

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 371 of 2011**

1. Nandlal Singh Singh, S/o Budhram Gond, aged about 29 years,
2. Ashok Singh, S/o Late Bandhram, aged about 21 years,
3. Geeta Singh @ Ballu, S/o Late Ramdhan, aged about 19 years,  
All R/o Village – Ramnagar, Patrapara, Police Station – Vishrampur,  
District – Surguja (C.G.)

**---- Appellants**

**Versus**

- The State of Chhattisgarh, through the Station House Officer, Police Station Vishrampur, District – Surguja (C.G.)

**---- Respondent**

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|----------------------|---|----------------------------------------|
| For Appellants       | : | Mr. Rakesh Sahu, Advocate.             |
| For Respondent/State | : | Mr. Vaibhav A. Goverdhan, Panel Lawyer |

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

**CAV JUDGMENT**

**Delivered on : 17-03-2016**

**Per, I.S. Uboweja, J.**

1. Challenge in this appeal is to the judgement of conviction and order of sentence dated 23.03.2011 passed by the 2<sup>nd</sup> Additional Sessions Judge (FTC), Surajpur, District – Sarguja (C.G.) in Sessions Trial No. 383/2010, whereby and whereunder the trial Court after holding the appellants guilty for causing homicidal death amounting to murder of Amar Singh in sharing common intention and for concealing the dead body, convicted them under Sections 302/34 and 201/34 of the IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for three months and to undergo R.I. for one year and to pay fine

of Rs.500/-, in default of payment of fine amount to further undergo R.I. for one month.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 14.06.2010 a *Dehati merg* (Ex.P-1) was reported at police station Vishrampur by Silak Singh (PW/1) in which, it was alleged that dead body of a person namely Amar Singh was found near Patrapara Redh River and near the dead body, the bloodstain was also available, thereafter, numbered merg (Ex.P-24) was registered. During the merg enquiry, Investigating Officer after summoning the witnesses vide Ex. P-3 prepared inquest over the dead body of the deceased vide Ex.P-4. Bloodstained and plain soils were seized from the spot vide Ex.P-7. Spot map was prepared vide Ex.P-2. FIR (Ex.P-25) was registered against the unknown person. Dead body of the deceased was sent for autopsy to Government Hospital, Vishrampur, where Dr. Rashmi Kumar (PW-11) conducted autopsy on the dead body of the deceased vide Ex.P-23 and found following injuries and symptoms :
  - (i) Rigor-mortis absent all over joints;
  - (ii) Tongue coming out from the mouth having swollen;
  - (iii) Both eyes closed, pupil dialated;
  - (iv) Foul smelling from body ;
  - (v) Bleeding from nose and mouth;
  - (vi) Both shoulders dislocated anteriorly;

- (vii) Contusion about 10 cm x 15 cm on upper part of chest including neck, ante-mortem in nature;
- (viii) Multiple contusions on back different in size and shape. Big size 5" x 2", Smaller size 1" x 1", which were ante-mortem in nature;
- (ix) Contusion over back side of leg 3 in numbers of size of 5" x 1";
- (x) Incised wound of 3 cm x 1 cm over chin, which was ante-mortem in nature;
- (xi) Four lacerated wounds over forehead in size of 1" x 0.5" x 0.5", which were ante-mortem in nature;
- (xii) Swollen over back side of head in size of 3" x 2" x 1".

Cause of death was asphyxia due to strangulation and death was homicidal in nature.

4. During the course of investigation, police came to know that the deceased and accused/appellant Nandlal Singh were last seen together in the night of incident at the house of accused Nandlal Singh along with other accused/appellants namely Ashok Singh and Geeta Singh alias Ballu. Accused - Nandlal Singh was taken into custody, he made a disclosure statement of wooden plank vide Ex.P-9, same was recovered at his instance vide Ex.P-12. Accused - Ashok Singh was also taken into custody, he made disclosure statement of mobile phone vide Ex.P-10, same was recovered at his instance vide Ex.P-14. Accused Geeta Singh @ Ballu was also taken into custody, he made a disclosure statement of axe vide Ex.P-11, same was recovered at his instance vide Ex.P-13. Wearing clothes i.e. shirts and pants of accused - Ashok Singh, Geeta Singh @ Bullu and

Nandlal Singh were seized from them vide Exs.P-15, P-16 & P-17. Patwari prepared spot map vide Ex.P-5. Clothes of the deceased were seized vide Ex.P-18. Seized articles were sent to Forensic Science Laboratory, Raipur for chemical examination vide Ex.P-29.

5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Additional Chief Judicial Magistrate, Surajpur, who in turn committed the case to the Court of Sessions, Sarguja, from where learned Additional Sessions Judge received case on transfer for trial.
6. In order to bring home the charges of the accused/appellants, the prosecution examined as many as sixteen witnesses. Accused /appellants were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.
7. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.
8. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
9. Learned counsel for the appellants vehemently argued that the appellants have been falsely implicated in the case and they have not committed any offence. He further argued that conviction is

substantially based on the evidence of Shivbhajan (PW-5) relating to last seen theory which was not itself sufficient for conviction of the appellants in absence of corroborative evidence. Even otherwise, the circumstances explained by the appellants in their statements were not considered by the trial Court, therefore, conviction of the appellants is not sustainable under the law.

10. On the other hand, learned State counsel opposed the appeal and submitted that conviction of the accused/appellants is substantially based on the evidence of Shivbhajan (PW-5) and articles used in commission of offence were recovered from the accused, it was also incriminating evidence against them, there was a cogent, reliable and trustworthy evidence, therefore, the aforesaid circumstances are sufficient for conviction of the appellants.
11. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
12. In the present case, homicidal death of deceased Amar Singh as a result of fatal injuries found over his dead body has not been substantially disputed on behalf of the appellants. Even otherwise, it is also established by the evidence of Dr. Rashmi Kumar (PW-11), autopsy report (Ex.P-23), Dehati merg (Ex.P-1), Numbered merg (Ex.P-24), FIR (Ex.P-25) and inquest (Ex.P4) that death of deceased Amar Singh was homicidal in nature.

13. Case of the prosecution is based on circumstantial evidence. In ***Dhananjoy Chatterjee -Vs- State of W.B. (1994) 2 SCC 22*** the Supreme Court held “In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.”
14. In ***Bodh Raj alias Bodha and others -Vs- State of Jammu and Kashmir, AIR 2002 SC 3164***, the Supreme Court laid down that there is no doubt that conviction can be based solely on circumstantial evidence but the conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are :
1. the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established;

2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. the circumstance should be of conclusive nature and tendency;
4. they should exclude every possible hypothesis except the one to be proved; and
5. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

15. In ***Manjunath Chennabasapa Madalli v. State of Karnataka***, AIR 2007 SC, 2080, it was held vide para 11 as under :

“It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* (AIR 1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Earabhadrappa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhbasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Singh Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621), it was laid down that where

the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt”.

16. Shivbhajan (PW-5) is the star-witness of the prosecution, he is the eye witness of beating by accused persons to the deceased and also the witness of last seen together with the deceased. He deposed in his statement that at about 10-11 p.m. deceased came to his house and asked him to accompany him for collecting the motorcycle key from the house of accused – Nandlal Singh, they went to the house of Nandlal Singh, where accused – Nandlal Singh (A-1) Ashok Singh (A-2) and Geeta Singh @ Bullu (A-3) were present, when they were returning back, Ashok Singh (A-2) asked Nandlal Singh (A-1) that deceased was teasing your sister, thereafter, all accused assaulted deceased Amar Singh with axe and wooden plank, he fled away from the spot because they also tried to attack him, early morning all accused came to his house and narrated him that they committed murder of Amar Singh, they threatened him not to disclose about the incident to anyone, otherwise he would also be killed along with his family. Later on, dead body of deceased was recovered from river bank. Defence has cross-examined this witness at length, but his evidence remained intact & firm.
17. Investigating Officer M.J. Firdosi (PW-10) has stated that during the course of investigation he had taken accused/appellants into custody

and recorded their memorandum statements vide Exs.P-9, P-10 and P-11 and at their instance two wooden planks, one axe and one mobile phone were recovered, which were supported by witness Shivbhajan (PW-5), Suresh Pandey (PW-9). Clothes of accused and deceased were also seized and sent to FSL, report of FSL (which is not exhibited) shows that shirt (Article E-1), seized from accused Geeta Singh @ Bullu, wooden plank (Article - G) seized from accused Nandlal Singh and clothes of deceased and spot soil were found bloodstained.

18. As per evidence of Shivbhajan (PW-5), it is clear that deceased was accompanying him and they reached the house of accused Nandlal Singh and there all accused assaulted the deceased and this witness has last seen the deceased with the accused persons. As per extra judicial confessions of the accused persons, they killed Amar Singh and threw his dead body near the river bank, thereafter, dead body was found near the river bank. The act was committed in secrecy, time gap is very short between last seen and recovery of dead body. The appellants were under obligation to offer an explanation as to who has caused homicidal death of the deceased and who has thrown the dead body from the house of Nandlal Singh to river bank, but none has given explanation, therefore, the only possible inference which would be drawn is that the appellants were the only author of crime and it also excludes the possibility of innocence of the appellants.

19. After appreciating the evidence available on record the trial Court has rightly convicted and sentenced the appellants as aforementioned.
20. On close scrutiny of the evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
21. Consequently, the appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed.

Sd/-  
**(Pritinker Diwaker)**  
JUDGE

Sd/-  
**(I.S. Uboweja)**  
JUDGE