

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.403/2011**

Larens Ekka, s/o Suresh Ekka, aged 22 years, R/o Village Telaidhar, Post-Bataikela, Police Station Sitapur, District Sarguja (C.G.)

APPELLANT
(In Jail)

Vs

State of Chhattisgarh, through Station House Officer, Police Station Balrampur, District Sarguja (C.G.)

RESPONDENT

&

Criminal Appeal No.523/2011

Govardhan Yadav, s/o Late Inderdev Yadav, aged 24 years, R/o Rampur, P.S. Chalgali, District Sarguja

APPELLANT
(In Jail)

Vs

State of Chhattisgarh, through the Station House Officer, P.S. Balrampur, District Sarguja (C.G.)

RESPONDENT

For the appellants:

Mr. V.C. Ottalwar, Advocate.

For the respondent:

Mr. Avinash K Mishra, Panel Lawyer.

For the complainant:

Mr. A.N. Pandey, Advocate

DB: Hon'ble Mr. Justice Pritinker Diwaker
Hon'ble Mr. Justice I.S. Uboweja

Judgment on Board

02.07.2015

Per P. Diwaker, J.

1. As these criminal appeals arise out of the common judgment dated 30.04.2011 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja in Sessions Trial No.283/2008, they are being disposed of by this common judgment.
2. Appellants have been convicted under Sections 302/34 & 397 of the Indian Penal Code (for short "the IPC") and sentenced to undergo R.I. for life & fine of Rs.500/-, in default to undergo additional R.I. for two months and R.I. for 07 years & fine of Rs.500/-, in default to undergo R.I. for two months respectively.
3. As per the prosecution case, both the accused/appellants were working as Constable in the armed force of the State. It is alleged that accused/appellant Goverdhan Yadav wanted to marry Vinayaka Yadav (PW-4), wife of deceased Vinod Yadav, and he had threatened her that in case she marries to someone else, he would first kill the said person

and would take away said Vinayaka (PW-4). It is further alleged that on the date of incident, when the deceased was going on his motorcycle, the accused/appellants stopped him near Daldhowa Ghat i.e. on the main road, and thereafter accused/appellant Goverdhan Yadav caused gunshot injury to the deceased as a result of which he died. The deceased was immediately taken to the hospital with the help of Dr. Hari Shankar Mishra (PW-2) but he was declared brought dead in the hospital. Upon receiving information from Peon of hospital, Merg Intimation (Ex.P-2) was recorded at 12.05 noon and on the basis of merg enquiry, offence under Sections 302 & 394 of the IPC and Sections 25 & 27 of the Arms Act was registered against unknown persons. Postmortem on the dead body of deceased was conducted on 24.3.2008 by Dr. N.K. Dutt (PW-11) and as per postmortem report (Ex.P-5), cause of death was shock due to gunshot injury.

4. During the course of investigation, statement of Smt. Vinayaka Yadav (PW-4) was recorded in which she had disclosed that she was threatened by the accused/appellants. After recording of case diary statements of the witnesses, ultimately charge sheet was filed against the accused/appellants on 30.09.2008. While framing charge, the trial Judge has framed charges against the accused/appellants under Section 302, in alternative Section 302/34, and Section 397 of the IPC read with Sections 25 & 27 of the Arms Act.
5. So as to hold the accused/appellants guilty, the prosecution has examined 22 witnesses. Statements of the 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.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in Para-2 of this judgment.
7. Learned counsel for the appellant submits as under:
 - (i) that there is no direct or indirect evidence against the accused/appellants on which basis their involvement can be proved for

the alleged murder of deceased Vinod Yadav.

(ii) that nothing has been seized from the possession of the accused/appellants on which basis it can be said that they were involved in any manner in the offence.

(iii) mere fact that accused/appellant Goverdhan Yadav had threatened Smt. Vinayka Yadav (PW-4) and the deceased for dire consequences is not sufficient to involve the accused/appellants in commission of offence.

(iv) that, even if the statements of Shyamlal (PW-5), Francis Khalko (PW-17), Smt. Sushila Devi (PW-21) & Nand Kishore Yadav (PW-22) are taken as it is, it cannot be said that involvement of accused/appellants has been proved by the prosecution.

(v) that, diary statement of Francis Khalko (PW-17) was recorded after about six months of incident therefore the same is required to be completely ignored.

(vi) that, in case of unknown miscreants test identification parade was required in order to establish their identity but in the present case the prosecution has not conducted test identification parade of the accused/appellants.

8. 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.

9. Mr. Pandey, learned counsel for the complainant, submits that from the evidence collected by the prosecution, needle of suspicion only goes on accused/appellant Goverdhan Yadav as even prior to the incident he had threatened Smt. Vinayaka (PW-4) for not marrying with the deceased

and as the deceased had performed marriage against the wishes of accused/appellant Goverdhan Yadav, he killed him. He further submits that even if no recovery has been made from the possession of the accused/appellants, considering their previous conduct they are liable to be convicted for commission of murder of deceased Vinod Yadav.

10. Heard learned counsel for the parties and perused the material available on record.
11. Sanjeev Kumar Gupta (PW-1), a truck driver who saw the dead body of the deceased lying on the road, has stated that on the date of incident when he was going to Ambikapur, he saw dead body of the deceased and later on, he came to know that he was killed, however, he cannot say as to who has killed the said person. Subsequently this witness turned hostile.
12. Dr. Harishankar Mishra (PW-2) has stated that on the date of incident when he was going to Balrampur, on the way he saw a person lying on the road. He stopped his motorcycle and asked two persons present there to wait and then he gave information of the incident to the police and in the hospital. He has further stated that the deceased was taken in a bus with the help of the passengers to the hospital and that the deceased died on the spot itself.
13. Mukesh Mukherjee (PW-3), Peon of Community Health Centre, Balrampur, gave information to the police on which basis Merg Intimation (Ex.P-2) was recorded.
14. Smt. Vinayaka Yadav (PW-4), wife of deceased, has stated that on the date of incident her husband Vinod Yadav left the house for Ambikapur for appearing in the examination and he was killed by the accused/appellants. She has stated that she had not seen the incident

but she was informed about the same by one tribal Ramlal. She has further stated that before occurrence of incident i.e. on 13.2.2008, accused/appellant Goverdhan Yadav threatened her husband. She has further stated that accused/appellant Larens Khalko had threatened her husband by warning him not to marry with her and further threatened that if he would marry with her, accused/appellant Goverdhan would kill him. She has stated that about one & half month prior to her marriage when she was teaching in the school, accused/appellant Goverdhan came there and threatened her by saying that if she would marry with Vinod Yadav, he would kill her and also Vinod Yadav. She has further stated that she lodged report in the police station and thereafter on 22.2.2008 she got married with Vinod Yadav. She has stated that on 23.3.2008 accused/appellant Larens met her husband and made some inquiry. Accused/appellant Larens has also threatened her husband not to marry with her and after the marriage, her husband had enquired from her as to why Larens was threatening him. She has stated that she also inquired from accused/appellant Larens as to why such threat is being given. In Para-8 she has stated that she had suspicion that it is the accused/appellants who must have killed her husband. She has further stated that the entire incident was witnessed by one Ramlal [it appears that this witness is talking about Shyamlal (PW-5)]. In Para-5 she has stated that naxals had made attack on the house of her grandfather & grandmother and she has lodged present complaint against the accused/appellants on the basis of suspicion alone. She has further stated that after the death of her first husband Vinod Yadav, she got married with one Rajeshwar Yadav. She has further stated that she has stated in her diary statement of Ex.D-1 that she was threatened by

accused/appellant Goverdhan Yadav, however, if the said fact is not recorded then she could not tell reason.

15. Shyamlal (PW-5), an eyewitness of the incident, has stated that on the date of incident while he was grazing his cattle, he saw one person going on the motorcycle towards Ambikapur and then he further saw two other persons riding on the motorcycle and one of them caused gunshot injury to the person who was riding motorcycle all alone. He has stated that names of persons who have committed the incident are Goverdhan & Larens but thereafter this witness has clarified that he does not know house of accused persons and that out of two assailants, one was of short stature, whereas another was tall one. He has stated that if those persons are brought in the Court, he would identify them. In Para-3 he has stated that he does not know accused/appellant Goverdhan Yadav present in the Court and he is not sure as to whether he could identify accused/appellant Larens or not, if he is brought before him. In the cross-examination he has categorically stated that while he was grazing his cattle, he had not seen anyone going from one place to another nor he saw anyone lying on the road. In Para-5 he has stated that he had not seen anyone at the place of occurrence nor had identified anyone. He had seen the persons on the motorcycle but did not identify them.
16. Ramgopal Yadav (PW-6), father-in-law of the deceased, has stated that on coming to know about the death of deceased at about 10.00 a.m., he immediately rushed to the hospital where he saw dead body of the deceased and when the police asked him as to whom you suspect as the accused, he named accused/appellant Goverdhan Yadav because before the incident he had threatened her son-in-law i.e. the deceased. He has further stated that prior to the incident, accused/appellant

Goverdhan had also threatened his daughter by saying that if she would marry with someone else, she would be killed. In Para-15 he has again repeated that he suspects that it is the accused/appellants who have killed his son-in-law.

17. Amol Kashyap (PW-7), a police constable, took the dead body of deceased for post-mortem. Smt. Manjurani Tiwari (PW-8) sent certain articles to the Forensic Science Laboratory for chemical examination. Vijendra Dubey (PW-9) saw dead body of the deceased at the place of occurrence, however, later on, this witness turned hostile. R. Sunder Sai Paikra (PW-10), a police constable, is the seizure witness of Ex.P-4.
18. Dr. N.K. Dutt (PW-11) conducted post-mortem on the body of deceased and noticed one elliptical wound on left side of chest between 5th & 6th ribs of 1cm x0.5cm size. He has opined that cause of death is shock due to profuse external haemorrhage due to gunshot injury. Ishwar Chand Yadav (PW-14) had prepared the spot map vide Ex.P-6.
19. Subhash Yadav (PW-16) has stated that accused/appellant Goverdhan wanted to marry with Vinayaka (PW-4) but her marriage was solemnized with the deceased and it is the accused/appellants who had killed the deceased. He has further stated that accused/appellant Goverdhan had also threatened Smt. Vinayaka (PW-4) when she was teaching in the school. This witness has reiterated that accused/appellant Goverdhan wanted to marry with his niece Vinayaka and that she was threatened by him for which a report was lodged in the police station.
20. Francis Khalko (PW-17) saw the body of deceased lying on the road and further saw two motorcycles there in the place of occurrence. He has further stated that accused/appellant Goverdhan was also there but he does not know other accused/appellant Larens. In Para-3 of evidence

this witness has stated that subsequently he came to know that it is the son-in-law of Gopal Yadav who was killed but he had not witnessed the incident. This witness has also been declared hostile, however, in the cross-examination he has further clarified that he had not seen any person killing the deceased. In Para-8 he has stated that his case diary statement was recorded after 2-3 months of incident, but record shows that case diary statement of this witness was recorded on 23.09.2008 i.e. after six months of incident, and no explanation has been offered either by the prosecution or by this witness as to why there was inordinate delay in recording his diary statement. In Para-6 he has further categorically stated that he could not identify the person who was standing near the place of occurrence.

21. H.R. Khan (PW-18) being the Station House Officer of Police Station Balrampur presented challan. Brijnath Sai Paikra (PW-19) had conducted main part of investigation. C.D. Tirkey (PW-20) is the investigating officer.
22. Smt. Sushila Devi (PW-21) is mother-in-law of the deceased and in Para-3 of her evidence she has stated that on the date of incident her son-in-law Vinod had left the house at about 8.00 a.m. and accused/appellants had followed him on their motorcycle and then killed him. However, in Para-4 she has stated that about 11.00 a.m. she came to know about the death of her son-in-law. She has further stated that on previous occasions also her daughter was threatened by the accused/ appellants for which report was lodged in the police station. She has stated that the accused/appellants had killed her son-in-law so that after killing him, accused/appellant Goverdhan can marry with her daughter. She has further stated that she too was threatened by

accused/appellant Goverdhan for not performing marriage of her daughter with anyone else. In the cross-examination she has admitted that she never had direct talk with accused/appellant Goverdhan and whatever she has deposed in her evidence is on the basis of what was disclosed to her by her daughter Vinayaka (PW-4). She has further admitted that she never had direct talk with accused/appellant Larens.

23. Nand Kishore Yadav (PW-22) has stated that while he was waiting for his bus near village Daldhova, he saw accused Goverdhan driving motorcycle with high speed and going towards Balrampur, he also saw accused Larens driving another motorcycle and both were perplexed. He has stated that on seeing him, accused/appellant Goverdhan did not stop there, but his companion i.e. accused Larens, stopped and thereafter he came with him upto Balrampur in his motorcycle. On the second day he came to know that Vinod Yadav was killed. He has further stated that after 2-3 months of incident the police had called him and recorded his statement (however as per record case diary statement of this witness was recorded on 23.9.2008 i.e. after about six months of the incident and no explanation has been offered by this witness or by the police for recording statement of this witness with such an inordinate delay). In the cross-examination this witness does not appear to be very firm and has made inconsistent statements. At some places he has stated that he saw accused/appellants, whereas at some places he has stated that he does not know the person who was driving other motorcycle.

24. From the above evidence it reflects that accused/appellant Goverdhan Yadav wanted to marry Vinayaka Yadav (PW-4) and had threatened her that if she would marry someone else then he would kill her and

therefore strong suspicion against the accused/appellants was expressed by relatives of the deceased. The prosecution upto some extent has also proved that Vinayaka Yadav & deceased Vinod Yadav both were threatened by the accused/appellants, but it is settled legal position that suspicion howsoever strong cannot take the place of proof and the prosecution is required to establish its case beyond all the shadow of reasonable doubt. It is true that it has come in the evidence of alleged eyewitnesses namely Francis Khalko (PW-17) & Nand Kishore Yadav (PW-22) that they have seen accused/appellant Goverdhan on the spot or coming towards the place of occurrence along with another person in perplexed condition, but these witness have not disclosed this fact to anybody for sufficient long time despite coming to know about the incident on the very next day. Undoubtedly, the delay in recording statements of witnesses is not fatal if it is properly explained, but in the present case statements of aforesaid witnesses were recorded on 23.09.2008 i.e. after about six months of incident, and the prosecution failed to offer any plausible & acceptable explanation for such delay in recording their statements, which can be held sufficient to destroy credibility of these witnesses. Further, accused/ appellants were arrested on 11.07.2008 but they were never put for identification before Francis Khalko (PW-17) & Nand Kishore Yadav (PW-22) and no explanation has been offered by the prosecution for not conducting test identification parade.

25. Even assuming that the accused/appellants were found near the place of occurrence, merely on this basis it cannot be said that it is they who committed murder of the deceased. 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 must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. It needs no reminder that legally established circumstances 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, but in the present case the Court below allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.

26. For the foregoing, we are of the opinion that the appellants are definitely entitled to be acquitted of the charges levelled against them by extending them benefit of doubt.

27. In the result, both the appeals succeed. Conviction of appellants Goverdhan Yadav & Larens Ekka under Sections 302/34 & 397 of the IPC is hereby set aside and they are acquitted of those charges. They be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-