

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 808 of 2009**

1. Sandeep Verma alias Trilok Verma, aged about 26 years, S/o Samaru Ram, Occupation – Agriculturist, R/o Village Dondhki, PS Dongergarh, District Rajnandgaon, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Dongergarh, District Rajnandgaon, CG

---- Respondent

For Appellant	:	Shri Rakesh Thakur, Advocate
For Respondent/State	:	Shri Vaibhav Goverdhan, PL
For Objector	:	Shri Rajendra Tripathi, Advocate

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****30/08/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 09.09.2009 passed by Additional Sessions Judge, Link Court Dongergarh, District Rajnandgaon, in Sessions Trial No. 20/2008 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 500/-, plus default stipulation.

2. According to the case of the prosecution, 2-3 year prior to the incident the deceased had teased the wife of the accused/appellant and it is said that on 19.7.2008 in between 7-9 AM when deceased Yagya Prakash alias Dinesh was working in the field, accused/appellant committed his murder first by throttling and then by causing number of injuries with knife. Body of the deceased was

first seen by his younger brother Hemant Kumar Verma (PW-5) who in turn informed the same to Ugrasen Verma (PW-7) who also also his brother. Thereafter, merg intimation Ex. P-10 was recorded on 19.07.2008 at 11.15 AM followed by Dehati Nalisi Ex. P-9 being recorded on the same day at 12.30 PM at the instance of Hemant Kumar Verma (PW-5). Inquest on the body was done on the same day and then the dead-body was sent for postmortem examination which was conducted by Dr. Suchita Shrivastava (PW-4) who gave her report Ex. P-7. Thereafter, FIR Ex. P-11 was registered at the instance of Hemant Kumar Verma (PW-5) against an unknown person under Section 302 IPC on 19.07.2008. On the basis of memorandum of the accused/appellant Ex. P-14 recorded on 21.07.2008 knife and vest (*Baniyan*) were seized under Ex. P-15 on which, as per the FSL report Ex. P-23, blood was present. However, serological report has not been obtained and produced by the prosecution. Hair seized from the spot marked as "G" and the ones taken from the head of the deceased marked as "L" have also been examined and found to be of human head origin. They are further found to be similar in morphological and microscopic charactrs. However, no definite opinion has been given regarding their origin from one and the same person. After investigation, charge-sheet was filed by the police under Sections 302 and 201 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied her guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below acquitted the accused/appellant of the charge under Section 201 IPC but has convicted and sentenced him as mentioned above.

5. By judgment dated 13.03.2014 this Court had set aside the impugned judgment and order under challenge herein acquitting the accused/appellant of the charge levelled against him but when the matter was taken to the Apex Court by special leave, by order dated 16.11.2015 it remanded the case to this Court for being decided afresh on merits by a reasoned judgment. Hence we do so.

6. Counsel for the accused/appellant submits as under:

(i) That there is no legally admissible evidence on record to convict the accused/appellant under Section 302 IPC.

(ii) That the accused/appellant has been convicted solely on the basis of motive which has not even been proved by the prosecution as at some places the accused/appellant is stated to have illicit relations with the wife of the deceased whereas at some places the deceased is stated to have the illicit relations with the wife of the accused.

(iii) That the strong piece of evidence relied upon by the trial Court is the memorandum of the accused/appellant Ex. P-14 and the seizure of knife and vest made under Ex. P-15 and that of shirt and fullpant made under Ex. P-16.

(iv) That though in the FSL report blood has been found on the articles seized by the prosecution yet there is no serological report to show the origin thereof and being so the accused/appellant cannot be held guilty for committing the murder of the deceased.

(v) That though on examination the hair seized from the spot and

the ones taken from the head of the deceased have been found to be of human head origin and similar in morphological and microscopic characters yet no definite opinion has been given regarding the fact that they were of one and the same person.

7. On the other hand counsel for the State as also the counsel for objector support the judgment impugned and submit that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

8. Heard counsel for the parties and perused the material available on record.

9. Sarjoram (PW-1) is the police constable who took the dead-body for postmortem examination and thereafter handed over the same to Hemant Kumar Verma (PW-5) - the brother of the deceased vide Ex. P-2. He also collected visra from the Government Hospital, Dongargarh and deposited the same in the police station. He also seized the photographs on being produced by Raj Photo Studio vide Ex. P-5. Yogeshwar Sahare (PW-2) is the Patwari who prepared spot map Ex. P-6. Munnalal Ransure (PW-3) is the sweeper of the hospital who after postmortem examination had produced the hair of the deceased in the concerned police station vide Ex. P-4. Dr. Suchita Shrivastava (PW-4) is the witness who conducted postmortem examination on the body of the deceased and submitted her report Ex. P-7 stating therein that there were multiple chopped wounds over face, neck and scalp. Big chopped wound was there extending from mouth to neck, nose to ear - both side. There was cut in the right ear and chopped cut over chin. Big

incised wound was present over right palm and finger (3" x 1" x 1"). Multiple small superficial incisions were there below shoulder, collar bone and also below neck. Multiple dried abrasions were noticed and the tongue was protruded out in between teeth. Rigor mortis was developing in extremities. Cause of death, according to her, was asphyxia due to throttling and the death was homicidal in nature. This witness has also stated that the injuries noticed on the body of the deceased could have been caused by the knife produced before her for examination. Hemant Kumar Verma (PW-5) is the brother of the deceased and lodger of the report. Initially he has stated that the accused/appellant had illicit relations with the wife of the deceased for which some dispute was there between the two leading to suspicion against the accused to do away with the deceased. However, in cross examination this witness has stated that about 2-3 year prior to the incident the deceased had teased the wife of the accused/appellant for which a meeting was convened in the village and he was even slapped a fine of Rs. 2,500/-. Suman Singh (PW-6) - the photographer has not stated anything specific about the involvement of the accused in the crime in question. Ugrasen Verma (PW-7) - another brother of the deceased has just stated that there was some ill-will between the accused and his deceased brother. He has admitted that once the deceased had teased the wife of the accused and for that a meeting was held in the village. Jeevanlal Verma (PW-8) is a villager who has been examined to prove the motive. He has stated that on account of the wife of the accused being teased by the deceased a meeting was called in the village and since then the relations between them turned sour, and for that he suspected the accused to have committed the murder of the deceased. C.R.

Thakur (PW-9) is the witness who recorded FIR Ex. P-11 on the basis of Dehati Nalisi Ex. P-9 and then forwarded the same to the Magistrate vide Ex. P-12. Tejram (PW-10) is the witness to memorandum Ex. P-14, seizure made under Exs. P-15 and P-16 and also the inquest Ex. P-17 who has duly supported the case of the prosecution. Pravin Chand Rai (PW-11) is the investigating officer who has duly supported the case of the prosecution.

10. We have gone through the evidence of the witnesses and other material collected by the prosecution. None of the witnesses has stated in categorical terms that it is the accused/appellant who has committed the murder of the deceased or that the incident was witnessed by anyone of them. Almost all the witnesses who deposed against the accused/appellant have just expressed their suspicion that on account of wife of the accused being teased by the deceased, the relations between the two were not cordial and for that he (accused) might have become the author of the crime in question. Law in this regard is well settled that howsoever strong the suspicion is, it cannot take the place of proof and thus cannot be the basis for conviction of an accused. Though as per the FSL report Ex. P-23 blood was found on the knife, vest, shirt and fullpant seized under Ex. P-15 and Ex. P-16 yet in the absence of serological report to establish the fact that the said blood was of the blood group of the deceased, such seizure is of no help to the case of the prosecution - **(AIR 1987 SC 150 Kansa Behra v. State of Orissa)**. Relevant portion reads thus:

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and

therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the cloths of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.”

11. Further, the hair seized from the spot marked as “G” and the ones taken from the head of the deceased marked as “L” were sent for examination and found to be of human head origin. They were also found similar in morphological and microscopic charactres but no definite opinion has been given regarding the fact that they were of one and the same person. Though Jeevanlal Verma (PW-8) has tried to prove the motive where the deceased is said to have once teased the wife of the accused/appellant yet keeping in mind the statement of (PW-5) who has first stated that the accused/appellant had illicit intimacy with the wife of the deceased and then he changed his version that it is the deceased who teased the wife of the accused, the motive part being not so pin-pointed is hereby rejected. Furthermore, in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused - {**Dhananjoy Chatterjee v. State of WB (1994) 2 SCC 220**}.

12. 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 in paras 11, 12, 13 & 26 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."

13. However, in the case in hand, the chain of circumstances relied upon by the prosecution is too fragmented to draw a conclusion of guilt of the accused/appellant for killing the deceased. Thus the prosecution has utterly failed to establish its case beyond all reasonable doubt on the basis of which it can be held that it is the accused/appellant who has committed the murder of the

deceased. Benefit of this lapse on the part of the prosecution must go to the accused.

14. In view of above, the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are liable to be set aside being not based on proper appreciation of the evidence on record. It is done so. Appeal stands allowed and the accused/appellant is acquitted of the charge levelled against him. He is reported to be on bail and therefore no order to set him free etc. is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge

Jyotishi