

Chandra Kumar Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Mar-04-2011

Judge : T.P. Sharma & R.L. Jhanwar

Appeal No. : Criminal Appeal No 159 of 2003

Appellant : Chandra Kumar

Respondent : State of Chhattisgarh

Judgement :

(Criminal appeal under Section 374 2 of the Cr PC)

SHARMA, J: -

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23-12-2002 passed by the 3rd Additional Sessions Judge (FTC), Janjgir, in Sessions Trial No.195/2002, whereby and whereunder learned Additional Sessions Judge after holding the appellant guilty for commission of culpable homicide amounting to murder of his wife Kaushalya Bai and concealing the evidence of criminal case, convicted the appellant under Sections 302 and 201 of the IPC and sentenced him to undergo imprisonment for life and RI for three years, respectively.

2. Conviction is impugned on the ground that without any iota of evidence, the trial Court has convicted and sentenced the appellant, and thereby committed illegality.

3. As per case of the prosecution, on the fateful day of 8- 4-2002 at about 9 a.m. appellant Chandra Kumar was present in house along with his wife Kaushalya Bai (since deceased), the appellant caused fatal injury upon head of Kaushalya Bai and caused her death, thereafter, with a view to conceal the evidence of criminal case, the appellant along with his father Laxmi Prasad burnt the dead body of Kaushalya Bai. Thereafter, factum of burns came to the knowledge of the villagers. The appellant himself lodged merger which was recorded vide Ex.P-14. The Investigating Officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-2, prepared inquest over the dead body of the deceased vide Ex.P-3. Plain soil and soil containing smell of kerosene was recovered from the spot vide Ex.P-4. Dead body was sent for autopsy to Primary Health Centre, Pamgarh vide Ex.P-5. Team of doctors comprising Dr. D.C. Choudhary (PW-5) and Dr. R.K. Agrawal conducted autopsy vide Ex.P-5 and found following symptoms/injuries: -

O 60% body was burnt.

O Swelling as a result of burns over knee.

O Scalp was missing from front part of head i.e. frontal bone and frontal bone was depressed.

O Redness over injured part was found.

Cause of death was as a result of head injury and burns were post mortem in nature. Mode of death was coma and death was homicidal in nature. During the course of investigation, accused/appellant Chandra Kumar was taken into custody, he made disclosure statement of carpenter axe vasula vide Ex.P-8 and same was recovered at his instance vide Ex.P-9, along with broken handle. Articles found over the body of the deceased at the time of autopsy were seized vide Exs.P-10 and P-11. Burnt pieces of clothes, lantern and kerosene oil

container were seized from the spot vide Ex.P-12. Spot map was prepared vide Ex.P-16. Finally, FIR was lodged vide Ex.P-17. Seized articles were sent for chemical examination and presence of kerosene was confirmed vide Ex.P-22.

4. Statements of the witnesses were recorded under Section 161 of the Cr PC. Patwari prepared spot map vide Ex.P-1. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Janjgir who committed the case to the Court of Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

5. In order to prove the guilt of the accused, the prosecution has examined as many as fourteen witnesses. The appellant and co-accused were examined under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. The appellant has taken specific defence that Ashwani Bai (PW-3) and her husband Raj Kumar have falsely implicated him on account of demand of money for cremation and last rituals of the deceased.

6. After affording opportunity of hearing to the parties, learned Additional Sessions Judge while acquitting co-accused Laxmi Prasad - father of the appellant, convicted and sentenced the appellant in the aforesaid manner.

7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellant vehemently argued that the appellant has not committed murder of his wife Kaushalya Bai and has not concealed the evidence of criminal case. While Kaushalya Bai was coming down from stairs, she fell down upon sharp edged object and sustained injuries and as a result of such injuries she died. The appellant was arrested on the suspicion of commission of murder of his wife Kaushalya Bai, her cremation and last rituals were performed by uncle of the appellant namely Raj Kumar and aunt of the appellant namely Ashwani Bai (PW-3), thereafter they demanded money of Rs.50,000-60,000/- towards expenses of last rituals of Kaushalya Bai which the appellant was not in a position to pay and, therefore, uncle and aunt of the

appellant have falsely stated against the appellant. In the present case, the prosecution has examined the witnesses after long gap and has not offered any explanation. The alleged eyewitnesses have not disclosed the name of the assailant immediately.

9. Learned counsel for the appellant placed reliance in the matter of Balakrushna Swain v. The State of Orissa in which the Supreme Court has held that unjustified and unexplained long delay on part of investigating officer in recording statement of material eye witness during investigation of murder case will render evidence of such witness unreliable. Learned counsel further placed reliance in the matter of State of Orissa v. Mr. Brahmananda Nanda in which the Supreme Court has held that eye-witness not disclosing name of assailant for a day and a half, his evidence does not inspire confidence and is not trustworthy. Learned counsel also placed reliance in the matter of Ganesh Bhavan Patel and another v. State of Maharashtra in which the Supreme Court has held that on the basis of doubtful prosecution story, accused cannot be convicted and the investigating officer is required to explain the delay in recording the statements of witnesses. Learned counsel relied upon the matter of Sahiya v. State of U.P. in which the Supreme Court has held that statement of witness recorded after 15 days of incident by police makes his statement doubtful. Learned counsel further relied upon the matter of The State of U.P. and another v. Jaggo alias Jagdish and others in which the Supreme Court has held that the prosecution is not required to examine all witnesses but is required to examine witness whose evidence is essential to unfold case of the prosecution, non-examination of such witness seriously affects the truth of the prosecution case. Learned counsel also relied upon the matter of The State of Punjab v. Bhajan Singh and others in which the Supreme Court has held that decomposed dead body not sent to an anatomy expert by the autopsy surgeon, adverse inference cannot be drawn against the accused. Learned counsel placed reliance in the matter of Badri v. State of Rajasthan in which the Supreme Court has held that evidence of single witness is sufficient to prove charge but the Court is required to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness. Learned counsel further placed reliance in the matter of Muluwa S/o Binda and others v. The State of Madhya Pradesh in which the

Supreme Court has held that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not counted. Learned counsel also placed reliance in the matter of Baldev Singh v. State of Punjab in which the Supreme Court has held that accused cannot be convicted on basis of statement before police. Learned counsel relied upon the matter of Mayur Panabhai Shah v. State of Gujarat in which the Supreme Court has held that evidence of doctor is required to be appreciated like that of any other witness. Learned counsel further relied upon the matter of Md. Ankoos and Ors. v. The Public Prosecutor, High Court of A.P. in which the Supreme Court has that acceptance of evidence of prosecution witnesses by High Court by verifying their statements recorded under Section 161 (3) of the Cr PC from case diary is illegal. Learned counsel also relied upon the matter of Archi Nawal Kishore Kujur v. State of Bihar in which the Patna High Court has held that in absence of motive and proof of homicidal death on the basis of strong doubt about conduct of accused, accused cannot be convicted.

10. On the other hand, learned State counsel vehemently opposed the appeal and submitted that evidence adduced on behalf of the prosecution is sufficient for drawing inference that only the appellant has committed homicidal death of his wife in his house and has concealed the evidence of criminal case. The trial Court has rightly convicted and sentenced the appellant as aforementioned.

11. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

12. In the present case, as per evidence of Dr. D.C.Choudhary (PW-5), ante mortem injury was found over head of the deceased, part of head was missing, burn injury was post- mortem burn and cause of death was coma. Dr. D.C. Choudhary (PW-5) has admitted in para 8 of his cross-examination that part of frontal region of head was missing and he has conducted autopsy along with Dr. R.K. Agrawal on the ground that abnormal death was of young female. Evidence of Dr. D.C. Choudhary (PW-5) reveals that head of the deceased was badly effected and after such injury at least she herself was not in a position to set

herself ablaze. Milauram (PW-2) has deposed that burnt dead body of Kaushalya Bai was taken out from first floor (pataw) for inquest and inquest was prepared vide Ex.P-3, dead body was badly burnt.

13. Ashwani Bai (PW-3) - wife of uncle of the appellant, has deposed that the appellant has caused fatal injury to his wife Kaushalya Bai and caused her death. As per her evidence, the appellant has caused homicidal death of his wife. As per para 7 of her evidence, the appellant was present in his house and after some time every body noticed that room of first floor of the appellant was burnt. In paras 7 and 8 she has deposed that she was threatened by the appellant and, therefore, she did not tell this incident to any person on same day, but when her husband came from Sakti, where he was serving, on second day, she narrated the incident to her husband and thereafter, after one month, she narrated the incident to the police. Defence has cross-examined this witness at length and tried to establish that she is not eyewitness and has not seen the incident. She was confronted from her previous statements Exs.D-1 and D-3 recorded under Section 161 of the Cr PC and Ex.D-2 recorded under Section 164 of the Cr PC. In Ex.D-1 recorded on 9-4-2002 - second day of the incident, she has not stated anything relating to commission of murder of Kaushalya Bai by the appellant, but in her statement recorded under Section 164 of the Cr PC by the Magistrate on 31-5-2002 (Ex.D-2) and also in Ex.D-3 - supplementary statement recorded by the police on 7-5-2002 in support of Ex.D-2, she has stated about the incident in detail. In para 4 of her evidence, she has stated that the appellant has thrown and broken TV and fan belonging to Kaushalya Bai, probably which have been given at the time of her marriage.

14. Babulal (PW-4) - elder brother of the deceased, has deposed that he was informed about the death of his sister by Malikram and Pradeep Sharma, then he immediately rushed to the house of the appellant along with his parents where he saw TV, fan and cycle in broken condition, other articles were scattered, kerosene oil smell was coming from the room where other articles were scattered and dead body of Kaushalya Bai was taken out by the police from one room, it was in burnt condition.

15. Investigating Officer L.P. Patel (PW-12) has prepared spot map vide Ex.P-16 which shows that broken table, broken fan, broken TV, broken table-fan, broken cycle and other articles were found in the house of the appellant. While answering question No.9, the appellant has denied the question relating to the aforesaid fact and broken articles found in his house, and the fact that the articles were scattered in his house.

16. Defence has cross-examined Babulal (PW-4) in detail, but has not suggested anything to him relating to such broken articles and the articles found scattered in the house of the appellant, same also finds support from spot map Ex.P-16 and evidence of L.P. Patel (PW-12). Defence has also cross-examined Ashwani Bai (PW-3) in detail relating to the fact that she has not seen the incident, she is not eyewitness and on account of demand of money she is falsely implicating the appellant. Defence has not suggested anything to this witness relating to the aforesaid broken articles and the articles found scattered in the house of the appellant. As per defence of the appellant, at the time of such incident of burn, he was not present in his house, he has denied the question put to him relating to the factum of aforesaid damaged and broken articles and the articles found scattered, but same has been established by evidence of Ashwani Bai (PW-3), Babulal (PW-4), L.P. Patel (PW-12) and spot map Ex.P-16.

17. Milauram (PW-2) has admitted in para 9 of his cross-examination that last rituals of deceased Kaushalya Bai were performed by Ashwani Bai (PW-3) and her husband Raj Kumar, Raj Kumar demanded expenses of such performance and threatened mother of the appellant that if she will not pay, they will state against the appellant and his father. As per evidence of Milauram (PW-2) and Ashwani Bai (PW-3), relation between Ashwani Bai (PW-3) and the appellant's family was not cordial. In these circumstances, there may be chance of false implication and evidence require deep scrutiny before accepting the same.

18. Police has recorded two statements of Ashwani Bai (PW-3) viz., Ex.D-1 on 9-4-2002 and Ex.D-3 on 7-5-2002, and her statement under Section 164 of the Cr PC (Ex.D-2) was recorded by the Magistrate on 31-5-2002. In first statement

Ex.D-1 recorded on second day of the incident she has not stated anything against the appellant, but in subsequent statements Exs.D-3 and D-2 she has stated in detail relating to the incident.

19. In Balakrushna's case (supra), the Supreme Court has held that unexplained long delay on part of investigating officer in recording statement of material eye witness during investigation of murder case will render evidence of such witness unreliable. While dealing with question of delay in recording statements of witnesses, the Supreme Court in the matter of Ganesh Bhavan (supra), has held that delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. In Sahiya's case supra, the Supreme Court has held that unexplained delay of 15 days in recording statement of material witness is fatal to the prosecution.

20. In the present case, the investigating officer has not caused any delay in recording statement of witness. Statement of Ashwani Bai (PW-3) has been recorded on 9-4-2002 - second day of the incident, in which she has not stated anything against the appellant, but after lapse of about one month her supplementary statement was recorded vide Ex.D-2 in which she has stated the details of incident and thereafter, her statement was recorded by the Magistrate vide Ex.D-3. Evidence of Ashwani Bai (PW-3) reveals that she herself has informed police about the incident after some time, but she has not disclosed the name of the appellant on second day. In the present case, the investigating officer has not recorded statement of this witness after lapse of considerable time and has not explained the delay in recording such statement. As held by the Supreme Court in Mr Brahmananda's case (supra), in a murder case if the entire prosecution case is depended on the evidence of a person claiming to be eye-witness who has not disclosed the name of the assailant for a day and a half after the incident and the explanation offered for non-disclosure found unbelievable, then such non-disclosure is a serious infirmity which destroys the

credibility of the evidence of the witness and his evidence is required to be rejected as untrustworthy.

21. In the present case, Ashwani Bai (PW-3) has not disclosed the name of the appellant on second day but has disclosed the name of the appellant after lapse of one month, she has offered explanation that she was threatened by the appellant that he will also kill her and, therefore, she has not disclosed the name of the appellant on second day when her statement was recorded. However, after lapse of one month she herself has informed the police and thereafter her supplementary statement was recorded by the investigating officer, and the Magistrate has also recorded her statement. Suggestion given to this witness and to Milauram (PW-2) reveals that 12-14 years prior to the incident relation between Ashwani Bai's (PW-3) family and the appellant's family was not cordial. But the fact remains that they are relatives and neighbours. In these circumstances, false implication or threat to cause injury is not unnatural.

Therefore, evidence of Ashwani Bai (PW-3) requires substantial corroboration from independent sources.

22. Ashwani Bai (PW-3) is the witness who has deposed about breaking of table, fan, TV, cycle and the fact that other articles were scattered in the house of the appellant at the time of incident which finds support from evidence of Babulal (PW-4) - brother of the deceased and spot map Ex.P-16 prepared by Investigating Officer L.P. Patel (PW-12). Defence has not suggested anything to Ashwani Bai (PW-3) relating to aforesaid facts, though the appellant has denied this fact in his examination under Section 313 of the Cr PC. This shows that Ashwani Bai (PW-3) has visited or has seen the aforesaid facts. In case of enmity of high degree, it was not possible for her to visit the house of the appellant, but her evidence reveals that enmity is not of so high degree, she is residing near the house of the appellant, and when she heard the sound of quarrel, she went near the house of the appellant and has seen the incident. Definitely, as held by the Supreme Court in the matter of Muluwa (supra), she is infirm witness and her evidence does not become reliable only on the ground that it has been corroborated by a number of witnesses of the same brand. As

held by the Supreme Court in the matter of Badri (supra), conviction can be based on the evidence of single witness but to base conviction on the evidence of single witness the Court is required to satisfy itself whether it can be reasonably satisfied to act upon the testimony of single witness for purpose of convicting a person.

23. In the present case, evidence of Ashwani Bai (PW-3) is corroborated by tangible evidence i.e. presence of broken TV, fan, table and scattering of other articles. There was no propriety for the appellant to break such articles received at the time of marriage of Kaushalya Bai (since deceased) which substantially corroborates the evidence of Ashwani Bai (PW-3) that she has seen the incident and the appellant has caused fatal injury to his wife Kaushalya Bai. As per medical evidence of Dr. D.C. Choudhary (PW-5) and inquest report Ex.P-3, there was injury mark over scalp and bloodstains were also found on scalp which has been noticed in inquest Ex.P-3. Dr. D.C. Choudhary (PW-5) has also noticed oozing of blood and red colour in the area of frontal bone which was missing, burn injury was up to 60% and complete body was not burnt. In these circumstances, presence of stains of blood or red colour in the area of such injury was not unnatural. Aforesaid head injury was ante mortem and burn injury was post mortem. In case of ante mortem injury of head to the extent of missing of part of bone of head, it was not possible for the deceased person to set herself ablaze.

24. In the matter of Mayur (supra), the Supreme Court has held that evidence of doctor has to be appreciated like that of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth. In the present case, finding of the doctor relating to injury has been considered which is well corroborated by the evidence of other witnesses and inquest report, no extra weightage has been given to the evidence of doctor.

25. As per case of the defence, no other person or the appellant has burnt the house of the appellant and there was no possibility of post mortem burn injury over the dead body of the deceased. The appellant was present in the house. He was under obligation to explain as to how the deceased sustained ante

mortem serious head injury and post mortem burn injury, but the appellant has not offered any explanation. These substantial circumstances also substantially corroborate the evidence of Ashwani Bai (PW-3) that the appellant has caused ante mortem injury to the deceased, after causing such injury and after death of Kaushalya Bai, he set her ablaze.

26. As held by the Supreme Court in Jaggo's case (supra), in the present case, defence has not taken defence that evidence of any other witness is essential for unfolding the real story, even otherwise, defence himself has not examined such witness to unfold the real story. Therefore, the case of Jaggo (supra) is distinguishable on facts to that of the present case.

27. As held by the Supreme Court in Baldev Singh's case (supra), the trial Court not convicted the appellant on the basis of statement given by the witness before police, but the trial Court has convicted and sentenced the appellant on the basis of evidence given before it. Therefore, the case of Baldev Singh (supra) is also distinguishable on facts to that of the present case.

28. As held by the Supreme Court in Bhajan Singh's case (supra), in the present case, no adverse inference has been drawn against the accused on failure of prosecution or non-obtaining report from other expert. Therefore, the case of Bhajan Singh (supra) is also distinguishable on facts to that of the present case.

29. As held by the Supreme Court in Md. Ankoos's case (supra), in the present case, evidence of witnesses has not been relied upon on the basis of their previous statements recorded under Section 161 (3) of the Cr PC. Therefore, the case of Md. Ankoos (supra) is also distinguishable on facts to that of the present case.

30. As held by the Patna High Court in Archi Nawal's case (supra), in absence of any evidence of commission of offence, only strong doubt about conduct of accused is not sufficient for conviction of the appellant. In the present case, evidence of Ashwani Bai (PW-3) well corroborated by part of evidence of Babulal (PW-4), medical evidence of Dr. D.C. Choudhary (PW-5), autopsy report Ex.P-5 and spot map Ex.P-16 are sufficient for drawing definite

conclusion that only the appellant has caused homicidal death with intent to cause death of Kaushalya Bai and that with intent to conceal the evidence of criminal case, he has burnt her dead body.

31. After appreciating evidence available on record, learned Additional Sessions Judge has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality in the judgment impugned requiring any interference.

32. Consequently, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

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