

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 378 of 2008**

Anand Singh S/o Ganga Ram Verma, Caste – Kurmi, R/o village Kandai, PS Bemetara, District Durg, CG

---- Appellant

Versus

State of Chhattisgarh through the Station House Officer, P.S. Bemetara, District Durg (CG).

---- Respondent

For Appellant	:	Shri Sanjay S. Agrawal, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble the Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

Per Deepak Gupta, Chief Justice

24/08/2016

1. This appeal by the accused-appellant is directed against the judgment dated 27.03.08 passed by the Additional Sessions Judge, Bemetara, District Durg in Sessions Trial No.42/2007 whereby the appellant has been convicted under Section 302 IPC for having committed murder of one Jagdish (the deceased) and sentenced to undergo life imprisonment and pay fine of Rs.500/-, in default of payment of fine to undergo further SI for one month.
2. The police machinery was set in motion on the basis of FIR Exhibit P-15 lodged by PW-9 Janak Sahu, the son of the deceased. The entire prosecution story is contained in the FIR and therefore it would be worth referring the

same in detail. In the FIR lodged on 03.10.2007 it is stated that on the same date at about 8 a.m. father of the complainant/informant Jagdish Sahu went on his cycle to village Hardas for purchasing rice and kerosene oil from the Society. He did not return till 12.30 afternoon. Then the mother of the complainant told him to find out whereabouts of his father. According to the complainant, when he was going in search of his father to village Hardas, on the way, he met with Dhan Singh Verma PW-4 who was working in his field. The said Dhan Singh informed him that he (Dhan Singh) had also gone to village Hardas to purchase rice and Kerosene along with the father of the complainant and they both had purchased rice and kerosene oil. However, he (Dhan Singh) returned soon whereas his father said that he would come later on. Thereafter, the complainant went further and on the way, he found Chapal and cycle of his father along with one bag full of rice. He also saw the dead body of his father. Then he returned home and informed his mother and again went to the place of occurrence along with other villagers. In the FIR it is also stated that the accused Anand Verma may have committed murder of his father since his father (Jagdish) had assaulted the wife of the accused about one month ago. After lodging of the FIR, the Police investigated the matter and charge sheet was filed against the accused and evidence was led.

3. The Trial Court has convicted the accused only on two grounds; i) motive and ii) recovery of a lathi and a shirt containing blood stains. Admittedly, this is a case where there is no eye witness. This is a case of circumstantial evidence. The law with regard to circumstantial evidence is well settled. In a case where the prosecution case arise on the circumstantial evidence, it must prove all the circumstances then it must link the circumstances in such a fashion so as to complete the chain of circumstances from which the only hypothesis which can arise on the basis of circumstances

should be the guilt of the accused. If there is any chance of the accused being innocent or the crime having been committed by any other person then no conviction can be passed on such circumstantial evidence.

4. As far as the evidence is concerned, the statement of the witnesses with regard to the motive is the same i.e. the deceased had assaulted the wife of the accused one month earlier and therefore he had a motive to kill the deceased. The second circumstance is recovery of the shirt belonging to the accused and one lathi at his instance.

5. We may examine the evidence with regard to recovery of lathi and shirt. There are three witnesses to the recovery of these two items; i) PW-1 Ghanshyam Sahu, ii) PW-2 Puni Das and PW-5 Gopal. All the three turned hostile and have not supported the prosecution version. According to these three witnesses, the recovery were not made at the instance of the accused. Furthermore, the lathi and the shirt after seizure were never sealed. Therefore, the chance of the lathi and the shirt being tampered at a later stage cannot be ruled out. Another aspect is that the recovered lathi is a common lathi and there is no special identification mark on the lathi indicating that it is belonging to the accused and none else. As far as the shirt is concerned, the recovery of the same has not been proved by the prosecution beyond reasonable doubt. So far as the blood stains on lathi and shirt are concerned, the forensic expert has only opined that there are blood stains on shirt and lathi. There is no report that the blood stains are human blood stains what to talk about giving the group of the blood. It appears that the lathi and the shirt were sent to the laboratory at Kolkota for knowing as to what is the group of the blood but no report in this regard has been placed on record.

6. Assuming for the sake of argument that the circumstance of motive is proved but this circumstance is a very weak piece of evidence. Just because

a person's wife is assaulted is not the sufficient ground for him to take such a heinous action like murder. There is no other evidence to show that the accused was threatening the deceased during that period of one month and that he could cause harm to him much less to kill him. Since the motive alleged by the prosecution itself is a very weak piece of evidence, it would be difficult to convict the accused unless there is some evidence led in this regard.

7. As far as the recovery is concerned, the same has not been proved. Even if we assume that the recovery has been proved, in the absence of any forensic report, the blood stains on lathi and shirt cannot be held to be the human blood stains or the same of the deceased.

8. In view of the above discussion, we are of the opinion that the prosecution has miserably failed to link the circumstances in clearly proving that only the accused and nobody else has killed the deceased.

9. We are dealing with the matter where the deceased was returning from village Hardas by a public road. The accused had no prior knowledge that the deceased was going to Hardas to purchase rice and kerosene and therefore, the question of premeditation does not arise. It is also the case of the prosecution that Dhan Singh had accompanied the deceased to village Hardas and both purchased rice and kerosene oil and therefore, on the way back to his home, the deceased is alleged to have been murdered. There is no doubt that the deceased was murdered but the prosecution has miserably failed to prove its case beyond reasonable doubt that it is the accused alone who could have been responsible for the murder.

10. Thus, we have no hesitation to hold that the judgment delivered by the Court below was illegal, unsustainable and is liable to be set aside. It is

accordingly set aside.

11. Consequently, the Appeal is allowed. The Appellant is acquitted of the charge under Section 302 of IPC. He is set at liberty subject to the conditions of Section 437A Cr.P.C.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE