

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 500 of 2000**

Ram Bharose S/o Manikram Yadao, aged about 40 years, R/o village Adbhar, Jurwapara, PS Malkharoda, District Janjgir-Champa.

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh) Through its PS Janjgir Champa.

---- Respondent

For Appellant	: Ms. Pritha Ghoshal, Advocate.
For Respondent/State	: Shri Vinod Deshmukh, Deputy Government Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****19/07/2016**

1. This appeal by the accused/Appellant is directed against the judgment dated 19.01.2000 delivered by the learned Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No. 289 of 1999, whereby he convicted the accused for having committed an offence punishable under Section 302 of the Indian Penal Code and sentence him to undergo rigorous imprisonment for life and to pay fine of Rs. 2000/-. In default of payment of fine, the accused/Appellant was directed to undergo further rigorous imprisonment for one year.

2. The first information (merg intimation) (Exhibit P/1) with regard to the commission of the offence was lodged by Tilak Ram (PW-1) at about 1:30 pm on 31.05.1999. In this report, the complainant alleged that his wife, Lachan Bai had gone to the pond to have bath at 8:00 am. At about 9:00 - 10:00 am, the younger brother of the complainant, Dileshwar Prasad (PW-15) informed the

complainant that Lachan Bai was lying near the pond. Thereafter, the complainant went to the pond and found that his wife Lachan Bai was dead. There were injuries on her head and forehead. He came to know from the villagers that the accused/Appellant-Ram Bharose had killed his wife due to some previous enmity. On the basis of this complaint, a formal first information report viz. FIR No. 94 of 1999 was recorded. The police investigated the matter. The accused/Appellant was arrested and he made a statement to the police and on the basis of the said statement, Lathi (Exhibit P/15) was recovered in the presence of Shrilal (PW-10) and Hetkumar (PW-14). The body of the deceased was sent for postmortem which was conducted by Dr. R.D.Gupta (PW-16). The incident is said to have been witnessed by Geeta Bai (PW-3), Rukhmani Bai (PW-6) and Mohar Bai (PW-7). During the course of investigation, it was found that Manglu Ram (PW-4) had informed Tilak Ram (PW-1) about his wife being killed by the accused/Appellant. On the basis of investigation, charge sheet under Section 173 CrPC was filed and the accused was charged for having committed murder of Lachan Bai. After the trial, he has been convicted and sentenced as aforesaid. Hence this appeal.

3. Ms. Pritha Ghoshal, learned counsel appearing for the accused/Appellant submits that the learned Trial Court has gravely erred in convicting and sentencing the accused. She submits that none of the eye-witness has supported the prosecution version. In fact, Manglu Ram (PW-4), Rukhmani Bai (PW-6) and Dileshwar Prasad (PW-15) also did not support the prosecution version. According to her, there is no evidence to connect the accused with the commission of the offence.

4. On the other hand, Shri Vinod Deshmukh, learned Deputy Government Advocate appearing on behalf of the State submits that the learned Trial Court has rightly convicted and sentenced the accused. He submits that the statement of Banshilal (PW-10) and Hetkumar (PW-14) fully support the

recovery of Lathi which was the weapon of offence. This Lathi has been recovered on the basis of the statement made by the accused and since this Lathi was blood stained, the learned Trial Court was fully justified in convicting the accused.

5. We have given our careful consideration to the evidence on record and the facts of the case.

6. As far as all the alleged eyewitnesses Geeta Bai (PW-3), Rukhmani Bai (PW-6) and Mohar Bai (PW-7) are concerned, they have turned hostile. In the Court, all of them have stated that they do not know anything about the occurrence except the fact that they saw the deceased lying near the pond in an injured condition. According to them, they do not know how the injuries were sustained. All of the three witnesses were declared hostile and cross examined by the Public Prosecutor and confronted with their statements made under Section 161 CrPC. There is no effective cross examination of these witnesses. Therefore, there is no eye-witness to the occurrence and now we have to consider the question as to whether there is sufficient circumstantial evidence to convict the accused.

7. The law with regard to circumstantial evidence is well settled. In a case where the prosecution relies upon the circumstantial evidence, it must not only prove the circumstances but should link them in such a fashion so as to form an un-ending chain i.e. leading to only one conclusion i.e. the guilt of the accused. But if there is any chance of the accused being innocent or the crime has been committed by some other person, then the accused has to be given the benefit of doubt and on the basis of circumstantial evidence, he cannot be convicted.

8. The first circumstance relied upon by the prosecution is that there was an inimical relationship between the accused and the deceased which is the

motive. The case of the prosecution is that the accused used to suspect the deceased of having engaged in witchcraft (जादू टोना) and the accused used to suspect that due to this witchcraft, he was suffering. Other than Tilak Ram (PW-1) who has made this statement, nobody else has supported this statement. In case a woman is engaged in witchcraft, the other villagers would also know about this fact and whether she was engaged in witchcraft to harm a particular person (in the present case, the accused) may or may not be known to them but they would definitely know that she engages in witchcraft. That has not been stated by any of the witnesses and in fact no suggestion has been put to them in this regard. Therefore, we are unable to hold that the prosecution has proved any motive for commission of the offence.

9. The main reliance by the prosecution is on the recovery of the Lathi (Exhibit P/15) at the instance of the accused/Appellant. As far as this circumstance is concerned, the witnesses, Shrilal (PW-10) and Hetkumar (PW-14) have supported the prosecution version. Part of the alleged statement made by the accused in so far as it inculcates the commission of the offence, is hit by provisions of Section 25 of the Evidence Act and is not admissible in evidence. However, other part of the statement which leads to discovery of the Lathi would be admissible in evidence. In the relevant portion of the memorandum statement which is admissible in evidence, he stated that the Lathi (weapon of offence) has been kept by him at his house. He further stated that they could all go and he would get the Lathi recovered. On the basis of the statement, Lathi (Exhibit P/15) was recovered and the eyewitnesses have also given statement that the Lathi was recovered at the instance of the accused. Therefore, we hold that Lathi was recovered at the instance of the accused/Appellant.

10. The next circumstance relied upon by the prosecution is the fact that the Lathi was blood stained. The fact that the Lathi was blood stained is proved

not only by the witnesses but also by the FSL report (Exhibit P/32) which shows that the Lathi was blood stained. It is however important to note that the Forensic Science Laboratory was unable to come to the conclusion with regard to the nature of the blood. It has not even been stated that it is a human blood. Therefore, question of giving the blood group does not even arise. Though, recovery of the Lathi may be proved, the prosecution, in our view has totally failed to prove that this was the Lathi which was used as weapon for commission of the offence. In the report of the doctor (Exhibit P/21), the Lathi is supposed to be a bamboo stick having seven rings/notches but what has been produced in the Court is a bamboo stick having five rings/notches. The prosecution has failed to explain how the number of rings/notches has reduced from seven to five. Therefore, two facts emerge that the prosecution has failed to prove the grouping of the blood or that it was a human blood which was found on the Lathi and it has also failed to prove that the Lathi which was sent for forensic examination is the same which was produced before the doctor. In this behalf, we may also make reference to the statement of Dr. R.D.Gupta (PW-16) who stated that the Lathi was not sealed in his presence. Therefore, chances of the Lathi being replaced cannot be ruled out.

11. There is no other circumstance which is proved or alleged. Now coming to the statement of Tilak Ram (PW-10), if we analyze his statement carefully, he states that he was first told by his brother about the occurrence and later, Manglu Ram (PW-4) told him that his wife had been killed by the accused/Appellant. As far as Dileshwar Prasad (PW-15) brother of the complainant is concerned, he states that he was informed by Shrilal (PW-10) that the deceased is lying next to the pond. Therefore, he has no personal knowledge as to who killed Lachan Bai. If we peruse the statement of Shrilal (PW-10), we find that this witness has also not supported the prosecution version. He says that he does not know anything about the occurrence. He is however witness to the memorandum relating to seizure of blood stained soil.

This witness does not support the version of Dileshwar Prasad that he had informed Dileshwar Prasad that the accused/Appellant had killed Lachan Bai.

12. Manglu Ram (PW-4) is other important witness but he has completely turned hostile. He stated that he does not know anything about the incident. Though, he was cross-examined by the prosecution and even confronted with his statement under Section 161 CrPC, no effective cross examination has been done. All the other witnesses have not supported the prosecution version. Therefore, the only circumstance which has been proved by the prosecution is recovery of the Lathi and that circumstance cannot by itself lead to the conclusion that the accused alone committed murder of Lachan Bai. As found by us above, the prosecution has failed to prove and that this is the same Lathi which was recovered because there is a difference in the rings/notches and secondly, the blood stains on the Lathi are not shown to be the blood stains of a human or the blood of the deceased. None of the eyewitness has supported the prosecution case. Even the statement of Tilak Ram (PW-1) husband of the deceased has not been supported by his brother or by any other witness.

13. In view of the above discussion, we are clearly of the view that the learned Trial Court totally misdirected itself in convicting the accused/Appellant. The judgment dated 19.01.2000 passed in Sessions Trial No. 289 of 1999 by the learned Additional Sessions Judge, Sakti, District Janjgir-Champa, is set aside and the accused/Appellant is acquitted of the charge.

14. The accused/Appellant is on bail. The bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A CrPC.

15. The appeal is allowed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE