattisgarh)		RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

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

Citation : (2011) 1 CG.L.R.W. 303 : (2011) CriLJ 1391

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 17th of June, 1993 passed in Sessions Trial No. 11/1993 by the Additional Sessions Judge Khairagarh, Camp Kawardha. By the impugned judgment, the Appellant has been convicted u/s 302, IPC and sentenced to undergo imprisonment for life.

2. The facts, briefly stated are as under:

2. Accused persons, namely Santosh Singh (Appellant herein) and Radha Bai, were prosecuted for commission of murder of deceased Moti Singh. Moti Singh was father of the Appellant and husband of acquitted accused Radha Bai. The case of the prosecution is that in the intervening night of 24-8-92 and 25-8-1992, the deceased, 2 accused persons and other family members of the deceased were sleeping in a common room in their house. At about 5.00 a.m. the villagers heard hue and cry from the house of the Appellant. They went to his house and found that the dead body of the deceased was lying in the verandah of his house. It was disclosed by the accused persons that some time in the night, the deceased committed suicide by hanging which could not be noticed by the inmates of the house. However, in the early morning they saw his body in hanging condition in the verandah. With a view that he may be alive, the body was brought down by the Appellant and other family members. Rope from the

neck was removed, however by that time the deceased had died. The merger intimation (Ex. P/7) was lodged by village Kotwar. The Investigation Officer reached to the place of occurrence, gave notice to the Panchas, and prepared inquest (Ex. P/1) on the body of the deceased. The dead body of the deceased was sent for post-mortem to Government Hospital, Khamariya, District Durg, where the post-mortem examination was conducted by Dr. R.P. Sharma (P.W. 6). He noticed following symptoms on the body:

Rigor mortis were absent in the head and neck, but were present in both upper limbs and lower limbs. Face was swollen and was bluish. Eyes were closed with pupils dilated. Lips were bluish and there was swelling in tongue with dark colour.

He further noticed following external injuries:

Ligature mark on the neck, 2 cm broad between chin and laryngeal protuberance. It was obliquely placed, directed upwards and backwards encircling the neck upto mastoid process just behind the ears on both sides. Ligature mark was ante-mortem. The above mark was continuous. Base of the groove was pale. Margins were ecchymosed and red. Abrasion present on the skin adjacent to the mark. On dissection blackish blood was found under the ligature marks. No other external injuries were found.

On internal examination, he noticed that hyoid bone was fractured. Dark blood was present in the tissues in trachea. They were also ante-mortem. The Autopsy Surgeon opined that the above ligature mark was produced by strangulation; the cause of death was asphyxia due to strangulation and it was homicidal in nature.

The prosecution came with the case that the accused persons caused the death of the deceased by strangulation with a rope and projected the story that the deceased committed suicide by hanging. The learned Sessions Judge held that the deceased died homicidal death in the house of the accused persons; the death was on account of strangulation by a rope; and the explanation given by the accused persons regarding suicidal hanging was not acceptable. It was further held that the deceased was ill since last 2 years and the Appellant was bearing the expenditure of his treatment, therefore, the Appellant got rid of all this by committing murder of the deceased. The Appellant, therefore, was convicted and sentenced as aforementioned. However, the other accused i.e. wife of the deceased was acquitted on the ground that she being the wife would never do like that with her husband and it was also not possible for her to commit such an act.

3. Ms. Sharmila Singhai, learned Counsel appearing on behalf of the Appellant, argued that, in fact, the deceased died suicidal death. The Appellant had given immediate explanation about his death. The Sessions Judge erred in law in holding that it was a homicidal death. There is no direct evidence and the case of the prosecution is based on circumstantial evidence. There were no incriminating circumstances against the Appellant to hold him guilty of the said offence. Almost on the same set of evidence, the co-accused has been acquitted, therefore, the

Appellant was also entitled for acquittal.

4. On the other hand, Mr. Jameel Akhtar Lohani, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard the learned Counsel for the parties at length and have also perused the records of the sessions case.

6. 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.

7. Firstly, we shall look into the finding relating to the homicidal death of the deceased. Dr. R.P. Sharma (P.W. 6) found the above symptoms on the body of the deceased. He clearly observed that there was an obliquely placed ligature mark on the neck of the deceased. The ligature mark was present on the front portion of the neck and it had gone to the back portion of the ears on both the sides. There were abrasions on the margins of the ligature mark and the said mark was found to be ante-mortem. Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation. Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold). Hanging is a form of death, produced by suspending "the body with a ligature round the neck, the constricting force being the weight of the body (or a part of the body weight). Hanging can be defined as the ligature compression of the neck by the weight of one's own body due to suspension. In hanging ligature mark is usually situated above the thyroid cartilage between the larynx and the chin, and is directed obliquely upward following the line of the mandible (lower jaw) and interrupted at the back or may show an irregular impression of a knot, reaching the mastoid processes behind the ears towards the point of suspension. The mark may be found on or below the thyroid cartilage, especially in case of partial suspension. It may also be circular if a ligature is first placed at the nape of the neck and then its two ends are brought horizontally forward and crossed, and

carried upward to the point of suspension from behind the angle of the lower jaw on each side. The mark will be both circular and oblique, if a legature is passed round the neck more than once. In this case, there may be evidence of skin bruises, whenever it is caught between the legatures. Near the position of the knot, it is like an inverted "V" (Please see - Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition, pp. 565, 568, 575 and 583). We may note that a most important difference between the hanging and strangulation by ligature is that in hanging, the ligature mark is oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like. Whereas, in strangulation by ligature, the ligature mark is usually horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish. In the present case, the ligature mark was oblique and it was on the high up in the neck between the chin and larynx and it was also non-continuous. Obliquely placed mark had gone to the back portion of the ear of both the sides and it was not found at the back portion of the neck in between the 2 ears. It appears, a loop was formed there and due to knot at the loop the ligature was not in contact with the skin of the neck, therefore, the mark was lacking. This was an ideal situation of suicidal hanging and was remarkably different from the case of strangulation, as opined by Modi. If the strangulation is done by ligature, the deceased would not die unless sufficient pressure is created on the neck or the wind pipe which can only be created by tightening the neck by ligature and in that case the mark all around the neck is likely to come. We do not find any such mark in this matter. Apart from the above, we also find other features which are suggesting the hanging.

8. The accused persons had taken the defense that in the night all the family members slept in room, however, when in early morning they found that the deceased was not on his bed, they went out of the room and saw that the deceased was hanging on the rope from the roof of the verandah. Specific defense has been taken that the accused persons firstly brought down the deceased with a view that he may be alive, and then they made hue and cry, but by that time the deceased had died. If the accused persons would have committed murder by causing strangulation by rope and then they started projecting that it was a suicidal death by hanging, why they will bring down the body prior to reaching of the villagers. In such situation they would have left the dead body to project it with authority that it was a hanging. Dr. R.P. Sharma (P.W. 6) has also admitted in his cross-examination that many similarities would be found in case of hanging and strangulation as in both the cases the death is caused on account asphyxia. He admitted that in suicidal hanging tongue becomes swollen and bluish and the ligature mark is oblique. Whereas in strangulation it is usually horizontal. Even after admitting all this in the cross-examination, he opined that the cause of death was asphyxia on account of strangulation by a ligature. The learned Sessions Judge, relied on the opinion of the Doctor which we find to be erroneous in the above facts and circumstances of

the case. Therefore, the finding of the Session Judge that it was a homicidal death does not appear to be based on sound reasoning's. In the facts and circumstances of the case, we hold that the prosecution could not establish beyond all reasonable doubts that it was a case of homicidal death, as a possibility of suicidal death has not been fully ruled out by the prosecution.

9. Besides the above, we find that according to the prosecution in all 6 persons were sleeping in the room. They were deceased, the 2 accused persons, the 2 daughters of the deceased namely Punnibai and Saraswati and another son of the deceased namely Narad. The prosecution did not examine these witnesses in trial, however, their Section 161, Code of Criminal Procedure statements were recorded on 25-8-1992. This is another flaw in prosecution case.

10. We also note that almost on same set of evidence the mother of the Appellant (co-accused Radha Bai) was acquitted saying that why the wife will cause or participate in commission of murder of her husband. In absence of proof of any strong and specific "motive", the same analogy would be applicable to the Appellant who was the eldest son of the deceased. Why the Appellant will commit murder of his father? The prosecution came with the "motive" that the deceased was suffering from illness since last 2 years and substantial amount was being spent by the Appellant on his treatment since long back, therefore the Appellant committed murder of the deceased. Firstly we may state that there is absolutely no evidence on record to prove the above "motive" set-forth by the prosecution. There is no evidence to show that even the deceased was suffering from some serious disease since last 2 years which required substantial amount for his treatment and the Appellant was bearing that amount which caused annoyance to him for causing the death of the deceased. On the contrary it comes in the evidence that on account of certain quarrel with a lady of the village, the deceased was called in the police station on the previous day and was detained there for a long time. We, therefore, find that the "motive" suggested by the prosecution was not at all proved in this matter.

11. For the foregoing reasons, we are unable to sustain the conviction of the Appellant and the conviction based on the above set of circumstantial evidence deserves to be set-aside.

12. Accordingly, we allow this appeal and set-aside the conviction and sentence awarded to the Appellant u/s 302, IPC. The Appellant is acquitted of the charges framed against him. The Appellant is on bail. His bail bonds are cancelled and surety stands discharged.