

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 38 of 2012**

1. Jaya Naykar W/o Mohan Naykar, aged about 34 years, Occupation Hotel, R/o Adivasi Nagar Chhavni Basti, Jamul, District Durg C.G., Permanent Address- R/o 32AIKAD, Housing Board Jamul, Bhilai, District Durg (C.G.)
2. Chandan Sao S/o Rajendra Sao, aged about 26 years, Occupation – Oil Seller, R/o G- Kebin Charoda , Near Lingaraju House , Distt. Durg C.G.
3. Narendra Singh @ Tote, S/o Amrik Singh, aged about 40 years, Occupation-Driver, R/o Near Kemp-2, Bhilai Publik School, Chhawani Distt. Durg. C.G. At present Present R/o Bombay, Aawas, Jamul Distt. Durg C.G.

**---- Appellants****Versus**

1. State Of Chhattisgarh, P.S. Khursipar, District Durg (C.G.)

**---- Respondent****And****CRA No. 223 Of 2012**

1. Raja Naykar S/o Ganesh Naykar, aged about 32 years, R/o 32 Akar Housing Board, Jamul, Atal Aavas Bhilai Distt. Durg C.G.

**---- Appellant****Vs**

1. State Of Chhattisgarh Through - P.S. Khursipar , Distt. Durg C.G.

**---- Respondent**


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| For Appellants.    | - | Shri B.P. Rao, Smt. Kiran Jain and Shri Atanu Ghosh, Advocates. |
| For Respondent No. | - | Shri Ajit Singh, PL.                                            |

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

**Order On Board by Pritinker Diwaker, J**

**22/07/2015**

As these appeals arise out of judgment dated 23.11.2011 passed by Additional Sessions Judge, Durg in S.T. No. 14/2010, they are disposed of by this common judgment.

2 Accused/appellants Jaya Naykar, Chandan Sao and Narendra Singh alias Tote have been convicted under Section 201 read with 120-B whereas accused/appellant Raja Naykar has been convicted under Section 302, 201 read with 120-B IPC. Accused/appellants Jaya Naykar, Chandan Sao and Narendra Singh alias Tote have been sentenced to undergo RI for five years with fine of Rs. 1000 each whereas accused/appellant Raja Naykar has been sentenced to undergo imprisonment for life with fine of Rs. 5000 u/s 302 and RI for five years with fine of Rs. 1000 under Section 201/120-B IPC.

3. Name of the deceased is Shiva alias Sanwar. It is alleged that one Mohan – the husband of accused/appellant Jaya and brother of accused/appellant Raja was killed by deceased Shiva alias Sanwar and as its offshoot, on 21.10.2009 at about 12 midnight, accused Raja Naykar committed the murder of the deceased by causing 24 stab wounds on his body. He then wrapped the body in a blanket with the help of other accused persons, took it behind Baba Balak Nath temple near Shastri Nagar ground where the half burnt body was found in the afternoon of 21.10.2009. Based on the information given by one Pramod Kumar (PW-3), *merg* intimation Ex. P-33 was registered on that very day against the unknown persons. Postmortem examination on the body of the deceased was conducted on 23.10.2009 by Dr. Ullhas Gonnade (PW-11) who noticed as many as 24 injuries on it. According to the doctor, after commission of murder the body of the deceased was burnt and the death was homicidal in nature. From the

body of the deceased one electricity bill in the name of Alakh Verma was found and based on that the police proceeded further with the investigation. In pursuance of disclosure statements of the accused/appellants seizure was effected and the police came to the conclusion that deceased was murdered by accused Raja Naykar and that with the help of others the body was taken to the Baba Balak Nath temple where an attempt was made to burn it.

4. Prosecution has examined 18 witnesses to bring home the guilt of the accused/appellants. Statements of the accused/appellants were also recorded under Section 313 Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

5. After hearing the parties, the trial Court has convicted and sentenced the accused/appellants as mentioned above.

6. Learned counsel appearing for the appellants would submit as under:

- (i) that the body of the deceased has not been identified and the prosecution has failed to prove that the body found near the Baba Balak Nath temple was of Shiva alias Sanwar;
- (ii) that all the important witnesses including the eyewitnesses namely Chiranjeev Naykar (PW-10), Vaijyanti (PW-12) and Neelu alias Neelam (PW-13) have not supported the case of the prosecution and have been declared hostile;
- (iii) that the accused/appellants have been convicted on the basis of circumstantial evidence and the circumstances are not as such on the basis of which their conviction

could follow;

- (iv) that the main circumstance against the accused/appellants is their memorandums based on which clothes of the accused persons, weapon and certain other articles have been seized and as per FSL reports Ex. P-72 to P-75 blood was found on the same;
- (v) that there is no serological report on record to show that the blood found on the aforesaid articles was human blood and that it was of the group of the deceased;
- (vi) that in the document of seizure made from the accused/appellant Raja Naykar Ex. P-18A, his signatures have not been obtained;
- (vii) that memorandum of accused Raja Naykar Ex. P-9 was recorded on 23.10.2009 whereas seizure has been made on 25.10.2009 and there is no explanation for the delay of two days in doing so;
- (viii) that the other piece of evidence against the accused/appellants on the basis of which their conviction is made is the FSL report Ex. P-74 in which it is stated that the articles marked as "A" seized from near the dead body and the one marked as "Q" seized from the place of incident i.e. the house of Jaya Naykar, match with each other and they are the pieces of the same blanket; this however, is a weak type of evidence;
- (ix) that merely on the basis of such seizure it cannot be said that both the pieces are of the same blanket as at one place it is mentioned as blanket and at the other it is

mentioned as wool;

- (x) that from Ex. P-74 it is apparent that the blanket which has been seized from one place was of different design whereas the piece seized from the other place was of different design;
- (xi) that accused/appellants Jaya Naykar, Chandan Sao and Narendra Singh have been convicted solely on the basis of recovery of clothes in which blood stains were found but in the absence of serological report their conviction can not follow; likewise the other piece of evidence against Narendra Singh and Chandan Sao is the call details but even those details have not been proved by the prosecution;
- (xii) that there is no evidence on record to show that appellants Chandan Sao and Narendra Singh had washed the wall where the deceased was murdered;
- (xiii) lastly, in respect of these three appellants it is argued that as they have already remained in jail for about nine months, sentence imposed on them may be reduced to the period already undergone in case their conviction is not going to be disturbed;
- (xiv) in support of the arguments advanced by the counsel for the appellants, reliance is placed on the decisions of the Apex Court in the matter of **Kansa Behera v. State of Orissa** reported in **AIR 1987 SC 1507**, in the matter of **Subhash Chand v. State of Rajsthan** reported in **2002 SCC (Crime) 256**, on the decisions of this Court in the

matter of **Amar Sai v. State of Chhattisgarh** reported in **2006 (3) CGLJ 55** and in the matter of **Chaitram and another v. State of Chhattisgarh** reported in **2009 (1) Crime 621**

7. On the other hand, counsel appearing for the State while supporting the impugned judgment submits that conviction and sentence imposed upon the accused/appellants are strictly in accordance with law and there is no infirmity in the same. He further submits that though important witnesses have turned hostile, the seizure witness Navin Mishra (PW-7) has admitted his signature on all the documents which include memorandums of the accused/appellants and the seizure based thereon. It has been argued that the seizure has further been proved by the investigating officer and there is no reason for this Court to disbelieve the same. He submits that even if there is no serological report on record, present is a case where appellants have been convicted on the basis of two circumstances firstly – in the seized articles blood stains were found which has been proved by the FSL report and secondly the seizure of pieces of blanket from the places where the deceased was murdered and then tried to be burnt. State counsel submits that once FSL report Ex. P-74 confirms that both the pieces are of the same blanket, even in the absence of any explanation from accused Raja in 313 Cr.P.C. statement his conviction cannot be faulted with. He further submits that in his 313 Cr.P.C. statement accused Raja has not denied the seizure of articles and his signature on the seizure memo.

8. Heard counsel for the parties and perused the documents on record.

9. Jai Singh (PW-1) - the witness to inquest Ex. P-2 has stated that half burnt body was recovered in his presence. Though in relation to Ex. P-3 by which half burnt blanket was seized from near the body of the deceased he has turned hostile yet he has admitted his signature on the seizure memo. Girish Kumar (PW-2) has not supported the case of the prosecution and has been declared hostile. Pramod Kumar (PW-3) is also the witness to inquest Ex. P-2. Sukku Bahadur (PW-5) is the rickshaw puller and he too has not supported the case of the prosecution and has been declared hostile. S.L. Manjhi (PW-6) is the Patwari who prepared two spot maps Ex. P-7 and P-8 i.e. of the places where the incident took place and Ex. P-8 of the place where the dead body was recovered, and has duly supported the case of the prosecution. Navin Mishra (PW-7) is the witness of memorandum Ex. P-9 to P-11, seizure Ex. P-13 to P-18A and arrest memo Ex. P-19 to P-22. He has stated that his signatures were obtained by the police. Though he has been declared hostile, he has admitted his signature on these documents. In paragraph No. 12 of his cross examination he has stated that he has signed the document of Ex. P-9 voluntarily and there was no pressure of the police people. Vikrma Pandey (PW-8) is the witness who identified the body of the deceased who has not supported the case of the prosecution and has been declared hostile. Chiranjeev Naykar (PW-10), Vaijayanti (PW-12) and Neelu alias Neelam (PW-13) who are the nephew and niece of accused Raja Naykar have not supported the case of the prosecution and have been declared hostile. Dr. Ullhas Gonnade (PW-11) is the witness who conducted postmortem on the body of the deceased and noticed the following injuries vide his report Ex. P-26:

- (i) 4 cut marks, 3 at postero lateral aspect of left side and one at lower part of right side size 4 x 2 cm,  $\frac{1}{2}$  x 0.2 cm, 1.5 x 0.4 cm, 1.5 x 0.1 cm.
- (ii) Body kept in cooler.
- (iii) 4 cm x 2.5 cm, oblique stab wound, upper end situated 8.5 cm below upper end of manubrium.
- (iv) 7 cm x 3.5 cm transversely oblique stab wound whose medial end situated 11.5 cm below upper end of manubrium, left side intrusively on chest.
- (v) 5.5 cm x 3.5 cm transversely oblique stab wound situated 17.5 cm below upper end of manubrium, left side 7.5 cm mid-line on chest.
- (vi) 4 cm x 2.5 cm stab wound situated 32 cm below upper end of manubrium and 9 cm left to middle oblique.
- (vii) 1.5 cm x 1.5 cm stab wound situated 33 cm below upper end of manubrium 12 cm left to midline, oblique anterior-lateral aspect of lower part of chest.
- (viii) 2.5 cm x 1 cm stab wound situated 15 cm below upper end of manubrium and 17 cm left to midline of lateral aspect of chest transversely oblique.
- (ix) 4 cm x 1.5 cm stab wound obliquely situated 20 cm below upper end of manubrium and 22 cm left lateral to midline on lateral aspect of chest.
- (x) 7 cm x 3 cm stab wound 29 cm below upper end of manubrium and 17.5 cm left to mid line on lateral aspect of chest.
- (xi) 8 cm x 2 cm stab wound present obliquely at lateral aspect of abdomen situated 42 cm below upper end of manubrium and 14 cm left to midline.
- (xii) 4.5 cm x 1.5 cm stab wound situated 83 cm below upper end of manubrium and present at lateral aspect of thigh lower part obliquely.
- (xiii) 0.2 cm x 0.1 cm stab wound at medial aspect of left knee joint.
- (xiv) Bruised wound at left wrist posteriorly 6 cm x 3 cm x muscle exposed.
- (xv) Bruised wound 1 cm x 0.5 cm at fifth metacarpal.

- (xvi) Lacerated wound 2 cm x 20 cm x bone deep at left shoulder and upper part of arm (postmortem)
- (xvii) Lacerated wound 24 cm x 15 cm x muscle deep above right knee joint (postmortem).
- (xviii) Lacerated wound 10 cm x muscle/bone deep, left side of cheek (postmortem)
- (xix) Lacerated wound 46 cm x 20 cm at right arm scapula, lower end of humerus fracture.
- (xx) Lacerated wound 16 cm x 13 cm x muscle deep above right side of chest posteriorly (postmortem).
- (xxi) Lacerated wound 14 cm x 10 cm x subcutaneous deep at right gluteal region (postmortem)
- (xxii) 4 cm x 25 cm stab wound situated 6 cm below upper end of manubrium 26 cm right to midline at anterior aspect of chest rib deep.
- (xxiii) Skull posterior surface burnt occipital bone broken due to heat brain comes out, skin of face, neck, skull, shoulders right and left part upper limb upto wrist, right thigh, part of trunk burnt (postmortem burn).
- (xxiv) 12 cm x 10 cm x stab wound at right side of abdomen anteriorly oblique, bubbling effect present at left humerus bone which is dislocated and lower part of thigh bone which is protruded also.
- III, IV, V, VI, VII, VIII, IX pierces respiratory ribs at chest wall and involves left lung penetrate it which is collapse.
- (xxv) Stab wound at ulnar border middle 1/3 vertically oblique size 2.5 cm x 1.5 cm x muscle deep.

Cause of death was hemorrhage and shock as a result of multiple stab wounds to chest and abdominal region caused by hard and sharp object, and the death was homicidal in nature.

10. Manovar alias Manohar (PW-14) – the brother of the deceased though has been declared hostile, in paragraph No.2 of his deposition he has stated that for identification of the deceased, his photograph

was brought to his father by the police and at that time he and his brother were present there and the necessary formalities were completed vide Ex. P-29. He has further stated that his father had identified the photograph to be of the deceased Sanwar alias Shiva and that document was signed by him and his brother. P.R. Verma (PW-15) is the Sub Inspector who had recorded *merg* intimation Ex. P-30. Jamal Ahmed (PW-16) – the father of the deceased though has been declared hostile, in paragraph No.5 of his deposition he has stated that after seeing the photograph of the dead body all his family members had identified the same to be of deceased Sanwar alias Shiva and that photograph was of a half burnt person. However, at some places he has denied the fact that he identified the photograph of the dead body. Mohd. Tariq (PW-17) is the witness to memorandum of accused persons vide Ex. P-9 to P-12 and seizure of articles made under Ex. P-13 to P-18A. Though this witness has been declared hostile, he has admitted his signature on all these documents. Smt. Navi Monika Pandey (PW-18) is the investigating officer who has duly supported the case of the prosecution. She has stated that she recorded the memorandum of the accused persons and made various recoveries based thereon. She has further stated that memorandum and seizure memos were signed by Navin Mishra (PW-7) and Mohd Tariq (PW-17). She has stated that the seized articles were sent by her for chemical examination to the Forensic Science Laboratory vide Ex. P-70 and the acknowledgement thereof is Ex. P-71 whereas the FSL reports are Ex. P-72, P-74 and Ex. P-75 and the covering letters thereof are Ex. P-73 and P-76.

11. Close scrutiny of the evidence on record makes it clear that on

21.10.2009 in the midnight accused/appellant Raja Naykar committed the murder of the deceased by first causing about 24 stab injuries on his body and then after wrapping the dead body in a blanket he took it behind the Baba Balak Nath temple near Shastri Nagar ground and burnt the same. On the next morning i.e. 22.10.2009 the dead body was noticed by Pramod Kumar (PW-3) and based on it *merg* intimation was registered. On the basis of electricity bill found in the pocket of the pant worn by the deceased, investigation was carried forward and during investigation it transpired that it is the accused/appellant Raja Naykar who committed the murder of the deceased. Based on his memorandum, recovery of various articles was made such as dagger vide Ex. P-13, rickshaw vide Ex. P-15, T-shirt and Jeans pant vide Ex. P-16, lime scraps of the wall and the pieces of green-black blanket vide Ex. P-18A. Similarly, on the memorandum of accused Jaya Naykar Ex. P-10, recovery of black-white-red printed maxi was made vide Ex. P-14. On the memorandum of accused Chandan Ex. P-11, recovery of pant, shirt, mobile and motorcycle was made vide Ex. P-17. Likewise, on the memorandum of accused Narendra Ex. P-12, recovery of pant and shirt was made vide Ex. P-18.

12. From the place where body of the deceased was found half burnt, seizure of half burnt red-black colour blanket stained with blood was made vide Ex. P-3. Likewise, electricity bill was also recovered from the pocket of the pant of the body of the deceased. The pieces of the blanket recovered under Ex. P-18A from the house of accused Jaya Naykar where the deceased was allegedly killed and the ones seized from the place where the body was allegedly found half burnt, were sent to the forensic science laboratory for chemical examination

and as per the report Ex. P-74, articles marked as "A-1 and Q" i.e. the pieces of blanket were found to be similar, and there is no challenge to this report. Further, as per the FSL report, in the seized articles such as dagger, rickshaw, lime scrapping of the wall were found blood stained. Blood was also found on the maxi recovered from the house of accused Jaya Naykar vide Ex. P-14. According to the FSL report Ex. P-72, pant of accused Chandan and shirt of accused Narendra were also stained with blood. Though there is no serological report on record, the FSL report is positive and suggests of presence of blood on various seized articles referred to above.

13. In 313 Cr.P.C. statement of accused Raja Naykar, specific questions were put to him regarding recovery of various articles at his instance and also regarding the FSL report but no explanation whatsoever has been offered by him as to how the blood was found on those articles. It is relevant to note here that though seizure witnesses have not supported the case of the prosecution, they have admitted their signatures on the memorandum of the accused persons and the recoveries made pursuant thereto. Even the investigating officer has duly proved the recovery of articles specified above.

14. In the case in hand, the strong piece of evidence against the accused/appellant Raja Naykar is the recovery of pieces of blanket from two places i.e. where the incident of murder took place and where the half burnt body was found, that too on the disclosure statement of none other than him and both the pieces were found to be similar vide FSL report Ex. P-74. In addition to this, there is recovery of blood

stained articles made at the instance of the said accused/appellant. True it is that the prosecution has not been in a position to find out the origin of the blood found on the seized articles by way of serological report etc. but it is equally true that there was blood in all those seized articles and the defence has utterly failed to explain as to from where it appeared thereon. Once the presence of blood on the seized articles is proved beyond doubt, mere absence of serological report does not vitiate the entire case of the prosecution to the wrongful advantage of the accused particularly when there is other evidence regarding his active involvement in the murder of the deceased.

15. We find no substance in the argument of the counsel for the appellants that as signature of accused/appellant Raja Naykar was not obtained on the seizure memo Ex. P-18-A, it cannot be considered against him. In our opinion, it cannot be said, as a matter of law that:

- (i) The signatures of the accused have to be obtained on the recovery memo; or
- (ii) An endorsement is required that the accused has refused to accept it; and
- (iii) Merely failure to do so, vitiates the recovery.

If there were such a provision, then it might run afoul of Article 20(3) of the Constitution of India.

16. In the case of **Golakanda Venkateswara Rao vs. State of A.P.** reported in **2003 SCC (Cri) 1904** it has been held by the Supreme Court:

- “(i) Disclosure and recovery memos were not signed by the accused; and
- (ii) Some of the recovered articles were not even produced before the Court; and
- (iii) It was a case of circumstantial evidence,

Yet the Supreme Court distinguished the Jackaran case. The Court relying upon the memos upheld the conviction. The court observed:

' Every case has to be decided on its own facts. The facts of that case [the Jackaran case] do not fit in the facts of the case at hand...In the instant case, while it is true that neither the disclosure statement remains that pursuant to the disclosure statement Mos have been recovered from the well and dug out from a place which is pointed out by the appellant, leaves no manner of doubt that the recovery of Mos has been made on the basis of the voluntary disclosure statement."

17. Further, in the case of **State of Rajsthan vs. Tejaram** reported in **1999 SCC (Cri) 436** it has been held as under:

"The resultant position is that the investigating officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by section 27 of the Evidence Act. But if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it."

18. This Court further finds no substance in the argument of the counsel for the appellants that dead body of the deceased was not identified by any of his relatives in particular father and brother. From the statements of Manovar alias Manohar (PW-14) and Jamal Ahmed (PW-16) it is apparent that on the basis of photograph of the dead body they had identified the same to be of the deceased and most important aspect of the case is that during trial an application was also filed on 15.3.2011 by the prosecution for DNA test of the dead body. However, in reply to that application, it was admitted by the accused persons on 3.10.2011 that the dead body was of deceased Shiva and once the accused/appellants have admitted the fact of the dead body

being of deceased Shiva, at this stage they cannot take a ground that the body was not of the deceased herein. Similarly, the argument of the counsel for the appellants that as the prosecution has not been able to establish the origin of the blood from the serological report, benefit has to go to the accused/appellant Raja Naykar, is without any substance. Presence of blood on the seized articles is not disputed even by the defence but it has not been in a position to explain as to from where the said blood appeared on the seized articles and in these circumstances mere absence of serological report would not be of any help to accused Raja Naykar.

19. Judgments cited by the counsel for the appellants are of no help to the accused persons because in their statements recorded under Section 313 Cr.P.C. specific questions were put to them but no explanation whatsoever has been offered by them.

20. We agree with the proposition of the counsel for the appellants that merely on account of blood found on the seized articles conviction cannot follow but when there are other things demonstrating the complicity of accused Raja Naykar with the crime in question, absence of serologist's opinion would not give any bonus to him. Indisputably, blood was present on various articles recovered at the instance of the accused Raja Naykar but even after specific questions being put in his 313 Cr.P.C. statement he did not offer any explanation as to from where that blood appeared. This apart, the pieces of blanket recovered from the place of incident and the place where the body was subsequently taken for being burnt, were found to be the same and this circumstance also remained unsatisfactorily explained by him.

21. In these circumstances, this Court does not find any illegality in the judgment impugned as far as it relates to accused Raja Naykar.

22. However, considering the fact that the only piece of evidence against other three accused persons in Cr. A. No. 38/2012 is their memorandum and seizure based thereon and no other evidence regarding disappearance of the body or hatching conspiracy in carrying out the same, is there on record to convict them under Sections 120-B/201 IPC and therefore benefit of doubt has to be given to them. Accordingly, the judgment impugned as far as it relates to the appellants of Criminal Appeal No. 38/2012 is set aside.

23. In the result, Criminal Appeal No. 223/2012 is dismissed and the other being Criminal Appeal No. 38/2012 succeeds leading to the acquittal of accused Jaya Naykar, Chandan Sao and Narendra Singh alias Tote.

24. As the accused/appellants of Criminal Appeal No. 38/2012 are already on bail, their bail bonds stand discharged. As the accused/appellant of Criminal Appeal 223/2012 is already in jail, no other order regarding his surrender etc. consequent to dismissal of his appeal is required to be passed.

Sd/-

(Pritinker Diwaker)  
Judge

Sd/-

(I.S.Uboweja)  
Judge