

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 231 of 2011

1. Lochan Ram And Ors. S/o Maliya Ram Yadav Aged About 45 Years R/o Village Maheshpur, Police Station Bagbahar, Distt. Jashpur Chhattisgarh.
2. Trilochan Ram S/o Maliya Ram Yadav Aged About 42 Years R/o Village Maheshpur, Police Station Bagbahar, Distt. Jashpur Chhattisgarh.
3. Tarun Kumar S/o Lochan Ram Yadav Aged About 22 Years R/o Village Maheshpur, Police Station Bagbahar, Distt. Jashpur Chhattisgarh.
4. Vidyadhar S/o Trilochan Ram Yadav Aged About 21 Years R/o Village Maheshpur, Police Station Bagbahar, Distt. Jashpur Chhattisgarh.
5. Thandu @ Arun S/o Goverdhan Yadav Aged About 25 Years R/o Village Potebirni, Police Station & Tah. Lailunga, Distt. Raigarh Chhattisgarh.

**---- Appellants
(In Jail)**

Versus

1. State Of Chhattisgarh Through S.H.O., P.S. Bagbahar, District Jashpur Chhattisgarh.

---- Respondent

For Appellants

Shri A.K. Prasad, Advocate with Shri
Rishi Mahobia, Advocate.

For Respondent

Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

JUDGEMENT

Per P. Diwaker, J

25/08/2015

1. This appeal arises out of impugned judgment of conviction & order of sentence dated 14.3.2011 passed by the Additional Sessions Judge, Jashpur at Kunkuri, District Jashpur in S.T. No.57/2009 convicting the accused/appellants under Section 302/34 of the Indian Penal Code (for short 'the IPC') and sentencing each of them with rigorous imprisonment for

life and fine of Rs.500/-, in default to undergo additional R.I. for 02 months.

2. In the present name of deceased is Madan Sundar. On 1.6.2009 at about 7.15 a.m. FIR (Ex.P-1) was lodged by Yadumani Yadav (PW-1), younger brother of deceased, to the effect that his brother was living separately in village Maheshwar, on the fateful day at about 5.30 a.m. his mother came to him and informed that motorcycle of the deceased is lying outside the village beside road. On this, he along with his mother had gone to the said place and found lying the motorcycle of deceased near the road. He has also noticed that stone & slippers were strewn on the motorcycle. On search being made, he found dead body of the deceased lying at about 200 mts away from the place where motorcycle was lying. Blood was oozing from the chin of his brother. He has further stated that mobile of the deceased, one bamboo stick & broken iron *dauli* (a kind of iron weapon) were lying there. He has further stated that on 28.5.2009 during the election process of President of the society some dispute had taken place between the deceased and accused/appellant No.1 and accused/appellant No.1 had threatened the deceased to see him and therefore he has suspicion that he would have committed murder of deceased. Based on this FIR, offence punishable under Section 302/34 of the IPC was registered against the accused/appellants. The Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P-16, prepared inquest over the body of deceased vide Ex.P-17. Dead body was sent for post-mortem examination to the Community Health Centre, Pathalgaon where Dr. Basant Singh (PW-14) conducted post-mortem vide Ex.P-21 and noticed following injuries;-

- Lacerated wound of 5"x1 ½"x bone deep on the right parietal region of skull.

- Lacerated wound of 7x1 x bone deep just 6" below the Injury No.1. Brain matter came out.
- Lacerated wound of 1 ½" x 1 ½" size on the chin. Another lacerated wound of 1.5" x 1.5" just below this injury.
- Lacerated wound of 6"x2" x muscle deep just above elbow joint of right hand.
- Scratch of 6"x4" on the upper side of right hand.
- Abrasion of 2" x 2", brownish in colour, over both the patella.

The doctor has opined that cause of death was head injury and excessive bleeding from fracture and the death was homicidal in nature. During the course of investigation, the accused persons were said to have been arrested on 6.6.2009. During the course of investigation, accused/appellant No.1 made disclosure statement (Ex.P-5) of one iron axe, half sleeves green colour shirt of safari suit & blood stained blue colour lungi and the same were recovered at his instance vide seizure memo of Ex.P-6. On the same day, accused/appellant No.2 also made disclosure statement (Ex.P-7) of one vest & blue colour lungi and the same were seized at his instance vide Ex.P-8. Likewise, on the basis of memorandum statement (Ex.P-13) of accused/appellant No.3, one lungi, t-shirt & club were seized vide seizure memo of Ex.P-14. Accused/appellant No.4 made disclosure statement (Ex.P-9) of red colour full sleeves shirt and green colour lungi and the same were recovered at his instance vide Ex.P-10. Similarly, accused/appellant No.5 made disclosure statement (Ex.P-11) of full pant & shirt and the same were recovered at his instance vide seizure memo of Ex.P-12. As many as sixteen articles were seized from the spot vide Ex.P-16 which includes motorcycle of the deceased, bloodstained & plain soil, one pair plastic slippers, wrist watch, silk thread & Nokia Mobile of deceased, bamboo stick in two pieces, iron dauli, bracelet, one stone stained with blood and one red colour towel. Identification of seized articles was done vide Ex.P-15 in which Gokul (PW-8) & Kailash (not examined)

have identified the slippers to be of accused/appellant Tarun. They have also identified the bracelet.

Further case of the prosecution is that services of sniffer dog was taken who made to sniff slippers seized from the spot and thereafter the sniffer dog had gone to the house of accused/appellant No.1-Lochan. Report of Dog Master is also exhibited as Ex.P-26. Seized articles were sent for chemical examination to the Forensic Science Laboratory from where report (Ex.P-27) was received. According to FSL report, blood stains were found on almost all the seized articles except plain soil seized from the place near the dead body. However, it appears that the prosecution has not made any effort to obtain serological report and therefore no report relating to origin and group of blood stains could be filed.

3. After completion of investigation, charge sheet was filed against accused/appellant for the offences punishable under Sections 302, 201, 147, 148, 149, 114 & 120B of the IPC, however, the trial Court has framed charges under Sections 147, 302, 201 r/w 34 of the IPC against the accused/appellants.
4. In order to held the accused/appellants guilty, the prosecution had examined as many as 16 witnesses. Statements of accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence & false implication. By examining four defence witnesses, accused/appellant No.5 had tried to establish the defence of alibi.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, while acquitting accused/appellants from the charges under Sections 147 & 201 of the IPC,

by the impugned judgment, convicted and sentenced them as described above.

6. Learned counsel for the appellants submits as under:

- accused/appellants have been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not such which can be made basis for their conviction. In support of this argument reliance is placed in the matters of Vijay Thakur vs. State of Himachal Pradesh reported in (2014) 14 SCC 609; Mustkeem alias Sirajudeen vs. State of Rajasthan reported in (2011) 11 SCC 724.
- first circumstance against the accused/appellants is so-called dispute between accused/appellant No.1 and the deceased during the election process of President of the society but it has not been stated by any of the prosecution witnesses that the deceased was threatened by him for his life.
- second circumstance is report (Ex.P-26) of sniffer dog's trainer which is a very weak type of evidence. If the said report is compared with the statement of Mrityunjay Singh (PW-16), it would reflect that many things have been stated by him which are not even the part of report. Even in a criminal cases life and liberty of a human being should not be dependent on canine inferences. In support of this argument reliance is placed in the matters of Gade Lakshmi Mangaraju alias Ramesh vs. State of M.P. reported in (2001) 6 SCC 205 & Dinesh Borthakur vs. State of Assam reported in (2008) 5 SCC 697.
- Third circumstance against the accused/appellants is seizure of various articles made pursuant to their disclosure statements, but the witnesses of memorandums and seizures namely Rajkumar (PW-3) and Gokul (PW-8) have not supported the prosecution and in categorical terms

stated that contents of documents have not been explained to them and they have signed the documents in the police station itself at the instance of police.

- Other circumstance on which basis the accused/appellants have been convicted is seizure of axe, but it is a very common article and normally found in every house of village. Reliance is placed in the matter of Gulab Khan & others vs. State of C.G. reported in 2008 (3) C.G.L.J. 71 (DB).
- Lastly, it has been argued that though blood stains on almost all the seized articles were found in the F.S.L. report, but the prosecution has utterly failed to establish origin and blood group of the blood was not established. Reliance is placed in the matter of Hanuman Divedi & others vs. State of C.G. reported in 2011 (4) C.G.L.J. 179 (DB).

7. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He further submits that the investigation has been done in a very planned manner by the prosecution where not only recoveries were effected on the basis of memorandums of accused persons but sniffer dog also after taking smell from the slipper lying on the spot had gone to the house of accused/appellant No.1 who was involved in the commission of offence. He further submits that memorandum & seizure witnesses have admitted their signatures on the documents and thus the same are fully reliable. He further argued that though no serological report could be filed on record, but FSL report confirms presence of blood on almost all the seized articles and the accused persons failed to offer any explanation as to how the blood came on the articles seized from their possession.

8. We have heard learned counsel for the parties and perused the material available on record.
9. Yadumani Yadav (PW-1) is the younger brother of the deceased who lodged FIR (Ex.P-1). While reiterating contents of FIR (Ex.P-1), he has stated that on 1.6.2009 in the morning her mother Budhni Bai told him that motorcycle of the deceased and two pairs of slippers are lying in forest situated at Gohar Valley. On this, he along with her mother reached the spot and there he met with two boys namely Gokul (PW-8) and Vishnu Kumar (not examined). They informed him that the deceased has been killed and his body is lying beside bushes and then he saw the body of deceased and lodged the report. He has further stated that in the elections of society held on 28.5.2009 accused/appellant No.1-Lochan Ram had threatened the deceased by saying that he will prove his mettle within three days and on 31.5.2009 the deceased had been killed therefore he had suspicion that accused/appellant might have committed his murder. He has further stated that various articles were lying near the body of deceased which were subsequently seized by the police. In the cross-examination this witness has denied the suggestion that accused/appellant No.1 did not threaten him, however, admitted that report of the same was not lodged.
10. Hemant Kumar (PW-2) is the son of deceased and reached the spot after coming to know about the incident. In Para-3 of his statement he has stated that nothing had happened with anyone and his father. He has further stated that on 28.5.2009 there was election of President of Mahkul Samaj and as accused/appellant No.1 could not get the post of President in the said election, he had threatened that within three days he will prove his mettle and three days thereafter the incident occurred therefore he had suspicion that it is accused/appellant No.1 who might have killed the deceased. This

witness has admitted that at the time of being threatened by accused/appellant No.1, he was not there. He has further admitted that neither his father nor he himself was ever extended any threat by accused/appellant No.1.

11. Rajkumar (PW-3) is the witness of memorandums of accused persons and seizures affected based on those memorandums. He is also a witness to identification memo (Ex.P-15). However, this witness has not supported the prosecution case and turned hostile. Gokul (PW-8) is another witness of memorandums and seizures. Though this witness has supported the prosecution case to some extent but in respect of Ex.P-16 he has stated that on the 7th day of incident, he was called by the police in the police where he has signed all the documents and therefore he has also been declared hostile by the prosecution.
12. Jugeshwar Prasad Yadav (PW-5) is an independent witness and he has stated that elections for the post of President, Vice President, Secretary & Treasurer of the society were held. He has further stated that the elections being unopposed, all the candidates have been nominated as officer bearers.
13. Smt. Bhagwati Bai (PW-6) & Jugeshwar Ram (PW-7) have not supported the prosecution case and have been declared hostile.
14. Kundram (PW-10) is the witness of identification memo (Ex.P-15) & inquest (Ex.P-17). In the cross-examination this witness has stated that identification proceeding of the seized articles vide Ex.P-15 was not done in his presence. He has signed the memo at the instance of the police and he is not aware of the contents made thereunder. Rameshwar Ram (PW-11) is also a witness of inquest (Ex.P-17).

15. Dr. Basant Singh (PW-14) has conducted post-mortem and noticed six injuries on the body of deceased. This witness has opined that the cause of death to be head injury and excessive bleeding from fracture site and that the death was homicidal in nature.
16. R.P. Sharma (PW-15) is the investigating officer and has duly proved the prosecution case.
17. Mrityunjay Singh (PW-16) is the Dog Master. He has stated that he along with sniffer dog reached the place of occurrence. The dog was made to sniff slipper seized from the spot and thereafter the dog reached the house of accused/appellant No.1-Lochan. His report is Ex.P-26. In the cross-examination this witness has admitted that he has not filed any document certifying that he is a trained dog master and even duty certificate has not been filed by him. He has admitted that there is no mention of date in the report of Ex.P-26. He has further admitted that it is not mentioned in the report (Ex.P-26) that the dog was made to sniff slipper seized from the spot. He has further admitted that place, time, date on which this report was prepared are not mentioned on it.
18. Banshi Ram (DW-1) has stated that on the date of incident accused/appellant No.5-Thandu @ Arun was not present in the village. Other defence witnesses have also stated in similar fashion.
19. Present is a case of blind murder. There are no eyewitnesses and conviction is based on the circumstantial evidence. It is by now well settled that in a case relating to circumstantial evidence, the chain of events has to be established pointing out the culpability of accused. The chain should be such that no other conclusion except the guilt of accused, is discernible without any doubt. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of

conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof. In a most celebrated case i.e. **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated by the Hon'ble Supreme Court as infra;-

- the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established; the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- the circumstances should be of a conclusive nature and tendency
- they should exclude every possible hypothesis except the one to be proved; and
- there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

20. Keeping in my mind the aforesaid principles, we shall now proceed to examine the evidence led by the prosecution to see whether the prosecution has been able to prove the offence against the appellants in conformity with the above principles.

21. The first circumstance adduced by the prosecution is that during the society election the accused/appellant had threatened that within three days he will prove his mettle and on the third day the incident occurred. May be the conduct of accused/appellant No.1 in saying so raises a finger of doubt against the accused/person but it has not come in the evidence that accused/appellant has directly threatened the deceased for dire consequences within three days or that having lost the elections against the

deceased or due to his active involvement against him, he personally threatened the deceased for life. Rather the evidence goes to show that elections of society being unopposed, all the candidates have been nominated as officer bearers. Thus, mere saying of accused/appellant No.1 that within three days he will prove his mettle is not sufficient to infer that the accused/appellant No.1 is the author of crime and none else. It is settled position of law that howsoever strong the suspicion is, it cannot take the place of proof and to establish a case against the culprits, the prosecution is required to give minute consideration to all the surrounding circumstances available against them.

22. So far as the evidence relating to sniffer dog is concerned, Mrityunjay Singh (PW-16) is the police constable posted as Dog Master. He has stated that on the direction of his senior, he brought the police dog to the place of occurrence and the dog after smelling the slipper of one of the accused lying on the spot, began its pursuit in search of the hideout of culprits and the terminus of track was the house of accused/appellant No.1. Evidence adduced by prosecution goes to show that two pairs of slippers were seized from the spot and out of two, one was identified as that of the deceased and another of accused/appellant No.3 by Gokul (PW-8) vide Ex.P-15, but nothing has been brought on record by the prosecution to show as to how the dog after taking smell from the slipper lying near the dead body reached to the house of accused/appellant No.1, when the same does not belong to him. Even it is not the case of prosecution that after the incident, all the accused persons came to the house of accused/appellant No.1 from the place of occurrence. Thus, the possibility of misjudging the smell or mistaking the track by the sniffer dog cannot be ruled out in the present case and therefore this cannot be treated as a circumstance against the accused/ appellants for the purpose of establishing their guilt. Fortifying this

position, it has been categorically held by the Hon'ble Apex Court in the matter of Gade Lakshmi Mangaraju (supra) as under;-

11. A fourfold criticism is advanced against the reception of such evidence. First is, it is not possible to test the correctness of the canine movements through the normal method available in criminal cases i.e. in cross-examination. Second is that the life and liberty of human beings should not be made to depend on animal sensibilities. Third is that the possibility of a dog misjudging the smell or mistaking the track cannot be ruled out, for many a time such mistakes have happened. Fourth is that even today science has not finally pronounced about the accuracy of canine tracking.
16. In Surinder Pal Jain v. Delhi Admn² a two-Judge Bench expressed the opinion that : (SCC p.696, para 33) "The pointing out by the dogs could as well lead to a misguided suspicion that the appellant had committed the crime." So save (*sic saying*) Their Lordships sidelined that item of evidence from consideration.
17. We are of the opinion that criminal Courts need no bother much about the evidence based on sniffer dog due to inherent frailties adumbrated above."
23. Coming to the next circumstance i.e. weapons allegedly used in commission of offence and other articles seized on alleged disclosure statements of accused/appellants. In the present case, recoveries on the basis of alleged disclosure statements of accused persons were sought to be proved from the statements of Rajkumar (PW-3) & Gokul (PW-8), but both these witnesses have not supported the case of prosecution and have been declared hostile by the prosecution. Rajkumar (PW-3) has stated that none of the accused persons, except accused/appellant No.5, has made disclosure statement of any article in his presence and that on being called by the police, he went to the police station where he, at the instance of police, has signed all the documents. Gokul (PW-8), another seizure

witness, has though supported the prosecution case regarding recovery of certain articles from the accused/appellants, but not supported recovery of alleged weapons of offence i.e. stick & *dauli* (a kind of weapon made of iron) by saying that the same have been shown to him in the police station. This witness has also admitted that he has signed the documents in the police station after six days of incident. In such situation, the recovery based on disclosure statements does not inspire confidence and it is not safe and proper to hold that the circumstance of recovery of above articles was established by the prosecution beyond the shadow of reasonable doubt. Even, the Hon'ble Supreme Court relying on its earlier judgment delivered in the matter of **Varun Chaudhary v. State of Rajasthan** reported in **AIR 2011 SC 72** has held in the matter of **Mustkeem vs. State of Rajasthan** reported in **(2011 (11) SCC** that *if the recovery memos were prepared at the police station itself then the same would lose their sanctity.*

24. True it is that in the FSL report blood stains were noticed on almost all the articles seized from the accused/appellants and the same were also sent to the serologist, but no document has been filed by the prosecution to establish that the blood stains were of human blood and further that they were matching with the blood group of the deceased. Undoubtedly, failure to detect the origin of blood does not mean that the blood stuck on seized articles would not have been human blood at all. It would depend on facts and circumstances of each case and effect of above circumstance has to be judged in the light of facts situation of each case. In the case in hand, we have already held the discoveries & seizure as doubtful and once the discovery fails, there would be literally nothing which would support the prosecution. Thus, we are of the view that the solitary circumstance of blood stains found over the articles allegedly seized from the possession of the appellants would not be sufficient against the appellants to hold them guilty

for an offence like murder.

25. After having discussed the entire evidence, we have no doubt in our mind that the same is vitiated by serious errors and if the appellants' conviction is upheld then it would amount to miscarriage of justice.

26. We, therefore, have no hesitation in allowing this appeal and setting aside the conviction and sentence of the appellants under Section 302 read with Section 34 of the IPC. We order accordingly. The appellants are directed to be released from jail forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-