

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 267 of 2012

1. Kamta Prasad Bareth S/O Sukhram Bareth, aged about 22 years, R/O Village Chhuhipali , P.S. Kosir , Distt. Raigarh C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through SHO Police Station Kosir District Raigarh (CG)

---- Respondent

For appellant : Mrs. Meena Shastri, Advocate.
For Respondent/State : Mr. Avinash K. Mishra, PL.

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

Order On Board

03/07/2015

Per Pritinker Diwaker, J

This appeal arises out of the judgment of conviction and order of sentence dated 28.2.2012 passed by the Additional Sessions Judge, Sarangarh, Distt. Raigarh in S.T.No.25/10 convicting the accused/appellant under Sections 302 and 397 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2000/- and to undergo RI for seven years, to pay a fine of Rs.1000/- respectively plus default stipulations.

02. As per prosecution case, in between 3 pm of 27.4.2010 and 7 am of 28.4.2010 deceased Nankibai, wife of Dhanau, was killed by the accused/appellant near stone mines of Village-Nunpani. It is further alleged that the appellant has caused several injuries on the body of

the deceased with stone and had also looted the valuable ornaments worn by her. On 28.4.2010 Dehati merg Ex.P/1 was recorded at the instance of Dhanau (PW 1) and thereafter, numbered merg Ex.P/20 was recorded and then FIR Ex.P/21 was recorded on 29.4.2010 under Section 302 of IPC against the unknown person. Postmortem on the body of the deceased was conducted on 28.4.2010 by PW-20 Dr. JR Dhritlahre vide Ex.P/18 wherein he noticed 10 injuries on the body of the deceased including fracture of number of bones and opined that the cause of death was hemorrhagic shock due to injury on vital organs and the death was homicidal in nature. During merg enquiry, statement of PW-9 Kumari was recorded from which it was revealed that the deceased was a member of Woman Self Help Group of which mother of the appellant was President and on the date of incident the appellant had called the deceased through his brother Bhuvan and then she was found murdered near stone mines of Village-Nunpani. Memorandum of the accused/appellant Ex.P/6 led to seizure of 10 notes of 1000/- denomination vide Ex.P/7, bloodstained clothes of the appellant vide Ex.P/8, piece of gold weighing 11.100 mg and one receipt of Mayank Jewellers dated 27.4.2010 showing sale of nose ring weighing 11.200 mg vide Ex.P/9. After investigation charge sheet was filed against the accused/appellant under Sections 302 and 397 of IPC and accordingly charges were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 23 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the

prosecution case, pleaded innocence and false implication.

04. 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/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted solely on the basis of circumstantial evidence but the circumstantial evidence is not as such which can be made basis for conviction of the appellant.

(ii) that the witnesses of memorandum Ex.P/6 are not reliable as their statements are self-contradictory and therefore, any recovery made pursuant to such disclosure by the appellant cannot be used against him.

(iii) that all the seizure memos have been made in the police station, nothing has been done on the field and therefore, the seizure memos loses its effect.

(iv) Ex.P/13 is a receipt allegedly issued by PW-10 Rakesh Kumar Kesharwani, which cannot be used against the appellant because as per the said receipt, description of some gold ornaments has been given whereas from possession of PW-10 melted gold has been seized and the quantity of the said melted gold does not tally with the quantity shown in the receipt.

(v) that there is no evidence on record to connect the appellant with the murder of the deceased because there is no FSL report nor the circumstances are so strong on which basis only one conclusion can be drawn that it is the accused/appellant who committed murder of the

deceased.

(vi) that recovery of cash amount from the possession of mother of the appellant cannot be used against him because prior to the date of incident the mother of the appellant (PW-8) had pledged her land with PW-5 Rohit Kumar Sahu and this has been duly proved by the prosecution witnesses.

(vii) even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 411 of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He submits that from receipt Ex.P/13 it is apparent that the same was duly signed by the appellant and PW-15 Chandram. The said document shows the entire transaction between the appellant and PW-10 of the gold ornaments.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Dhanau Kenwat, husband of the deceased, has stated that dead body of the deceased was found near stone mines of Village-Nunpani. Before her death, the deceased was wearing gold chain of 12.25 gm, nose ring of 3 mg, ear ring of 3 mg and the person who had killed the deceased took all those ornaments but for one. The appellant had confessed the offence before his friend and then he sold the looted ornaments. He is also a witness of inquest Ex.P/2. He has further

stated that he was informed by his daughter that the appellant had called the deceased. He has admitted that the gold which was seized by the police was melted gold and he does not know as to how the same was made. PW-2 Bholaram Chouhan is a witness of memorandum of the appellant Ex.P/6 and seizure Ex.P/7 to Ex.P/9. In cross-examination he has stated that in the police station his signatures were taken by the police on 4-5 papers, the appellant never made memorandum before him and he is not aware as to what was recorded by the police. He has further denied any recovery of gold from the appellant or recovery of any currency notes from mother of the appellant. He has further stated that the memorandum was never recorded before him nor any seizure was made. In para-7 he has stated that he is a Village Kotwar and he signs papers as desired by the police. PW-19 Phoolkumar Nishad is another witness to memorandum Ex.P/6 and seizure Ex.P/7 to P/9. He too has made similar statement as has been made by PW-2 Bholaram. However, both the seizure witnesses have admitted their signatures on the documents.

09. PW-3 Uddhavlal Sahu is a witness of inquest Ex.P/2, seizure Ex.P/12 whereby plain and bloodstained soil as well as stone were seized. He has denied any such seizure and has been declared hostile. However, he has admitted his signatures on the aforesaid documents. PW-4 Lakhanlal is a witness of inquest Ex.P/2. PW-5 Rohit Kumkar Sahu has stated that father of the appellant had pledged the land for which he had given currency notes of denominations 50 and 100. PW-6 Kushalram Sahu is a person to whom the appellant had first

alleged to have approached for lift, however, as he did not have the vehicle the appellant and this witness both went to the house of PW-7. He has not supported the prosecution case and has turned hostile. PW-7 Shambhu Patel is a witness to whom the appellant and PW-6 had approached for vehicle. He has also not supported the prosecution case and has been declared hostile. PW-8 Shukwarabai, mother of the appellant from whom Rs.10,000/- was seized vide Ex.P/7, has stated that this amount was given to her by her husband as her husband had pledged his land. PW-9 Kumari, daughter of PW-1 Dhanau from his second wife, has stated that Bhuvan, brother of the appellant had called the deceased for obtaining her signature and thereafter she left for the village pond and she had informed the deceased about the same. PW-10 Rakesh Kumar Kesharwani is a goldsmith who had issued receipt Ex.P/13. He has stated that Chandram (PW-15) and the appellant came to him for sale of gold ornaments as mentioned in Ex.P/13 and after weighing the same he gave Rs.14,300/- to them and had also issued receipt Ex.P/13 which was subsequently seized vide Ex.P/9. As per seizure memo Ex.P/9, piece of gold was also seized. He has admitted that he did not sign Ex.P/13. PW-11 Laveshwar Prasad Chandrakar, Nagar Sainik, has not stated anything against the appellant. PW-12 Kartik has turned hostile and not supported the prosecution case. PW-13 Jaleshwar is a witness of inquest Ex.P/2. PW-14 Mahettar Ram, Patwari, prepared the spot map Ex.P/3. PW-15 Chandram Nirala is a person who had taken the appellant to the goldsmith. He has stated that as he was known to the goldsmith, the goldsmith agreed to purchase the ornaments from the appellant. He has further stated that the receipt was not issued at the time of sale

and the same was made about 4-6 days and that Rs.14,300/- was given to the appellant. In cross-examination he has stated that the piece of gold (in melted form) was sold to the goldsmith and not the ornaments. He has stated that when he took the appellant along with him, the appellant was normal and was not perplexed. PW-16 Bholaram Kenwat and PW-17 Nanbai are witnesses to inquest Ex.P/2. PW-18 Rameshwar Singh, Head Constable, took the dead body for postmortem and thereafter handed over the same to the family members of the deceased. PW-20 JR Dhritlahre conducted postmortem on the body of the deceased, noticed 10 injuries on her person including fracture of various bones and opined that the cause of death was haemorrhagic shock due to injury on vital organs and the death was homicidal in nature. PW-23 Ramkumar Rana, Investigating Officer, has duly supported the prosecution case.

10. From the record it is evident that no FSL report has been received by the prosecution though certain articles were sent vide Ex.P/24. From the evidence adduced by the prosecution the following facts emerge:

- (i) in between 27.4.2010 and 28.4.2010 deceased Nankibai was murdered.
- (ii) dead body of the deceased was found near stone mines of Village-Nunpani.
- (iii) on the basis of memorandum of the appellant Ex.P/6, seizure Ex.P/7 to P/9 was made, however, the seizure and memorandum witnesses have not fully supported the prosecution witnesses.
- (iv) vide Ex.P/13 it appears that certain gold ornaments were sold by

the appellant to PW-10 in the presence of PW-15.

(v) there is no FSL report on record.

11. There is absolutely no evidence to connect the appellant with the crime in question. Though bloodstained clothes of the appellant and stone were seized and sent for FSL, but there is no FSL report. In his statement, PW-1 Dhanau has stated that before death the deceased was wearing certain gold ornaments which were found missing when he saw her dead body but those ornaments have not been seized by the police and only a piece of melted gold was seized vide Ex.P/9 of which receipt is Ex.P/13. Furthermore, it is also doubtful that the recovered articles belong to the deceased because as per statement of PW-1 the deceased was wearing certain gold ornaments, however, recovery of the gold was made in melted form and therefore, the question of identification of the same does not arise.

12. It is settled proposition of law that even if recovery of stolen/robbed article is reliable, even then it does not establish that the accused committed murder and only admissible fact which can be inferred is that the accused was in possession of the stolen goods. In the present case, the only evidence against the appellant is recovery of looted property and although the circumstances may indicate that theft/robbery and murder might have been committed at the same time, but it will not be safe to draw an inference that it is the accused/appellant, who sold the gold ornaments, had committed the murder. For establishing guilt on the basis of circumstantial evidence, it is also to be taken into account that the chain of circumstantial evidence must be completed. In the present case, it appears from the

evidence that the said chain of circumstantial evidence can not be completed in the manner sought to be done by the prosecution. The circumstances must be conclusive in nature. In the matter of ***Dhan Raj @ Dhand Vs. State of Haryana*** reported in ***(2014) 6 SCC 745*** the Hon'ble Apex Court while dealing with case based on circumstantial evidence in paragraph-19 observed thus”

“19. We would refer to the decision of this Court in *Nunish Mubar Vs. State of Haryana*, (2012) 2 SCC 399, wherein Dr. Chauhan, J has very aptly and succinctly stated the following:

“28. ... The circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one indicating the guilt of the accused.”

A court has to examine the entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the court's job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused.”

13. In the case in hand, though the circumstances reveal that certain gold ornaments were sold by the appellant but there appears to be a gap between the circumstances tried to be relied upon to hold the

appellant as guilty. Mere recovery of certain article at the instance of the accused is not enough to incriminate the accused unless it is also established that the recovered article connect the accused with the alleged crime. Even assuming that the ornaments belong to the deceased, at best the appellant would be guilty of having received the stolen property but could certainly not be guilty of having murdered the deceased. Thus there appears to be loopholes in the case of the prosecution and the grounds on which basis the trial Court has convicted the appellant.

14. On the basis of aforesaid discussions, we are of the opinion that the prosecution has not been able to prove the appellant guilty under Section 302 or 397 of IPC beyond all reasonable doubt and as such, the trial Court has committed an illegality in holding the appellant guilty under these sections. However, on the basis of evidence adduced by the prosecution, the appellant can safely be held guilty under Section 411 of IPC.

15. In the result, the appeal is allowed in part. While acquitting the appellant of the charges under Sections 302 and 397 of IPC by extending him benefit of doubt, he is held guilty under Section 411 of IPC. As he has already served the maximum jail sentence provided under Section 411 of IPC and is still in jail, he be set free forthwith if not required to be detained in any other case.

Sd/-

(Pritinker Diwaker)
J U D G E

Sd/-

(I.S. Uboweja)
J U D G E

