

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 886 of 2010**

1. Babloo @ Irshad, S/o Vahid Musalman, aged about 40 years, r/o Rly Station, District Satna (M.P.)

**---- Appellant  
(In Jail)**

**Versus**

1. State Of C.G., through Police Station Manendragarh, District Korla.

**---- Respondent**

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For Appellant:

Shri Abhijeet Sarkar, Advocate

For Respondent:

Shri Sangharsh Pandey, Govt. Advocate.

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Judgement**

**Per Pritinker Diwaker J,**

**10/12/2015**

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.4.2010 passed by the Additional Sessions Judge, Manendragarh, District Korla (CG) in S.T. No.106/2009 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.2,000/-, in default to undergo additional R.I. for 03 months and R.I. for 5 years & fine of Rs.2000/-, in default to undergo additional RI for 03 months respectively.
2. In the present case the name of deceased is Abdul Shabbir. As per prosecution case, Dharampal Singh, Sarpanch of village Bauridand, lodged FIR (Ex.P-2) on 28.5.2009 alleging therein that on that day in the morning hours he was informed by one Bharat Singh that dead body of a male is lying in his agricultural field. On receiving such information, he reached there and saw that a dead body with injury on head is lying in the field. Based on this report, offence under Section 302 of the IPC was

registered against unknown person. Merg Intimation (Ex.P-1) was also recorded at the instance of Dharampal Singh. The Investigating Officer after summoning the witnesses prepared inquest over the body of deceased Abdul Shabbir vide Ex.P-4. Dead body was sent for post mortem examination to the Community Health Centre, Manendragarh where Dr. P.S. Kurrey (PW-5) conducted post-mortem examination vide Ex.P-11 and noticed following injuries on the body of deceased;

- Contusion on the right upper arm of 3x1" size.
- Incised wound of 1 x 0.2" x 0.3" size on lower lip.
- Punctured wound at left parietal region of head of 1"x2" size, upto skull.
- Incised wound at the left parietal region of head of 4"x0.3" size, upto skull

Cause of death is coma due to head injury leading to cardio respiratory arrest and death was homicidal in nature. Duration of death was 12 to 36 hours before the examination and the death was homicidal in nature. During the course of investigation, case diary statements of Shakeela Bano (PW-2) & Abdul Sharif (PW-3) were recorded wherein they have stated that the deceased had left the house with accused/appellant and thereafter his dead body was recovered. Accused/appellant was taken into custody and on the basis of his memorandum statement (Ex.P-7), bloodstained pickaxe & pink colour shirt were seized vide Ex.P-8.

3. After the investigation, challan was filed under Sections 302 & 201 of IPC followed by framing of charges accordingly. The prosecution in order to bring home the charges levelled against the accused/appellant examined 09 witnesses in all. Statement of the accused was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties, the Court below has convicted and sentenced the accused/appellant in the manner as described above.

5. Learned counsel for accused/appellant submits that;

- there is no direct evidence against the appellant and conviction is based on the circumstantial evidence i.e. last seen, which is not of such nature as to lead to an irresistible inference that it is the accuse/appellant who committed murder of the deceased.
- evidence of Shakeela Bano (PW-2) & Abdul Sharif (PW-3), who have allegedly seen the deceased last time alive in the company of accused/appellant, do not inspire confidence because some part of Shakeela Bano (PW-2) is based on the information given to her by Abdul Sharif (PW-3) and as per statement of Abdul Shariff (PW-3), on 27.5.2009 the accused/appellant came to his house but there is no evidence as to whether he had seen the accused/appellant and the deceased leaving the house together.
- though the bloodstained pickaxe & shirt were seized at the instance of accused/appellant, but in absence of report of F.S.L. only on the basis of recovery of such articles, it is difficult to connect the accused/appellant with crime in question.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that;

- conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
- there is no reason to disbelieve the testimonies of Shakeela Bano (PW-2) & Abdul Sharif (PW-3) who had seen the deceased last time alive in the company of accused.
- though no FSL report could be filed on record, but the accused/appellant failed to offer any explanation as to how the blood came on the articles seized from his possession. Even as per query

reports (Ex.P-12 & P-13) of the doctor, the injuries sustained by the deceased could have been caused by the pickaxe seized at the instance of accused/appellant.

- the accused/appellant has also not offered any explanation in his statement recorded under Section 313 of Cr.P.C. as to when he has departed the company of the deceased.

7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Dharampal Singh (PW-1) is the lodger of FIR (Ex.P-2). He is also witness to the Merg Intimation (P-3), disclosure statement of accused/appellant (Ex.P-7), seizure memo (Ex.P-8) and inquest (Ex.P-4).
9. Shakeela Bano (PW-2) is the sister of deceased. She has stated that on the date of incident when she came back home after fetching water, she found the accused/appellant sitting in the house. Her brothers offered him snacks and thereafter her brother Abdul Sharif (PW-2) left the house. She has further stated that on that day we had to go to a marriage and being asked, her deceased brother refused to go to the marriage by saying that he is going with the accused and will join them later. She has further stated that 15-20 minutes thereafter the deceased informed her over telephone that he is going to Chuktapaani along with accused/appellant and would come late in the party. She has further stated that when she was getting ready to go to marriage, her brother Abdul Sharif (PW-2) came and informed her that while he was coming back to home after collecting money, on the way he met the deceased, accused/appellant & mother of accused and being asked, the deceased informed him that he is going to Chuktapaani along with accused/appellant & his mother. Thereafter her brother did not return and next day his dead body was recovered. In the cross-examination this witness remained very firm and the defence has not

been able to elicit anything incriminating so as to make her testimony unreliable or doubtful.

10. Abdul Sharif (PW-3) is the brother of deceased. He has stated that on the fateful day at about 5.30 p.m. in the evening the accused/appellant had come to his house. He offered him snacks and thereafter left the house to collect the money. While he was returning house, on the way he saw the accused/appellant, mother of accused/appellant and his deceased brother going together and on being asked, the deceased told him that he is going with the accused/appellant to Chuktapaani. He has further stated that having come to know that one dead body with injuries is there near the pond in village Chuktappaani, they went there along with the police and recognized the dead body to be of his brother. In the cross-examination this witness remained very firm and the defence has not been able to elicit anything incriminating so as to make his testimony unreliable.
11. Dr. P.S. Kurrey (PW-5) conducted post mortem on the body of deceased and opined that cause of death is coma due to head injury leading to cardio respiratory arrest and death was homicidal in nature. He has further stated that on being produced, he has examined pink colour full shirt and found that blood stains were present on it, however, he has advised for chemical examination. This witness has also examined the pickaxe and according to his report (Ex.P-13), injuries sustained by the deceased could have been caused by said pickaxe.
12. Jawaharlal (PW-6) is the Patwari who prepared the spot map of Ex.P-7.
13. Bhaiyalal (PW-7) is the witness of inquest (Ex.P-4).
14. Mahendra Kumar Singh (PW-8) had sent the seized articles to the Forensic Science Laboratory for chemical examination, however, report of FSL is not available on record.
15. Prem Sahu (PW-9) is the investigating officer and has duly proved the

prosecution case.

16. As noticed above, the prosecution case was not based on direct evidence of eye-witnesses but purely on the circumstantial evidence i.e. last seen. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of accused and totally inconsistent with his innocence.
17. Close scrutiny of evidence makes it clear that on 27.5.2009 at about 5.00-5.30 p.m. the accused/appellant came to the house of deceased and after having snacks, he and the deceased went out together. While leaving the house, the deceased said to his sister Shakeela Bano (PW-2) that he is going with accused/appellant and would join them at the marriage later and thereafter he again informed her over telephone that he is going to Chuktapaani with accused/appellant. At about 7.00 p.m. while Abdul Sharif (PW-3), brother of deceased, was returning home, he met the deceased & the accused/appellant on the way and being asked, the deceased told him that he is going to Chuktapaani with accused/appellant and in the next morning at about 5.00 a.m. body of deceased with injuries was recovered from the agricultural field situated at Chuktapaani. The accused/appellant either in his statement under Section 313 Cr.P.C. or by any other evidence failed to establish that when and where he and the deceased parted company after being last seen. Thus the evidence of Shakeela Bano (PW-2) & Abdul Sharif (PW-3) clearly established the circumstances which unerringly point the accusing finger at the accused.

That apart, on the basis of disclosure statement (Ex.P-7) made by accused/appellant, bloodstained pickaxe & shirt were recovered vide

seizure memo of Ex.P-8 and there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized from his possession. Though the prosecution has not produced the report of FSL, but considering the fact that witness to memorandum & seizures (Ex.P-7 to P-8) remained very firm and the defence has utterly failed to elicit anything in his cross-examination to discredit his testimony, it cannot be said that non-production of FSL report is fatal to the prosecution. Even the doctor performing autopsy has opined that injuries found on body of deceased could be caused by the pickaxe so seized.

18. As regards the conviction of accused/appellant under Section 201 of IPC, from the evidence of Abdul Shariff (PW-2) itself it is clear that when he met the deceased on the way at about 7.00 p.m., the deceased told him that he in the company of accused/appellant is going towards Chuktapaani and it is that very place from where the body was recovered on the next morning. Thus, it is apparent that the accused/appellant with intent to screen himself from the legal punishment had thrown the body of deceased in the agricultural field located in Chuktapaani after committing his murder and being so his conviction under Section 201 of IPC is also justified.
19. Thus, on the basis of aforesaid circumstantial evidence the prosecution has succeeded in proving involvement of accused/appellant in commission of the offence beyond reasonable doubt. The findings recorded by the court below being strictly based on the unfettered appreciation of the evidence of the witnesses require no interference in this appeal.
20. For the reasons aforementioned, we do not find any substance in this appeal and is accordingly dismissed. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-  
(Pritinker Diwaker)  
Judge

Sd/-  
(C.B. Bajpai)  
Judge