

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1313 OF 1999

PAWAN KUAMR  
ELLANT

... APP

VERSUS

STATE OF CHHATTISGARH  
PONDENT

... RES

J U D G M E N T

SEMA, J.

The sole appellant before us was put to trial for an offence under Section 302 IPC. He was found guilty and convicted by the trial court and sentenced to R.I. for life. His appeal was dismissed by the High Court. Hence this appeal by special leave.

Heard the parties.

The prosecution case was set in motion on the basis of FIR lodged by

PW.8 Gajraj. It is not very clear whether the FIR was lodged on 26.1.1989 or

27.1.1989. Be that as it may, in our view, it is inconsequential for the purpose of

disposal of the present appeal. The FIR is to the effect that the wife of the accused was giving medicine to her daughter and the accused asked her to wash the spoon, to that the wife of the accused told him that she had washed the spoon on which the accused

enraged and had beaten his wife and caught her by her saree and blouse and ran

away from the house along with his infant daughter. To establish its case the

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prosecution examined PW.8, PW.9, PW.10 and PW.11. PW.8 Gajraj is the informant

himself. PW.10 Rajbai is the wife of the accused. PW.9 Ghasnin wife of Gajraj and

PW.11 Tulsi Ram is the neighbour of the accused. Pws.8,9,10 and 11 stated that the

accused has taken away the infant child on the fateful day. Body of the infant child

was recovered through an information given by PW.18 Sunder Lal on 28.1.1989 from

the pond which is about 3-4 furlongs away from the place of occurrence. As nobody

came forward to claim the body of the infant child it was buried on 31.1.1989 through

a sweeper. The dead body of the infant child was snapped through a photographer

and only on the basis of the photograph shown to her PW.10 Rajbai the mother of the

child identified the body to be her infant child.

In the instant case, admittedly, besides a bald statement by Pws.8,9,10

and 11 that the appellant had taken the child from the house and never returned,

nobody had seen the appellant along with the child either on the way or in the vicinity

of the pond from where the body of the child was found floating by the PW.18. On the

fact as stated above the conviction was based entirely on the circumstantial evidence.

By now it is well settled principle of law that in order to sustain conviction on

circumstantial evidence the prosecution evidence must complete the chain of the

circumstances which is incapable of any explanation of any other hypothesis except

that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence. In our view, the prosecution has not been able to establish the chain of the circumstances consistent with the guilt of the accused and inconsistent with his innocence in the present case.

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The prosecution has also failed to establish motive against the appellant.

On the contrary, the strong motive was established against the wife, PW.10 Rajbai. It is in the evidence on record of Pws.8, 9 and 11 that PW.10 the wife of the appellant contracted second marriage within 15 days from the death of the infant child. On the other hand from the evidence disclosed, the appellant used to love his infant child.

There is no rhyme and reason as to why the appellant should have done away with his child, whom he loved.

This apart, the appellant was examined under Section 313 of the

Criminal Procedure Code. In response to the question No.28 the appellant stated that

he used to do the labour work at Kouajhar and he had been doing the labour work at

Kouajhar for two months before 27.1.1989. He used to do up and down (coming and

going) from Kouajhar to Kagdei. Further in answer to question No.38 as to why the

witnesses depose against him he stated, "they have deposed because of enmity". In

response to question No.39 as to whether he wanted to say anything, the appellant

replied, "My father was suffering from leprosy due to which my neighbour Tulsiram

and my wife would hate me and my wife might have thrown the child Yashoda and he

left by Rajbai". In response to question No.40 as to whether he wants to produce any witness the appellant said "I don't want to produce any witness. After the date of incident, Rajbai(my wife) had left my house and after 15-20 days she had married with another person. I thought that my wife Rajbai along with the child Yashodabai would have gone to her parent's house at Pitiyajhar".

That the father of the appellant was suffering from leprosy is also

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admitted by Pws.8,9,10 and 11. It is also in evidence from the doctor who conducted autopsy on the body of the deceased child that the child had white patch on her back.

Examining the aforesaid facts and circumstances and the prosecution evidence cumulatively, we are of the view that two views are possible, one against the appellant and the other in his favour. It is now well established principle of law that when the two views are possible one against the appellant and the other in his favour, the Court is obliged to accept the view in favour of the appellant.

For the reasons aforestated, we are of the view that the prosecution has not been able to establish its case against the appellant beyond all reasonable doubt and the appellant is entitled to be acquitted by giving him a benefit of doubt. The conviction and sentence are set aside. This appeal is accordingly allowed. The appellant is on bail his bail bonds and sureties stand discharged.

Considering the assistance rendered by the learned amicus curiae we fix his fees as Rs.750/-.

.....J.

( H.K. SEMA )

.....J.

( G.P. MATHUR )

NEW DELHI,

SEPTEMBER 15, 2005.

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ITEM NO.103

COURT NO.9

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1313 OF 1999

PAWAN KUMAR

Appellant (s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

(With office report )

Date: 15/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s)

Mr. A.S. Pundir, Adv.(A.C.)

For Respondent(s)

Mr. Atul Jha, Adv.

Mr. Nirmal Mittal, Adv.

Mr. D.K. Sinha, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the parties.

The conviction and sentence are set aside. This appeal is accordingly

allowed in terms of the signed judgment. The appellant is on bail his bail bonds and

sureties stand discharged.

The fee of amicus curiae is fixed as Rs.750/-.

(PAWAN KUMAR)

(PREM PRAKASH)

COURT MASTER

COURT MASTER

(signed judgment is placed on the file)