

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2046 of 2000**

Shahid Khan, son of Chhuttan Khan, alias Yusuf Khan, aged 24 years, resident of Sector No.10, Street No.33, Qr.No.17-E, Bhilai Nagar, District Durg, M.P. (now Chhattisgarh)

---- Appellant**versus**

The State of M.P. (now Chhattisgarh) through Police Station Bhilai Nagar, District Durg, M.P. (now Chhattisgarh)

---- Respondent

For Appellant : Shri Ashok Das Vaishnav, Advocate
For State/Respondent : Shri Vinod Deshmukh, Deputy Government Advocate

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

Judgment on Board**Per Navin Sinha, Chief Justice****17/8/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine Rs.2,000/-, in the event of failure to pay which, he was required to undergo further one year simple imprisonment, as ordered on 28.7.2000 by the 5th Additional Sessions Judge, Durg in Sessions Trial No.335 of 1998.

2. *Dehati Nalishi*, Exhibit P-20, was lodged by PW-16 Rakesh Bhatt, the Investigating Officer, on 25.6.1998 at 12:40 p.m. upon recovery of the dead body of a young girl Ms. Anuradha Shrivastava, aged about 18 years with stab wounds in the under construction Gujarati Bhawan located at Sector-7, Bhilai. Formal FIR, Exhibit P-20, was registered. The time of assault was estimated between 11:00 am to 12:00 pm. The post mortem of the deceased, Exhibit P-1, was conducted by PW-2, Dr. S.K.Sinha on 25.6.1998. Several penetrating stab wounds were present in the chest, navel and waist area opining that death was due to hemorrhage tearing

the heart, lung and stomach. The time elapsed since death was 12 hours.

3. Learned Counsel for the Appellant submitted that there is no eyewitness to the occurrence. The case of the prosecution is based entirely on circumstantial evidence founded on mere suspicion. The chain of circumstances was required to be established from one link to another leading to the only conclusion that the Appellant was the assailant leaving out the possibility of any other being the assailant or that the assault may have been committed in any other manner. The prosecution has failed to establish the chain of circumstances, much less establish any complete links between them. The circumstance discussed by the Trial Judge in paragraph 18 of the judgment itself establishes that the chain of circumstances was not complete. No evidence was led to prove that the photograph recovered from the purse of the Appellant was that of the deceased. The Appellant was not the registered owner of the Luna moped in question and neither has it been found near the place of occurrence. PW-16, Rakesh Bhatt, in paragraph 55 of his evidence, has acknowledged not having recorded properly the description of the T-Shirt alleged to have been seized from the Appellant. The possibility that some other T-Shirt was sent for FSL examination cannot be ruled out. In a case of circumstantial evidence, the mere recovery of a knife from an open area accessible to all, albeit on the confession of the Appellant, even if it had blood stains, cannot ipso facto lead to an inescapable conclusion that the Appellant alone was the assailant. The love letters seized from the Appellant, Exhibit P-3, are not addressed to the deceased. In the facts and circumstances of the case, the totality of the evidence led by the prosecution in a case of circumstantial evidence, it was insufficient to convict the Appellant.

4. Learned Counsel for the State submitted that the absence of an eye witness is irrelevant as the chain of circumstances are complete

corroborating each other, establishing all links pointing towards the guilt of the Appellant, beyond mere suspicion. The conviction calls for no interference. The nature of circumstantial evidence sufficient in a case will depend on the facts of each case. PW-1, Arif Hussain, employed as a driver at the same place where the Appellant also worked as driver, has deposed that the latter stopped coming for duty from the date of occurrence. The Luna moped, bearing Registration No.MP 24 E 2816, has been proved by PW-10, Santosh Kumar Singh, as having been sold to the Appellant by sale letter dated 22.3.1998 for a value of Rs.5,200/-. The Appellant had paid in installments and Rs.700/- only remained due. No question was asked or suggestion given by the Appellant during cross examination in this regard. The question was also specifically put to the Appellant under Section 313 Cr.P.C. to which he made a bald denial. Even though, the Appellant stated that he desired to lead evidence in defence, he did not do so. The occurrence is stated to have taken place about 11:00 am to 12:00 pm. The Luna mopeds both of the deceased and the Appellant have been seized from near Anandi Mata Mandir at a distance of barely 100 meters from Gujarati Bhawan, marked Exhibit P-18, proved by PW-14, Naresh Rajput, whose medicine shop was situated barely 200 meters from the place of occurrence. He was a natural witness and has acknowledged his signature on the seizure list. It is difficult to believe that as a business man he had signed the seizure list blindly placing absolute trust in the police without verification of contents, a highly abnormal conduct.

5. PW-15, S.N.Akhtar, Sub-Inspector of Police has proved recovery of the insurance policy of the Luna bearing registration No.MP 24 E 2816, sale-letter, marked Exhibit P-4, from the house of the Appellant. He has further deposed that PW-19, Kumari Kiran Bala, a class-friend of the deceased recorded her police statement on the day of occurrence itself. A bare reading together of the police statement and the Court deposition of

PW-19, Kiran Bala reveals that her police statement was recorded in presence of her parents. She specifically stated that the Appellant would harass the deceased. He had even presented her a silver ring because of which the deceased was very annoyed. In her deposition a year later in the Court, the reason why she turned hostile is more than evident from her own statement that there were many anti-social elements in the area and they would harass the people making life unsafe for others. Obviously, she was now seeking to retract because of her personal safety.

6. The fact that there may be no positive identification with regard to the photograph of the young girl recovered from the purse of the Appellant as that of the deceased is not very material in view of the fact that the Appellant does not deny recovery of his purse on his confession with blood stains on it. The knife has also been recovered on the Appellant's confession from the bushes near the gutter by the side of park of Telugupara Maidan. The FSL report has confirmed presence of blood on it. So long as the Appellant does not deny that the half sleeve blue T-Shirt was his on which blood stains have been found in the FSL report, the mere fact that the tag on the collar or inscription on the sleeve of the T-Shirt was not mentioned in Exhibit P-14 is not so material as to completely doubt the seizure of the T-Shirt or presume that the T-shirt seized and that sent to the FSL were different.

7. We have considered the submissions and examined the evidence on record.

8. Circumstantial evidence, a principal of criminal jurisprudence establishes guilt by a chain of incriminating circumstances linked to each other when there is no direct evidence available. A crime need not be proved only by direct ocular evidence. The offence can be proved by circumstantial evidence also. The crime may be proved indirectly by means of certain inferences drawn from facts, that is, the evidentiary

facts. Put differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The invocation of the principle necessitates that the prosecution must establish that the incriminating circumstances form a complete chain which are connected to each other leading to the only hypothesis of the accused being the assailant. If the chain of events cumulatively forming the circumstances is not complete, is broken, or there are missing links unexplained, a possibility intervening that the occurrence may have taken place in any other manner, at another place or that the assailant could also be another, the benefit of doubt has to be given to the accused. It would depend on the facts of each case what would be the nature of circumstantial evidence required and whether the chain stood established in a particular case. There is no absolute principle of circumstantial evidence.

9. In (1963) 3 SCR 239 (*Raghav Prapanna Tripathi v. State of Uttar Pradesh*), the principle of circumstantial evidence was explained as follows :-

“38. The conviction is based on circumstantial evidence. This Court in *Anant Chintaman Lagu v. State of Bombay* has laid down the principles which govern such cases. In that case Hidayatullah, J., at p. 516 quoting the observations of Baron Parke in *Towell case* where the learned Baron laid down the principles applicable to such cases observed that any circumstance which destroys the presumption of innocence, if properly established can be taken into account to find out if the circumstances lead to no other inference but of guilt. Thus what we have to see is whether taking the totality of circumstances which are held to have been proved against the appellants it can be said that the case is established against the appellants i.e. the facts established are inconsistent with the innocence of the appellants and incapable of explanation on any hypothesis other than that of guilt.....”

10. Once the prosecution has been able to establish a chain of incriminating facts against the accused, he is required to either deny the

incriminating circumstances or offer an explanation regarding the same. Absence of explanation cannot be compensated by simple bald denial of the accusations under section 313 Cr.P.C. The failure to explain or deny the accusations then becomes another incriminating factor. Reference may be made to (2014) 12 SCC 419 (Madhu v. State of Karnataka) observing as follows :-

“25. It is obligatory on the part of the accused while being examined under Section 313 CrPC, to furnish some explanation with respect to the incriminating circumstances associated with him, and the court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete.”

11. The chain of circumstances considered by the Trial Court and held to be sufficient were recovery of the Appellants moped near the place of occurrence along with that of the deceased. The recovery of the Appellant's T-Shirt and purse coupled with the recovery of the knife used for assault on the Appellant's confession from the bushes. The FSL report, Exhibit P-34 has confirmed presence of blood on all three items. The reliance on the blood stained photograph recovered from the purse of the Appellant is not considered relevant in absence of any identification of the same as that of the deceased.

12. PW-1, the driver, Arif Hussain, with whom the Appellant was working in the same organization, has deposed that after 25.6.1998, the day of occurrence, the Appellant had stopped reporting for duty. No question was put in cross-examination or any suggestion made that the Appellant was coming for duty or that he was not doing so for some other reasons not related to the occurrence. This is considered an incriminating circumstance against the Appellant for which he ought to have offered some explanation if he was taking the defence of false implication.

13. PW-4, Ishrat Khan the brother of the Appellant was a witness to the seizure of the registration book of the Appellants Luna moped, the

insurance policy and the sale letter, from his house marked Exhibit P-4. PW-5, Ravi Shrivastava, the father of the deceased deposed that on the fateful day she had gone to Kalyan College on her moped bearing number 0221 to collect the admission form. PW-10, Santosh Kumar Singh who was also a driver in the same organization as the Appellant proved purchase of Luna moped M P 24 E 2816 on 22.3.1998 by the Appellant for Rs.5200/- and that the Appellant had paid for the same in instalments and Rs. 700/-only remained due. The Appellant did not put any question in cross examination or give any suggestion that he had not purchased the Moped in the aforesaid manner.

14. PW-13, Sanjay Kumar Tiwari proved the confession of the Appellant, Exhibit P-12 and recovery of the knife, Exhibit P-13, from the wild bushes near the gutter adjacent to the park. He also proved Exhibit P-14, the T-Shirt and purse of the Appellant seized in his presence. Naresh Rajput, PW-14, the owner of the medical store barely at a distance of 200 meters from the place of occurrence proved the seizure of the blood stained earth, Exhibit P-17 and the two mopeds belonging to the deceased and the Appellant, Exhibit P-18. The witness did not dispute his signatures on the seizure memo. The explanation that he signed papers in blind trust of the police is a sham and completely contrary to normal human conduct. If he was a businessman, it is difficult to believe that he placed blind faith and trust on the police and signed documents for the asking without awareness of the contents.

15. PW-15, S.N.Akhtar, Sub-Inspector of Police proved the seizure of the insurance policy, registration book of the Luna moped and sale letter in name of the Appellant from his house, Exhibit P-4. The witness very importantly deposed that he recorded the police statement of PW-19, Kiran Bala the classmate of the deceased on the date of occurrence itself. In her police statement, PW-19 stated that the deceased was a dear

friend of hers. The Appellant was harassing her for about a year by writing love letters and had also presented her a silver ring which the deceased had thrown away and that she was getting fed up of his behaviour and that he lived near her house. The Appellant did not ask any question to the witness in cross examination or give any suggestion that PW-19 had not given any police statement to him or any different version of the same.

16. PW-16, Rakesh Bhatt, the Investigating Officer proved the Merg Intimation, Exhibit P-19, the formal FIR, Exhibit P-20, the spot-map, Exhibit P-22, the seizure of the half sleeved blue T-Shirt of the Appellant on 29.6.1998, Exhibit P-14. The recording of the Appellant's confession on 29.6.1998 leading to recovery of the knife, Exhibit P-13 from the wild bushes adjacent to the gutter near Telugupara Park as also Exhibit P-18, the seizure of the mopeds both of the Appellant and the deceased from near Anandi Mata Mandir barely at a distance of 100 metres.

17. PW-19, Kiran Bala aged about 18 years deposed that she was a classmate of the deceased. Thereafter she turned hostile and denied that the deceased had told her anything. In cross examination by the Assistant Public Prosecutor she acknowledged having given a police statement and that it was recorded in presence of her parents. She further acknowledged that there were several goonda elements in her locality but denied that she was now deposing wrongly in fear of them.

18. A hostile witness is described as one not desirous of telling the truth at the instance of the party calling the witness. Section 154 of the Evidence Act permits a person calling the witness to put any questions that could have been put in cross examination and rely on the evidence of such witness also. Thus the evidence of a hostile witness is not to be rejected in its entirety and so much of it as finds corroboration from other evidence shall still be admissible. In (1976)1 SCC 727 (Sat Paul v. Delhi Administration) it was observed as follows :-

“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.”

The recording of the police statement of PW-19, Kiran Bala and its contents has been proved by PW-15, S.N.Akhtar, Sub-Inspector of Police. It was not challenged by the Appellant. The Court statement of PW-19 was recorded more than one year later. A combined reading of her police statement and the Court deposition reveals that she stands by her statement that the deceased was a dear friend of hers. She further acknowledges that her police statement was in fact recorded in presence of her parents and that there were several goonda elements in her locality. The witness, with the passage of time was apparently apprehensive of her own safety as a young girl if she spoke the truth in Court also because of the goonda elements in her locality and may have met the same fate as her friend. The case is symptomatic of the malaise that afflicts our criminal justice delivery system. Had her Court statement been recorded promptly she may have stood by her police statement. The passage of time leads to all kinds of myriad situations of threatening and winning over witnesses. At times the witness also starts feeling that what has happened be best forgotten and that the own safety of the witness is now apparent. The debate thus on the need for a witness protection scheme has now commenced.

19. Criminal jurisprudence must be dynamic with the changing times and must subserve the interest of the society for maintenance of an orderly civil society. We may profitably refer to the observations in (2012) 4 SCC 516 (Rattiram v. State of Madhya Pradesh) as follows : -

“65. We may state without any fear of contradiction that if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage.....”

20. The observations in (2006) 3 SCC 374 (Zahira Habibullah Sheikh (5) v. State of Gujarat) are apposite in the facts of the case:-

“22. The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system.”

21. The blood stained knife cannot be said to have recovered from a public place open and accessible to all. The recovery was not from the public park but from the wild bushes adjacent to the park. In other words it was concealed in the bushes and could not be known to others except for a person who was aware that there was a knife kept hidden in the bushes and proceeded directly to the relevant place leading to recovery on confession by the person.

22. The discussion reveals the chain of circumstances in the following sequence :-

- a) The Appellant fancied the deceased and lived close to her house.
- b) He was harassing her for a year by writing love letters and had

also presented her a silver ring which the deceased threw away.

c) Spurned by the rebuff, the Appellant then cornered her and assaulted.

d) The Luna moped of the Appellant and the deceased were recovered together about 100 meters from the place of occurrence.

e) The Appellant stopped going on duty after the assault.

f) The blue half sleeve T-Shirt seized from the Appellant had blood stains for which he offered no explanation and gave no defence.

g) The Appellant did not deny ownership of his purse which also had blood stains on it for which he offered no explanation and put forth no defence.

h) The weapon of assault was recovered on his confession hidden in the wild bushes near the gutter which cannot be described as open place.

i) The FSL report has confirmed the presence of blood on the T-shirt, purse and knife.

23. The aforesaid discussion leads us to conclude that the order of conviction calls for no interference in appeal. The bail bonds of the Appellant are cancelled. He is directed to surrender forthwith and/or be taken into custody for serving out the remaining part of the sentence.

24. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE