

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2583 of 1999**

Sewak Ram S/o. Bishal Sahu, Aged 33 years, Resident
of Village- Mohdi, Police Station Ghumka, Tahsil,
District Rajnandgaon

---- Appellant

Versus

State of Madhya Pradesh

----Respondent

For Appellant	:-	Smt. Anju Ahuja, Advocate.
For Respondent/State	:-	Shri Ravindra Agrawal, Panel Lawyer .

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V Judgement
(06 .07. 2015)

Per P. Sam Koshy, Judge

1. The Appellant in the instant Appeal has been convicted for the offence punishable under section 302 of IPC and sentenced to undergo life imprisonment vide the judgment and order of sentence dated 09.08.1999 passed in Sessions Case No. 78/99 by the Sessions Judge Rajnandgaon, District Rajnandgaon.
2. The prosecution story in brief, is that on 26.04.1999, it is said that at around 6.00 AM the Appellant took his wife Savitri Bai to his field on his cycle for doing some field work. It is said that there the Appellant took an iron pick axe (*Gaiti*) and assaulted his wife resulting in her death. The FIR in this regard was lodged on the very same day at the instance of Phooldas Kotwar PW-1 of the said village at around 8.40 AM which has been marked as Exhibit P/1 and the body of the deceased was sent for postmortem on the

same date which is marked as Exhibit P/18 and has been proved by Dr. S.K. Agrawal, PW-9 in the course of the postmortem Doctor has found the following injuries on the body of the deceased:-

- 1) Incised wound over right leg shin region size 2" x ½ " clotted blood present in wound.
- 2) Incised wound over right arm region anteriorly size 3"x ½ " in upper 1/3rd region.
- 3) Incised wound over left arm elbow region anterolateral obliquely placed size 2"x ½".
- 4) Incised wound over left thigh 1/3rd size 3" x 2 ½".
- 5) Incised wound left side chest on 3rd, 4th IC space rib 4th on left side size 2" x ½" deep chest penetrating the left atrium of heart at 6" deep penetrating injury.
- 6) Incised wound over right side chest region on 4th, 5th IC space fracture of 5th rib size 2" x ½" deep in chest wall piercing the lung left side Hemorrhage present in chest cavity on both sides no. (6) is 6" deep.
- 7) Incised penetrating wound over left umbilical region about 2" x ½" through which omentum can be seen which has become blackish in color due to exposure. Penetrating wound going upwards and laterally injuring the intestines on the way and piercing spleen which has punctured. Depth of wound about 6 ½ " long.
- 8) Incised penetrating wound over right side epigastric region through which omentum is coming out size 2" x ½" abdomen deep piercing the liver tissues on right side and destroying it about 6 ½" length (depth).
- 9) Incised penetrating injury over left side umbilicus region 2" x ½" just below injury no. (7) through which omentum is coming out size 2" x

½" penetrating the small intestine loop and lacerating it.

- 10) Incised wound over right side umbilicus region just below injury no. (8) which is going deep in abdominal wall injuring the intestines size 2"x ½" x 6" in depth. Hemorrhage present in abdominal wall cavity.
- In the opinion of the Doctor, the death of the deceased was due to injuries on the vital parts of the body like heart, lungs, liver and spleen.

3. As per the lodger of the FIR on the date of incident at around 07.00 AM when he was sitting at his home, the Appellant is said to have reached PW-1's house and has informed him that someone has killed his wife in the field and he has therefore, come to report to the Kotwar. Accordingly the Kotwar along with the Appellant is said to have reached the place of incidence and found the deceased Savitri Bai lying dead in the field of the Appellant with gruesome injuries on the stomach which the Kotwar reported to the Police registered as FIR in Crime No. 33/99 under section 302 of IPC. In the course of the investigation the Police authorities found that there was blood stains on the clothes worn by the Appellant and on interrogating the Appellant by the Police, he disclosed the fact that it was he who had assaulted the deceased causing her death.

4. The matter was put to trial and on behalf of the prosecution total 11 witnesses were examined. Though there were no eye-witness to the incident but on account of circumstantial evidence revolving around the Appellant and the chain of events which transpired immediately after the incident, the Trial Court found the charges under section 302 of IPC proved beyond all reasonable doubt by the prosecution and accordingly convicted the Appellant and sentenced to undergo for life imprisonment.

5. Counsel for the Appellant assailing the said impugned judgment

submitted that the charge leveled against the Appellant has not been proved beyond reasonable doubt by the prosecution. She further contended that the charges alleged to have been proved against the Appellant was on conjecture and surmises. She further contended that the findings arrived at by the Trial Court was based on assumptions and presumptions without there being any strong concrete evidence or proof that which has to be proved beyond all reasonable doubt.

6. Counsel for the Appellant further contended that the Trial Court has failed to appreciate the conduct of the Appellant in as much as, it was he himself who had gone to the Kotwar of the Village PW-1 (as is evident from the FIR) to report the matter. If the Appellant would have been the person guilty of having assaulted his wife to death he would not have gone to the Kotwar himself for reporting the matter. Secondly, she contended that if at all the Appellant intended to report the matter to the Kotwar then he would not have gone to the Kotwar with the blood stained clothes

7. Counsel for the Appellant further contended that the seizure of the blood stained clothes as well as weapon used in the assault and other articles seized have not been proved as the seizure witnesses have not supported the case of the prosecution. According to the Appellant , the prosecution has not been able to establish it's case procedurally also in as much as the memorandum statement of the Appellant is not signed by the Appellant and therefore, the reliance on the memorandum statement is not proper, legal and justified. Similarly, according to the Appellant the prosecution has not been able to establish any motive on the part of the Appellant for him to assault his wife and kill her. Further, there was no animosity between the Appellant and the deceased adduced before the Trial Court so as to strengthen the circumstantial evidence against the Appellant. So far as the bracelet which is said have been recovered at the instance of

the Appellant, the prosecution has not been able to establish its case to identify the fact that the bracelet which is said to have recovered were that of the deceased herself.

8. Counsel for the Appellant further contended that the prosecution has not produced weapon of assault during the course of evidence for Doctors opinion to establish the fact that the assault made on the deceased was from the said weapon. It was also contended that the prosecution has not taken any finger print of the Appellant nor they have taken finger print of the weapon of assault so as to match the finger print of the Appellant with the finger print on the weapon of assault. Counsel for the Appellant further contended that even if for argument sake it is accepted that the weapon of assault, nails, the bracelet recovered and seized and also the blood stained clothes of the accused have been produced as evidence before the trial Court, the FSL report does not reveal that it is the human blood stains that have been found in these articles nor does the Forensic report shows that the blood stains found on these articles are the same blood group that of the deceased and therefore, the entire Trial stands vitiated as the charge has not been proved and the benefit of which should be given to the Appellant.

9. Counsel for the Appellant further submitted that the entire case is nothing but a case of false implication of the Appellant in the said offence. According to him, the discrepancies would show that it is a case of false implication in as much as the alleged confession and recovery made by the Appellant is said to be at 2 p.m. whereas crime details form prepared by the Police is at around 10 a.m. which itself shows the attack to be made by the pick axe (Gaiti). Similarly, the postmortem conducted at around 12.30 p.m. talks of assault being made by a pick-axe. Thus, according to the counsel for the Appellant, when the postmortem report and the crime details form speak

of the offence to have been committed with a pick axe, the subsequent confession statement and the recovery of a pick axe again creates a great element of doubt on the prosecution story and therefore it has to be inferred that the Appellant has been falsely implicated in the said case. Similarly, counsel for the Appellant further referring to the statement of the Investigating Officer PW-11 submitted that his version has also many contradictions and the main contradiction is that the Appellant did not come with PW-1, Phool Das, the Kotwar to the Police Station whereas PW-1 in his evidence has stated that he along with the Appellant had gone to the Police Station for lodging the FIR. In spite of this, the FIR was lodged against the unknown persons and the Appellant was not named in the FIR.

10. Lastly, counsel for the Appellant relying upon AIR 2007 SC 2080 also contended that if there are two inferences which are possible pertaining to the assault made upon the deceased it could have been made by the Appellant or it could have been made by the two persons who it is alleged to have come on a motorcycle and made an attack upon the deceased then under such circumstance the inference favourable to the accused ought to have drawn and the benefit of doubt of which should have been given to the Appellant and thus, the order of the Court below of the conviction is not sustainable and deserves to be quashed/set aside. Counsel for the Appellant submitted that in the light of the judgment of the Supreme Court in AIR 2007 SC 2080, any weakness of the defence in the statement under Section 313 Cr.P.C. of the accused cannot by itself form a basis for conviction.

11. Per contra, counsel representing the State opposing the contention put forth by the Appellant submitted that the case of the Appellant has been proved beyond all reasonable doubt before the Trial Court and that the

order of conviction imposed by the Trial Court is proper, legal and justified and does not call for any interference whatsoever. Referring to the prosecution witnesses counsel for the State submitted that the conviction of the Appellant was based on circumstantial evidence but the chain of events which revolve around the Appellant immediately after the incident leads to the only conclusion that the assault, in fact, has been made by the Appellant himself and according to the State counsel, the evidence which have come before the Court below on behalf of the accused itself lead to the conclusion that it was the appellant alone who could have killed his wife.

12. The State Counsel further submitted that PW-1 in his deposition states that the Appellant's brother informed him of intruders in his field who were snatching the bracelet of his wife and the Appellant ran away from the scene. Till then no assault had taken place on the deceased. But in the FIR which was lodged just immediately after the incident PW-1 says that he was informed by the Appellant that someone had killed his wife. Thus, false stories were being made. Similarly, State counsel further submitted that in 313 Cr.P.C statement, the Appellant took a false defence that he did not go to the Police Station while PW-1, Phool Das, the Kotwar deposed before the Court that the Appellant did accompany him to the Police Station. This itself is an incriminating factor which goes against the Appellant.

13. Counsel for the State also submitted that according to the defence it could be the intruders who had killed the deceased and if that be so, the Appellant being present in the field along with his wife he would have said so firstly to the Kotwar and then to the Police at the time of lodging of the FIR when he had accompanied the Kotwar but the prosecution witnesses clearly disclose the fact that the Appellant had not said anything to the Police in this regard nor has he said anything in this regard in his statement under Section

313 Cr.P.C. Thus, the conduct of the Appellant right from the beginning was suspicious which leads us to infer that it was he who had assaulted his wife.

14. According to the State counsel the chain of event like recovery of the pick axe (*Gaiti*) Exhibit P/9 i.e. the weapon of assault at the instance of the Appellant, the recovery of blood stained clothes of the Appellant (shirt, *gamchha* and *lungi*) Exhibit P/10, the sample of nail seized from the finger of the Appellant with blood stains on it all proved from the Forensic test as per the FSL report Exhibit P/21 point to his being the assailant. In addition, according to the State counsel, recovery of the bracelet belonging to the deceased from the place of incident buried under the earth at the instance of the Appellant on the memorandum statement made by him completes the chain of events to establish the fact that it was the Appellant alone who had assaulted the deceased to death. According to the State counsel, contradictory and conflicting statement have been made by the Appellant and the prosecution witnesses themselves leads to conclude that it was the Appellant alone who had killed the deceased. Thus, prayed for rejection of the appeal.

15. Having considered the rival contentions put forth by the counsel on either side if we peruse the evidence which have come on record it would reveal that PW-1, Phool Das, Kotwar of village Mohdi who is the lodger of the FIR while lodging the FIR just immediately couple of hours after the incident had stated that it was the Appellant who had come to him informing that his wife had been killed by some persons in the field. Whereas in the court statement PW-1 makes a statement that it was the brother of the Appellant namely Santosh who had come to call him in the morning and when he had gone to the field, he found the Appellant there and he was informed by the Appellant that two persons had come to the field on motorcycle and

assaulted his wife with an intention of snatching her bracelet. This statement of PW-1 is apparently an after thought and is just in contradiction to what he had stated in the FIR. However, in his further evidence, PW-1 accepts the fact that he had gone for lodging the FIR and that he has acknowledged of having put his signature on the FIR marked exhibit P-1 and also his signature in merg intimation which was recorded at his instance. Similarly, he has also acknowledged his signature having put on the spot map prepared by the Police department. He has further in his examination-in-chief as well as cross-examination accepted the fact of having seen blood stains on the clothes which the Appellant was wearing. Though PW-1 in his deposition before the Court has tried to give a different version of facts contrary to the one which he had narrated while lodging the FIR yet to a great extent, PW-1 has supported the case of prosecution in as much as having accepted the contents stated in the FIR and the signature that he had put on the FIR as well as on the merg intimation exhibit P-2. The other averments made by PW-1 are also not corroborated with the statement of the accused under Section 313 Cr.P.C, in question no.3 pertaining to two persons coming on the motorcycle and having tried to snatch the bracelet of his wife Savitri. The Appellant has denied the said averment made by PW-1 and as such the statement of PW-1 gets falsified to the extent of the theory that the defence was trying to take the possibility of the murder having been caused by the two persons who had allegedly come on a motorcycle. Another aspect which is noteworthy at this juncture is the statement of PW-1 to the extent of the Appellant's brother having met him first and informed about the incident. This statement of PW-1 is not trustworthy for the reason that the brother of the appellant Santosh has not been examined by the prosecution nor has the Appellant tried to examine him as a defence witness. Hence, the said theory put forth by the Appellant is not sustainable.

16. Likewise, PW-2, Nilamber Singh Sahu who happens to be the Sarpanch of the village Mohdi in somewhat similar manner has also tried to give a different version of story contrary to the one recorded in the FIR. Though the said PW-2 was subsequently declared hostile, from the deposition of PW-2 it is evidently clear that he had signed upon the documents before the Police like exhibits P-8, P-9 and P-10 which are the seizure memo and the memorandum statement of the Appellant recorded in the presence of the witnesses. In his evidence PW-2 has categorically accepted the fact that he also signed upon the documents after it was duly written and he never puts his signature on blank documents/papers. In addition, he also acknowledges the contents of the memorandum statement and his signature on it. The admission on the part of PW-2 of putting signature on the documents like seizure memo and memorandum statement of the Appellant itself is sufficient proof. Further, it was on the basis of the memorandum statement exhibit P-12 the seizure of pickaxe from the house of the Appellant and the bracelet from the place of incident where the Appellant himself had buried in the ground were recovered and in any case, the recovery of article at the instance of the Appellant and the acknowledgement of PW-2 on the memorandum statement as well as the seizure memo proves the recovery part.

17. So far as the identity of the bracelet is concerned, the very fact that the bracelets were recovered at the instance of the Appellant and the bracelet had blood stains. In addition, PW-1 and PW-2 both have stated that they were told that the persons who had come on the motorcycle were trying to snatch the bracelets which also proves the fact that the bracelets were that of the deceased.

18. PW-4, Banshilal who is also a Panch witness though has turned

hostile yet has accepted the fact of having put his signature on the memorandum exhibit P-12 which thereby corroborates the statement of the other Panch witness namely Nilamber Singh (PW-2).

19. Admittedly, the present case is based on circumstantial evidence and circumstantial evidence is an evidence which is not direct but consists of evidences of various other facts which are so closely associated with the facts in issue that taken together they form a chain of circumstances from which the existence of the principle fact can be legally informed or presumed. In a case of circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. To prove the guilt of the accused by circumstantial evidence it is necessary to establish that the circumstances from which a conclusion is drawn should be fully proved, the circumstances should be conclusive in nature, all the facts so established should be consistent only with the hypothesis of the guilt and inconsistent with the innocence. The cumulative effect of the circumstances must be such as to negate the innocence of the accused and to bring home the offence beyond any reasonable doubt.

20. In the present case if we see the chain of circumstances to establish the links as per the prosecution, it would reveal that the first piece of evidence against the Appellant is the time of incident and the information received by PW-1, the Kotwar of the village and also the time gap between the FIR and the time of incident. There is no dispute in respect of the fact that it was the Appellant who had taken his wife to the field that too early in the morning. It is also not in dispute that the Appellant was present with the deceased all alone till she was assaulted yet the Appellant has not been able to give a description of the alleged persons who had assaulted the deceased

which presupposes the fact that it was the Appellant himself who could have assaulted the deceased. Recovery of bloodstained clothes of the Appellant along with pickaxe (weapon of assault) and blood in the nails of the Appellant and the bracelet which the deceased was wearing that too at the instance of the Appellant with blood stains, which were also put to test at the Forensic Laboratory which gave a positive report that all these above referred articles had blood stains on it are the other links in the chain of circumstances which leads to a conclusion that it was the Appellant alone who had assaulted the deceased.

21. Another link joining the chain of circumstances is the improbable theory put forth by the defence that two persons had come on a motorcycle and in the course of snatching the bracelet of the deceased they might have killed the deceased. The reason for not believing this theory is that if the alleged assailants had an intention of snatching the bracelet, they could have easily fled away along with the bracelet after committing crime, they would not have hidden the bracelet under the earth at the place of incident. Further, the accused himself in his 313 Cr.P.C. statement has denied the improbable story of two persons coming in a motorcycle and trying to snatch the bracelet of the deceased. Thus, the said theory firstly on the denial of the Appellant himself, secondly the theory has not been established and thirdly if there had been any attack by the two alleged assailants, the first reaction on the part of the Appellant would have been raising an alarm at the place of incident calling for help from the people nearby and which also is not reflected from the evidence. Further, this theory of the assailants coming on a motorcycle and trying to assault the deceased is not present in the FIR which was lodged by PW-1 himself in a short interval of time after the incident. Thus, it is an untenable theory to be accepted. These are all false defences which are enmity factors against the Appellant.

22. The judgment of the Supreme Court reported in **AIR 2007 SC 2080** cited by the counsel for the Appellant is thus not coming to the rescue of the Appellant and the chain of events in the present case meets the requirement of law as has been enunciated in the said judgment by the supreme Court. The Supreme Court in **(2009) 11 SCC 111** (Raju v. State by Inspector of Police) again has reiterated the circumstances which require to complete a chain of circumstances for convicting the accused and held that a conviction can be based solely on circumstantial evidence if the circumstances are tested by the touchstone of the law relating to circumstantial evidence whereby the chain of events would clearly draw inference of the guilt being cogent and firmly established and the guilt also is unerringly pointed out towards the accused and the circumstances also lead us to the only conclusion that the accused is incapable of giving proper explanation to any other hypothesis. In **Molai and Another v. State of M.P.**¹ it was laid down that presence of human blood on knife which was recovered at the instance of the accused, even if the blood group was not determined, was an incriminating circumstance. In **State of Rajasthan v. Tejaram and others**², in paragraph 25, the Hon'ble Supreme Court held that Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

¹ (1999) 9 SCC 581

² (1999) 3 SCC 507

23. In the given facts and circumstances of the case, the grounds raised by the Appellant alleging that the prosecution has failed to prove the charges are unsustainable as the injuries found on the deceased are established to have been caused with pick-axe which was recovered at the instance of the Appellant himself and the pick-axe also had blood stains on it. Further, the blood stained clothes of the Appellant and his nails having blood stains having been established in the forensic report is also an incriminating circumstance against the Appellant for which there is no reasonable explanation provided by the Appellant. Likewise, there is no evidence in respect of any intruders to have caused the attack on the deceased as has been tried by the defence particularly the statements of the Kotwar (PW-1) and the Sarpanch (PW-2) who during the course of evidence before the Court appear to have tried to help the accused but there was no evidence in this regard for presuming the Appellant to be innocent. The overall conduct of the Appellant being very suspicious and there being no reasonable explanation provided by the defence in respect of the chain of events put forth by the prosecution it can be held to be incriminatory which has no reasonable explanation except for the hypothesis that he is guilty and which also destroys the presumption of the innocence of the accused/appellant.

24. Thus, in the overall facts and circumstances of the case, there is no infirmity insofar as the evidence regarding the disclosure or the recovery of the weapon used in the assault and the bracelet of the deceased recovered at the instance of the Appellant. The chain of circumstances against the accused is so complete that it excludes the possibility of any hypothesis other than the one which is consistent with the guilt of the accused and inconsistent with his innocence. The circumstances relied upon by the prosecution definitely and unerringly point towards the guilt of the Appellant and then cumulatively form a chain so complete whereby there is no escape

from the conclusion that the crime was committed by the accused/appellant and none else particularly when the accused has failed to explain the circumstances established by the prosecution against him.

25. Thus, in the circumstances, we do not find it to be a fit case where any interference with the findings of the Court below is called for. Accordingly, the present appeal being devoid of any substance is liable to be and is hereby dismissed. The Appellant is on bail. His bail bonds stand cancelled. He be sent to jail forthwith to serve the remaining part of the sentence imposed on him.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE