

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 318 of 2007**

Narayan Nishad S/o Ram Kumar Nishad, aged about 19 years, Occupation Student, R/o Akanchha Parisar Ke Pas, Thana Saraswati Nagar, Raipur Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, Through PS Ajad Chowk, Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Arun Kochar, Advocate.
For Respondent/State : Smt. Smita Ghai, Panel Lawyer.

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

Judgment on Board**Per Deepak Gupta, Chief Justice****18/10/2016**

1. This appeal by the convicted Accused/Appellant is directed against the judgment dated 03.04.2007 delivered by the learned Sessions Judge, Raipur, District Raipur in Sessions Trial No. 31 of 2007 whereby he convicted the Accused 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 accused/Appellant was directed to undergo further rigorous imprisonment for six months.

2. The undisputed facts are that one Raju Patel, Driver, was assaulted and murdered at about 10:00 am on 09.09.2006 near Punjab Oil Mill, Raipur. On the same date, at about 10:30 am, Vidyadhar Sona (PW-1) lodged a mereg intimation as well as Dehatinalishi (Exhibit P/1 and P/2) regarding the death of Raju Patel. In these documents, it is mentioned that the witness came to know that Raju Patel

had been murdered near Punjab Oil Mill and then he went to the spot he saw that Raju Patel was lying on the ground with injuries on the face, head and ear. The ear had been badly cut and Raju was bleeding and the blood on the ground had dried up. After lodging of the Dehatinalishi and the Dehati Merg Intimation, FIR (Exhibit P/10) was lodged by the police under Section 154 CrPC. The investigation was conducted and during the course of investigation, a galvanized iron pipe (for short 'the GI pipe') and shirt of the Accused were recovered at the instance of the Accused/Appellant and this, according to the prosecution, is the weapon of offence. The body of the deceased was subjected to postmortem conducted by Dr. Ulhas Gonnade (PW-7) who opined that the death was as a result of post-traumatic shock and haemorrhage. After investigation was completed, the accused was charged for having committed murder of Raju Patel. The Accused/Appellant has been convicted and sentenced as above. Hence, this appeal.

3. There is no eyewitness to the occurrence. The entire case against the Accused/Appellant is based on circumstantial evidence. The circumstances relied upon by the prosecution are (i) motive (ii) previous enmity and history of the accused beating the deceased; and (iii) recovery of the weapon of offence.

4. As far as the motive is concerned, the allegation of the prosecution is that the deceased-Raju Patel had two wives. It is also alleged that Raju Patel also had illicit relationship with the mother of the Accused and therefore, the Accused was angry and had a motive to murder the deceased. There can be no manner of doubt that there is evidence on record especially the statements of Jani Gond (PW-2), Bheem Nath (PW-3) and Rajbai (PW-4) that previously also, the Accused had beaten Raju Patel and in fact had beaten him to such an extent that his arm was broken. This clearly proves that there was some history of enmity but the cause of enmity is not proved by this evidence. There is no evidence which clearly

proves that the deceased had illicit relationship with the mother of the Accused. There is only a hearsay evidence and no direct evidence to this effect. Therefore, with regard to motive, it can only be said that there was history of prior enmity but what was the reason for enmity is not proved.

5. The second circumstance that there was previous enmity and beating by the Accused, according to us is proved by the statement of Jani Gond (PW-2), Bheem Nath (PW-3) and Rajbai (PW-4).

6. The third and most important circumstance is recovery of the alleged iron pipe and shirt of the Accused at his instance in the presence of the witnesses Jani Gond (PW-2) and Bheem Nath (PW-3). Memorandum in this regard in Exhibit P/8 and it shows that on 10.09.2006 at about 6:30 pm, the Accused made a statement to the Police. A portion of the statement is in the nature of a confession and that portion of the statement would not be admissible in evidence in view of Section 25 of the Indian Evidence Act. However, the remaining portion of the statement leading to recovery of iron pipe and blood stained shirt of the Accused can be taken into consideration. The only portion of the memorandum which can be admitted to evidence is the statement of the Accused that he could get the iron pipe recovered from his home as well as his shirt which had stains of blood of the deceased.

7. According to the prosecution, pursuant to the statement vide seizure memorandum (Exhibit P/9) one iron pipe measuring 44½" which also had an elbow joint and one cream coloured shirt were recovered at the instance of the Accused. According to the prosecution, both these items had blood stains on them. As far as recovery of these two items is concerned, the same stands proved on the statements of Jani Gond (PW-2) and Bheem Nath (PW-3). Both the witnesses have stated that the Accused made a statement recorded in memorandum (Exhibit P-8) and at the instance of the Accused, both the items

were recovered from inside the house of the Accused. Therefore, we hold that the recovery has been proved.

8. Unfortunately, the prosecution thereafter had failed to do its duty. It is not only the recovery which had to be proved but the burden lay upon the prosecution to show that it was the recovered items which were connected with the scene of crime. As far as the iron pipe is concerned, the same allegedly contained blood stains of the deceased-Raju Patel. The same was sent by Sunil David, the Investigating Officer (PW-6) for examination to the Forensic Science Laboratory (for short 'the FSL') but no report of the FSL has been proved on record. Similarly, the shirt which the Accused was wearing at the time of occurrence, as per his own statement was having blood stains of the deceased. This shirt was also sent for examination to the FSL but no report on the same has been produced. Therefore, though the prosecution may have proved that the recoveries were made, it has failed to link the recoveries directly with the offence.

9. 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.

10. In the present case, we are of the view that the prosecution has miserably failed to prove that this iron pipe was the only iron pipe which could have been used for the commission of the offence. It was very easy for the prosecution to prove this by leading proper evidence, but this has not been done. Therefore, we are constrained to set aside the judgment dated 03.04.2007 of the learned Sessions Judge, Raipur in Sessions Trial No. 31 of 2007 convicting and

sentencing the Accused. The Appellant/Accused is accordingly given the benefit of doubt and is acquitted of the charge.

11. 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.

12. Before parting with this case, we are forced to observe that there has been extreme laxity on the part of the prosecution as well as the Public Prosecutor. In this modern day and age, there are sufficient scientific tests available to easily prove as to who has committed the offence in such a case. No effort was made to get the blood examined which was found either on the iron pipe or on the shirt. Not only should the pipe and shirt have been sent to FSL for analysis which could have at best given the blood grouping or should have reported whether the blood was human blood or not. We are of the considered view that both these items should have been sent for DNA profiling which would have proved beyond any doubt whether the blood on the pipe and the shirt belonged to the deceased-Raju Patel or not. If it had been proved, then the Accused/Appellant could not have been acquitted. In such a case, DNA profiling was absolutely necessary and this shows that the police officials need to be properly trained in the art of forensic examination and collection of evidence.

13. The Registrar General is directed to send a copy of this order to the Director General of Police, Raipur and Secretary, Home Affairs, Government of Chhattisgarh, who shall conduct necessary enquiry against the concerned Investigating Officer as to why he did not send the iron pie and the shirt for DNA profiling and why he did not make any attempt to get the report from the FSL. Similarly, the role of the Public Prosecutor shall also be looked into as to why he did not take any steps to ensure that before the Court itself, application under Section 311 CrPC is filed and the report of the forensic science examination of the iron pipe and the shirt is placed before the Court. In case, it is found that the

Investigating Officer is guilty of negligence then strict disciplinary action shall be taken against him and in case if it is found that the Public Prosecutor has been negligent in his duties, he shall not be engaged in any other case.

14. The appeal is allowed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE