

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.488 of 2002**Judgment Reserved on : 27.7.2016Judgment Delivered on : 24.8.2016

1. Jagdher, son of Bhagirathi Tandan, aged about 25 years, R/o Mudpar, P.S. Seepat, District Bilaspur, Chhattisgarh
2. Pannalal, son of Bhukhan Tandan, aged about 26 years, R/o Mudpar, P.S. Seepat, District Bilaspur, Chhattisgarh
3. Raghuveer @ Raghu, son of Purshottam Tandan, aged about 22 years, R/o Mudpar, P.S. Seepat, District Bilaspur, Chhattisgarh

---- Appellants**versus**

State of Chhattisgarh, through D.M. Janjgir-Champa, P.S. Akaltara,
Chhattisgarh

--- Respondent

For Appellants	:	Shri Rajeev Shrivastava, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****C.A.V. Judgment****Per Deepak Gupta, Chief Justice**

1. This appeal by the accused/Appellants is directed against judgment dated 23.4.2002 passed in Sessions Trial No.288 of 2001 by Fourth Additional Sessions Judge (F.T.C.), Janjgir, whereby the accused/Appellants have been convicted for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Each of the accused/Appellants have been sentenced to undergo life imprisonment and pay fine of Rs.100/- each, in default of payment of fine, to undergo additional rigorous imprisonment for 1 month.
2. The prosecution case, briefly stated, is that the accused in furtherance of a common intention committed murder of Dhanaram in the evening of 22.2.2001 or thereabout. The facts relevant for disposal of the case are that Complainant Shyamlal, PW-1 lodged a

complaint with the police that deceased Dhanaram is son of his paternal uncle (*Taya*). On 20.2.2001, Dhanaram left his house on a cycle at about 6:00-7:00 p.m. Thereafter, Dhanaram did not return home. A search was made for him, but all in vain. On 22.2.2001, his younger brother Samaylal, PW-15 came to the village and informed that the cycle of Dhanaram is lying near Lilagarh River in the area of Village Mudpar. He also informed that the dead body of Dhanaram is lying across Lilagarh River in Farhada Khar area. Thereafter, the Complainant along with Sarpanch Ramanand, Kotwar Manikdas, PW-11 etc. went to the spot. They saw that the cycle of Dhanaram was lying in the river and the body of Dhanaram was lying in the field. There were injury marks on the body of Dhanaram. On the basis of this oral complaint made in Police Station, Akaltara, First Information Report, Ex.P-1 was recorded. Merg Intimation, Ex.P-2 was also recorded. Thereafter, the matter was investigated by the police. The dead body was sent for post mortem examination and Dr. D.K. Netam, PW-16 conducted the post mortem (Ex.P-12) on the body of Dhanaram, who opined that Dhanaram had been killed by use of an iron chain. Thereafter, the accused/Appellants were arrested and on the basis of the discovery statements made by the three accused, Ex.P-17 in respect of accused Pannalal, Ex.P-18 in respect of accused Jagdher and Ex.P-19 in respect of accused Raghuv eer. Seizures were made vide Exhibits P-20, 21 and 22. Thereafter, charge-sheet was filed against the accused/Appellants and after the trial they have been convicted and sentenced for the murder of deceased Dhanaram.

3. Learned Trial Court, after trial, convicted the accused on the basis of circumstantial evidence and sentenced them as aforesaid. Hence this appeal.

4. There is no eyewitness and the case depends only on circumstantial evidence. There are three circumstances relied upon by the prosecution.
5. The first circumstance relied upon by the prosecution is that the deceased was last seen with the accused. The second circumstance is that the time of death as mentioned in the post mortem report is 48 to 72 hours. The third circumstance is motive.
6. The first relevant statement is of PW-2, Krishnabai. She is widow of the deceased. She states that it was Tuesday evening at about sunset her husband proceeded to *Basti* area on his bicycle. She asked him where was he going and her husband replied that he had been called by Panna and Raghuvver. Thereafter, her husband did not return. Though she searched for him, she could not trace him out.
7. PW-2, Krishnabai has two sons Tameshwar, PW-3 and Budheshwar, PW-4. She states that both her sons told her that they were playing at the crossing near the platform under the pipal tree. When they returned she asked if they had seen their father. They informed her that when they were playing near the pipal tree, their father Dhanaram (deceased) had going on a bicycle and accused Pannalal gave money to the deceased to purchase liquor. At that time, the other two accused were present there. PW-2, Krishnabai states that next day she again searched for her husband/deceased, but could not trace him out. Later on, she came to know that dead body of her husband is lying near Lilagarh River on the other side. She went to the spot along with other villagers and identified the dead body to be of her husband Dhanaram. She states that her husband had been burnt and

blisters were found on his body. She also states that her husband had contested the election for the post of Sarpanch and that is why the three accused were against her husband. According to her, due to this acrimony, the accused murdered her husband. In cross-examination, she admits that when her husband left the house, he was all alone. She also states that she informed some old lady in the village about what had been told by her children. She also states that when she asked the accused about the whereabouts of her husband, they told that they did not know where her husband was. She has been confronted with her statement recorded by the police under Section 161 Cr.P.C. She also states that the election to the post of Sarpanch were held 2-3 months earlier and that after the elections the accused and her husband were on visiting terms. She also admits that the accused had told that what had happened in the election they had forgotten and they had lived together. It is important to note that in her statement, Ex.D-5, it is not mentioned that on her asking her husband had informed her that he was going to meet the accused.

8. The other two statements are of the children. Tameshwar, PW-3 was aged about 12 years and he states that when he and his brother Budheshwar, PW-4, who was aged about 7 years, were playing on the crossing near the pipal tree, their father had come on a bicycle, all the 3 accused were also there near pipal tree and at that time accused Pannalal gave his father Rs.50/- to buy liquor. Thereafter, the 3 accused along with his father left towards Village Tendua. He also states that he and his mother searched for his father, but in vain. He has been confronted with the statement recorded by the police, Ex.D-1, in which the other facts are mentioned. It is not mentioned that the deceased and the 3

accused last went towards Tendua. PW-4, Budheshwar is 7 years old and his statement is virtually identical to that of his brother. Even in his statement made to the police under Section 161 Cr.P.C., it is not mentioned that his father along with the accused went towards Tendua.

9. PW-1, Shyamlal states that on the date of occurrence the accused/Appellants came to their house and called him and his brother Dhanaram (deceased). He states that thereafter the deceased never returned. He also states that though he had accompanied the accused and the deceased, the accused had forced him to return back to his house. In the morning, he came to know from PW-2, Krishnabai that deceased Dhanaram did not return home. PW-1, Shyamlal has been confronted with the statement, Ex.D-4, which is totally contrary to the statement made in the Court. His statement is totally different to the statement of PW-2, Krishnabai, who has not mentioned that PW-1, Shyamlal was present at the home. His statement cannot be believed.

10. PW-8, Ramratan states that in the night, when deceased Dhanaram was missing, he (Dhanaram) had come to his house and purchased a bottle of liquor for Rs.50/-. In cross-examination, he states that the deceased used to visit his house very often to buy liquor. In cross-examination, he states that the deceased had come to his house at about 4:00 p.m., i.e., much before sunset.

11. There is no dispute that the deceased was murdered. The fact that his dead body was recovered is also not denied. The issue is who killed him. One of the circumstances relied upon is motive. The prosecution has failed to prove this circumstance at all. The widow PW-2, Krishnabai herself has stated that her husband had

contested election for the post of Sarpanch. She has not stated who was contesting the election against her husband and why the accused had some grievance against her husband with regard to the election. Even if it be assumed that there was some grievance, as per PW-2, Krishnabai after the election were over, the 3 accused had made peace with the deceased and they were on talking terms. It is also apparent that the deceased had gone to meet the accused who gave him money to buy liquor. This also shows that there was no enmity otherwise why would the deceased buy liquor at the behalf of the accused.

12. We are of the considered view that the children are telling the truth that the 3 accused were sitting near the pipal tree and the deceased came there on his bicycle. They are also telling the truth when they stated that the deceased was given Rs.50/- by the accused to purchase liquor. Their statement is supported by the statement of PW-8, Ramratan, who also states that the deceased came to his house to buy liquor. However, the children have added something in their statement made in the Court which is not mentioned in their statement under Section 161 Cr.P.C. They stated before the Court that they saw all the accused/Appellants along with the deceased going towards Tendua. This part of the statement of the children does not appear to be correct. It appears that the deceased was given money to buy liquor by the accused from Ramratan, PW-8, who used to deal in sale of liquor. It is Ramratan, PW-8, who lived in Village Tendua. He does not state that the 3 accused were accompanying the deceased. As far as this aspect is concerned, the version of the children even otherwise cannot be believed because if all 4 of them were going towards Tendua to buy liquor, why would the accused hand over money to

the deceased to purchase liquor. However, we are of the view that the accused gave money to the deceased to purchase liquor. This may lead to the presumption that they had consumed liquor and, therefore, we may come to the conclusion that the deceased was last seen with the accused.

13. However, we are clearly of the view that as far as the circumstance of time of death is concerned, it does not help the prosecution. The deceased did die after he was seen by his children, but the time gap is 48 to 72 hours. The post mortem report is Ex.P-12. The dead body was subjected to post mortem on 23.2.2001 at 8:00 a.m. Therefore, the death could have been any time between 8:00 a.m. of 20.2.2001 to 8:00 a.m. of 21.2.2001. The deceased was last seen with the accused in the evening at about 6:00 to 7:00 p.m. on 20.2.2001. He should have died any time till 8:00 a.m. on 21.2.2001 and, therefore, the chance of somebody else committing his murder cannot be ruled out.

14. The law is well settled that in a case of circumstantial evidence, the accused can only be convicted if all the circumstances are proved and these circumstances form an unbroken chain of circumstances leading to only one conclusion that it is the accused alone who could have committed the murder of the deceased. If the accused being innocent or of any other person committing the murder, the accused cannot be convicted. In the present case, motive has not been proved. The time of death has not been established so exactly that it can be said with certainty that the accused alone could have murdered the deceased. It may happen that the deceased and the accused had a drink together and then they parted ways and thereafter, the deceased was killed by somebody else. All that cannot be ruled out. In this view of the matter, benefit

of doubt has to be given to the accused. Though the finger of suspicion may point towards the accused, no amount of suspicion can take place of proof and in a criminal case the case has to be proved beyond reasonable doubt.

15. In view of the above discussion, we, by giving benefit of doubt to the accused/Appellants, allow the criminal appeal and set aside the impugned judgment dated 23.4.2002 passed in Sessions Trial No.288 of 2001 by Fourth Additional Sessions Judge (F.T.C.), Janjgir.

16. The accused/Appellants are on bail. Their bail bonds are discharged subject to their compliance of the conditions incorporated in Section 437A Cr.P.C.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE