
(2020) 01 CHH CK 0133

Chhattisgarh High Court

Case No: Criminal Appeal No. 981, 1132 Of 2013

Ishwar And Anr

APPELLANT

Vs

State Of Chhattisgarh
Through The Station
And Ors

RESPONDENT

Date of Decision: Jan. 31, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 120(B), 302
- Code Of Criminal Procedure, 1973 - Section 437(A)

Hon'ble Judges: Prashant Kumar Mishra, J; Gautam Chourdiya, J

Bench: Division Bench

Advocate: Trivikram Nayak, R.K. Pali, Pawan Kesharwani

Final Decision: Allowed

Judgement

Prashant Kumar Mishra, J

1. Challenge in both these appeals is to the judgment of conviction and order of sentence dated 27-9-2013 passed by the Additional Sessions Judge,

Bhatapara, District Raipur, in ST No.18/12 whereby learned Court below convicted the appellants namely; Sharda @ Choti (for brevity ~A1~™),

Laxmi (for brevity ~A2~™) & Mukesh (for brevity ~A3~™) for offence under Sections 302 & 120-B of the Indian Penal Code (IPC) and

sentenced each of them to undergo RI for life for each count and to pay a fine of Rs.1,000/- on each count, in default of payment of fine to further

undergo RI for one year on each count. Accused Ishwar Sahu (for brevity ~A4~™) has also been convicted under Section 120-B of the IPC and

sentenced him to undergo RI for life and to pay a fine of Rs.1,000/- in default of payment of fine to further undergo RI for one year.

2. The accused persons were sent for trial for entering into criminal conspiracy and thereafter committing murder of Deepa Sahu (since deceased) on 15-2-2012.

3. The prosecution case, as emerging from the material on record, is that on account of death of deceased (second wife of A4), A4 lodged merg

intimation (Ex.P/18) that he was residing at village Datrengi with deceased having married her 10 days before the date of incident. On 15-2-2012 he

had gone to Bilaspur in connection with his driving job. He received a telephone call from his first wife (A1) at about 2.50 pm informing that the

deceased is not well. When he returned to Datrengi he found deceased lying dead on the floor. In the postmortem conducted by PW-9 Dr. D.P.

Verma & PW-11 Dr. Ajay Kumar Gupta it was found that cause of death is asphyxia due to strangulation; death within 18-36 hours.

4. Memorandum statement of A1 was recorded vide Ex.P/10 in which she informed the police that when A4 married the deceased and brought her to

the house she objected by saying why has he brought her Sout () (husband's second wife) on which A4 stated that despite effort he is not able to

get rid of her. On 13-2-2012 they hatched a conspiracy to murder Deepa with the assistance of her sister (A2) and brother-in-law (A3). On the date

of incident Ishwar (A4) left for Bilaspur and they 3 namely; Sharda @ Choti (A1), Laxmi Bai Sahu (A2), Mukesh Kumar (A3) strangulated her

(Deepa) to death. On the basis of memorandum of A1 one lungi was recovered vide Ex.P/11; vide Ex.P/12 broken bangles of A2 were recovered

from the place of occurrence as well as the bangles of the deceased vide Ex.P/13.

5. On completion of merg enquiry, the First Information Report (FIR) was registered vide Ex.P/19. Spot map was prepared vide Ex.P/15 and the

accused persons were arrested. The seized articles were sent for FSL examination, however, FSL report is not produced before the Court.

6. In course of trial the prosecution examined as many as 15 witnesses to bring home the charges. The accused persons abjured the guilt; pleaded innocence; and false implication.

7. On the basis of evidence on record, the trial Judge has convicted the accused persons for their respective charges as stated supra.

8. Shri R.K. Pali & Shri Trivikram Nayak, learned counsel appearing for the respective appellants, would submit that there is absolutely no evidence

against any of the appellant conclusively connecting them with the commission of crime. Learned counsel would further submit that the circumstantial

evidence does not complete the chain nor an inference of guilt can be drawn on the basis of such evidence as has been brought on record by the prosecution.

9. PW-1 Ayodhya Yadu, is the father of the deceased. He would depose that Deepa was found missing from his house on 6-2-2012. During search

he became aware that she is living with A4 at village Datrengi. He persuaded A4 and Deepa, but Deepa refused to return to the house saying that she

has married with A4. This fact of marriage of the deceased with A4 is otherwise an admitted position. Statement of PW-1 Ayodhya Yadu is, thus, not

helping the prosecution in respect of the crime, albeit it may be an evidence for the alleged motive.

10. PW-2 Shiv Kumari is a resident of same village. According to this witness, A1 informed her on the date of incident that her sister and brother-in-

law have come and that when she had gone to A4's house, A2 was present in the house whereas A3 was present outside the house. She would

not speak anything about the offence. She would also state that she has never met A2 & A3 and that she does not visit the house of A1. PW-2 would

also state that on the date she had gone to A1's house to demand Lota (). She has not seen who were the persons available in the house.

Thus, this witness has diluted her earlier statement during cross-examination.

11. PW-3 Nirmala Yadu is the mother of the deceased. She would state that A4 had called her to inform that her daughter (Deepa) is not well,

however, she had not gone to see her daughter at village Datrenghi.

12. PW-4 Khobram Verma is the neighbor of A4. He says that on the date of incident A1 had a talk with A4 through mobile to inform A4 that Deepa

is not well and he should return to Datrenghi. Thereafter, A4 returned at about 4.30-5.00 pm. He is not aware as to whether A2 & A3 were present in

the house or not. He says that he has never gone to the house of A4.

13. PW-5 Rakshendra Kumar is the person who was called by A4 to his house at about 4.30 pm on the date of incident. He appears to have been

called for some medical assistance. He checked the pulse of deceased and advised A4 to get her admitted to Government Hospital, however, he is not

acquainted with either A1 or deceased. He had gone to the house of A4 on the previous day also and had checked the pulse of the lady. This witness

has not fully supported the prosecution, therefore, at later stage he has been declared hostile.

14. PW-6 Devendra Sahu is the Patwari, who has prepared spot map (Ex.P/7) and panchnama (Ex.P/9). PW-7 Vinod Verma & PW-8 Ram Kumar

Sahu are the witnesses to the memorandum statement (Ex.P/10) and seizure memos Ex.P/11 to Ex.P/14, however, they have not supported the

prosecution and have been declared hostile.

15. PW-9 Dr. D.P. Verma & PW-11 Dr. Ajay Kumar Gupta had conducted postmortem on the body of the deceased. They have proved postmortem

report (Ex.P/16) and summary report (Ex.P/16A). PW-11 Dr. Ajay Kumar Gupta has also given query report vide Ex.P/17. They have found ligature

mark on front & both sides of neck, but absent on back; ligature mark at the level of thyroid. The face was congested but heart was found healthy

whereas neck, trachea and lungs were found congested. Thus, except for ligature marks no other external injuries were found over the body of the

deceased. PW-9 Dr. D.P. Verma would admit that the kind of ligature mark sustained by the deceased is not possible if neck is pressed by means of

thumb and that the rope was not used throughout the neck. PW-11 Dr. Ajay Kumar Gupta would admit that none of the bones of the neck were found

broken or fractured.

16. PW-10 Suresh Kumar is Kotwar, who assisted the Patwari in preparing the spot map. PW-12 Dau Lal Bareth is Constable who has taken down

merg intimation whereas PW-13 K.P. Dewangan is the Revenue Inspector who prepared dead body inquest. He admits that he has not seen any

injury on the person of the deceased. PW-14 B.K. Tiwari is the Investigating Officer whereas PW-15 Virendra Kumar Baghel, Constable, had taken

the dead body for postmortem.

17. Admittedly, there is no ocular version of the crime, as no witness has seen the appellants committing the crime. Case of the prosecution, therefore,

rests on circumstantial evidence. The principle as to when an accused can be convicted on the basis of circumstantial evidence has been propounded

by the Supreme Court in the celebrated case of Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116, wherein it has underlined the

conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-153 as under :

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be

fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is

not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in

Shivaji Sahebrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance

between “may be” and “must be” is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.â€■

18. In a recent judgment in *Nathiya Vs. State* represented by Inspector of Police, Bagayam Police Station, Vellore, (2016) 10 SCC 29,8 the Supreme

Court has reiterated the above principles.

19. In *Jonh Pandian v State*, Represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 12 9 the Supreme Court has held that all means adopted

and illegal acts done must be proved to be done in furtherance of the object of conspiracy hatched. A systematic role played by each accused has to

be highlighted. Similarly each one of the circumstances should be proved beyond reasonable doubt and such circumstances proved must form a chain

of events from which the only irresistible conclusion is about the guilt of the accused which can be safely drawn and no other hypothesis of the guilt is

possible. Since the evidence of conspiracy is very hard to find and the prosecution would always have great difficulty in proving the conspiracy and,

therefore, the conspiracy has to be inferred from circumstantial evidence, but the circumstances in a case, when taken together on their face value,

should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by

illegal means.

20. Similar proposition has been laid down by the Supreme Court in *Sherimon v State of Kerala*, (2011) 10 SCC 768 and held thus in paras 17 & 18 :

17. The gist of the offence of conspiracy is the agreement between two and more persons to do or cause to be done an illegal act or a legal act by

illegal means. There must be meeting of minds resulting in an ultimate decision taken by the conspirators regarding commission of the crime. In this

case, no such evidence has come on record. PW-5 Biju, the employee of City Auto Finance at Moovattupuzha was the only witness examined by the

prosecution to prove the alleged meeting between the appellant and the other accused. He has turned hostile. Therefore, there is nothing on record to

establish meeting of minds between the appellant and the other accused.

18. Assuming that the appellant had produced certain documents pertaining to the said auto rickshaw, it cannot be concluded on the basis thereof that

he had entered into a conspiracy with A-1 to A-3 to repossess the said auto rickshaw because the loan amount was not repaid and in pursuance

thereof A-1 to A-3 murdered the driver of the said auto rickshaw. The evidence on record is totally inadequate to come to such a conclusion. It is,

therefore, not possible to sustain the impugned judgment.

21. In the case at hand, the case of the prosecution is based on circumstantial evidence, as there is no ocular version of the crime. The Investigating

Officer obtained only one memorandum statement of A1. Except this memorandum statement there is no other evidence against A1. Admittedly, A4

was not present at village Datrengi on the date of incident. Although PW-2 Shiv Kumari would state that she had seen A2 & A3 in the house of A4,

but she has diluted this statement during cross-examination by stating that she does not visit A1's house and that she cannot tell as to who was

present in the house on the date of incident. Thus, this evidence alone is not sufficient to establish that A2 & A3 were present at the place of

occurrence, which is a different village than that of their ordinary residence.

22. In view of the above, there is absolutely no evidence against A2, A3 & A4. In so far as A1 is concerned, except for her memorandum statement

(Ex.P/10) and recovery of bangles for which there is no FSL report, there is no other evidence of conclusive nature by which her guilt of committing

murder of the deceased can be proved. In the state of evidence on record A1 is also entitled for the benefit of doubt.

23. Accordingly, conviction and sentence imposed on all the appellants are hereby set aside and they are acquitted of the said charges. The appellants

are in jail. They be released forthwith if not required in any other case, on each of them furnishing a personal bond for a sum of Rs.25,000/- with one

surety each in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months as required under the

provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.

24. In the result, both the criminal appeals are allowed.