

Chingada Alias Chamara Vs. State of Chattisgarh

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Court : Chhattisgarh

Decided On : Jun-29-2010

Judge : Shri Dhirendra Mishra, Shri R.N. Chandrakar, JJ.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 313;
Indian Penal Code (IPC) - Section 302

Appeal No. : Criminal Appeal No.285 of 2003

Appellant : Chingada Alias Chamara

Respondent : State of Chattisgarh

Advocate for Def. : Shri Arun Sao, Govt. Adv.

Advocate for Pet/Ap. : Shri Alok Dewangan, Adv.

Judgement :

J U D G M E N T

The following judgment of the Court was delivered by Dhirendra Mishra, J.

1. The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 11th July, 2002 passed in S.T. No.271/2002 whereby learned 4th Additional Sessions Judge (FTC), Bastar at Jagdalpur, after holding the appellant guilty for committing murder of Sharad Chandra Yadav, has convicted him under Section 302 of the IPC and sentenced to undergo imprisonment for life

and to pay a fine of Rs.200/-, in default of payment of fine to further undergo additional R.I. for 4 months.

2. The case of the prosecution, in brief, as projected in the impugned judgment is that, on 5-2-2000 at about 9 pm the appellant came with two bottles of liquor in the house of Sharad Chandra. Both of them consumed liquor from one bottle. When the deceased opened second bottle, the accused went away. Deceased Sharad after consuming liquor fell sick, suffered stomachache and started writhing. His wife Meena went in search of the accused and returned back, as she did not find him. Looking to the condition of her husband, she called doctor and on his advise, she took him in a rickshaw to the hospital where the deceased died on 6-2-2000 at 11.30 am.

3. Merg was registered on 6-2-2000 on the basis of information received from hospital vide Ex.-P/4. After preparing inquest over the dead body vide Ex.-P/10, the dead body was sent for autopsy to Maharani Hospital, Jagdalpur vide Ex.-P/11, where Dr. M.A.H. Rizvi (PW-7) conducted postmortem and gave his report vide Ex.-P/5 on 7-2-2000. One bottle of English wine containing liquid of yellow colour was taken into possession on 9-2-2000 at 15.00 hours on being produced by Meena Yadav in Police Station vide Ex.-P/1.

4. Crime was registered on 1st March, 2000 on information of Raj Kumari Pandey, Assistant Sub Inspector vide Ex.-P/2. Two plastic sealed containers containing viscera of the deceased preserved during postmortem and received from hospital was taken into possession vide Ex.-P/3.

5. In reply to query dated 23-2-2000 by the IO, Dr. Rizvi gave his opinion on 1-3-2000 vide Ex.-P/7. Site plan was prepared by the I.O. on 2nd March, 2000 vide Ex.-P/8. In reply to other query dated 27-2-2000, Dr. V.K. Joshi (PW-10) gave his opinion vide Ex.-P/13.

6. Bottle containing liquor and two bottles containing viscera of Sharad Chandra Yadav and solution of salt were sent for chemical examination to FSL, Sagar and the report of FSL is Ex.-P/15. As per the report of the FSL, liquor in the bottle contained Mono Chrotophos and ethyl alcohol and the container containing

viscera also contained Organo Phosphorous insecticide Monochrotophos and ethyl alcohol.

7. After completing usual investigation, charge sheet was filed against the appellant in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Court of Sessions Judge, Jagdalpur and the same was received on transfer for trial by learned Additional Sessions Judge.

8. Learned Additional Sessions Judge framed charge under Section 302 of the IPC against the appellant, who abjured guilt.

9. The prosecution examined 15 witnesses in all. Thereafter statement of the accused was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

10. The trial Court after hearing learned counsel for the respective parties, convicted and sentenced the appellant as mentioned in para-1 of the judgment.

11. Sharad Chandra Yadav's death on account of poisoning has not been disputed. From the following un rebutted evidence also, it is established that the deceased died as a result of consuming poisonous substance organo phosphorous insecticide Monochrotophos.

"Meena (PW-2) has deposed that after consuming liquor from the second bottle, condition of her husband started deteriorating and she took him to the hospital. Dr. Rizvi (PW-7) has conducted postmortem and on internal examination found that pungent foul smell like suspected organo phosphate type was emanating from abdomen. He had preserved viscera and advised chemical examination. In reply to the query, he had submitted his report of Ex.-P/6 and opined that it was possible that the deceased could die due to organo phosphate and ethyl alcohol vide his report of Ex.-P/6. However, he had opined that it is not possible to tell the cause of death vide his report of Ex.-P/7 dated 1st March, 2000. The report received from FSL (Ex.-P/15) also mentions that the bottle containing yellow liquid marked as Ex. `A' and 2 containers containing viscera of the deceased marked as Ex. `B' and

`C' contained Organo Phosphorous insecticide Monochrotophos and ethyl alcohol."

12. Learned counsel for the appellant vehemently argued that in order to sustain conviction in the cases of murder by poisoning, the prosecution is duty bound to establish that the accused had a clear motive for administering poison to the deceased. In the instant case, wife of the deceased has clearly stated that the appellant frequently visited her house and they used to consume liquor together and he did not have any enmity with them. There is no evidence available on record that the appellant had any motive for committing murder of the deceased. There is no evidence that the accused had poison in his possession and that he had an opportunity to administer poison to the deceased. On the contrary, on the date of the incident, the deceased consumed liquor with Ten Singh Thakur at about 6 pm. His conviction is based on the evidence of Meena (PW-2), wife of the deceased, and Shankar (PW-3), father of the deceased. Meena claims to be the witness of the fact that the appellant brought 2 bottles of liquor. Both of them consumed liquor with the first bottle. When her husband opened second bottle, the appellant went away and only after consuming liquor from the second bottle, the deceased fell sick and ultimately died. Liquor in the second bottle contained poison. The bottle containing liquor was not seized from the appellant and the same was seized after 4 days of the incident on 9-2-2000 on being produced by Meena in police station. In these circumstances, there is material discrepancy in the description of the bottle and colour of the liquid in bottle given by Meena Bai. There is inter se contradiction in the version of Meena Bai and her father-in-law Shankar Yadav (PW-3). There is evidence that there was quarrel between his son Praveer and Sharad. His father has admitted that he did not work and consumed liquor and, there fore, there used to be some quarrel between the husband and the wife and Sharad used to beat her. From overall evidence, it is evident that the prosecution has failed to establish that the appellant alone had an opportunity to administer poisonous liquor to the deceased. The trial Court has given undue importance to the fact that the appellant remained absconding after the incident for more than 2 years. The appellant is rustic villager of 21 years. The above fact alone cannot be considered to be a circumstance to fasten charge of murder. Even otherwise, no evidence has been adduced by the prosecution that the

appellant was absconding for more than 2 years and the above circumstance has also not been put to the appellant in his examination under Section 313 of the Cr.P.C..

13. On the other hand, learned counsel for the State supported the impugned judgment.

14. We have heard learned counsel for the parties. We have perused the record as also the impugned judgment.

15. The Hon'ble Supreme Court in the matter of Sharad Birdhichand Sarda vs. State of Maharashtra {(1984) 4 SCC 116} while considering murder by poison or suicide has held in paragraph 165 of the judgment thus:

"So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

- (1) There is a clear motive for an accused to administer poison to the deceased,
- (2) That the deceased died of poison said to have been administered,
- (3) That the accused had the poison in his possession,
- (4) That he had an opportunity to administer the poison to the deceased."

16. In the matter of Bhupinder Singh vs. State of Punjab {(1988) 3 SCC 513}, the Hon'ble Apex Court has doubted the availability of the above third circumstance as necessary to establish the case of murder by poisoning. Paragraphs 25 & 26 of the above judgment are reproduced hereunder:-

"25. We do not consider that there should be acquittal or the failure of the prosecution to prove the possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder

would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

26. The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the court may be justified in drawing permissible inference that the accused was in possession of the poison in question. There may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the court can legitimately draw from the circumstances an inference on any matter one way or the other."

17. This Court in the matter of Krishna v. State of C.G. {2008(1) CGLJ 107 (DB)} following the above judgments of the Supreme Court, considering that the motive was not proved for administering poison and also considering material contradictions in the evidence of prosecution witnesses regarding time and manner in administering poison, had acquitted the appellant.

18. We propose to examine the oral evidence adduced by the prosecution in the light of principles of law laid down by the Hon'ble Supreme Court in the matter of Sharad Birdhichand Sarda (Supra) and Bhupinder Singh (Supra) to ascertain whether in the present case the four important circumstances have been established or not. Whether there is a clear motive for the accused to administer

poison to the deceased?

19. The trial Court in para-25 of the impugned judgment on the basis of evidence of PW-3 Shankar has observed that Praveer is the elder brother of the deceased, who resides separately, and on last Holi i.e. on 5-3-99 Praveer had attacked Sharad Chandra by arrow and bow and the case was registered against him. Further referring to the written report lodged by Meena, reproduced in the first information report, it has been observed that when Meena went to enquiry about the accused to Praveer's house, he got annoyed and abused her and became ready to beat her. Thereafter he also ran away with the accused. On the basis of this evidence, it has been observed that the appellant committed this heinous offence in the interest of his brother-in-law knowing fully well that by consuming poisonous alcohol Sharad Chandra would die.

20. PW-2 Meena, in her cross-examination at para-5, has categorically deposed that Chingda often came to their house and consumed liquor with her husband. He had no enmity with them.

21. PW-3 Shankar has deposed that he has two sons. His elder son's name is Praveer whereas younger is Sharad. In para-3, he has deposed that there was some dispute between the two sons and they were not in talking terms. There was some quarrel between them at the time of Holi festival. PW-2 has also deposed that she had given written complaint to the police and in her complaint; she had mentioned that Praveer had attacked her husband by bow and arrow on 7-3-99. From the evidence of this witness, it is also evident that there was frequent quarrel between Meena and the deceased on account of consumption of alcohol. He used to beat her also. PW-3 Shankar has also deposed the above fact.

The finding of the trial Court that the appellant might have administered poisonous alcohol to the deceased in the interest of his brother-in-law Praveer, who had inimical relationship with his real younger brother Sharad, is perverse and based on conjectures and surmises in view of the categorical assertions of Meena Bai that her husband used to consume liquor with the accused and he did not have any enmity with them. The trial Court was wholly unjustified in reaching to positive conclusion that the appellant had a motive to commit murder of the deceased and

accordingly, we hold that the prosecution has utterly failed to prove that the appellant had any motive to commit murder of the deceased. On the contrary, we hold that the appellant had cordial relations with the deceased. He used to frequently visit the house of the deceased in his life time.

Whether the deceased died of poison said to have been administered?

22. So far as this circumstance is concerned, we have already held that the deceased died on account of organo phosphorous insecticide Monochrotophos.

Whether the accused had the poison in his possession and whether the accused had an opportunity to administer the poison to the deceased?

23. The bottle containing poisonous liquor has been seized from Meena PW-2 on being produced by her on 9-2-2000 in the Police Station vide Ex.-P/2. Meena has deposed that her husband had consumed liquor from one bottle and some part of another bottle. At that time she was present in the house and saw him consuming liquor. The appellant was with him and both were consuming liquor. Chingda consumed liquor from the first bottle with her husband; however, he did not take liquor from the second bottle and ran away. Her husband had consumed liquor from the second bottle also and his condition started deteriorating whereupon she went to the house of Praveer to call Chingda, however, he was not present in his house, thereafter she took her husband to Maharani Hospital where he died on Sunday at about 8-9 am. She had gone to lodge report and had given written report to the police. Colour of the liquor was red. In cross-examination, she has stated that Chingda had brought 2 bottles of liquor. Both bottles were 'Half' (Adhdhi). Her husband had opened first bottle with the help of knife, however, he had opened second bottle by hand. He consumed liquor from the second bottle, however, the accused did not consume liquor from the second bottle as he had gone out. She had taken only one bottle to the police station. She has also stated that she lodged report after 8 days of the incident. She has further stated that she had given written report in the office of the Superintendent of Police and along with her application; she had handed over bottle containing liquor.

24. PW-3 Shankar has deposed that his son poured liquor in two glasses and was handing over to him. He went to ease out and by the time he returned, Sharad had taken liquor from the glass and asked him not to drink as poison has been mixed. Thereafter, he started complaining stomach pain and writhing. In cross-examination, he has deposed that he saw the appellant and Sharad consuming liquor in his house, however, they did not quarrel in his presence. Chingda had come to his house at 7-8 pm. When Chingda came to his house, he offered liquor when he returned after watching TV.

25. PW-4 Ten Singh Thakur has also deposed that on the date of the incident he had consumed liquor with the deceased at 6 pm. The deceased fell sick 2-3 hours after consuming liquor. He was complaining pain in the stomach and vomiting. He was admitted in the hospital where he died. He has categorically deposed that he did not see the appellant visiting Sharad's house.

26. Thus, from the above evidence of the witnesses, it is clear that on the date of the incident, the deceased consumed liquor with Ten Singh Thakur as well as the appellant. There is evidence that two bottles of liquor were not brought by the appellant, however, during investigation, second bottle allegedly brought by the appellant nor glasses which were used for consuming liquor were promptly seized and sealed. Second bottle of liquor has been seized from the possession of Meena on 9-2-2000 in the police station on being produced by her. Thus, the bottle remained in possession of Meena in unsealed condition for 4 days. She has also deposed that she had given bottle of poison in the office of the Superintendent of Police along with her written complaint which she claims to have lodged after 8 days. The bottle which has been seized on 9-2-2000 from Meena has been forwarded to the FSL. In these circumstances, the finding of the trial Court that bottle of poisonous liquor was the same bottle which was allegedly brought by the appellant is not proper and evidence adduced by the prosecution in this regard does not inspire confidence. In the absence of any evidence that bottle which the appellant brought was in fact seized and the same contained poison and the same was sent for chemical examination to the FSL; on mere evidence of Meena Bai and Shankar that the deceased and the appellant both consumed liquor brought by the appellant and on account of consuming liquor from the

second bottle, the deceased died, it cannot be held that the appellant alone had an opportunity to administer poison to the deceased, particularly, in the light of uncontroverted evidence of Ten Singh, who has also deposed that he along with the deceased consumed liquor on the same day at about 6 pm and 2-3 hours thereafter he complained pain in the stomach and vomited and died in the next day in the hospital.

27. For the aforesaid reasons, we are of the opinion that the prosecution has also failed to prove the circumstance that the appellant alone had an opportunity to administer poison to the deceased. We have already observed that there was absolutely no apparent reason for the appellant to administer poison to the deceased as there is evidence that the appellant had cordial relations with the deceased.

28. The Hon'ble Supreme Court in the matter of Jaipal v. State of Haryana {(2003) 1 SCC 169}, has referred to the judgment of Sharad Birdhichand Sarda (Supra) with approval and in paragraph 33 of the judgment it has been held thus:-

"33. Dealing with a case of circumstantial evidence the court has to be circumspect. A note of caution was sounded by a Constitution Bench of this Court in Raghav Prapanna Tripathi v. State of U.P., quoting (at AIR p.89, para 60) from R. v. Hodge: "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them in little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

29. We are unhesitatingly of the opinion that the prosecution has utterly failed in proving such chain of circumstantial evidence as would fasten the guilt on the accused leaving no room for doubt.

30. In the result, the appeal is allowed. The conviction of the accused under Section 302 of the IPC and the sentence passed thereon by the trial Court are set aside. The accused/appellant is acquitted. He shall be released forthwith if not

required to be detained in any other offence.

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