(2018) 09 CHH CK 0397

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 562 Of 2013

Shekhraj And Ors		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: Sept. 26, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 201, 302
- Code Of Criminal Procedure, 1973 - Section 161, 313

Hon'ble Judges: Pritinker Diwaker, J; Rajani Dubey, J

Bench: Division Bench

Advocate: Pushkar Sinha, Vivek Sharma

Final Decision: Allowed

Judgement

Rajani Dubey, J

1. This appeal has been preferred against the judgment and order datedÂ Â Â 22.02.2013Â Â Â passedÂ Â Â by the AdditionalÂ Â Â Â Â

SessionsÂ Â Â Judge, Sarangarh, district Raigarh in Sessions Trial No. 23/2011 convicting the accused/appellants for the offence punishable under

Section 302 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 2,000 with default stipulation.

2. Facts of the case in brief are that Chetan Patel informed the police Sarangarh that he resides at village Bade Kharvani and is a agriculturist. He has

some land dispute with Awadh Ram Gond and some cases are also pending in the court below. On 30.03.2011, at about 1.00 a.m. his elder brother

Yaadram went to pump house near Shiv Temple for watering the fields and he returned home and went to sleep. Further case of the prosecution is

that in the morning, on hearing the cries outside when he and his brother Ram Kumar came out they saw his brother Yaadram was lying in a pool of

blood near Shiv Temple. There were injuries on the stomach, chest, neck, hand and head which were grievous. The gamchha and slippers of the

deceased were also found nearby. Thereafter he lodged a report that as he was having suspicion that it is Awadh Ram and his family members who

have committed the murder of the deceased. FIR Ex.P- 24 was registered against the accused/appellants under Sections 302 and 201 IPC. Spot map

Ex.P-25 was prepared. Merg intimation Ex.P-6 was registered. Inquest Ex.P-19 was prepared and body was sent for postmortem examination which

was conducted by Dr. J.R.Ghritlahre (PW-11) vide Ex.P-20 and according to him cause of death is hemorrhagic shock due to extensive injury and the

death was homicidal in nature. On the memorandum of accused/appellants vide Exs. P-4, 5 & 7 seizure Exs.P-1,2,3,6,8 and 26 were given effect to

and blood stained pant, shirt, bicycle, one sharp sword like weapon, underwear, axe and club were seized from their possession. After filing of charge

sheet, the trial court framed charge under Sections 302 and 201,34 IPC against the accused/appellants.

3. So as to hold the accused/appellants guilty, the prosecution has examined 15 witnesses in all. Statement of the accused were also recorded under

Section 313 Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case pleaded innocence and false implication.

This apart accused persons have examined two witnesses in their defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment has

acquitted the appellants of the charge under Section 201 IPC but has convicted and sentenced them as mentioned above. Hence the present appeal.

5. Counsel for the appellant submits that there is no eyewitness account to the incident and the appellants have been convicted solely on the basis of

circumstantial and non-reliable evidence but its nature is not as such which can be made basis for their conviction. He submits that the main piece of

evidence relied upon by the trial court against the appellants is the seizure of certain articles pursuant to the disclosure statements of the appellants.

However, in absence of FSL and serological report, the said seizure loses its significance and merely on that basis the conviction cannot be based. He

further submits that though the appellants have been convicted on the basis of their name being mentioned in the FIR, but from the evidence it is clear

that as there was some land dispute between the accused/appellants and the deceased, some cases were also pending in the court below, suspicion

has been drawn that it is the accused/appellants who have committed the murder of the deceased. Lastly he submits that the body of the deceased

was found near the fields where he went to water the fields.

6. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and

there is no illegality or infirmity in it warranting interference by this Court.

7. We have heard counsel for the parties and perused the evidence available on record.

8. Tikaran (PW-1) is the witness to seizure Ex.P-1, P-2 by which blood stained gamchha and slippers of the deceased were made. He has stated that

while recording the statement of Appellant No.1 Shekhraj, he has informed that there was some land dispute between them and the deceased. He has

also informed that on 30.03.2011 at night when the deceased was watering his fields, taking advantage of his loneliness he assaulted him with a

sword-stick and had hidden the said weapon in the sand. On his memorandum the said weapon has been seized. Shankar Lal Agrawal(PW-2) has

also stated that there was some land dispute going on between the appellants and the deceased. Nehru Bariha (PW-3) has stated that on the date of

incident at about 10.00 p.m. when he had gone to attend the natures call, he heard the cries of Yaadram that the appellants are assaulting him. On

hearing the cries when he went there, he saw that the appellants were present there carrying club and axe. Thereafter, he came home and slept. He

has stated that in the morning he heard the noise outside he came out to the place of incident, saw Yaadram lying dead and there were several injuries

on his body. Sonau (PW-4) has stated that on the date of incident when he was coming towards the village, on the way near the boring, he was

washing his face, at that time he heard the cries of Yaadram that the appellants are assaulting him. He has stated that sons of Awadhram were

carrying club and axe. Bhagwan Ram (PW-5) has stated that appellant Awadh Ram has made statement before them that it is he who had assaulted

the deceased with axe and that he had kept the weapon at his home and on his memorandum the axe was seized vide Ex.P-6. Dr. Amrit (PW-6) is

the doctor who had medically examined appellant Shekhraj and gave his report Ex.P-12. Devlal Rathia (PW-07) is the constable who had sent the

sealed articles to FSL, Raipur. Ganesh Ram (PW-8) has stated that on the date of incident, at about 10.00 p.m. when he was returning to Sarangarh,

he saw the accused/appellants running towards the village Kharwani and they were carrying axe, club and knife. Ram Kumar (PW-9) son of the

deceased has stated that it is the accused/appellants who have committed the murder and that there was some land dispute between them. Lakshmi

Narayan Patel (PW-10) has stated that he is a witness to inquest (Ex.P-20) and inquest notice (Ex.P-19). Dr. J.R.Ghritlahre (PW-11) is the autopsy

surgeon who conducted postmortem examination and according to him cause of death is hemorrhagic shock due to extensive injury and the death was

homicidal in nature. Hemant Lal Bharti (PW-12) is the patwari who prepared spot map Ex.P-18. Chetan (PW-13) is the witness who has lodged the

report at PS Sarangarh. Sushil Kumar Sahu (PW-14) is a witness to inquest Ex.P-20 and inquest notice Ex.P-19. K.L.Yadav (PW-15) is the

Investigating Officer who has done the investigation.

Mohd. Imraan Khan (DW-1) & Ravi Sahu (DW-2) have stated that certain documents were signed and certified by them.

9. In the present case, though some of the witnesses have stated that they had seen the incident and that the appellants after committing the murder of

deceased fled from the spot carrying the weapons used in the crime but none of them had gone to the police to inform about the occurrence. From

perusal of the statement of the witnesses it is clear that after witnessing the alleged incident, none of them had chosen to inform the police and it was

a highly unusual conduct on the part of the witnesses. The conduct of the witnesses in not disclosing the fact to the police or anyone else, coupled with

the fact that there is history of inimical relationship on account of some land dispute, alone are sufficient to render their version doubtful and unreliable.

Statements of Nehru Bariha (PW-3) and Sonau (PW-4) were recorded after about one and half month of the incident and the delay inj recording their

statements has not been explained properly. Moreover, the incident had taken place on 30.03.2011 and the statement under Section 161 Cr.PC was

given effect on 12.05.2011 and the delay has not been explained satisfactorily. So far as the recovery of incriminating articles i.e. axe, club and knife

at the instance of the appellants is concerned it is of no consequence for the reasons that the prosecution has failed to prove that these articles have

any nexus with the crime in question. Neither there is report from FSL to show that it contained blood nor is there any report from serologist that the

blood found on it was of human being and that too of the group of the deceased. Though the witnesses to the memorandum and seizure have

supported the prosecution case, but that alone is not sufficient to draw an adverse inference against the appellants particularly when the case rests

solely upon circumstantial evidence. Further, the prosecution has failed to prove the case beyond reasonable doubt by any cogent evidence. True it is

that the conduct of the accused persons, after the incident had taken place is very unnatural and creates strong suspicion against them but that by

itself is not sufficient to convict them. The investigating officer has been questioned but he has not given satisfactory reply.

Though the facts involved in the case and the evidence on record give rise to suspicion about the involvement of the accused/appellants in the cirme in

question, in a series of cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of

evidence. One such judgment of the Apex Court dealing with this fact is Commissioner of Police, Delhi & Others Vs. Jai Bhagwan reported in

2011(6)SCC 376.

10. In view of the above, there is nothing on record to conclusively establish that the appellants are the author of the crime in question. Thus, after

going through the evidence of the prosecution witnesses and the findings recorded by the Court below, we find that the trial court has failed to

understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a case where there was lapse on the part of the

investigating agency and the evidence of the witnesses is not trustworthy which can never be made basis for conviction. There are lots of

contradictions and the evidence of the witnesses is filled with discrepancies and improbable versions which draws us to the irresistible conclusion that

they cannot be made basis to convict the accused. While dealing with the matters involving like that of the present case, it has been held by the Apex

Court in the matters of Krishnegowda & Others reported in (2017)13 Supreme Court Cases 98, Anjan Kumar Sarma & Others Vs. State of Assam

reported in (2017) 14 Supreme Court Cases 359, Shiv Prasad Baghel Vs. State of CG reported in 2018(1) CGLJ 64 that circumstantial evidence and

absence of satisfactory explanation can not be made basis of conviction. All the circumstances even if taken together do not lead to the inference that

it is the accused only who committed the crime in question and in our view, the prosecution has failed to prove its case against the appellants beyond

reasonable doubt. In these circumstances, the appellants are entitled to benefit of doubt.

11. In view of the above discussion, we allow the appeal filed by the appellants. Impugned judgment of conviction and order of sentence is hereby set

aside. The appellants are acquitted of the charges levelled against them. The appellants No.2 & 3 are reported to be on bail. Their bail bonds stand

discharged. So far as appellant No.1 is concerned, he is reported to be in jail. He be set free forthwith if not required in any other case.