

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 357 OF 2002

Daneshwar Dewangan, aged about 29 years, S/o Toran Prasad Dewangan, resident of Ponsri, Police Station Simga, District Raipur (CG).

... Appellant

Versus

State of Chhattisgarh through Station House officer, Police Station Simga, District Raipur (CG).

... Respondent

For Appellant	:	Shri Awadh Tripathi, Advocate.
For Respondent/State	:	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble The Chief Justice

Hon'ble Shri Justice P. Sam Koshy

CAV JUDGMENT

Delivered on 03/08/2016

Per, P.Sam Koshy, J.

1. The appellant assails the judgment of conviction dated 20.03.2002 passed by the IInd Additional Sessions Judge, Baloda Bazar, in Sessions Trial No.147 of 2001. By the said judgment, the court below having found the appellant to be guilty of offence under Section 302 IPC convicted and sentenced him to undergo RI for life with fine of Rs.1000 with default stipulation.
2. The prosecution case in brief is that, the deceased Baisakhu was working as night guard at 132 KV Sub Station, Duldula, Police Station, Simga, District Raipur. In the intervening night of 13-14th January, 2001, the deceased is said to have left his house at around 09:30 pm but did not reach the place of working i.e. Sub Station Duldula. His dead body was found on the path way between

the Sub Station and the colony where the workers of the said sub station had their houses.

3. One BP Bharat is said to have first seen the dead body and identified the same to be that of Baisakhu. He thereafter lodge a report which was recorded as Merg Intimation on 14.01.2001. Subsequently, an FIR (Ex. P/2) was also lodged on the same day against the unknown person. Inquest (Ex. P/3) was also prepared and in the course of investigation, the authorities collected bloodstained soil and seized Mufler, underwear, woolen paint, hair pieces and cycle. Later on, the body was sent for postmortem. The Doctor, after conducting the postmortem gave a report (Ex. P/6) opining that cause of death was hemorrhagic shock due to head injury and mode of death was homicidal.
4. On the basis of suspicion, the appellant was made as an accused and charge sheet was filed before the court and the case was put to trial. In the course of investigation, memorandum statement of appellant was recorded wherein he is said to have admitted the fact that it was he who had killed the deceased Baisakhu and that weapon of offence which were used have been hidden in the pipe near the culvert. So far as other articles i.e. shawl that he was wearing on the said date and certain love letters and greeting cards which the daughter of the deceased had sent to the appellant have been kept at his house which were made available to the police authorities before the witness. Likewise, Farsa which was hidden by him also was recovered at his instance in the presence of witness.

5. The trial court found the appellant to be guilty of having committed the murder of deceased Baisakhu, convicted him for the offence under Section 302 IPC and sentenced him to life imprisonment. It is this judgment of conviction which is under challenge in this appeal.
6. Learned counsel appearing for the appellant submits that present is a case where there is no eyewitness to the incident and the entire case is based on circumstantial evidence. The prosecution in the instant case has miserably failed to establish the circumstantial evidence to connect the different links in the chain of circumstances by which it could be said that the chain of circumstantial evidence is complete. If the entire case of prosecution even as on date is taken into consideration then there is no cogent material to connect the appellant with the commission of the offence. The prosecution also has not been able to show the motive for the appellant to kill the deceased.
7. Likewise, assailing the judgment, it is also submitted that so far as the seizure and recoveries are concerned, the same has not been established before the court below as the material witness to the seizure have all turned hostile and except for the blood which was found on the Farsa and a bunch of hairs which were found in the hands of the deceased, there is no substantial material which the prosecution could have brought on record to establish the offence against the appellant. So far as blood on Farsa is concerned, though the FSL report shows that there is blood on the said Farsa, but whether it was human blood, whether the blood matches with

the blood group of the deceased and other such relevant examinations like serology have not been conducted and if it is conducted, the report of the same has not been produced before the court. Likewise, when the hairs which were recovered from the hands of the deceased put to test with the hairs of the appellant, the only report which the expert has given is that there is possibility of the two to be similar, but there is no conclusive evidence to establish the fact that the hairs in the hands of the deceased were the hairs of the appellant. The expert has given a report that no definite opinion can be given so far as the origin of the same is concerned. Thus, the recovery of the hairs also does not support the case of the prosecution for implicating the appellant in the case.

8. It is contended that the entire conviction of the appellant has been based upon the evidence of the investigating officer. The conviction only on the basis of the statement of the investigating officer is bad in law, illegal and not sustainable. According to him, in the absence of circumstantial evidence completing the chain of links in the commission of offence, the statement of the investigating officer is not of much relevance and when the circumstantial evidence itself is not complete, conviction could not have been passed only on the deposition of the investigating officer.
9. It is lastly submitted that in case of conviction based on circumstantial evidence, prosecution is required to prove the complete chain of circumstances and to prove the fact that only the appellants have committed the offence and except appellant

nobody has committed the aforesaid offence and would also sufficient to rule out the possibility of his innocence. In the present case, the prosecution has not proved any chain of circumstances sufficient for drawing inference. Thus, it is prayed for quashing of the judgment of conviction and also prayed for acquittal of the appellant from the charge levelled against him.

10. State counsel, however opposing the appeal submits that it is a case where though there is no eyewitness to the incident, but the circumstantial evidence collected by the prosecution during the course of investigation and recovery that were made from the spot as well as the recovery made at the instance of the appellant, are all facts which form the links in chain of circumstances. The memorandum statement of the accused to the extent of recovery made at his instance is definitely admissible and in the instant case the recovery of Farsa, Ex. P/10, with bloodstains on it which were sent for FSL, report of which also confirms it to be blood which adds another link to the chain of circumstances. So far as the motive for appellant to eliminate the deceased is concerned, according to State counsel the police authorities in the course of investigation found that the appellant was in some sort of love affair with the daughter of the deceased and in the course of relationship, his daughter had written various love letters to the appellant and had also sent some greeting cards which were recovered from the possession of the appellant which also is a incriminating factor.

- 11.** It is next submitted that another vital incriminating factor which further adds to the chain of circumstances is recovery of bunch of appellant's hairs from the hands of the deceased. The prosecution has also taken the hair of the appellant for being tested and those were found to be similar, from which also it can be safely inferred that hairs found in the hands of the deceased were that of the appellant. All these facts have been established before the court below on the basis of statement of the investigating officer, PW-12, A.S. Khan. Thus, the court below has not committed any illegality nor is there any infirmity in the findings arrived at by the court below calling for interference of this court and therefore, the appeal deserves to be dismissed.
- 12.** Having heard the counsel appearing for the parties and on perusal of record what is an admitted factual position is that firstly there is no eyewitness to the incident and secondly; the entire conviction is based on the circumstantial evidence. One of the circumstantial evidence is the memorandum statement (Ex. P/9) of the appellant recorded on 16.01.2001 wherein at the instance of the accused appellant, the Farsa, love letters and greeting cards were recovered and seized. Farsa seized and recovered at the instance of the appellant had bloodstains on it. Likewise, bunch of hairs which were recovered from the hands of the deceased when matched with the hair of the appellant, they were found to be of similar nature. So far as the memorandum statement of the appellant and recovery made is concerned, PW-10, Dilip Kosle, witness to the said memorandum

and seizure though had admitted his signature, but does not support the case of the prosecution. Similarly, PW-9, Anup Kumar Tiwari, the witness to the memorandum and seizure, also has not supported the case of the prosecution with which the appellant could be implicated.

13. So far as the statement of PW-3, Smt. Sushila, wife of the deceased, is concerned, there are lot of contradictions and omissions in the statement under Section 161 CrPC when it compared to the deposition made before the court. PW-7, Dr. R.C. Mishra, who conducted the postmortem and gave a report, Ex.P/6, has categorically stated that no definite opinion can be given to show the cause of death. Mode of death was homicidal in nature. The cause of death was hemorrhagic shock due to head injury.
14. Now, when the seizure witness have turned hostile and have not supported the case of the prosecution, one would have to go deeper to strengthen the case of the prosecution. If we look into the bloodstains Farsa recovered at the instance of the appellant, the FSL report stats that it had blood marks on either side of the blade, but there is no proof or evidence to the extent that the said blood which was found on the blade of the Farsa was a human blood, much less, even the prosecution did not care to establish the fact that the blood found on the Farsa was of the same blood group of the appellant. Therefore, the said bloodstains on Farsa is of no consequence and is a weak piece of evidence on the basis of which the appellant cannot be convicted. Likewise, the hair recovered

from the hands of the deceased when put to test, it was also declared to be similar by the expert, but the expert in his report itself has stated that there is no definite opinion which could be provided so far as the origin/source of the said hair is concerned. Except for the report that it appears to be similar, the expert has clearly stated that no definite opinion can be given as to whether the said hairs belong to the same person or not.

15. So far as the motive is concerned, the prosecution has not been able to prove motive on the part of the appellant to kill the deceased except for the fact that the deceased happens to be the father of the girl with whom the appellant was having love affair. Though the wife of deceased, in her deposition, initially had not supported the case of the prosecution, but subsequently in her cross examination she had accepted the fact that the appellant was having some sort of relationship with her daughter, but yet she has not proved the motive of the appellant or whether the appellant at any point of time had threatened the family in dire consequences.
16. So far as the conviction of the appellant under circumstantial evidence is concerned, for drawing an inference on the basis of circumstantial evidence, the court must find that all the incriminating facts found are totally incompatible with the innocence of the accused.
17. The prosecution has to establish chain of circumstances which could link only the appellant with the crime and not other. The said

view has been taken by the Supreme Court in case of Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, reported in 2008(3)SCC-210.

18. In Sudama Pandey & Others Vs. State of Bihar, reported in 2002(1) SCC-679, the Supreme Court has held that, in case of in the case of circumstantial evidence, the various circumstances should be able to form a chain pointing to the guilt of the accused. In cases where there is only circumstantial evidence, the Court has to consider the evidence adduced by the prosecution and decide whether the evidence proves particular facts relevant for the purpose of the case and when such facts are proved the question arises whether the facts are capable of giving rise to any inference of the guilt of the accused person or not. An inference of guilt can be drawn only if the proved fact is wholly consistent with the guilt of the accused and certainly he is entitled to the benefit of doubt if the proved fact is consistent with his innocence.
19. In K.T. Palanisamy Vs. State of Tamil Nadu, reported in 2008 (3) SCC-100, the Supreme Court has re-iterated the principles so far as circumstantial evidence is concerned and has held that when the offence is said to have been committed and circumstantial evidence is the basis for establishing the charge, indisputably all links in the chain must be completed to form the basis of conviction.
20. Similar view has further been taken by the Supreme Court in case of Hatti Singh Vs. State of Haryana, reported in 2007(12)SCC 471,

wherein it has been held that the circumstantial evidence must be complete to conclude that within all human probability, the accused alone could have committed the crime.

- 21.** Recently, in case of Vijay Shankar Vs. State of Haryana, reported in 2015 AIR-SCW-5324, the Supreme court has observed as under:

“7.....The normal principle is that in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence”

- 22.** Thus, from the evidence which have come on record and in view of ratio of law laid down in aforesaid cases, it can be safely held that the circumstances relied by the prosecution are neither fully established nor consistent with the hypothesis of the guilt of the accused. Only on the basis of deposition of the investigating officer, the appellant could not have been held guilty of offence.

- 23.** Accordingly, the Appeal is allowed. The conviction of Appellant for offence under Sections 302 IPC is set aside. The Appellant is acquitted of the charges. The bail bond of the Appellant shall remain in operation for a further period of six months from today in view of provision contained in Section 437-A Cr.P.C.

Sd
(Deepak Gupta)
CHIEF JUSTICE

sd/-
(P.Sam Koshy)
JUDGE