

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 389 of 2001**

- Rajnarayan Tripathi, aged about 22 years, Son of Shri Sukhdev Prasad Tripathi, Agriculturist, previously r/o Madmada, Police Station Kawardha, at present r/o Mahaveerpur, PO Arka, District – Koshambi (UP) ---- **Appellant**

Versus

- The State Of Chhattisgarh, ---- **Respondent**

And

CRR No. 259 Of 2001

- Laxmikant Gupta, aged about 40 years, R/o village Chhanta P.S. Kawardha, Tah. & Distt. Kawardha (C.G.) ---- **Petitioner**

Vs

1. The State Of Chhattisgarh
2. Prem Prasad Sharma, S/o Kunji Lal Sharma, aged about 46 years, R/o Kawardha, Distt. Kawardha.
3. Vishram Kaushik, s/o Sukhram, aged about 38 years, R/o Village Chhanta Kawardha, Distt. Kawardha. ---- **Respondents**

And

Acquittal Appeal No. 370 Of 2010

- The State of Chhattisgarh ---- **Appellant/applicant**

Vs

- Vishram Kaushik, aged about 38 years, S/o Sukhram, occupation, cultivation, R/o Chhanta, P.S. Kawardha, Distt. Kawardha, Chhattisgarh.

---- Non-Applicant/Respondent**CRA No.389 of 2001**

For Appellant : Shri P.K.C.Tiwari, Senior Advocate with Shri Kripesh G. Kela, Advocate.
 For Respondent/State : Shri Arun Sao, Deputy Advocate General

Cr.Revision No. 259 of 2001

For Applicant : Smt. Renu Kochar, Advocate.
 For Respondent/State : Shri Arun Sao, Deputy Advocate General.

For Respondent No.2 : Shri P.K.Verma, Senior Advocate with Shri Sumit Verma, Advocate.
 For Respondent No.3 : Shri Alok Bakshi, Advocate.

Acquittal Appeal No.370 of 2010

For Appellant/State : Shri Arun Sao, Deputy Advocate General.
 For Respondent : Shri Alok Bakshi, Advocate.

**Hon'ble Shri Deepak Gupta, Chief Justice &
 Hon'ble Shri Justice Sanjay Agrawal**

Judgement on Board

03/11/2016

Per Deepak Gupta, CJ

These three cases are being disposed of by a common judgment since all the three cases arise out of one judgment delivered by the learned Additional Sessions Judge, Khairagarh, Link Court Kawardha in Sessions Trial No.184/98 on 31.03.2001 whereby he acquitted two of the accused, namely, Prem Prasad Sharma and Vishram Kaushik and convicted one accused – Raj Narayan Tripathi of having committed offence punishable under Sections 302 and 404 of the IPC and sentenced him as follows:

Conviction	Sentence
Under Section 302 IPC	Rigorous life imprisonment with fine of Rs.1000/- in default to pay the fine amount, to undergo additional six months rigorous imprisonment.
Under Section 404 IPC	Rigorous imprisonment for three years with fine of Rs.1000/- in default to pay the fine amount, to undergo additional six months rigorous imprisonment.

2. Briefly stated prosecution story is that one Prem Prasad Sharma had enmity with the deceased – Nand Kishore Gupta. It is alleged that Prem Prasad Sharma had advanced money to Raj Narayan Tripathi and Vishram Kaushik, who are contract killers and at the behest of Prem Prasad Sharma, they committed the murder of Nand

Kishore Gupta on the evening of 17th October, 1997.

3. The learned trial Court convicted appellant – Raj Narayan Tripathi as above, who has filed Criminal Appeal No. 389 of 2001. The State has filed Acquittal Appeal No. 370 of 2010 challenging the acquittal of Vishram Kaushik. Laxmikant Gupta, brother of the deceased has filed Criminal Revision No. 259/2001 challenging the acquittal of both the accused – Prem Prasad Sharma and Vishram Kaushik.

4. The undisputed facts are that early in the morning of 18th October, 1997, the villagers of village Chhanta discovered a body in the fields. It is also in evidence that some of the villagers recognised the dead body to be of Nand Kishore Gupta, who used to practice as a local Doctor in the area. Some people went to village of the deceased – Bamhni and informed his brother and maternal uncle of the suspected death of the deceased. Immediately, the brother – Laxmikant Gupta (PW.2) and the maternal uncle of the deceased – Chandrika Prasad (P.W.13) went to the place of occurrence and found that the dead body is of Nand Kishore Gupta. It is also not disputed that the dead body of the deceased was sent for post-mortem and it is not disputed before us that the deceased Nand Kishore Gupta was murdered.

5. The main issue is who has murdered the deceased. The case as set up by the prosecution against the accused is that the deceased Nand Kishore had fought the election of Pradhan (Sarpanch) against a candidate allegedly set up by Prem Prasad Sharma, and therefore, there was enmity between these two groups and this is the motive for the crime. It is further the case of the prosecution that Prem Prasad Sharma hired the other two accused – Raj Narayan Tripathi and Vishram Kaushik to murder the deceased. Admittedly, this is a case of blind murder. There are no eye witnesses to the occurrence. The body was discovered only in the next morning, i.e., 18th October, 1997. The entire prosecution case is based on the following circumstantial evidence:

i. Motive;

- ii. Statements of Laxmikant Gupta (PW.2) and maternal uncle of the deceased – Chandrika Prasad (P.W.13) regarding suspicious conduct of the accused Raj Narayan;
 - iii. Disclosure statements made by Raj Narayan and Vishram Kaushik;
 - iv. Recovery of incriminating evidence, ie., gold ring allegedly belonged to the deceased, *Farsa*, a sharp edged instrument, which was alleged weapon of offence, clothes of the injured Raj Narayan all of which were blood stained;
 - v. F.S.L. report which indicates that the incriminating evidence was blood stained and hence connected with the crime.
 - vi. The unexplained injuries on the person of the accused Raj Narayan and Vishram Kaushik; and
6. As far as the law relating to circumstantial evidence is concerned, it is now well settled that in a case where the prosecution relies on circumstantial evidence, it is the duty of the prosecution to prove the circumstances, which it relies upon. It is further the duty of the prosecution to link all those circumstances to form a complete unbroken chain, which leads to only hypothesis, i.e., the guilt of the accused. If there is any chance of the accused not being guilty or of the crime having been committed by any other person, then the accused has to be given the benefit of doubt. It is in the light of the aforesaid law that we shall now discuss the evidence.

Motive :-

7. As far as motive is concerned, the only evidence on record are the statements of Laxmikant Gupta (P.W.2), brother of the deceased and Chandrika Prasad (P.W.13), maternal uncle of the deceased. These two witnesses have proved that the deceased had fought election and their case is that the person against whom he fought the election had been set up by the accused Prem Prasad. Other than their bald statements that there was enmity in this connection, there is no other evidence. Elections are fought and during elections, there is rivalry and sometimes there is bloodshed also, but, merely fighting election against each other cannot be a motive to

commit a heinous crime of murder unless there is some other compelling motive, which has to be proved by the prosecution. In this case, other than alleging that because elections were fought between two rival groups, there is no other allegation. In this regard, we may also state that though Prem Prasad had been acquitted, but the State, for the reasons best known to it, has not chosen to file any appeal challenging his acquittal. This means that the State itself does not believe the story of motive set out by the prosecution. However, since a criminal revision has been filed by the brother of the deceased, we have gone through the record even with regard to motive. It would be important to note that in the statement of Laxmikant Gupta (P.W.2) himself, he has stated that after his brother lost the election, he had been asked by the winning candidate to join the victory celebrations which he did. If this witness (PW.2) had joined the victory celebrations of the winning candidate, then there was no enmity left between the two groups. Therefore, we are unable to accept the motive as set up by the prosecution. Furthermore, this motive would only be a motive against Prem Prasad Sharma and not against other two accused. Against the other two accused, the only motive would be that they were hired killers engaged by Prem Prasad Sharma, against whom, the State has not chosen to file any appeal. If the State has not filed any appeal against Prem Prasad, then the prosecution would have to prove some other motive against the accused, which it has neither alleged nor proved.

Suspicious Conduct :-

8. As regards second circumstance regarding suspicious conduct of the accused – Raj Narayan, relied upon by the prosecution, while appearing in Court, P.W.2 Laxmikant Gupta, (who is also the petitioner before this Court in the Criminal Revision), stated that on the morning of 18th October, 1997, accused – Raj Narayan Tripathi came to his house on a scooter to inform him that a dead body had been found near village Madmada and the dead body appeared to be of his brother and he should come and check the same. Thereafter, he went to the spot where one

Ramnath told him that the scooter of accused Raj Narayan Tripathi, which was at the place of occurrence itself, had some bloodstains on the foot-guard and on the stepney cover and then they questioned the accused Raj Narayan Tripathi, who instead of answering, fled towards the house of Vishram Kaushik and thereafter he went to the house of Devendranath Jha and hid there. It is also the case of this witness that thereafter the villagers caught hold of the accused – Raj Narayan Tripathi. If we believe this statement, this would be a strong circumstance against the accused. However, we are not inclined to believe the statement because the statement of P.W.13 Chandrika Prasad, maternal uncle of the deceased, does not support the version of P.W.2 Laxmikant Gupta.

9. P.W.13 Chandrika Prasad in his statement has given an entirely different version. According to P.W.13 Chandrika Prasad, it was the Kotwar of village Chhanta, who came to inform him about the dead body. He does not name Raj Narayan Tripathi as the person, who came to inform him. Further, according to this witness, when Raj Narayan Tripathi was questioned on the spot, he fled straightaway towards the house of Devendranath Jha and there is no mention of fleeing towards the house of Vishram Kaushik.

10. According to these two witnesses, early in the morning of 18th October, 1997, they were informed that a dead body was lying in the village Chhanta. Then they went to the spot and found one scooter lying there and also found Raj Narayan Tripathi present along with the scooter. The villagers informed them that there are blood stains on the foot-guard and stepney of the scooter and they questioned Raj Narayan Tripathi, who instead of answering the questions fled away to the house of Devendranath Jha. If this fact had been true, the same should have been reported immediately to the police. If this story had been true, then it should have been reflected in the police record on 18th October, 1997 itself. The statement of these two witnesses, who are close relatives of the deceased, is alleged to have been recorded under Section 161 of the Cr.P.C. only on 20th October. This would give more than

ample time for the relatives of the deceased to sit together and decide who is to be implicated in the crime. If the events had happened as they are now stated to have happened, then they would have immediately informed to the police. There is no explanation why this information was not given to the police for two days.

11. Furthermore, there is a vast improvement in what has been recorded in the statement under Section 161 of the Cr.P.C. and what has been stated in the Court. As far as the statements under Section 161 of the Cr.P.C. is concerned, they only talk about Raj Narayan Tripathi being questioned but none of the other facts regarding his going to the house of Vishram Kaushik or Devendranath Jha are recorded in the statement made under Section 161 Cr.P.C. and these are embellishments and exaggerations made in the Court which we cannot believe to be true.

12. Another reason for not accepting this version is that it is not a believable version. Statement of P.W.2 Laxmikant Gupta that accused Raj Narayan Tripathi came to his house is not supported by P.W.13 Chandrika Prasad. However, even if we were to believe this version, it would, in fact, indicate that Raj Narayan Tripathi was not involved in the offence. Why would a criminal alleged to be involved in a heinous offence of murder, go to the house of the brother of deceased to inform him about the occurrence and that too on a scooter, which apparently had bloodstains on it. This story is not believable. Therefore, we do not believe the statements of P.W.2 Laxmikant Gupta and P.W.13 Chandra Prasad with regard to the conduct of the accused Raj Narayan Tripathi.

Disclosure Statements :-

13. So far as disclosure statements are concerned, there are two disclosure statements. The first one is Ex.P.1, disclosure statement of Raj Narayan Tripathi, in which he makes a confessional statement with regard to having committed the offence. This portion of the statement is inadmissible in evidence, in view of the provisions contained in Section 25 of the Indian Evidence Act. The only portion of his

statement which could be admitted in evidence as disclosure statement under Section 27 of the Indian Evidence Act is in relation to the fact that gold ring of the deceased was recovered at his instance from his house and that gold ring was kept in a pocket of red coloured full pant which he could get recovered. On the basis of this disclosure statement, it is alleged that one gold ring and some clothes of the accused were recovered and the memo prepared in this behalf is Ex.P. 12 and Ex.P.13.

14. We have carefully gone through these memos and these memos do not depict how these items were recovered, they only record the fact that at the instance of the accused – Raj Narayan Tripahti, the gold ring and cloths have been recovered.

15. With regard to the accused Vishram, the statement in question is Ex.P.14 wherein the only portion which is admissible is that he would get the Farsa, which was alleged weapon of offence, recovered. The memo of recovery is Ex.P.15 and this does not in any manner depict the exact manner in which the Farsa was recovered. It only says that Farsa was recovered under the mud in a nalah. In cases where the prosecution wants to prove recovery of some incriminating evidence, it not only has to prove the documentary evidence, i.e., memorandum but has to lead oral evidence to show in what manner recovery was made. To give an example, if a person says in the Police Station that he can get recovered the weapon of offence, which he has hidden under some grass in a field, then the prosecution would have to prove that from the Police Station the person making the disclosure statement along with the witnesses went to the spot, and therefore, the person making the statement led the Police to the spot where he had hidden the weapon of offence and got the same recovered. Unless it is shown how the recovery was made at the instance of the accused, only proof of memorandum is not sufficient to convict the accused.

16. As far as the two witnesses to the recovery are concerned, they are Ram Kumar (P.W.5) and Devendranath Jha (P.W.14). These witnesses in their statements in examination-in-chief have stated that they had been asked by the investigating

officer to sign certain documents. They have admitted their signatures on the documents, relied upon by the prosecution. However, these two witnesses very clearly stated in their cross-examination that in their presence neither were the two accused persons questioned nor did the accused make any disclosure statements. These witnesses were declared hostile and the entire cross-examination of these witnesses is directed to prove their signatures which they have not denied. However, even in the cross-examination, no questions have been put to them as to in what manner the recovery was made. There is not a single question put to them in this regard. The only question put to them is that the recovery was made in their presence, which they denied. It is not sufficient to prove the recovery. What is more important is that it must be proved that the recovery of the incriminating evidence has been made at the instance of the accused. In this case, there is no evidence to show that the recovery was made at the instance of the accused.

F.S.L. report :-

17. Assuming for the sake of arguments that this recovery has been proved, then also the burden lies upon the prosecution to link the recovered articles with the offence in question. To link the cloths and Farsa, the prosecution relies upon the report of Forensic Science Laboratory Ex.P.38. This report only indicates that there was blood on the clothes, Farsa and ring. There is no serological report that the blood is human blood what to talk about grouping of the blood. This will not directly connect the so-called incriminating evidence with the offence. Another aspect of the matter is that the seizure documents Ex.P.12, Ex.P.13, Ex.P.15 and Ex.P.16 make a mention that after incriminating evidence was seized, it was put in a bag and sealed. There is no seal impression proved on record. There is no sample seal impression on record. The investigating officer does not say with what seal he sealed the items. There is no record of sealing, and therefore, there is always chance of the incriminating evidence being tampered with.

18. Another shocking aspect of the matter is that not a single word has been said by the investigating officer or any of the witnesses as to why these items, seized on 20th October, 1997, were not sent to Forensic Science Laboratory for 27 days and were sent to the Forensic Science Laboratory only on 17th November, 1997. That by itself may not have been enough to disbelieve the prosecution case, but, even more important fact is that there is no whisper by the investigating officer or by any Police Officer as to where these items were kept from 20th October till 17th November, 1997. The prosecution case is full of lapses and lacunae. When the prosecution wants to rely upon such evidence, which has been sent for examination to F.S.L., it must show that the incriminating evidence was sealed at the spot, it must prove the sample seal impression, it must prove where the sealed items were kept till they were sent to the F.S.L. and it must be proved by the prosecution that the items were sent to the F.S.L. in the same condition. Unless this entire link is complete, it will not be possible to rely upon prosecution case in such like cases. Therefore, with regard to recovery of these items, we are unable to accept the prosecution case.

19. Another part of the submission is human blood alleged found on the stepney cover of the scooter of Raj Narayan Tripathi, seized by the Police. The seizure memo in this regard is Ex.P.6, which has been proved by P.W.2 Laxmikant Gupta. This scooter admittedly belongs to the accused Raj Narayan Tripathi. With regard to the stepney cover, there is a report of the F.S.L. that it contains human blood. Therefore, as far as this part of recovery is concerned, we accept the prosecution story that the scooter was recovered and the stepney cover contained human blood.

20. In so far as report of the F.S.L. is concerned, we have already discussed the F.S.L. report. The report, except in the case of stepney cover, does not even clearly indicate what was the nature of the blood whether it was human blood or not. There is no report with regard to the grouping of the blood. As regards the stepney cover, we shall discuss the evidence in detail under the next circumstance relied upon by the prosecution, i.e., the unexplained injuries on the deceased because the human blood

on the stepney cover can be explained under that head.

Unexplained injuries :-

21. With regard to unexplained nature of injuries on the person of accused, the case of the prosecution is that they have not given any explanation even in the statement made under Section 313 of the Cr.P.C. The injury reports are Ex.P.30 and Ex.P.31. Ex.P.30 relates to Vishram Kaushik and the injury found on his person is one scratch like injury caused on the right cheek having length 4 cm x 1 cm. The injury is stated to be 5 – 8 days before. The injuries on the person of Raj Narayan are reflected in Ex.P.31, which are stitched wounds having length 1.5 cm along with three stitches on the wrist joint and one injury on the middle finger. P.W.10 Devraj Pali was examined by the prosecution itself. He in his statement has stated that about 4 years prior to recording his statement at about 8 pm, one person named Raj Narayan came to the clinic, in which he is working. Raj Narayan informed that he had fallen from the scooter and sustained injuries and since the Doctor was to go for a meeting, he asked this witness, who was working as compounder to treat Raj Narayan. Thereafter, this witness administered an injection and some treatment. He has further stated that Raj Narayan came on his scooter to the clinic and he identified Raj Narayan. Accused Raj Narayan Tripathi has not denied this part of the statement but has got it clarified that he had come to his clinic on 17.10.1997, i.e., on the date of incident. This only proves that accused Raj Narayan had got himself treated in the clinic and had informed the Doctor that he had received injuries due to fall from the scooter. When this version is proved by the prosecution, how can the prosecution urge that the injuries sustained by Raj Narayan are unexplained. The prosecution itself provided explanation for the injuries, and therefore, these injuries cannot be said to be unexplained. In any event, it is not believable that if Raj Narayan had fought with the deceased and had received injuries in the fight when he killed the deceased, he would have got himself treated from a Doctor for injuries, which were not at all serious. A person who has committed crime will not create evidence against himself.

As far as injury on the person of Vishram Kaushik is concerned, that is only a scratch and it is stated to be 5 to 8 days older than 20th October, therefore, this injury was prior to 15th October and could not be related to the alleged occurrence. Therefore, this circumstance is also not proved.

22. In view of the above discussion, we find that the prosecution has miserably failed to all the circumstances, relied upon by it. In this view of the matter, we allow Criminal Appeal No. 389 of 2001 filed by Rajnarayan Tripathi and set aside the judgment of learned trial Court convicting and sentencing as aforesaid. He is acquitted of the charge and is ordered to be set at liberty forthwith. He is on bail. The bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A Cr.P.C.

23. Criminal revision No.259 of 2001 preferred by Laxmikant Gupta and Acquittal Appeal No.370 of 2010 preferred by the State are rejected, in view of what has been discussed in preceding paragraphs.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge