

(2023) 08 CHH CK 0029

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 615 Of 2022

State Of Chhattisgarh

APPELLANT

Vs

Shankar Buddhe @ Kajal Kinnar

RESPONDENT

Date of Decision : 16-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2023) 08 CHH CK 0029

Hon'ble Judges : Ramesh Sinha, CJ; N. K. Chandravanshi , J

Bench : Division Bench

Advocate : Madhunisha Singh

Final Decision : Dismissed

Judgement

1. The State has sought leave to appeal against the impugned judgment of acquittal dated 12.08.2021 passed in Sessions Trial No. 12/2020 by the Court of learned Sessions Judge, District – Durg (C.G.), by which the respondent / accused has been acquitted from charges under Section 302 of the Indian Penal Code in connection with Crime No. 897/2019, registered at Police Station – Durg, District – Durg (C.G.).

2. Case of the prosecution, in brief, is that the present respondent / accused has murdered Sonu Sarthi @ Chhaya Kinnar by stabbing him on 28.09.2019 at night about 10.00 O'Clock. The motive of murder is about the existence of failure on the part of deceased to repay the loan, which he owes to the present accused. The dead body of the deceased namely Sonu Sarthi @ Chhaya Kinnar has been recovered from an open plot existed in Rajiv Nagar, Durg (C.G.). On founding the dead body of the deceased, the police has registered a Morgue No. 118/2019 and later on registered Crime No. 897/2019. During the course of investigation the present respondent/accused has been arrested and sufficient evidence has been existed to implicate the respondent/accused. After the completion of investigation, the police has submitted charge-sheet. Thereafter, the learned trial Court has commenced the trial and after completion of trial, the trial Court has

acquitted the respondent / accused from the offence for which he has been charged with by giving him the benefit of doubt.

2. Ms. Madhunisha Singh, learned Deputy Advocate General, appearing for the Applicant/State would submit that the learned trial Court has erred in holding that the chain of incriminating circumstances is not completed against the respondent/accused and benefit of doubt has been given to him, though by the perusal and appreciation of the entire evidence leads to only one conclusion that, it is the respondent/accused who has murdered the deceased Sonu Sarthi @ Chhaya Kinnar. In the present case, the motive of committing murder is clearly established by the prosecution, but the trial Court did not consider it and the same results into the acquittal. She further submits that the trial Court has erred in the appreciation of the statement of the prosecution witness no. 3 namely Lachhu Sarthi, who categorically stated that the deceased has told to her that he was going to the house of respondent/accused and he will return back soon, and after that he was found dead. The respondent/ accused has failed to discharge his burden to clarify the incriminating circumstances which are exclusively within his knowledge and therefore, in absence of any satisfactory explanation or justification the respondent/ accused is clearly liable for conviction. She also submits that the learned trial Court has committed grave error to overlook, the statement of PW-9 namely Palu Sarthi, on whose statement the prosecution has successfully proved the recovery of the knife, bloodstained cloth, blade and rings belonging to the deceased. Thus, learned trial Court is absolutely unjustified in acquitting the respondent / accused from the aforesaid offence by recording a finding which is perverse to record. Therefore, leave deserves to be granted.

3. We have heard learned counsel for the applicant / State, considered her submission and gone through the records filed along with this petition.

4. Learned Sessions Judge has acquitted the respondent / accused finding that Palu Sarthi (PW-9) in his entire evidence has not given any statement regarding the seizure of the gown worn by the accused at the time of occurrence on the basis of the memorandum statement of the accused. Therefore, it is clear that the prosecution has not been able to prove the proceedings of confiscation of the said gown worn at the time of incident. Further, there is no evidence in the case to the fact that the deceased and the accused were last seen alive together. There is also no evidence to the fact that the deceased was seen going to the house of the accused. The prosecution has not been able to establish the fact that the deceased was invited by the accused to his house. Further, according to the prosecution, the murder of the deceased took place between 10.00 pm to 11.00 pm and on the date of incident, in between 10.00 pm to 11.00 pm, PW-4 Hemant Pal and P.W.6 Rakesh Soni, both stood in front of the accused and talked to him, but they have not stated to have seen any blood stains etc in the gown worn by the accused. The house of the said two witnesses is so near to the house of the accused that they heard the sound of utensils falling, but they did not hear the screams of the deceased. Apart from this, the prosecution has also

not been able to prove the motive being the crime. In addition to this, PW-15 Suresh Kumar Dhruv, about 10 hours after the alleged incident, has seized a broken iron knife, handle of knife separately, blade, three pieces of silver ring, T-shirt, which are such property, which are generally found in every household. Apart from this, the prosecution has also not got done the process of identification of three pieces of silver ring and the clothes of the deceased. In memorandum statement of the accused Ex.P-11, there is no signature of PW-15 Suresh Kumar Dhruv, who was the investigating officer of case. Therefore, in such a situation, this Court is of the conclusion that there is strong doubt that the accused Shankar Budde may have committed the offence of murder of the deceased, but it is settled law that doubt cannot take the place of proof. Had the prosecution succeeded in quoting the memorandum of the gown seized from the accused and convincing the proceedings of the seizure beyond doubt, the situation could have been different, but the prosecution has not been able to prove beyond doubt the memorandum statement relating to the gown seized from the accused and the process of seizure. In the said circumstances, it would not be safe to hold the appellant guilty for the offence under Section 302 of IPC on the basis of only one false answer given by him.

5. Taking into consideration, the statement of PW-9 Palu Sharthi, PW-4 Hemant Pal, PW-6 Rakesh Soni and PW-15 Suresh Kumar Dhruv and other evidence available on record, it cannot be held that the findings recorded by the learned Sessions Judge, acquitting the respondent / accused from aforesaid offences, are perverse or contrary to record. We do not find any reason to grant leave to appeal. Accordingly, the application is rejected and consequently, acquittal appeal is also dismissed.