

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1159 of 2001**

1. Pashuram S/o Tularam, aged about 40 years.
2. Sada S/o Dono Bhatra, aged about 36 years.
3. Somdas Bhatra S/o Tularam, aged about 46 years (Died)
4. Guru S/o Jeyta Bhatra, aged about 53 years (Died)

All residents of village Sirsi, P.S. Kodenga, District Navrangpur (Orissa)

---- Appellants

Versus

State of Chhattisgarh through PS Sukma, district
Dantewada, Bastar, CG

---- Respondent

For Appellants	:	Shri Ravi Maheshwari, Advocate
For Respondent-State	:	Shri U. K. S. Chandel, Panel lawyer

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

C A V JUDGEMENT

Per P. Sam Koshy, Judge

02/02/2016

1. Appellant No.3 Somdas Bhatra and Appellant No.4 Guru died during the pendency of the appeal and as such the Appeal abates with regard to them and now survives only so far as the Appellants 1 & 2 are concerned. Inimical
2. The Appellants in the present Appeal stand convicted for the offence under Sections 302 and 201 IPC and sentenced to undergo imprisonment for life with fine of Rs. 500/- u/s 302 and rigorous imprisonment for three years with fine of Rs.500/- u/s 201 with default stipulations by the judgement dated 01.10.2001 passed by the Court of Special Judge, SC & ST (Prevention of Atrocities) Act, Bastar at Jagdalpur in S. T. No.165/2001.
3. The prosecution case, in brief, is that the Appellants along with the

deceased Somnath were working as labourer in the field of Mohan Nag (PW-1) in village Pakela for digging purpose. One Saturday around 1 p.m. the Appellants came to the house of PW-1 for demanding their wages and at that time, the deceased was not in their company. PW-1 told the Appellants of giving the money later. Second day PW-1 is said to have gone to the field for some measurement work where he met with the Appellants but did not see the deceased there. Third day when PW-1 again went to the field, he saw a dog eating a corpse. He went near and saw that the dog, in fact, was eating a dead body of a male which he immediately reported to Sarpanch and Kotwar of the village. All of them again went to the spot and saw the dead body. Since the accused persons were working in the field, they were suspected and were also not traceable therefore more suspicion arose against them. After much search, ultimately, the Appellants were found and on questioning, it is said that they confessed of having committed the murder of Somnath on the issue of not bringing fresh water for cooking for which they assaulted the deceased. The Appellants are said to have assaulted Somnath with hand, fist and Lathi and after death, they buried his body in the field. On 10.01.2001 the matter was reported to Police Station, Sukma who initially registered a Merg and later on, on the same day FIR Exhibit P-2 was registered. Dr. R. K. Nachankar PW-5 reached the spot and got the body exhumed from the field. He also conducted the postmortem and gave a report Exhibit P-10. The cause of death of the deceased was opined to be because of multiple fractures on skull and homicidal in nature and the duration of death was shown to be more than 90 hours. During the course of investigation, the Appellants are said to have given memorandum statement on the basis of which Lathis were recovered from Appellants Pashuram, Sada and Somdas. In due course, after investigation was complete, charge sheet for the offence under Sections 302, 201 read with section 34 of IPC was filed and the matter was put to trial. The Court below by the impugned judgment found the Appellants to be guilty for the offence for

which they were charged and convicted them leading to the filing of the present Appeal.

4. Counsel for the appellants submitted that the entire case of the prosecution is based on circumstantial evidence and that there is no substantial evidence led by the prosecution by which it could be said that the Appellants alone had committed the said offence. It was argued that the judgment of conviction of the Trial Court is bad in law to the extent that the entire conviction is based on inferences drawn by the Court below with no cogent and material evidence led by the prosecution firstly in identifying the dead body to be that of Somnath and secondly by not adducing cogent and reliable piece of evidence to complete the chain of events for proving a case of circumstantial evidence beyond all reasonable doubts pointing to the guilt only upon the Appellants of having committed the offence. That the prosecution had also failed to establish any motive on the part of the Appellants to commit the said offence. It was further submitted that the chain of events not being complete, the circumstantial evidence on the basis of which the trial Court has convicted the Appellants is not sustainable and deserves to be set aside.

5. State counsel, however, opposing the Appeal submitted that in fact, the prosecution has proved its case beyond all reasonable doubts as is evident from the evidence of PW-1 Mohan in whose field the Appellants were working. It was submitted that the conduct of the Appellants is a relevant factor for establishing the circumstances against them in as much as the Appellants had tried to mislead the Police by making a statement that the deceased had run away from the village. The memorandum statement based upon which the recovery of Lathis from the three Appellants connects the chain of circumstances against the Appellants. State counsel tried to emphasize on the fact that the Appellants and the deceased were staying together and were working at the same place. Therefore, subsequently the recovery of the dead body and the memorandum

statement of the Appellants leading to the recovery of Lathis used in the commission of the offence are also sufficient chain of events for completing the circumstantial evidence leading to the only inference of the Appellants themselves having committed the said offence. Thus, State counsel prayed for rejection of the Appeal.

6. So far as the case of circumstantial evidence is concerned, the prime requirement to be satisfied is (a) a circumstance from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (b) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (c) the circumstances, taken cumulatively, should form a complete chain so that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and (d) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. This has been enunciated in the verdict of the Supreme Court in the case of *Ashok Kumar Chatterjee v. State of Madhya Pradesh* reported in AIR 1989 SC 1890.

7. The Supreme Court in **(2009) 11 SCC 111** (*Raju v. State by Inspector of Police*) has reiterated the circumstances which are required to complete a chain of circumstances for convicting the accused and held that a conviction can be based solely on circumstantial evidence if the circumstances are tested by the touchstone of the law relating to circumstantial evidence whereby the chain of events would clearly draw inference of the guilt being cogent and firmly established and the guilt also is unerringly pointed out towards the accused and the circumstances also lead us to the only conclusion that the accused is incapable of giving proper explanation to any other hypothesis. For a conviction based upon circumstantial evidence the chain of circumstances against the

accused persons has to be so complete that it excludes the possibility of any hypothesis other than the one which is consistent with the guilt of the accused and inconsistent with his innocence.

8. From the aforesaid legal pronouncement what is carved out is that before an accused is convicted purely on circumstantial evidence it must be ensured by the Court that the evidence must be such by which all possibility of the Appellants being innocent stands excluded. If we peruse the records in the instant case, the first flaw in the investigation is the lapse on the part of the prosecution in establishing the fact that the dead body which was recovered from the field of PW-1 was in fact that of Somnath. Once when the identification of the body itself is not established, according to the evidence of PW-1 and PW-2, the whole case of the prosecution gets shattered and the impugned judgment is not sustainable on this very fact itself. Further, if we see the other circumstantial evidence also, it would reveal that the prosecution has not been able to prove its case beyond reasonable doubts against the Appellants so far as the commission of the offence is concerned. In a case of circumstantial evidence, there has to be a complete chain of links. The entire events, right from the stage of the Appellants being in company of the deceased immediately prior to the time of incident till the body was recovered, in the instant case, is also not clearly established. According to PW-1 Mohan, on Saturday night when the Appellants had come to him for claiming the wages, the deceased was not with them. Next day, PW-1 went to the field for measurement even then the deceased was not in their company and at the time of measurement, the dead body was not found by PW-1. It is only on third day when he again went to the field, he found a dog eating flesh from a dead body. As such, from the evidence of PW-1 it is clear that in Saturday night when the Appellants had gone to the house of PW-1 and next day also when PW-1 had gone to the field for measurement, Somnath was not in the company of the Appellants. Thus, there

is considerable broken links among the events which have transpired in between but which have not been picked up by the Court below before convicting the Appellants.

9. So far as the confession made by the Appellants are concerned, the statement of PW-1 Mohan, PW-2 Gangaram- Sarpanch of the village and PW-3 Ramanand Nag would reveal that the same was not made voluntarily. As per PW-2, it was made before the Police on an enquiry and as per PW-3, it was made after the Appellants were caught hold and brought by the villagers before the Panchayat. Thus, under both the circumstances their statements appear to have been made under pressure and therefore would not be admissible. PW-3 states that the Appellants had made a confession of the hut in which they were residing having caught fire. A bare perusal of the postmortem report would also reveal that the body was severely mutilated to the extent that the head, both legs and hands were all separated from the trunk. The abdomen was open and all the internal organs were absent. There were no hairs present on the skull. PW-1 and PW-2 have clearly deposed before the Court that the body was in a very bad shape in as much as they had difficulty in identifying as to whose body it was.

10. Admittedly, the present case is based on circumstantial evidence. The circumstantial evidence is an evidence which is not direct but consists of evidences of various other facts which are so closely associated with the facts in issue that taken together they form a chain of circumstances from which the existence of the principle fact can be legally informed or presumed. In a case of 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. To prove the guilt of the accused by circumstantial evidence it is necessary to establish that the circumstances from which a conclusion is drawn should be fully proved, the circumstances should be

conclusive in nature, all the facts so established should be consistent only with the hypothesis of the guilt and inconsistent with the innocence. The cumulative effect of the circumstances must be such as to negate the innocence of the accused and to bring home the offence beyond any reasonable doubt.

11. But, in the instant case, the prosecution has not been able to complete the chain of circumstances for proving its case beyond all reasonable doubts and therefore the conviction of the Appellants stands on a weak footing as the alleged chain of circumstances is not sustainable in the eye of law. On the issue of circumstantial evidence, the Supreme Court in the case of Vijay Shankar v. State of Haryana reported in 2015 SCW 5324 in Paragraph-7 has held 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.”

12. In the instant case, the prosecution has not been able to first prove the motive in as much as the only reason given by the prosecution as per the confession made by the Appellants is of not bringing fresh water for cooking and this can never be a ground for murdering a person particularly when five persons were staying together. The last seen theory also has not been established for the reason that Somnath was not seen for the last more than 2-3 days with the Appellants and on the second day when PW-2 had visited the field for measurement, the dead body had also not been seen. Further, the alleged confession made by the Appellants under no circumstances is an admissible piece of evidence. In the absence of any supporting evidence,

recovery of Lathis on the confession made by the Appellants is considered irrelevant in absence of any proof of their having been used to assault the deceased. A Lathi is a normal routine possession in the rural environment and cannot specifically be described as a weapon of offence.

13. Thus, for the foregoing reasons, we are unable to sustain the conviction of the Appellants. Accordingly, the impugned judgment dated 01.10.2001 passed by the Special Judge, Bastar at Jagdalpur in Sessions Trial No. 165/2001 deserves to be and is set aside. The Appellants are acquitted of the charges under Sections 302 and 201 of IPC. They are set at liberty subject to the conditions of Section 437A Cr.P.C.

14. The Appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE