

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 631 OF 2013

State of Chhattisgarh, Through Police Station- Kawardha, District Kabirdham
(C.G.)

... Applicant

Versus

Bhadoo Yadav S/o Sukhiram Yadav, aged about 24 years, R/o Kailash Nagar
(Daihan Chowk), Thana Kawardha, District Kabirdham (C.G.)

... Respondent

For Applicant-State : Mr. Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

05/01/2016

1. The present application has been filed for leave to appeal against acquittal of the Respondent from the charge under Sections 302, 392, 397 IPC, dated 9.4.2013 in Sessions Trial No. 24 of 2012 by the Sessions Judge, Kabirdham.
2. The body of the deceased, Deepak @ Gendu Sahu was found abandoned in the field on 24.3.2012 at about 6:00 a.m. by PW-2 Devkinandan.
3. Learned Counsel for the Applicant submitted that the Respondent was arrested on suspicion. Upon on his confession, the weapon of assault, Farsha, was recovered, marked Exhibit P-11, said to have bloodstains on it. The clothes of the Respondent which he wore at the time of the assault were also seized said to have bloodstains on it, marked Exhibit P-10. The deceased had stolen Rs. 30,000/- from his own parents of which Rs. 20,000/- was taken away by the Respondent before killing him and was recovered on his confession. Cumulatively

considering the recovery of the bloodstained Farsha, bloodstained clothes and the money, acquittal was not justified even if there was no eye-witness to the occurrence. PW-9, Ramavtar Dhruw, the Investigating Officer and PW-3, Basant, the seizure witness, have both deposed of bloodstains on the handle and sharp cutting edge of the Farsha. The present was a case of circumstantial evidence and the three circumstances taken cumulatively were establishing the guilt of the Respondent.

4. We have considered the submissions on behalf of the applicant and find no reason for grant of leave to appeal.

5. An order of acquittal is not to be lightly interfered with especially if it is reasoned and well discussed. Unless there has been gross miscarriage of justice, complete misappreciation or relevant evidence had been ignored or inadmissible evidence accepted, the order of acquittal ought not to be interfered with.

6. The Farsha was alleged to have been recovered ten days later from the house of PW-6, Shushila Bai. The FSL report with regard to presence of bloodstains on it is negative. The recovery is therefore inconsequential. Similarly, the forensic report does not confirm presence of blood on the clothes of the Respondent stated to have been worn by him at the time of assault. That leaves only the recovery of Rs.20,000/- from the house of PW-4, Parwati Bai allegedly on the confession of the Respondent. We again need not to discuss the explanation given by PW-4, Parwati Bai that the money was kept with her in security after the Respondent had sold his cattle as the Trial Judge has more than adequately discussed the evidence of the mother of the deceased, PW-5 Jhunia Bai that as labourer she would get Rs.100/- or Rs.150/- at times which she would keep collecting in her

box. The recovery on the alleged confession of the Respondent was of Rs.500/- notes only and not of the denomination of which the witness stated to have received her remuneration as labour which her son had allegedly stolen. Furthermore, in absence of any other identification it could not be stated with certainty that the money recovered from the Respondent necessarily was part of that stolen by the deceased from his parents. We further find that the Trial Judge has more than adequately discussed that the body was found near the fields along which was a road frequently used and there was no evidence of any person having last seen the deceased with the Respondent except for the evidence of one Om Yadav that on 23.3.2012 one day previous to the occurrence he had seen the deceased talking to the Respondent after which the Respondent had gone away, to conclude that the last seen theory was also not applicable.

7. Confession of an accused to the extent admissible under Section 27 of the Evidence Act is not substantive evidence for conviction. It is at best corroborative evidence. There must be other surrounding evidence which considered cumulatively with the admissible evidence under Section 27 of the Evidence Act may lead to a conclusion of guilt. To hold that the evidence admissible under Section 27 of the Evidence Act may be sufficient for conviction irrespective of all other circumstances may be vesting arbitrarily and uncanalized power in the police to falsely implicate people finding easy solutions for solving the case. The Court has to be cautious with regard to the same.

8. We find no reason to interfere with the acquittal.

9. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge