

(2003) 04 CHH CK 0002

Chhattisgarh High Court

Case No: Criminal Appeal No. 197 of 2001

Nehru and Another

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision: April 29, 2003

Acts Referred:

- Evidence Act, 1872 - Section 27, 3
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2004) 1 CGLJ 340 : (2003) 4 MPHT 43

Hon'ble Judges: K.H.N. Kuranga, C.J; L.C. Bhadoo, J

Bench: Full Bench

Advocate: K.N. Nande, for the Appellant; Gautam Bhaduri, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

L.C. Bhadoo, J.

Accused/appellants Nehru and Sainiklal have preferred this criminal appeal u/s 374(2) of the Code of Criminal Procedure being aggrieved by the judgment of conviction and sentence dated 19-1-2001 passed by the learned First Additional Sessions Judge, Raigarh in Sessions Trial No. 129 of 1999 by which the learned Additional Sessions Judge after holding the above accused persons guilty of the offence u/s 302 read with Section 34 of the Indian Penal Code convicted each of them under the said Section and sentenced to undergo imprisonment for life.

2. The relevant facts for the disposal of this criminal appeal are that Mangal Singh gave Merg intimation (Ex. P-1) to Gharghoda Police Station on 25-4-1999 at 10.00 a.m. stating that his brother in relation Ramlal Majhi sowed paddy crop in his field and he used to go every day in the evening to watch the crop. As usual yesterday, i.e., 24-4-1999 in the evening at about 4.00 p.m. he left his residence for his agricultural field and he did not return in the night. Today, in the morning at about

6.00 the ladies of the village went to fetch water from the pond and along with those ladies wife of Ramlal had also gone. From those ladies he along with other villagers came to know that the dead body of Ramlal is lying in the pond and some portion of the body is visible and near the bathing platform of the pond some blood is lying and the clothes and axe of the deceased is also lying there. Thereafter the villagers along with Kotwar of the village went to the site and found that the dead body of Ramlal was lying in the water of the pond. On this, the police after giving intimation to the Panchas, went to the spot and prepared a site map (Ex. P-2). The post-mortem of the body of the deceased was got conducted by Dr. S.N. Kesari (P. W. 13) who noticed five incised wounds on the forehead and near the eye and after conducting the post-mortem the doctor opined that the cause of death of the deceased was asphyxia as a result of drowning and choking of the trachea. Thereafter the Investigating Officer took the accused persons into custody and during the police custody accused Nehru gave a memorandum (Ex. P-4) u/s 27 of the Evidence Act that the weapon of offence - axe he has concealed in his house and he can get the same recovered. At the instance of accused Nehru the axe was recovered vide Ex. P-5. A white Terri cot ready-made shirt stained with blood was taken into possession vide Ex. P-6. The clothes and the axe of the deceased were taken into possession vide Ex. P-8 from the scene of the occurrence. The Panchanama (Ex. P-13) of the dead body was prepared. The recovered clothes and the axe were sent for chemical examination and the reports of the serologist and the FSL were received. The police after completing the formalities filed the charge-sheet against the accused/appellants.

3. The learned Additional Sessions Judge framed the charge u/s 302 read with Section 34 of the Indian Penal Code against both the accused persons and the accused denied the charge.

4. The prosecution in order to prove the case against the accused persons examined fifteen witnesses at the trial. The statements of the accused persons were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the statements of the witnesses and said that they are innocent.

5. Learned Additional Sessions Judge after hearing the arguments of the learned Public Prosecutor and the learned Counsel for the accused persons passed the impugned judgment.

6. We have heard Shri K.N. Nande, learned Counsel for the appellants and Shri Gautam Bhaduri learned Govt. Advocate, for the State/respondent.

7. As far as the question of nature of the death of deceased Ramlal is concerned, learned Counsel for the accused/appellants has not disputed the nature of the death as homicidal. Apart from that Dr. S.N. Kesari (P.W. 13) has said that on 25-4-1999 he conducted the post mortem of the body of deceased Ramlal and he found five incised wounds on the forehead, near the left and right eyes. All the injuries were

ante mortem in nature. The cause of death of the deceased was asphyxia on account of the drowning in the water. Therefore, in view of the statement of the doctor, the death of the deceased was not natural and the same was homicidal in nature.

8. Now, coming to the question whether the accused persons caused the death of the deceased by inflicting the injury by axe and thereafter throwing him into the water, there is no direct evidence and there is no eye-witness in this matter. The whole case rests on the circumstantial evidence and in order to prove the offence against the accused based on circumstantial evidence the Hon"ble Supreme Court has held that in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused. It is on the basis of these principles that we shall examine the circumstantial evidence relied upon by the prosecution in this case.

9. Now we shall examine the circumstantial evidence adduced by the prosecution on the point whether the prosecution has been able to prove the offence against the accused appellants by the circumstantial evidence as per the principle laid down by the Apex Court. The prosecution has tried to prove the offence against the accused appellants through the circumstantial evidence, which are as under :--

- (a) Deceased Ramlal was last seen together with the accused persons on the date of the incident, i.e., on 24-4-1999.
- (b) The weapon of offence - axe was recovered at the instance of accused Nehru.
- (c) The blood stained cloth was recovered at the instance of accused Sainiklal.
- (d) Accused Sainiklal made extra judicial confession before Sitaram about the murder of deceased Ramlal.

The learned Additional Sessions Judge after scrutinizing the evidence of the prosecution has reached the conclusion that the prosecution has been able to establish the offence against the accused persons by proving the above circumstances.

10. As far as point No. (a) is concerned, in this connection the relevant prosecution evidence is that Mangal Singh (P.W. 1) is the person who after coming to know about the death of the deceased reported the matter to the police vide the report (Ex. P-1) and said that he enquired from accused Sainiklal about Ramlal but he did not tell anything. Then he asked accused Sainiklal that he should have searched about the whereabouts of Ramlal. This witness has said that when he and other

villagers reached the pond they saw Chappal and the clothes of the deceased near the pond and the blood was also lying there. Thereafter they went towards the pond and saw the body of the deceased Ramlal in the pond. Ghurau (P.W. 2) has said that he knows deceased Ramlal. How Ramlal died he does not know. On Saturday Ramlal, Nehru, Sainiklal and Bhim came to his shop and after purchasing the sugar and rice they went back. What happened thereafter he does not know. This witness has been declared hostile and in the cross-examination he has said that portion A to A of the statement (Ex. P-3), he has not given to the police. He further said that in his presence the police took out the Tangia from the house of accused Sainiklal and Nehru which was recovered vide Ex. P-4. The other items were recovered vide Ex. P-6. In the cross-examination he has said that he used to visit the house of Ramlal. He gave Rs. 300/- to Ramlal. In Para 6 of the evidence he said that Ramlal, Nehru, Sainiklal, Bhim etc., all came to him separately but all were present at his shop together; at that time no quarrel took place between them. All of them were talking with each other. He did not say that the field of Ramlal dried up. Such statement he has not given to the police. Ugrasen (P.W. 4) in the examination-in-chief has said that he knows accused Nehru and Sainiklal and also knows deceased Ramlal. He has said that he along with Jagatram, Ghurau and one person of Tilaipali were going for taking the bath and saw that Ramlal and accused Sainiklal were standing in the field near the pond and both were quarelling with each other and beating each other. The persons who were with him separated Ramlal and Sainiklal and said that why they were you quarelling and the persons who were with him took them to their residence. How Ramlal died he does not know. In the cross-examination in Para 2 in the last line he has said that he does not remember that how many days before the death of Ramlal, Ramlal and Sainiklal quarrelled with each other. On perusal of the statement of Ghurau (P.W. 2), it reveals that after taking sugar and rice Ramlal, Nehru, Sainiklal, Bhim etc., left his shop. Therefore, in view of the above statement, first of all the time has not been given by this witness that when these persons along with the deceased came to his shop. Moreover, this witness has said that after purchasing the sugar and rice they left. Whereas, the incident had taken place in the field. They came to his shop in the village. There is no evidence to the effect that the accused persons and the deceased were seen together while going to the agricultural field. In view of the above, the last seen theory of deceased Ramlal with the accused persons becomes doubtful. It has been held by the Hon"ble Apex Court in the case of [Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir](#), that last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is also small and possibility of any person other than the accused being the author of the crime becomes impossible. It has been further held that it would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together. Similarly the Hon"ble Apex Court in the case of [Subhash Chand Vs. State of Rajasthan](#), has specifically held that last seen together - must be near about the

date and time of the incident. In the present case, the scene of occurrence is the agricultural field and the wife of the deceased has said that around about in the evening the deceased left for the field in order to watch his crop. Therefore, there is no evidence that while going to the field the deceased was seen in the company of the accused persons. Therefore, the statement of Ghurau (P.W. 2) is of no help to the prosecution and on the basis of evidence of this witness it can not be said that the accused persons and the deceased were seen together near the scene of occurrence or they left together towards the scene of occurrence. As far as the statement of Ugrasen (P.W. 4) is concerned, he has categorically stated that first of all the quarrel had taken place between Ramlal and Sainiklal in the field and he along with persons who were with him got separated them and they were sent back to their houses. Therefore, when accused Sainiklal and deceased Ramlal were sent to the house, the circumstance that they were just seen together before the incident does not connect the accused appellant with the crime. Moreover, there is no evidence that accused Nehru was also present there. In the cross-examination this witness has stated that how many days before the death of the deceased the quarrel between deceased Ramlal and accused Sainiklal took place he does not know. Therefore, there is no circumstantial evidence that on the fateful day of the incident, i.e., 24-4-1999 he saw the quarrel between deceased Ramlal and accused Sainiklal in the field. As such, the evidence of last seen together of the accused and the deceased does not inspire confidence.

11. In view of the above discussion, the prosecution has not been able to prove that on the day of the incident or before the death of the deceased, the accused persons and the deceased were seen together or going towards the place of incident or near the place of the incident.

12. As far as the recovery of the axe at the instance of accused Nehru vide Ex. P-5 is concerned, as per the report of the Serologist human blood was found on the axe but there is no report that the blood found on the axe was of the same blood group of the deceased. Moreover, one more axe was also recovered from the place of the occurrence, which was said to be of deceased Ramlal. As such, in view of this fact, the recovery of the axe at the instance of accused Nehru from his house can not connect with the murder of the deceased by the accused persons. Apart from that, in the information memorandum (Ex. P-4) accused Nehru has said that the axe by which he had committed the offence was concealed in the corner of the house and which he could get recovered. Whereas Ghurau (P.W. 2) has stated that the axe was recovered at the instance of accused Sainiklal and Nehru and both took out the same from inside the house. Therefore, it can not be said that the axe was exclusively within the knowledge of accused Nehru. In view of the above discussion, it can not safely be believed that this recovery of axe at the instance of accused Sainiklal connect accused Nehru and Sainiklal with the murder of deceased Ramlal.

13. As far as recovery of blood stained clothes of accused Sainiklal vide Ex. P-6 is concerned, there is no evidence that the blood found on the shirt of accused Sainiklal was of the same group of the deceased. Without this evidence recovery of the shirt can not connect accused Sainiklal with the murder of deceased Ramlal. Therefore, the recovery of the axe and the shirt can not connect the accused persons with the murder of the deceased.

14. As far as the extra judicial confession made by accused Sainiklal before Sitaram about the murder of Ramlal is concerned, upon which the learned Additional Sessions Judge has placed reliance while holding the accused appellants guilty, Sitaram (P.W. 5) has turned hostile and said that accused Sainiklal came to his house and told that I will prepare the food. On his enquiry Sainiklal said that his wife has gone to the village and thereafter he left his house. This witness has said that he did not give the statement A to A of Ex. P-7 to the police. Therefore, the prosecution has failed to prove that accused Sainiklal made extra judicial confession before this witness Sitaram.

15. In view of the above, the prosecution has not been able to brought home the guilt against the accused persons. The circumstantial evidence adduced by the prosecution to connect the accused appellants with the murder of deceased Ramlal does not stand up to the standard prescribed by the Apex Court and the circumstantial evidence can not be relied upon to connect the accused appellants with the murder of the deceased. Therefore, the judgment of the learned Trial Court after placing reliance on the above circumstantial evidence convicting the accused appellants can not be sustained and the same is liable to be set aside.

16. In the result, the appeal of the accused appellants is allowed. The judgment of conviction and sentence passed by the learned Trial Court is set aside and the accused appellants are acquitted of the charge u/s 302 read with Section 34 of the Indian Penal Code. They be set at liberty forthwith if not required in any other case.