

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 145 of 2008**

Kanwal Sai S/o Ramdas Nagesia aged about 43 years, Occupation Labour, Caste Nagesia, R/o Mohalla-Jhanjhatpara, Namnakala, Thana Ambikapur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh, Through the District Magistrate, Ambikapur, District Magistrate, Ambikapur, District Surguja, Chhattisgarh.

---- Respondent

For Appellants : Shri S.S.Rajput, Advocate.
For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****15/11/2016**

1. This appeal by the convicted Accused/Appellant is directed against the judgment dated 23.01.2008 delivered by the learned Sessions Judge, Surguja (Ambikapur) in Sessions Trial No. 439 of 2006 whereby he convicted the Accused/Appellant for having committed an offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs. 500/-. In default of payment of fine, the Appellant was required to undergo further rigorous imprisonment for three months.

2. The undisputed facts, in brief, are that FIR (Exhibit P-7) was lodged on the basis of mere intimation (Exhibit P-8). Two residents of the locality including a Corporator came to the police station and lodged a report that one Gungi Bai, neighbour of Raja Ram (PW-6) had been murdered in her house. The police officials also went to the spot and found that she has in fact been murdered by slitting her throat with a knife. Postmortem of the deceased was conducted and

further investigation was done. The matter was investigated and the Accused-Appellant was charged for having committed murder of Gungi Bai. He pleaded not guilty to the charge and prayed for trial. After evidence was recorded, the learned trial Court found the Accused-Appellant guilty of having committed an offence of murder and sentenced him as aforesaid. Hence this appeal.

3. We have heard learned counsel for the Accused-Appellant, learned counsel for the State and have also carefully gone through the records.

4. Admittedly, there is no eyewitness to the occurrence and the case is based on circumstantial evidence. The law with regard to circumstantial evidence is well settled. In a case where the prosecution relies upon the circumstantial evidence, it must not only prove the circumstances but should link them in such a fashion so as to form an un-ending chain leading to only one conclusion i.e. the guilt of the accused. If there is any chance of the accused being innocent or the crime having been committed by some other person, then the accused has to be given the benefit of doubt and on the basis of circumstantial evidence, he cannot be convicted.

5. In the present case, the prosecution relies upon two circumstances. The first circumstance is recovery of a knife which is the alleged weapon of offence at the instance of the Accused in the presence of Lokai @ Krishna Murari (PW-4) and Shiv Kumar Minj (PW-7), the Corporator of the area. Both these witnesses have turned hostile and have not at all supported the prosecution version. According to them the Accused was not even interrogated in their presence by the police. They further stated that the Accused did not make any statement in their presence. It was lastly stated that no recovery was made at the instance of the Accused in their presence. These witnesses have been cross-examined in detail and both have admitted their signatures in the disclosure statement and the seizure memo. The explanation of Lokai @ Krishna Murari (PW-4) is that he is

virtually illiterate and he only knows how to sign and has signed the document on asking of the police. The version of Shiv Kumar Minj (PW-7) is that he was worried and confused and had signed the documents at the asking of the police. We shall deal with this aspect of the matter later. But one thing is absolutely clear that both these witnesses have not supported the prosecution case with regard to the recovery of the knife. It would also be pertinent to mention that these witnesses have been declared hostile and cross-examined by the Public Prosecutor. Nothing effective has been extracted with regard to the manner in which the recovery was made. The only question put to them in cross-examination is that their signatures are there and that the Accused got the knife recovered at his instance.

6. The knife was seized but there is no evidence that it was sealed before sending for forensic examination. The report of the FSL is that the knife had blood. Though, the Serologist report shows that it was human blood but it has not been proved with certainty that the blood was of Gungi Bai. Neither the blood grouping has been done nor any DNA profiling has been done. The prosecution has failed to prove that this was the weapon of offence. There is a chance of tampering because the knife was not properly sealed. As already stated, the witnesses have not supported the recovery and therefore, this circumstance is not proved.

7. The second circumstance is lifting of the finger print of the Accused from a glass in the house of the deceased, Gungi Bai. As far as recovery of finger print is concerned, there is no doubt that the finger print has been lifted from the house of the deceased-Gungi Bai as is apparent from the statement of Linus Kispotta (PW-8), an expert from the FSL. However, the issue is whether mere lifting of the finger print of the Accused from the house of the deceased is sufficient to convict him. In this behalf, we have to remember that the Accused and the deceased were neighbours. They lived in a locality in a small town. When people live in

single room tenements, they very often go to each other's house and also borrow utensils. Mere lifting of finger prints is by itself not sufficient in case of circumstantial evidence to uphold the guilt in case of such a serious offence. We cannot send the Accused behind bars for life only on the basis of this evidence. Therefore, the benefit of doubt in this circumstance has to be given to the Accused.

8. In view of the above, we set aside the judgment dated 23.01.2008 of the learned Sessions Judge, Surguja (Ambikapur) in Sessions Trial No. 439 of 2006 convicting the Appellant under Section 302 IPC and the Accused-Appellant is acquitted of the charge. The Accused/Appellant is on bail. The bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A CrPC.

9. Before parting with the case we cannot but comment on the conduct of Shiv Kumar Minj (PW-7) who is an elected Corporator of the ward in which the murder took place. He has admittedly passed B.A. He is not only a graduate but he is an elected representative. Therefore, we cannot believe that he would have signed the documents merely on the asking of the police except if he himself had some personal interest in the matter or he was beholden to the police for some other extraneous reasons. Whatever may be the case, we are clearly of the view that he has not signed the document because he was worried or confused. This is a totally false explanation.

10. Fabricating false evidence is a crime within the meaning of Chapter XI of the IPC. Any person creating false documents knowing that it will be used in judicial proceedings and if a person on the basis of such document can be convicted for a capital offence, is himself guilty of having committed an offence under Section 194 IPC and can be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years. Even as per his

own statement made in the Court, he is guilty of signing a document on the basis of which an innocent person could be sentenced for life or even with death.

11. Normally, in such case, this Court does not take action, especially against poor villagers because they are always under the pressure of the police and sometimes they sign the documents merely on the asking of the police. Therefore, with regard to Lokai @ Krishna Murari (PW-4), we are not directing any action to be taken against him because he has stated that he is illiterate. However, we are prima facie of the view that such an explanation cannot be accepted on the part of a person who is clever and intelligent enough to fight election and gets elected as Corporator of the area because such a man would have no fear of the police unless he himself is a criminal. Such a powerful person would only be afraid of the police if he is indulging in nefarious activities. Why should an elected representative sign a document without any rhyme or reason. We therefore feel that a criminal proceedings under the relevant provisions of Section 194 and 195 of the Indian Penal Code should be initiated against Shiv Kumar Minj (PW-7). However, before passing final order in the matter, we feel that in the interest of justice, he should be heard in the matter.

12. The Registry is directed to send a copy of the judgment alongwith a notice to the witness Shiv Kumar Minj (PW-7) as to why criminal proceedings should not be lodged against him. This notice be made returnable for 16th January, 2017.

13. The appeal is allowed. However, the notice sent to the witness-Shiv Kumar Minj (PW-7) shall be listed alongwith the records of this appeal on 16.01.2017.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE