AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 406 of 2008

- Laxman, aged about 24 years, son of Shri Niranjan Satnami, occupation Labourer, resident of Rengakathera, Police Station Khairagarh, Police Station Khairagarh, Distt. Rajnandgaon (CG)

---- Appellant

Versus

- State Of Chhattisgarh through the District Magistrate, Rajnandgaon (CG)

---- Respondent

And

CRA No. 412 Of 2008

- Chetan Lal Verma S/o Krishna Kumar Verma, aged about 24 years, R/o Village-Rengakathera, P.S. Khairagarh, Distt.-Rajnandgaon, C.G.

---- Appellant

Vs

- State Of Chhattisgarh through District Magistrate, Rajnandgaon Distt. Rajnandgaon (CG)

---- Respondent

And

CRA No. 643 Of 2008

- Lalit Kumar Yadav, aged about 22 (20) years, son of Shri Ram Prasad Yadav, occupation Labourer, resident of Kahadkasa (Kahkasa), Police Station Ambagard Chowki, Distt. Rajnandgaon (CG), presently residing at Kohka, Bhatapara, Police Station Supela, Distt. Durg (CG)

---- Appellant

Vs

- State Of Chhattisgarh through the District Magistrate, Rajnandgaon (CG)

---- Respondent

For Appellants in Cr.A.Nos.406/08 & 643/08	:	Shri PKC Tiwari, Sr. Adv. with Shri Shashibhushan Tiwari, Adv.
For Appellant in Cr.A.No.412/08	:	Shri Awadh Tripathi, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

03/08/2017

As these three appeals arise out of the common judgment of conviction and order of sentence dated 29.3.2008 passed by Additional Sessions Judge, Khairagarh, Distt. Rajnandgaon in ST No.129/2006, they are being disposed of by this common judgment. By the said judgment, appellants Laxman & Lalit Kumar have been convicted under Sections 302/34, 201, 449, 120B, 404 of IPC and sentenced to undergo life imprisonment, fine of Rs.1000/-; RI for 7 years, fine of Rs.500/-; RI for 8 years, fine of Rs.1000/-; RI for 5 years, fine of Rs.500/- and RI for 1 year, fine of Rs.500/- with default stipulations respectively. Appellant Chetan has been convicted under Sections 302, 201, 449 and 120B of IPC and sentenced to undergo life imprisonment, fine of Rs.1000/-; RI for 7 years, fine of Rs.500/-; RI for 8 years, fine of Rs.1000/- and RI for 5 years, fine of Rs.500/- with default stipulations respectively.

02. As per prosecution case, Gendlal, brother of accused/appellant Chetanlal developed illicit relations with deceased Smt. Maltibai and brought her in his village where his first wife was already residing. It is said that first wife of Gendlal and the deceased used to quarrel with

each other and the deceased was given a separate house by Gendlal. Further case of the prosecution is that deceased Maltibai also made a complaint against accused/appellant Chetanlal and to eliminate her appellant Chetanlal took help of other two accused/appellants Laxman, Lalit Kumar and absconded accused Billa @ Amar Sahu. Deceased Malti went missing from 11/12.8.2006 and a missing report (Ex.P/26C) was lodged on 29.8.2006 by PW-5 Kamlesh, brother of the deceased, who was residing in another village of District Durg. On 8.9.2006 memorandum of appellant Chetanlal (Ex.P/3) was recorded wherein he confessed his guilt and informed the police as to the manner in which he with the help of other accused persons killed the deceased. According to him, he with the help of other accused persons strangulated Maltibai to death, took her dead body on his scooter and buried the same near the dam. Based on this memorandum, dead body which was in highly decomposed condition was recovered vide Ex.P/2 on 8.9.2006 and seizure (Ex.P/6) of one motorcycle, spade, pickaxe and plastic jerycane was made. On the same day, memorandums of appellant Laxman and Lalit Kumar were recorded vide Ex.P/4 & P/5 respectively. Pursuant to memorandum of appellant Laxman one suitcase and ear top were seized vide Ex.P/7 and memorandum of appellant Lalit led to recovery of one *mangalsutra*, one purse and a scooter vide Ex.P/8. The dead body was identified to be that of deceased Maltibai by her brother PW-5 Kamlesh vide Ex.P/1. However, other witness to identification of dead body Sarshottam, brother of the deceased, has not been examined. In respect of seized articles, identification was conducted by PW-7 MR Dhruv, Naib Tehsildar vide Ex.P/17 and the same were identified by PW-5 Kamlesh.

In the meanwhile, Dehati Nalishi/Dehati Merg was recorded on 8.9.2006 vide Ex.P/29 and merg intimation Ex.P/30 was also recorded on the same day. FIR (Ex.P/31) was recorded on 8.9.2006 based on merg enquiry against the accused persons. Inquest over the dead body was conducted on 8.9.2006 vide Ex.P/16. Dead body was sent for postmortem to Community Health Center, Khairagarh on 8.9.2006 which was conducted by PW-15 Dr. Alpana Luniya vide Ex.P/27 and the doctor noticed that the body was of a female, it was in highly decomposed condition, face was in the form of skeleton with empty orbital cavity, fracture (small) of left side maxillary bone, hair present only on occipital region of head, ligature noticed of burnt nylon rope, heavy knot on left lateral side of neck, muscles were detached from their body joints, partial burnt clothes red and green coloured were attached to chest and the whole body was putrefied. However, no definite opinion regarding cause of death and others could be given and therefore, the whole portion of the body was sealed, packed and handed over to the police for further opinion by expert at Medical College, Raipur. On being questioned by the Court, the doctor stated that looking to the burnt clothes on the body and the burnt ligature mark on the neck it appeared that the dead body was burnt. Thereafter, the dead body was sent to Medical College, Raipur where second postmortem was done by PW-16 Dr. Ulhas Gonnade vide Ex.P/28. He also noticed burnt clothes on the body, skin was absent from nose, forehead, parietal, upper half of occipital bone, from junction of upper 1/3rd and middle and 1/3rd of right upper limb, left upper limb, chest, back, both thighs, abdomen. He also noticed absence of muscles over left arm and forearm, both legs, both foots, right hand and that there

were marks of burning over chest, right tibia, 11th & 12th rib, T12 to L5, both thighs, pubic region, lower half of small intestine, urinary bladder. He further found that left maxillary bone show small linear fracture, skull was healthy, brain liquefied, chest organs baked and putrefied, stomach empty and that urinary bladder burnt. However, no definite opinion could be given regarding cause and mode of death as the body was putrefied. After filing of charge sheet, the trial Court has framed charge against the appellants Laxman and Lalit Kumar under Section 302, in the alternative 302/34, 201, 449, 120B and 404 of IPC whereas appellant Chetalal was charged under Sections 302, in alternative 302/34, 201, 449 and 120B of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 19 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for appellants Laxman and Lalit Kumar submits as under:

(i) that there is no legally admissible evidence against these appellants,

(ii) though certain articles have been seized on their memorandum but these articles are common and found in every household and further, identification of the articles itself is doubtful.

06. Counsel for appellant Chetanlal submits as under:

(i) that the prosecution has utterly failed to prove cause and mode of death of the deceased and once the same itself has not been proved, the appellant cannot be convicted for the offence of murder.

(ii) that identification of the dead body is disputed. As per autopsy surgeon (PWs-15 & 16) the body was highly decomposed, it was merely a skeleton and thus unless DNA or other scientific test is conducted, it could not be said that the body belonged to the deceased. Even the autopsy surgeons have admitted the fact that they are aware of such scientific test but as the police had informed them that the body was of Maltibai, they wrote in their postmortem reports accordingly.

(iii) that question of identification of dead body by PW-5 Kamlesh does not arise because the body was beyond recognition, it was in the form of skeleton only and according to the doctors there was no skin on her face whereas Kamlesh is said to have identified the dead body on the basis of her face also. Even as per inquest (Ex.P/16) Kamlesh is said to have identified the body on the basis of physique, clothes, bangles whereas Kamlesh was residing in a different village, he has nowhere stated that on or before the date of incident he had seen the deceased wearing the same clothes or bangles.

(iv) that it has come in the evidence of PW-5 Kamlesh that before he identified the dead body, the police had already informed him that dead body of his sister has been traced. Once the dead body found was already disclosed to be that of the deceased by the police to PW-5, subsequent identification of the same by this witness becomes meaningless and raises suspicion over the prosecution case.

(v) that dead body of the deceased was recovered on 8.9.2006 at

4.15 pm vide Ex.P/1 whereas Dehati Nalishi (Ex.P/29) was recorded at 3.30 pm on 8.9.2006 wherein it has been mentioned that body was already recovered after digging the pit and the investigation officer (PW-17) has admitted this mistake in paras-28 & 31 of his cross-examination.

(vi) that PW-5 Kamlesh, the star witness of the prosecution, in para-26 has admitted the suggestion that before deceased Malti went missing, he had a quarrel with accused/appellant Chetan and Chetan lodged a report against him and his brothers. In view of this, the possibility of false implication of the appellant Chetan cannot be ruled out.

07. On the other hand, State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no illegality or infirmity in it. In respect of appellant Chetan it has been argued that PW-5 Kamlesh being brother of the deceased is the best person to identify the body of his sister Maltibai and thus, the identification of the deceased cannot be doubted. This apart, PW-4 Atmaram Verma, witness of inquest, has also identified the body of the deceased.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Bisouha is a witness of identification panchanama of the dead body Ex.P/1, dead body recovery panchanama Ex.P/2, memorandum of the appellants Ex.P/3, P/4, P/5 and seizure effected from them Ex.P/6, P/7, P/8, seizure from the spot Ex.P/9 of broken bangles of deceased, seizure of broken bangles of deceased from her

house P/10 and spot maps Ex.P/11 & P/12. He has stated that dead body of Maltibai was identified by PW-5 Kamlesh, brother of the deceased.

10. PW-2 Likhan, PW-3 Gangabai, PW-6 Bodhiram, PW-8 Rajkumar Verma and PW-9 Pooran have turned hostile. PW-4 Atmaram Verma is a witness to memorandum of the appellants, seizures, spot maps and inquest proceedings vide Ex.P/3 to P/16.

11. PW-5 Kamlesh, brother of the deceased, has stated that on 26.8.2006 he had gone to the house of his sister Maltibai but her house was locked and thereafter, he went to the house of appellant Chetanlal and enquired from him. Chetanlal told that he had also not seen Maltibai for the last 3-4 days. He has stated that then he enquired from village Sapranch and other persons and thereafter lodged missing report Ex.P/26C wherein he had given description of the deceased including her height and further mentioned that on the right hand of his sister Maltibai name of her friend Sabekan was tattooed. He has further stated that when he was in his house he was called by police personnel through village Kotwar to police station, he immediately went to Town Inspector who informed him about discovery of dead body of his sister and then took him along with his brother Sarshottam and other villagers to the place from where the dead body was taken out. The body was buried near a dam where there was about two feet deep water and the water of the dam was removed by breaking the dam and then after digging the pit, the dead body was exhumed. When the police asked him to identify the body, he identified the same to be of his sister Maltibai. He states that skin of half of the portion of her face had

peeled off, there was rope around her neck, she was wearing a catechu coloured sari, red, blue and white bangles were there on her wrist, one side of her face was clear and from that side only he identified her. At that time, appellants Chetan and Laxman were present whereas appellant Lalit was arrested subsequently. It is the appellants Chetan and Laxman who confessed to have buried Maltibai there only. He also identified the articles of the deceased vide Ex.P/17. In para-19 of his cross-examination he has, however, stated that he did inform the police while recording his diary statement (Ex.D/3) that as one side of the face was clear he identified the dead body to be of the deceased and if the same was not recorded he could not tell the reason. He has further admitted the fact that sari which was found on the dead body was common and is easily available in the market. He has stated that he could not see the name of his sister's friend Salekan on her left hand as the body was decomposed and only bone was visible. In para-26 he has admitted the fact that prior to missing of his sister/deceased, a report was lodged by appellant Chetan against him and his brothers Sarshottam and Parshottam regarding commission of *marpeet*. He has further admitted in para-30 that height of his sister/deceased was five feet whereas the dead body was of four feet.

12. PW-7 MR Dhruv, Naib Tehsildar, conducted identification of the seized articles. He has stated that PW-5 Kamlesh identified those articles to be of the deceased. PW-10 Mahendra Kumar Tandon, PW-13 Nandkishore and PW-14 Chhannulal Jangde, police personnel, helped in the investigation. PW-12 Sunil is the sweeper who helped the police in taking out the dead body from the pit. He states that body was fully decomposed, it was completely damaged and the face was not

identifiable as the entire skin from the face had come out.

13. PW-15 Dr. Alpana Luniya conducted first postmortem of the deceased on 8.9.2006 at Community Health Center, Khairagarh vide Ex.P/27 and noticed that the body was of a female, it was in highly decomposed condition, face was in the form of skeleton with empty orbital cavity, fracture (small) of left side maxillary bone, hair present only on occipital region of head, ligature noticed of burnt nylon rope, heavy knot on left lateral side of neck, muscles were detached from their body joints, partial burnt clothes read and green coloured were attached to chest and the whole body was putrefied. However, no definite opinion regarding cause of death and others could be given and therefore, the whole portion of the body was sealed, packed and handed over to the police for further opinion by expert at Medical College, Raipur. On being questioned by the Court, the doctor stated that looking to the burnt clothes on the body and the burnt ligature mark on the neck it appeared that the dead body was burnt. The doctor has admitted the fact that when the body was brought for postmortem, face of the body was beyond recognition. PW-16 Dr. Ulhas Gonnade conducted second postmortem of the deceased on 9.9.2006 at Medical College, Raipur vide Ex.P/28 and noticed burnt clothes on the body, skin was absent from nose, forehead, parietal, upper half of occipital bone, from junction of upper 1/3rd and middle and 1/3rd of right upper limb, left upper limb, chest, back, both thighs, abdomen. He also noticed absence of muscles over left arm and forearm, both legs, both foots, right hand and that there were marks of burning over chest, right tibia, 11th & 12th rib, T12 to L5, both thighs, pubic region, lower half of small intestine, urinary bladder. He further found that left maxillary

bone show small linear fracture, skull was healthy, brain liquefied, chest organs baked and putrefied, stomach empty and that urinary bladder burnt. However, no definite opinion could be given regarding cause and mode of death as the body was putrefied. He has admitted the fact that as the police had written that the dead body was of Maltibai, he taken it to be true.

14. PW-17 PP Singh, investigating officer, has supported the prosecution case. According to him, the body was identified on the basis of physique, sari and bangles and that skin from the face and other portion of the body had peeled off. According to him, before taking out the dead body from the pit, Dehati Nalishi (Ex.P/29) was recorded at 3.30 pm whereas the dead body recovery panchanama was prepared at 4.15 pm. PW-18 Dinesh Sarpute, Patwari, prepared the spot map Ex.P/46. PW-19 Pooranlal Kanwar, Patwari, prepared the spot map Ex.P/47.

15. Admittedly, there is no direct evidence in this case connecting the accused/appellants with the commission of crime and the case rests upon circumstantial evidence. In the matter of ***Sattatiya*** **@ *Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210*** the Supreme Court while dealing with circumstantial evidence observed as under:

> "*11. In Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:*
>
> > "10. ….. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the

hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

12. In Padala Veera Reddy v. State of A.P. [(1989) Supp (2) SCC 706], this court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

*(3) 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 none else; and (4) 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. *

13. In Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

(1) the circumstances from which the conclusion of guilt is

to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

26. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any

habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder."

16. Close scrutiny of the evidence makes it clear that deceased Maltibai went missing from 11/12.8.2006 and her dead body was allegedly found on 8.9.2006 i.e. after about a month. As per autopsy surgeon, PW-15 Dr. Alpana Luniya and PW-16 Dr. Ulhas Gonnade, the body was highly decomposed, it was putrefied and was literally in the form of skeleton. However, the same has been allegedly identified by PW-5 Kamlesh to be that of his sister Maltibai on the basis of one side of face. Though he admits to have identified the body on the basis of one side of face but in cross-examination he states that he never disclosed the police that he identified the body from one side of face. Further, as per statement of the sweeper (PW-12 Sunil) who helped the police in taking out the dead body from the pit, the dead body was fully

decomposed, it was completely damaged and the face was not identifiable as the entire skin from the face had come out. Thus, considering the oral and medical evidence on record, it is doubtful whether the dead body recovered was of the deceased.

17. This apart, identification of the dead body also becomes doubtful for the reasons that PW-5 Kamlesh is said to have identified the dead body on the basis of her face, physique, clothes and bangles whereas there is no evidence that this witness was aware of the clothes and other articles which were found on the body of the deceased. He has nowhere stated that he had ever seen the deceased wearing those articles. Moreover, while lodging missing report he has also stated that he is not aware as to what were the clothes the deceased was wearing when she went missing. Most importantly, according to this witness height of the deceased was five feet whereas the dead body was of four feet and this has also been admitted by him in his cross-examination. Though on the memorandum of the appellants, certain articles have been seized but as per witnesses to the memorandum and seizure including PW-5 Kamlesh who is said to have identified those articles to be that of the deceased, these articles are very common and easily available in the market. Keeping in view all these things, it cannot be said with certainty that the dead body recovered by the police was of Maltibaibai.

18. Yet another important aspect of the case is that postmortem has been conducted twice, first by PW-15 Dr. Alpana Luniya vide Ex.P/27 and second by PW-16 Dr. Ulhas Gonndae vide Ex.P/28 and both the doctors have not given any definite opinion regarding cause and mode

of death. It is thus not proved as to whether the death was homicidal or not.

19. Thus, considering the facts and circumstances of the present case on the touchstone of the principles of law relating to circumstantial evidence, it emerges that the prosecution has failed to prove involvement of the accused/appellants in commission of the crime. It has even failed to prove beyond reasonable doubt that the dead body so recovered was of deceased Maltibai.

So far as appellants Laxman and Lalit Kumar are concerned, the only piece of evidence adduced against them is the recovery of certain articles, which are commonly available in every household and further, identification of the same is also doubtful. The prosecution has also failed to establish beyond doubt that these articles had any nexus with the crime in question. In these circumstances, the findings of guilt recorded by the trial Court against the appellants are liable to be dislodged and they are entitled to be acquitted of all the charges by giving them benefit of doubt.

20. In the result, all the three appeals are allowed and the appellants are acquitted of all the charges leveled against them by extending them benefit of doubt. As the appellants are reported to be on bail, their bail bonds stand discharged and they need not surrender.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P. Sharma)
Judge

Khan