
(2012) 10 CHH CK 0019
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 444 of 2009

Virendra Kumar and Another

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2012) 4 CGBCLJ 554

Hon'ble Judges : Sunil Kumar Sinha, J; Pritinker Diwaker, J

Bench : Full Bench

Advocate : Hamida Siddiqui, Mr. Wasim Miyan and Mr. Mahendra Dubey, for the Appellant; Sandip Yadav, GA for the State, for the Respondent

Judgement

1. As these two appeals arise out of the same judgment and order dated 23.4.2009 passed by Additional Sessions Judge (FTC) Raipur, in Sessions Trial No. 124/2007 convicting the accused/appellants under Sections 302, 342 and 454 IPC and sentencing each of them to undergo imprisonment for life u/s. 302 and rigorous imprisonment for 3 years with fine of Rs. 500/- u/s. 342 and 454 IPC separately, plus default stipulations, they are disposed of by this common judgment. Facts of the case in brief are that on 14.9.2006 Dehati Nalisi Ex. P-1 was recorded by police of Police Station Pandri, District Raipur at the instance of Ved Prakash (PW-1) - son of the deceased alleging that on the date of incident when his father had gone to attend his duties in Electricity Department, his tenant Virendra Dewangan (one of the accused/ appellants in Cr.A. No. 444/2009) who was residing in the nearby room came there and told his mother that someone had come to see the house for the purpose of taking it on rent and then his mother went along with him (accused Virendra). It is alleged that 15 minutes thereafter said Virendra again came to him and demanded Rs. 50/- on credit and when he replied saying that he did not have money, he asked him to arrange money from his mother and took him to the nearby room. On reaching the said room, he saw his mother lying on a cot drenched with blood and injury

was there on her head. It is alleged that certain ornaments worn by his mother were missing and that along with said Virendra, Dipak (acquitted by the Court below), accused/appellant Rikhiram and one other boy were also there who tied him with a bench and after bolting the door from outside they left the spot. After some time, he somehow managed to set himself free and raised cries from the window. Thereafter, one boy came there and took him out and when he went to his room, all the four persons fled away from the spot. He found the almirah of his room open and Rs. 45,000/- were missing from it. It is thus alleged that accused persons have committed loot of the cash amount as well as the ornaments. He then called his neighbour Gangadhar (PW-6). Post mortem examination on the body of the deceased was conducted on 15.9.2006 by Dr. Shiv Narayan Manjhi (PW-12) who gave his report Ex. P-6 opining the cause of death as shock due to hemorrhage as a result of head injury and that the death was homicidal in nature. Based on this Dehati Nalisi, offences under Sections 307 and 394 IPC were registered against accused Virendra Dewangan, Dipak Dewangan, Rikhiram Dewangan and others. After death of the deceased, FIR Ex. P-33 was registered against them. Memorandums of accused/appellants were recorded vide Ex. P-21 to P-23. Seizure from all the three accused/appellants was made vide Ex. P-25, P-26 and P-27 by which cash of Rs. 2000 and silver anklets were seized. These articles were however not identified by anyone. After completion of investigation, charge sheet was filed on 23.11.2006 against the accused/appellants herein as well as acquitted accused Dipak, Shivcharan, Ramesh, Liladhar and Surendra for the offences under Sections 307, 394, 302 and 396 IPC. Court below however framed the charges against them under Sections 147, 148, 395, 396, 450, 302, 342/ 149 IPC.

2. In support of its case, prosecution has examined 20 witnesses. Statements of the accused persons were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

3. After hearing the parties, the Court below has acquitted accused Dipak, Shivcharan, Ramesh, Liladhar and Surendra of all the charges levelled against them. It also acquitted the accused/appellants of the charges u/s. 147, 148, 395 and 396 read with 149 IPC but convicted and sentenced them as mentioned in paragraph No. 1 of this judgment.

4. On behalf of accused/appellant Virendra in Cr.A. No. 444/2009 it has been submitted by Smt. Hamida Siddiqui Adv. that statement of Ved Prakash (PW-1), Kaushal Kumar (PW-3), Sunil (PW-4) and Gangadhar (PW-6) being not in accordance with law is untrustworthy and does not inspire confidence. She submits that a very improbable story has been put forth by the prosecution where the deceased is alleged to have been taken in a separate room, was murdered and then accused/appellant Virendra allegedly demanded Rs. 50/- from Ved Prakash (PW-1) on credit. She submits that had accused/appellants committed any such offence, they would have beaten the deceased as well as

Ved Prakash (PW-1) but they have not beaten Ved Prakash but simply tied him up, which shows the total falsity of the case. She submits that when Kaushal Kumar (PW-3) and Sunil (PW-4) opened the door where Ved Prakash (PW-1) was locked, they would have definitely seen the body of the deceased but no such statement has been made by them. Thus, according to Smt. Siddiqui, possibility of offence being committed by Ved Prakash (PW-1) himself cannot be ruled out. She further submits that seized articles have not been identified either by Ved Prakash (PW-1) or by any other person and therefore, the accused/appellants cannot be connected with the alleged murder of Ghasnin Bai.

5. Adopting the argument of Smt. Siddiqui, it has been argued by Shri Wasim Miyan Advocate appearing for accused/appellant Sanjay, that in Dehati Nalisi recorded at the instance of Ved Prakash (PW-1) name of Sanjay is not there though he was identified by said Ved Prakash and thus it is clear that he (Sanjay) has been implicated in a false case. He submits that once accused Sanjay was known to Ved Prakash (PW-1), the report should have been lodged by naming him but it has not been done. Thus according to Shri Wasim Miyan, omission to disclose his name also makes it clear that accused Sanjay has been implicated in a false case.

6. Shri Mahendra Dubey Advocate appearing for accused Rikhiram submits that statement of Gangadhar (PW-6) is highly unreliable because in fact he had not seen anything as has been alleged by him. He submits that Khem Kumar (PW-11) has made the allegation against accused Virendra only and once accused Dipak has been acquitted, accused Rikhiram should also have been acquitted. He submits that Gangadhar (PW-6) has given different timing of the incident and therefore also his statement becomes doubtful.

7. Supporting the impugned judgment it has been submitted by Shri Sandip Yadav, Government Advocate, that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same. He submits that statements of Ved Prakash (PW-1), Kaushal Kumar (PW-3), Sunil (PW-4) and Gangadhar (PW-6) are fully reliable as in the cross examination of these witnesses no such question was put to them which could be of any help to the accused/appellants. He submits that even if in the Dehati Nalisi (Ex. P-1) name of accused Sanjay is not there, he cannot draw any benefit of the same because FIR is not an encyclopedia and that in the Court statement Ved Prakash (PW-1) has duly identified accused Sanjay and made specific allegations against him.

8. Ved Prakash (PW-1) has stated that deceased Ghasnin Bai was his mother and that on the date of incident at about 1 p.m. when after returning from school he was taking his meals, accused/appellant Virendra came there and asked his mother saying that someone had come to see the house for taking it on rent. About 15 minutes thereafter, he again came and demanded Rs. 50/- from him on credit and he expressed his inability to give the said amount, he (accused Virendra) requested him to arrange the same from his mother. Thereafter, accused/appellant Virendra brought him to a nearby house which was given on

rent where he saw his mother lying on a cot fully drenched with blood. According to this witness, at the said place one other boy who was not present in the Court, was also standing there. Thereafter, according to this witness, two accused persons who were present in the Court, came there and he indicated towards them and that on being asked they disclosed their names as Sanjay and Rikhiram. He has stated that thereafter all the four accused persons i.e. one Udia boy, and the present appellants tied him up with a bench and after locking the door from out side they left the place. This witness has further stated that as the window of the room was open, he called Kaushal Kumar (PW-3) who broke open the lock. When he reached the place where he was residing, he saw all the four accused persons coming out and after seeing him they fled away. Thereafter, he informed his relative Hemchand about the entire incident and then the police was called. According to him, when he saw his mother, there were injuries on her face and the ornaments worn by her were also missing. This witness has further stated that when he saw the almirah, clothes kept in it were scattered and cash of Rs. 45,000/- and the gold ornaments were missing. In cross-examination this witness remained firm to what he has stated in the examination-in-chief and again described the manner in which the incident had taken place.

Gokul Ram Patel (PW-2) - the husband of the deceased has stated that on the date of incident when he had gone to his workplace, at 3.30 p.m. he received a telephone call from his son that accused/appellant Virendra killed his wife and at about 4 p.m. when he reached his house, police had taken her body for post mortem examination. He is said to have been informed by his son Ved Prakash (PW-1) that accused/appellant Virendra who was residing in his house as tenant, and three other boys had killed the deceased. He also saw that the household articles were scattered, almirah was open and that a cash of Rs. 51,000/- and the ornaments worn by the deceased were missing. In cross examination, this witness too remained firm to what he has stated in the examination-in-chief and nothing could be elicited by the defence to benefit the accused/ appellants. Kaushal Kumar (PW-3) - a child witness aged about 14 years has stated that on the date of incident at about 2 p.m. one Sunil (PW-4) informed him that some voice was coming from the house of Ved Prakash (PW-1) and when he peeped through the window, he (Ved Prakash) requested him to break open the door and after the door was broken open, Ved Prakash (PW-1) came out and then he came to know that mother of Ved Prakash was murdered. Sunil (PW-4) has stated that after hearing the cries when he peeped through the window, Ved Prakash (PW-1) asked him to open the lock and when he did not succeed in doing that, Kaushal Kumar (PW-3) came there and with his help the lock was opened and then Ved Prakash came out and then he came to know that mother of Ved Prakash was murdered. Daa Prasad (PW-5) has stated that he had seen the persons running away from the house of Ved Prakash (PW-1) but he did not see their faces. Thereafter, this witness has been declared hostile. Gangadhar (PW-6) - another important prosecution witness has stated that he knew the accused/ appellants as well as Ved Prakash (PW-1) and that on the date of incident in

between 11.30 and quarter to 12 noon when he was in his shop, Ved Prakash came to him and informed that accused Virendra had killed his mother. When he was going to see the mother of Ved Prakash, he saw accused Virendra, Rikhiram, Dipak and one other boy whose name he did not know, fleeing from the backside of the house of Ved Prakash. He also saw two bags in the hand of accused Virenda and then he came to know that Ghasnin Bai was murdered. In cross-examination, this witness has stated that he knew that accused Virendra was the tenant of Ved Prakash but he did not see the actual occurrence. According to this witness, his shop is 40-50 ft. away from the place of incident and that from his shop the activities going on at the place of incident could not be seen. He however has denied that he had not seen anything. Baldau Patel (PW-7) is the witness to inquest notice Ex, P-4 and inquest Ex. P-5 as well identification of the deceased vide Ex. P-6 while her body was being sent for post mortem examination. Sunita (PW-8) is the witness to seizure of a black colour bag made under Ex. P-7 who has duly supported the case of the prosecution. Munna Sinha (PW-9) and Vimal Dewangan (PW-10) have not supported the case of the prosecution and have been declared hostile. Khem Kumar (PW-11) has stated that he knew all the accused persons as also son of the deceased namely Ved Prakash (PW-1). According to this witness, on the date of incident, Ved Prakash had informed him over telephone that his mother was murdered by accused Virendra on which he asked him to lodge the report. Thereafter, he reached the police station from where along with Assistant Sub Inspector he came to the place of incident and saw Ghasnin Bai struggling for life. Thereafter, according to this witness, while she was being taken to the hospital with the help of other persons, she died on the way and then he came to know through Ved Prakash that his mother was murdered by accused Virendra and others. He has further stated that memorandum of acquitted accused Shivcharan was recorded in his presence where he had informed that after leaving the place of incident, they had shared money and other looted articles. According to this witness, from acquitted accused Shivcharan seizure of certain articles was made vide Ex. P-11. This witness has also proved memorandum of accused Ramesh, Liladhar and Surendra and seizure of articles made under Ex. P-15 to P-17. Dr. Shiv Narayan Manjhi (PW-12) is the witness who conducted post mortem examination on the body of the deceased and gave his report Ex. P-6 stating that following nine injuries were present on her body:

(i) Contused lacerated wound (CLW) present on frontal region extending into 3 parts (i) 4.5 x 0.9 cm. (ii) 5 x 1 cm. (iii) 3.5 x 1 cm. all over bone deep transversely.

(ii) Contused lacerated wound present on left parieto-temporal region 12 x 2 cm. transversely, bone deep, margins are irregular with 2 long stitches.

(iii) Incised wound present on left parietal region 5 x 0.5 cm. bone deep.

(iv) Incised wound present on vertex region mid plane 4 x 0.5 cm. transversely.

- (v) 2 cm. posterior to injury No. 4 - 4 x 0.5 cm. Transversely
- (vi) 2.5 cm. posterior to injury No. 5 - 5 x 0.5 cm transversely bone deep.
- (vii) Incised wound present on upper 1/3 part of nostrils to maxillary region slightly left side - 5 x 0.5 cm. bone deep. Cavity deep.
- (viii) Incised wound on left zygomatic region vertically obliqued - 3 x 1 x 0.5 cm. size
- (ix) Incised wound present on chest left side - hypochondriac region to mid plane - 15 x 0.2 cm. transversely - superficially.
- Death was due to shock and hemorrhage as a result of head injury.
- Few injuries are caused with hard and blunt object. Few injuries are caused with sharp and hard heavy object.
- Duration of death is within 24 hours prior to p.m. examination.
- Duration of injuries are within 12 hours prior to death.
- Death was homicidal in nature.

Arun Kumar Shrivastava (PW-13) is the witness who assisted in the investigation after post mortem examination of the body of the deceased. Ramadhar Patel (PW-14) is the witness who reached the spot along with Anwar Hussain and others after the incident and saw Ghasnin Bai in injured condition drenched with blood and then she was taken to hospital where she was declared dead. According to this witness, later he came to know that Ghasnin Bai was murdered by accused Virendra with the help of other persons. Jitendra Sahu (PW-15) is the witness to memorandum of accused persons vide Ex. P-21 to P-24 and seizure made under Ex. P-25 to P-28. He has not supported the case of the prosecution and has been declared hostile. Gajendra Kumar Nisad (PW-16) - the witness to memorandum Ex. P-10, 12, 13 and 14 and seizure of articles made under Ex. P-11, P-15, P-16 and P-17, has also not supported the case of the prosecution and has been declared hostile. M.L. Ajgale (PW-17) is the witness who did part of the investigation i.e. made entry in Rojnamcha Sanha at the time of recording Dehati Nalisi Ex. P-1, gave notice of inquest and then prepared inquest. He has duly supported the case of the prosecution. Labhram (PW-18) - the witness to seizure made under Ex. P-19, P-35 and P-36, has not stated anything specific. Ganesh Pardhi (PW-19) is the witness to notice of inquest Ex. P-4, inquest Ex. P-5 and identification of the body of the deceased before post mortem examination vide Ex. P-6. He is also the witness to memorandum Ex. P-21, P-22, P-23 & P-24 and seizure made under Ex. P-25, P-26, P-27 & P-28. This witness has however not supported the case of the prosecution and has been declared hostile. K.B. Khatri (PW-20) is the investigating officer who has duly supported the case of the prosecution.

9. Minute examination of the evidence makes it clear that on the date of incident

accused Virendra entered the house of the deceased, took her to a nearby house on the pretext of showing it to the tenant and then committed her murder with the help of his associates. Evidence further makes it clear that after committing the murder of the deceased he returned to her house and this time took Ved Prakash to his room where the deceased was lying and after tying him up and bolting the door from outside he and his associates again came to the house where the deceased was residing and then looted the cash and ornaments. Ved Prakash (PW-1) has duly supported the case of the prosecution and deposed in a descriptive manner how the incident had taken place. From the evidence of Ved Prakash (PW-1) it is further clear that accused Rikhiram was also there along with accused Virendra in committing the murder of Ghasnin Bai. He (PW-1) has categorically named accused Virendra, Dipak and Rikhiram at the time of recording prompt Dehati Nalisi Ex. P-1. Further, he has duly identified accused Virendra and Rikhiram in the Court. Thus beyond any shadow of doubt it can be said that accused Virendra and Rikhiram have committed the murder of Ghasnin Bai. Though in the Court Ved Prakash (PW-1) has also identified accused Sanjay as one of the assailants yet his name has not been mentioned in the Dehati Nalisi Ex. P-1 and therefore his involvement in the crime in question becomes doubtful. Statement of Ved Prakash (PW-1) has been duly supported by Kaushal Kumar (PW-3), Sunil (PW-4) and Gangadhar (PW-6) and there is no reason for this Court to disbelieve the same. Accordingly, Cr.A. No. 537/2009 filed by accused Rikhiram being without substance is liable to be dismissed and it is dismissed as such. Cr. A. No. 444/2009 so far as it relates to accused Virendra Kumar is also liable to be dismissed and it is dismissed as such. However, as regards accused Sanjay Kumar, it is allowed. His conviction under Sections 302, 342 and 454 IPC is set aside and he is acquitted of the charges levelled against him. He is reported to be in jail. He be set free forthwith if not required in any other case.