

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 900 OF 1997

Bhuwaneshwar S/o Uma Shanker, age 35 years, R/o Vill. - Bhakhar, PS
Baikunthpur, Distt. - Sarguja.

... Appellant

Versus

State of M.P. (now C.G.), through PS - Baikunthpur, Distt. Sarguja.

... Respondent

For Appellant	:	Mr. Shakti Raj Sinha, Advocate.
For Respondent-State	:	Mr. UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

13/10/2015

1. The Appellant stands convicted under Section 302 IPC to life imprisonment, ordered on 15.4.1997 by the Additional Sessions Judge, Baikunthpur, in Sessions Trial No. 47 of 1996.

2. It is the case of the prosecution in the First Information Report, Exhibit P-12, lodged by the witness Chandra Shekhar, that the deceased was the uncle of the Appellant and had adopted him as his son in absence of his own progeny. Due to love and affection, the deceased had willed his properties to the Appellant. Relations between them gradually soured because of which the Appellant killed the deceased to obtain advantage and benefit of the will as the deceased had subsequently thrown the Appellant out of his house. The inquest report was marked as Exhibit P-5 and the post-mortem report, Exhibit P-7, disclosing 7 injuries and the expected time of death was 12:00 to

24:00hrs earlier, homicidal in nature. The assault is alleged to have taken place between 10:00 p.m. to 5:00 a.m.

3. Learned Counsel for the Appellant submitted that suspicion howsoever strong cannot take the place of proof. There is no eye-witness to the occurrence. There is no evidence by the prosecution to invoke even the last seen theory. The fact that the deceased may have executed the will in favour of the Appellant and that relations may have soured between them, and the Appellant may have been subsequently thrown out of the house for that reason, are only materials for an unfounded suspicion. In a case of circumstantial evidence, conviction cannot be based on suspicion. It was next submitted that the alleged recovery of a "*balua*", an agricultural instrument, alleged to have been used for the assault with presence of blood on it and the clothes of the Appellant allegedly with blood on it as mentioned in the forensic report pursuant to a confession under Section 27 of the Evidence Act, may at best be corroborative materials but cannot be substantive evidence for conviction especially in a case of circumstantial evidence. The blood also has been found to be inadequate for a serologist report that the group of the blood found on the clothes of the Appellant or on the "*balua*" was the same as that of the deceased. In a blind case like the present of circumstantial evidence, if the prosecution choses to rely upon the evidence collected under Section 27 of the Evidence Act, the serologist report was essential in absence of which the benefit of doubt must be given to the Appellant. The Trial Court has committed gross mis-appreciation of evidence to hold on basis of suspicion combined with the recovery that the charges stood established beyond reasonable doubt in a case of circumstantial evidence.

4. Learned counsel for the State submitted that the body of the deceased was found in the backyard of his own house. The Appellant is stated to have been residing with him, a defence also taken by him under Section 313 Cr.P.C. It is not denied by the Appellant that the deceased had executed a will in favour of the Appellant and subsequently relations had soured between them leading the deceased to throw him out of the house. In the entirety of the facts, in a case of circumstantial evidence, the Appellant definitely had motive to kill the deceased because of the will executed in his favour and the subsequent souring of relations between them. The occurrence is at night. It is not the case of the Appellant that any other was present in the house. Thus, the recovery of the weapons of assault and blood on his clothes having remained unexplained are incriminating factors against the Appellant.

5. We have considered the submissions on behalf of the parties.

6. In a case of circumstantial evidence, it is for the prosecution to establish that all the links in the chain of circumstances are complete leading inescapably to the only hypothesis of the guilt of the accused leaving out any possibility of innocence. Suspicion howsoever strong cannot take place of proof. The last seen theory is also a part of circumstantial evidence. But in the present case, the prosecution has not led any evidence in support of the last seen theory which becomes important in view of the conflicting evidence that the Appellant was residing with the deceased and conversely that the deceased had thrown him out of the house.

7. Merely because the relations between the deceased and the Appellant may have subsequently soured and because of the Will

executed by the deceased, there may exist a motive, an important issue in a case of circumstantial evidence, it cannot be sufficient by itself to hold guilt against the Appellant.

8. Likewise, evidence recovered on confession admissible to the extent under Section 27 of the Evidence Act, may at best be corroborative in nature but cannot be substantive by itself to found conviction on basis of the same alone. If mere recovery on basis of confession is accepted as substantive evidence, it may be vesting unfettered power in the police for false implication also.

9. We are of the considered opinion that in the facts of present case, mere presence of blood on the "*balua*" or the clothes of the Appellant allegedly recovered on confession, cannot be the basis for conviction in absence of a serologist report that it was of the same blood group as that of the deceased. There is no evidence whatsoever in support of the last seen theory. Only suspicion exists against the Appellant.

10. In conclusion, the appeal is allowed. The Appellant who is stated to be in custody in the Baikunthpur Jail is directed to be released from custody immediately subject to the conditions in Section 437-A Cr.P.C.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge