

(2022) 01 CHH CK 0094
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 426 Of 2015

Shukla Prasad

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 147, 149, 302
Code Of Criminal Procedure, 1973 — Section 161, 313, 437A
Evidence Act, 1872 — Section 25, 27

Citation : (2022) 01 CHH CK 0094

Hon'ble Judges : Rajendra Chandra Singh Samant, J;Arvind Singh Chandel, J

Bench : Division Bench

Advocate : Rajeev Kumar Dubey, Shivali Dubey

Final Decision : Partly Allowed

Judgement

1. This appeal has been preferred against judgment dated 12-02-2015 passed in Session Trial No.3/2014 by the Additional Sessions Judge Pendra

Road, District Bilaspur convicting the appellants for charges under Section 147 and Section 302 read with Section 149 of the IPC and sentencing each

of the appellants with R.I. for two years, fine of Rs.200/- and life imprisonment with fine of Rs.500/- with default stipulations respectively.

2. The prosecution case is this, that on 02-07-2013 in the evening time the dashgatra function of deceased Bokhai was going on. Deceased Gorelal

was present there for looking after the arrangements. His son Raju Singh (PW-1) all of sudden saw that the deceased was missing from the function.

He enquired about his whereabouts and started looking for him, then he found that deceased Gorelal was lying on the soil and appellant Shukla Prasad

(appellant No.1) was seen nearby, who on seeing Raju Singh (PW-1) fled from the spot. Son Sai (PW-2) also came on the spot and he saw 3 to 4

persons running away from the spot. The deceased was found dead. Morgue intimation (Ex.-P/1) was lodged and on the basis of the information given by Raju Singh (PW-1) the FIR (Ex.-P/2) was lodged against the appellant No.1. Police conducted the inquest procedure. According to the postmortem report (Ex.-P/11), Doctor K.K. Dhruw (PW-7) has opined that the neck of the deceased was twisted which resulted in fracture of neck bone and his death. The nature of the death was homicidal. Appellant Shukla Prasad was interrogated who made statement of involvement of other appellants and also about the dupatta that was used in the incident vide his memorandum statement (Ex.-P/4). At the instance of appellant No.1 one dupatta was seized vide Ex.-P/5. Other investigation procedures were carried out including recording of statements of witnesses under Section 161 of the Cr.P.C.

On completion of the investigation charge sheet was filed in the Court. Learned trial Court framed charges under Section 147 and Section 302 read

with Section 149 of the IPC against the appellants. The appellants denied the charges and pleaded not guilty. The prosecution examined 9 witnesses.

On completion of the prosecution evidence the accused persons were examined under Section 313 of the Cr.P.C. in which all of them denied the

incriminating evidence present against them and made statement that all of them are innocent and they have been falsely implicated because of

previous enmity with the complainant and others. No evidence was led in defence. After giving opportunity of hearing to the prosecution and defence,

learned trial Court has delivered the judgment of conviction and sentence in the manner mentioned hereinabove.

3. It is submitted by learned counsel for the appellants that conviction of the appellants is totally erroneous and without there being any evidence of

prosecution. According to the charge sheet itself, there was no eye-witness of the incident in which deceased Gorelal was done to death. Learned trial

Court has placed reliance on the evidence of Raju Singh (PW-1) who has improved his statement in the Court. The morgue intimation (Ex.-P/1) and

FIR (Ex.-P/2) mention that deceased Gorelal was summoned and taken away by appellant No.1 from the place of the function. Later on when Raju

Singh (PW-1) started searching for his father, he saw and recognized only appellant No.1, although he has stated about seeing appellant No.1 running

away from the spot and 3 to 4 persons also were seen by him running away from the spot. But in the Court statement he has stated about being eye-

witness which is clearly an improved statement against his previous statements, the morgue intimation (Ex.-P/1), FIR (Ex.-P/2) and statement under

Section 161 of the Cr.P.C. (Ex.-D/1). There is no evidence of other circumstances to complete the chain of circumstances. There is only evidence of

one circumstance in which the appellant No.1 was seen taking away the deceased from the spot of the function, but consequent to that, there is no

other evidence to relate him with commission of the offence. Further, no test identification parade was conducted for the purpose of identifying

appellants No.2 to 6, therefore, conviction of these appellants is totally without any basis. Conviction against appellant No.1 cannot be held only on the

basis of last seen evidence. Therefore, the impugned judgment is not at all sustainable. All the appellants deserve to be acquitted. Hence, it is prayed

that this appeal be allowed.

4. Learned State counsel opposes the submissions made by learned counsel for the appellants and submits that the prosecution has proved its case

beyond reasonable doubt. Learned trial Court has not committed any error in holding that all the appellants were properly identified and holding the

appellants guilty for commission of offences. The appellants are answerable for their conduct of running away from the spot of the incident when Raju

Singh (PW-1) came to the spot. Hence, the impugned judgment is sustainable and there is no room for interference. Therefore, the appeal may be

dismissed.

5. Heard learned counsel for the parties and perused the record of the trial Court.

6. Considered on the submissions.

7. There appears to be no dispute that deceased Gorelal was murdered as per the postmortem report (Ex.-P/11), which mentions that the cause of

death was twisting of his neck which resulted in fracture of his neck bone, which means application of force for twisting of his neck and this cannot be

done by a person himself. Now, the issue raised in this appeal is this, that the appellants were not the persons who have caused death of the deceased,

needs consideration.

8. Raju Singh (PW-1) has stated before the Court that on the date and time of the incident dashgatra function was going on. At about 9.00 p.m.

appellant No.1 called deceased Gorelal asking him that appellant No.6 has called him. The witness then after some time went to search for his father

and on reaching the spot he found that his father was being assaulted by all these appellants. The witness raised alarm, on which the appellants ran

away from the spot. The witness then saw that his father was dead. Subsequent to which, he has lodged the morgue intimation (Ex.-P/1) and the FIR

(Ex.-P/2). In cross-examination this witness was confronted with morgue intimation (Ex.-P/1) and the FIR (Ex.-P/2) and also his previous statement

under Section 161 of the Cr.P.C. (Ex.-D/1), according to which, it appears that the statement before the Court regarding seeing all the appellants

assaulting the deceased is an improved statement. The morgue intimation (Ex.-P/1), the FIR (Ex.-P/2) and his previous statement (Ex.-D/1) all

mention that Raju Singh (PW-1) was informed by his uncle Son Sai (PW-2), that his father was taken away by appellant No.1 and later on when he

reached the spot of incident he found his father dead, he saw and recognized only appellant No.1 only who started running from the spot and then he

saw 3 to 4 other persons running away who were not identified by him. Therefore, the improved statement made by Raju Singh (PW-1) cannot be

believed and taken into consideration.

9. Son Sai (PW-2) has stated that on the date and time of the incident his wife informed him that appellant No.1 has called and taken away the

deceased. This witness went for search of his brother Gorelal, then he saw that all the appellants were attempting to conceal the dead body, who on

seeing the witness ran away from the spot. In cross-examination this witness was confronted with his previous statement (Ex.-D/2) and on that basis

it is clear that this witness has improved his statement in the Court regarding seeing the appellants making attempt to conceal the dead body of the

deceased. In previous statement he has stated only about the circumstance when the deceased called and taken away by appellant No.1 and second

circumstance that on reaching the spot he saw the dead body of the deceased and appellant No.1 along with others running away. Therefore,

improved statement made by this witness can also not be taken into consideration as this evidence cannot be regarded as believable. Other part of his

evidence regarding circumstances mentioned hereinabove are worth consideration as the same are supported by Raju Singh (PW-1).

10. Sumritbai (PW-3) who is wife of Son Sai (PW-2), has stated that she witnessed appellant No.1 calling and taking away the deceased and later on she came to know about the incident. In cross-examination she has remained firm on this statement.

11. Gudda (PW-6) who is son of deceased Gorelal has stated in the Court that he was searching for his father along with his brother Raju Singh (PW-

1) and then he saw that all the appellants were assaulting and threatening the deceased. In cross-examination this witness was confronted with his

previous statement (Ex.-D/3) and according to that, the statement of this witness has also made improvement in the Court. His previous statement had

been only to this extent that he went to the spot on call of Raju Singh (PW-1) and saw the dead body of deceased Gorelal. He had stated that the

appellants had murdered the deceased because of previous enmity. The Court statement of this witness cannot be taken in account in any manner as

he is not a witness of any other circumstance, except for seeing the dead body of the deceased.

12. One witness of incident Bela Singh (PW-9) has not supported the prosecution case and she has been declared hostile by the prosecution.

Therefore, her statement has no evidentiary value.

13. Constable L.S. Parihar (PW-8) has stated that Inspector F.J. Tigga had conducted the investigation in this case. The Inspector Tigga has expired,

he has identified the signature of Inspector F.J. Tigga on the memos prepared regarding the investigation.

14. The memorandum Ex.-P/4 has relevance. Shivlochan Choudhari (PW-4) has stated that appellant Shukla Prasad gave the memorandum statement

Ex.-P/4 and at his instance a dupatta of white colour (a cloth) was recovered and seized vide Ex.-P/5. Although the prosecutor has put some leading

questions to him, but the statement made by him earlier in the examination-in-chief is intact and unrebutted in cross-examination.

15. Ganesh Ram (PW-5) is a hostile witness and he has not supported the procedure conducted under the memorandum (Ex.-P/4) and the seizure of

Dupatta (Ex.-P/5). The investigating Officer F.J. Tigga was not available to be examined because of his death, but presumption goes that he being a

public officer has performed his part according to law and on the basis of the corroboration from the statement of Shivlochan Choudhari (PW-4), this

fact stands proved that the dupatta was seized at the instance of appellant No.1 on memorandum, which may be considered as a proof of a

circumstance. Regarding participation of other appellants cannot be taken into consideration as the same does not have any evidentiary value

according to Section 25 of the Indian Evidence Act, 1872. Learned trial Court has placed reliance in this memorandum statement and also the

improved statement made by the witnesses which is clearly an erroneous consideration and such improved evidence as well as the statement on

memorandum under Section 27 of the Indian Evidence Act has to be discarded.

16. The evidence is present against appellant No.1 confirming his presence in the function and also confirming his act by which he called the deceased

and took with him to some place. The another circumstance against appellant No.1 present is this, that when the witnesses Raju Singh (PW-1) and

Son Sai (PW-2) came searching for the deceased and found his dead body, appellant Shukla Prasad was present on the spot who on seeing these

witnesses immediately ran away. This conduct of appellant No.1 needed explanation which has not been explained by him at all, neither by putting

some question to the witnesses to explain his conduct, neither making any statement under Section 313 of the Cr.P.C. and further no evidence has

been led in defence. Therefore, the another circumstance which crops up, that the deceased may have died in the presence of appellant No.1. As he

was in his company, therefore it was the burden upon appellant No.1 to explain as to in what manner the deceased has died and if he himself has not

caused his death then who else has caused the death or could have caused his death. Without there being any such explanation, finger of accusation is

only towards appellant No.1. Hence, the circumstances which are present are complete in themselves for the purpose of holding appellant No.1 guilty

for the murder of deceased Gorelal. The evidence with respect to other appellants is not trustworthy being improved in the Court statements by the

witnesses, namely, Son Sai (PW-2), Raju Singh (PW-1) and Gudda (PW-6). Secondly, the Investigation Officer did not care to go for test

identification parade for appellants No.2 to 6 if it were the case that they were seen running away from the spot by Raju Singh (PW-1) and Son Sai

(PW-2). Therefore, we are of the considered view that conviction against appellant No.1 is sustainable. However, conviction of appellants No.2 to 6 is

not sustainable as the evidence of prosecution against them is not reliable and trustworthy as well as in fact there is no evidence present against appellants No.2 to 6.

Hence, on the basis of this conclusion drawn we feel inclined to allow this appeal in part. Accordingly, this appeal is allowed in part. Conviction and

sentence of appellant No.1 under Section 302 of the IPC is upheld. His conviction under Section 147 is unsustainable as the involvement of other

appellants in this incident has not been proved in the case. Therefore, act of the appellant No.1 being an act in furtherance of common object of

unlawful assembly is also not proved. Hence, this appellant is acquitted of charge under Section 147 of the IPC. Conviction of appellants No.2 to 6 is

set aside and they are acquitted of all the charges against them. These appellants are already on bail, therefore, there is no requirement of passing any

further orders. The bail bonds of appellants No.2 to 6 shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.