
(2023) 02 CHH CK 0052

Chhattisgarh High Court

Case No: Criminal Appeal No. 339 Of 2014

Ajay Sidar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 17, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 374(2), 437A#Evidence Act, 1872 " Section 27#Indian Penal Code, 1860 " Section 302

Citation: (2023) 02 CHH CK 0052

Hon'ble Judges: Sanjay K. Agrawal, J; Radhakishan Agrawal, J

Bench: Division Bench

Advocate: Ishwar Jaiswal, Ruchi Nagar

Final Decision: Allowed

Judgement

Conviction,Sentence

Under Section 302 of Indian Penal Code (for short

Ã¢â¬ÏIPCÃ¢â¬Ï,â),",Imprisonment for life and fine of Rs.10,000/-, in

default of payment of fine additional rigorous

imprisonment for six months

(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.Ã¢â€,â€,

12. Now, we shall consider the incriminating circumstances found proved by the trial Court. PW-2 Jairam, son of the deceased, stated in his deposition",

that on the date of incident, he was at village Pasid and PW-6 Harihar had informed him over telephone that his mother has died. He further stated in",

para 5 that on second day, he came to know about the death of his mother. This witness has turned hostile and not supported the prosecution case.",

PW-3 Smt. Kritika Bai, daughter-in-law of the deceased, PW-4 Ratan Singh, PW-5 Ghasiya Ram, PW-6 Harihar Singh and PW-9 Smt. Ashok Bai",

have neither supported the prosecution case nor stated anything in relation to the commission of offence by the appellant/accused.,

13. PW-7 Sadhuram stated in his deposition that he has no knowledge about the incident and he does not know as to how Radha Bai / deceased died.,

He stated that at about 12:00 pm, he came out of his house and saw that the deceased was lying on the road in front of his house and thereafter, he",

went back to his house and closed the door. This witness has also not supported the prosecution case.,

14. In view of the aforesaid discussion, it is quite clear that there is no eye-witness to the incident. After the incident, one Gourilal who took the",

deceased at her home has also not been examined by the prosecution.,

15. The next circumstance which has been pointed out is that wooden stick has been seized vide Ex.P-10 from the possession of the appellant,

pursuant to his memorandum statement vide Ex.P-9. Though it was seized and proved by PW-10 Anand Ram, Investigating Officer and according to",

the query report vide Ex.P-15, Dr. N.P. Mishra (PW-8) has opined that injury could have been caused by the seized wooden stick which was sent to",

FSL for chemical examination but none of the seizure witnesses has supported the prosecution case and further there is no FSL report on record to,

prove the presence of human blood on the seized weapon. Therefore, the aforesaid circumstance is of no help to the prosecution to establish the",

complicity of the appellant in the crime in question. In this regard, it would be appropriate to refer to the judgment of the Supreme Court in the matter",

of Mani v. State of Tamil Nadu (2009) 17 SCC 273, wherein considering the nature, scope and applicability of Section 27 of the Indian Evidence Act,"

1872, it has been held that discovery is a weak kind of evidence and cannot be wholly relied upon. Paragraph 26 of the said judgment reads as under :-",

“26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the,

discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. We have already held that the",

prosecution has failed to prove that the house where alleged bloodstains were found belonged exclusively or was possessed exclusively by the,

appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts",

that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to,

that effect. Therefore, even if we accept the discovery, it does not take us anywhere near the crime. Both the courts below have ignored this very",

important aspect. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory.”

16. Thus, considering the circumstantial evidence relied upon by the prosecution in light of the principles of law laid down by the Supreme Court in the",

matter of Sharad Birdhichand Sarda (supra), this Court finds that the prosecution has utterly failed to prove appellant is the perpetrator of the crime in",

question. In view of above stated analysis, the learned trial Court is wholly unjustified in convicting and sentencing the appellant for offence under",

Section 302 of IPC. Accordingly, the impugned judgment of conviction and order of sentence dated 14.03.2014, passed by the learned trial Court is not",

sustainable.,

17. Consequently, the conviction of the appellant for the offence punishable under Section 302 of IPC as well as the sentence imposed upon him by",

the learned trial Court is hereby set aside. He is acquitted of the said charge. The appellant is reported to be on bail, therefore, his bail bonds shall",

continue for a period of six months from today in view of the provisions contained in Section 437-A of Cr.PC.,

18. In the result, the criminal appeal is allowed.",