

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRIMINAL APPEAL NO. 1699 OF 2000

1. Manglooram, son of Jugalram, aged 40 years,
 2. Indarbati Bai @ Indarbai, W/o Mangloo Ram, aged 35 years,
- Note : Both residents of Murethitola, P.S. Ambagarh Chowki,
Distt. Rajnandgaon

... Appellants

Versus

1. State of Madhya Pradesh, through P.S. Ambagarh Chowki,
Distt. Rajnandgaon.

... Respondent

For Appellants	: Mr. P.K.C. Tiwari, Senior Advocate, along with Mr. Shashi Bhushan Tiwari, Advocate.
For Respondent-State	: Mr. Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

Per NAVIN SINHA, C.J.

01/07/2015

1. The Appellants who are husband and wife respectively, stand convicted under Sections 302, 201/34 IPC and under Section 201/34 IPC respectively, to life imprisonment and three years rigorous imprisonment with fine of Rs.1000/- and Rs.500/-, and three years rigorous imprisonment with fine of Rs.500/- respectively. In the event of failure to pay the fine they were required to undergo three months further rigorous imprisonment each. The sentences have been directed to run concurrently.

2. The body of the deceased Santosh Rawat was found in the Bagwantola Nullah half buried leading to institution of Merg, Exhibit P-21, on 6.3.1999 at 7:30 a.m. by PW-10 Tarachand. The father of

the deceased Jairam, PW-11, had stated that the deceased resided at the house of the Appellants. FIR, Exhibit P-24, was registered on basis of the same by PW-8, the police officer L.K. Pandey, on the same day. The post-mortem, Exhibit P-20 dated 7.3.1999, of the deceased was done by PW-5 Dr. M.P. Maheshwar who found ante-mortem lacerated wound 7cm x 3cm on right parietal region of scalp and ante-mortem lacerated wound 3cm x 3cm on left side of forehead opining that there was commuted fracture of frontal bone on both sides and commuted fracture on right parietal bone and fracture on sternum on middle part of the right side causing death due to shock due to head and chest injury. The time elapsed since the death was 3 to 8 days.

3. Learned Senior Counsel for the Appellants submitted that there is no eye-witness of the assault. The entire case of the prosecution is based on circumstantial evidence. No motive has been proved. The seizure of bloodstained earth from the house of the Appellants, the recovery of the gunny bag or *lathi* on the confession of Appellant no.1 or that of his wife, Appellant no.2, leading to recovery of the handle of a "*tangia*" ipso-facto cannot lead to any conclusion against the Appellants of being the assailants or disposing the dead-body in the nullah. There is no FSL report with regard to any of the seized items. Merely because when the police went to the house they were not at home cannot lead to the conclusion beyond all reasonable doubts that Appellant no.1 was the assailant. The entire conviction as discussed by the Trial Court is based on sheer suspicion and that too

by completely erroneous appreciation of evidence. The conviction is therefore not sustainable and is fit to be set aside.

4. Learned Counsel for the State opposing the Appeal submitted that Appellant no.1 had a motive to kill the deceased because he saw his wife, Appellant no.2, in a compromising position with the deceased. It has come in the prosecution evidence that the deceased resided at the house of the Appellants. Even if the FSL report is not available, the fact remains that bloodstained earth has been seized from the house of the Appellants by PW-9 Rameshwar Pandey, the Investigating Officer. The Appellant in his memorandum also confessed leading to the recovery of the sack in which he had carried the body of the deceased from his house before dumping it in the nullah. The conduct of the Appellants was highly unusual in having run away from their house, which the police had sealed. Appellant no.1 led the police to the place where the body was lying in the nullah.

5. We have considered the submissions on behalf of the parties and perused the evidence on record.

6. There is no eye-witness to the assault on the deceased and the entire case of the prosecution is based on circumstantial evidence. The circumstances on which the prosecution relies is existence of a motive, appellant no.1 pointing out the place where the body was found, bloodstained earth seized from the house of the Appellants, the recovery of a gunny bag and "*lathi*" on the confession of Appellant no.1 and the recovery of certain wooden sticks along with wooden handle of the "*tangia*" on the confession of Appellant

no.2 coupled with the fact that the Appellants were missing from their house after the occurrence.

7. The body of the deceased was found in a drain with half the torso under the ground and the remaining above the ground. It is apparent from the Merg and FIR that recovery of the body was not based on any confession of Appellant no.1 but was seen by people passing by who informed the police. The body was in a highly decomposed condition and was identified by the father of the deceased, PW-11 Jairam. If the body was already half above the earth visible to all and sundry, it cannot be said that the recovery of the body was on the confession of Appellant no.1. If the earth had been dug and the body had been placed inside and covered, Appellant no.1 would have led the police to that place and the body was then exhumed, matters may have been entirely different.

8. The fact that blood may have been found in the house of Appellant no.1 cannot ipso-facto lead to any conclusion of his being the assailant. It could only be an incriminating factor or corroborative material. Independent evidence was required to show the circumstances under which the death had occurred in the house of Appellant no.1. It is not the case of the prosecution that the deceased was last seen in the house of the Appellants. There is no forensic report available with regard to the presence of blood also. Mere presence of blood in the house of a villager cannot lead to the only inevitable conclusion that it was that of the deceased. Similarly, even if a gunny bag was recovered on the confession of Appellant no.1, that part of his confession that he had put the body in the gunny bag

and carried it is inadmissible in evidence. There had to be independent evidence from the gunny bag with either blood on it or any other identification to link it with the death of the deceased as having been used for any purpose in the process.

9. The recovery of a “*lathi*” or the wooden handle of a “*tangia*”, splits of wood from the house of a villager, cannot lead to any inevitable conclusion that they were used for the assault especially when there was no forensic report available with regard to the same. These are all normal materials for daily use in the house of a villager and it cannot be said that anything unusual was found in the house of the Appellants.

10. The fact that the Appellants may have been missing from their house after the deceased was killed again may be an incriminating factor against the Appellants and may raise a strong suspicion against them. But, to establish guilt in a criminal trial there has to be proof beyond reasonable doubt. Conviction cannot be based on suspicion.

11. That leaves the only material with regard to the question for motive. The absence or presence of motive cannot be sufficient by itself for either holding guilt or exoneration. In a case of circumstantial evidence motive may be a relevant factor but it cannot be the only crucial factor. While the Respondents have relied on a motive because the Appellant no.1 had seen his wife, Appellant no.2, in a compromising position with the deceased inside his own house, PW-1 Anispuri Goswami, in cross-examination had denied that Appellant no.1 had told him anything with regard to illicit relations

between the deceased and Appellant no.2 or he had seen them in a compromising position. Similarly, PW-2 Mohammed Shami in his cross-examination has also denied having given any statement to the effect that Appellant no.1 had mentioned anything to him about the illicit relations of the deceased with his wife, Appellant no.2. Likewise, PW-7 Gyanchand in his cross-examination had deposed that the police had forced Appellant no.1 to make the submission that he suspected the deceased to have illicit relations with his wife. PW-11 Jairam, father of the deceased, was also ambivalent on the question whether his son was having illicit relations with Appellant no.2. The motive therefore has also not been established by the prosecution against Appellant no.1.

12. There is no evidence on record at all to suggest that it were the Appellants who carried the body of the deceased and dumped it into the nullah in an attempt to bury it, to uphold the prosecution of the Appellants.

13. The Trial Court appears to have been swayed by an alleged confession attributing motive to the Appellants, the seizure of bloodstained earth and recovery of "*lathi*", wooden handle of the "*tangia*" and the fact that the Appellants were absconding from their house after the death to hold that these were conclusive proof of their guilt. There has been complete erroneous appreciation of evidence by the Trial Court. The principle of criminal jurisprudence has been applied wrongly in a case of circumstantial evidence shifting the burden onto the accused even when the prosecution have not been able to establish a prima-facie case against the Appellants.

14. In conclusion, we are unable to sustain the conviction of the Appellants which is accordingly set aside.

15. The Appeal is allowed and the Appellants are set at liberty subject to conditions contained in Section 437-A Cr.P.C.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge