

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1549 of 2000**

Bhupesh Dewangan, aged about 22 years, S/o Mehruram Dewangan,
R/o Hanuman Gali, Tulsipur, Rajnandgaon (MP) (Now CG)

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh), through Police Station
Rajnandgaon

---- Respondent

For Appellant	:	Shri Gautam Khetrapal, Advocate.
For Respondent/ State	:	Shri N.K. Mehta, Panel Lawyer

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P.SAM KOSHY, J.

Judgment On Board**Per NAVIN SINHA, C.J.****06/07/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.1,000/- in the event of failure to pay which, he was required to undergo six months further rigorous imprisonment as ordered on 9.6.2000 by the First Additional Sessions Judge, Rajnandgaon in S.T. No. 42 of 2000.

2. There is no eye witness to the occurrence as all the prosecution witnesses have gone hostile and denied having witnessed the occurrence. The only evidence available against the Appellant is circumstantial in nature based on his confession and recovery of his Shirt and Trouser with blood stains on it.

3. The First Information Report (FIR) was lodged on 10.11.1999 at

10:45 am by PW-1, Ajay Kumar Gautam, the brother of the deceased to the effect that one Balia @ Ratan Singh, PW-8 came and informed him around 10:00 am that his brother was being assaulted by the Appellants near the Kirana Store of the latter. He reached there to find his brother lying dead. PW-4, Rajendra Pandey, was named as the person who informed the witness that the Appellant along with brother, Yaman Dewangan, had assaulted and killed the deceased.

4. The post-mortem, Exhibit P-25, was conducted by PW-11 Dr. R. R. Mandle, who found several injuries on the person of the deceased opining that the cause of death was due to fatal head injury and the time elapsed since death was approximately 6 hours.

5. Learned Counsel for the Appellant submitted that the nature of evidence available against the Appellant and his brother Yaman Dewangan was common. None of the witnesses had supported having seen the occurrence including PW-4 Rajendra Pandey and PW8, Balia named in the FIR. The nail clippings of the Appellant, and his brother were taken and no blood was found in both. Merely because the police may have found blood stains on the shirt and trouser of the Appellant, recovered on his confession, cannot lead to an inescapable conclusion of his being the assailant. The recovery of information under Section 27 of the Indian Evidence Act cannot be the sole basis for conviction. It can at best be a corroborative factor only. The Appellant is also entitled to acquittal like his brother, the evidence being common. The prosecution witnesses having gone hostile, to support a conviction under circumstantial evidence there has to be something more to link the Appellant with the crime than mere seizure of his clothes. The FSL report

cannot be considered conclusive in the facts and circumstances without a Serologist report that the blood found on the shirt and trouser of the Appellant matched that of the deceased. In his defence under Section 313 Cr.P.C., the Appellant had claimed innocence urging that he had been falsely implicated.

6. Learned Counsel for the State opposing the Appeal submitted that even if one of the accused has been acquitted, it does not automatically lead to the acquittal of the other also. The nature of evidence available against the two is different. Even if no blood was found in the nail clippings of the two accused, the distinction lies in the presence of bloodstains on the clothes of the Appellant which he has not been able to explain. It is not normal for a person to have bloodstains on his clothes. Even if the witnesses have gone hostile, the place of occurrence is proved by the spot-map, Exhibit P-32, as being in front of the shop of the Appellant. The broken pieces of glass found on the spot were from the shop of the Appellant. As long as human blood has been found on the clothes of the Appellant, the mere absence of a Serologist report cannot be fatal.

7. We have considered the submissions on behalf of the parties and also perused particularly paragraphs 14 and 16 of the judgment under Appeal to which our attention was invited by the Counsel for the Appellant.

8. PW-1, Ajay Kumar Gautam, in the FIR stated that he was informed by PW-8 Balia that his brother was being assaulted by the Appellant and the acquitted accused, Yaman Dewangan, in front of their Kirana Shop. When he reached there, PW-4 Rajendra Pandey also informed him that the Appellant and his brother had assaulted the deceased. But, both PW-4

and PW-8 have gone hostile during their deposition in Court and have denied having witnessed the occurrence. The Trial Court therefore proceeded on the basis of circumstantial evidence. In a case of circumstantial evidence, the materials against the accused must be conclusive in nature leading to the only inescapable conclusion for the hypothesis of guilt and there must be no material with regard to mere suspicion or innocence of the accused. Evidence garnered under Section 27 of the Evidence Act cannot by itself lead to the conclusion of the person on whose confession the recovery is made of compulsively being the assailant himself. It can only be a corroborative factor. If, the evidence admissible under Section 27 of the Evidence Act is considered sufficient for conviction all by itself, it may be giving extraordinary powers to the police which may result in false implication of innocent persons also when the police may be unable to find the real culprits. The evidence collected under Section 27 of the Evidence Act therefore can only be a corroborative factor and not a conclusive factor for guilt. Even if Exhibit P-32, the spot-map, proved that the place of occurrence was in front of the shop of the Appellant and the glass of the shop was broken it does not lead to any inescapable conclusion of the Appellant being the assailant necessarily. Likewise, the presence of blood on the shirt and trouser of the Appellant could have been for varied reasons and which may also include any help that may have given by the Appellant to the injured, a possibility that cannot be ruled out in view of the nature of evidence brought on record by the prosecution itself. If the prosecution was faced with a blind case, prudence required it to obtain a Serologist report with regard to the blood samples found on the clothes of the Appellant matching that of the deceased. It is a lapse on part of the police during investigation. But, the

lapse is so fundamental in nature that it is difficult for the Court to hold that the Appellant cannot get the benefit of faulty investigation. We are therefore satisfied that the prosecution has failed to prove the case against the Appellant beyond all reasonable doubt. The Appellant is situated alike the co-accused Yaman Dewangan acquitted for lack of evidence on basis of lack of proof beyond reasonable doubt. In the nature of the evidence available against the Appellant, we find no reason to hold that he is not entitled to the same benefit.

9. In (2007) 9 SCC 315 (Geejaganda Somaiah v. State of Karnataka) it was observed:-

“22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act.”

10. We therefore find it difficult to uphold the conviction of the Appellant and set it aside. He is set at liberty subject to conditions enumerated in Section 437-A Cr.P.C.

11. The Appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE