

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 467 of 2004

Sant Ram, S/o. Dukalu Ram Gond, aged 40 years, resident of Devbhog Chowki, Fingeshwar, P.S. Rajim, District Raipur (C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- the District Magistrate, Raipur (C.G.)

---- RESPONDENT

For Appellant :- Ms. Sangeeta Mishra, Advocate
For Respondent /State :- Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment on Board By
Prashant Kumar Mishra, J.

06.03.2017

1. The appellant would assail his conviction under Sections 302 and 201 of the Indian Penal Code for committing murder of deceased Hira Bai and thereafter concealing the evidence of crime.
2. The deceased was a widow for about three years prior to the date of incident. She was allegedly having illicit relation with the appellant and the appellant used to visit her

house frequently during the day as well as in the night hours and at times he used to stay back there whole night. It is alleged by the prosecution that in the morning on 13.07.2013 the appellant went to the house of the deceased and requested her to accompany him. Bhuvneshwari (PW-1) and three other children of the deceased were in the house. Bhuvneshwari and her brother went to attend the agriculture work and two small children stayed back in the house. When Bhuvneshwari (PW-1) returned at about 1 PM her mother was not present in the house and two younger children could not precisely inform her as to the whereabouts of their mother. When the deceased did not return by evening, Bhuvneshwari (PW-1) informed Komal Sahu (PW-6) brother-in-law (*Devar*) of the deceased, who in turn advised her to search the deceased in the house of her maternal uncle. Later on, she was advised to trace out the deceased at Kurud and other villages. After two days, Bhuvneshwari (PW-1) requested for a meeting in the village on which a meeting took place and she was advised to lodge the report of missing person. The report of missing person was lodged on 17.07.2003 vide Ex.P-23(C) and thereafter the FIR was registered. In the meeting of the village, village Patel Shiv Prasad informed Bhuvneshwari (PW-1) that when he was attending weekly village market there was rumor that a dead body has been found in the nearby forest. The villagers

thereafter proceeded towards the forest and located the dead body, identified the same to be of deceased Hira Bai and accordingly the police was informed. The inquest of the dead body was conducted vide Ex.P-2 on 17.07.2003 itself and the postmortem was performed by Dr. P. Kudeshiya (PW-13), who opined vide his report Ex.P-19 that the mode of death is shock; nature of death seems to be homicidal in nature; cause of death being excessive internal haemorrhage resulting in shock; time of death 5 to 6 days from the time of autopsy.

3. During the morgue intimation and subsequent investigation after registration of crime, witnesses informed the Investigating Officer that the appellant was having illicit affair with the deceased and she was carrying pregnancy of about 6 to 7 months, therefore, the appellant being perturbed he planned to eliminate the deceased and in furtherance of the said plan he went to the house of the deceased and on the pretext of taking her to some physician for abortion he took her to the nearby forest where both of them consumed liquor and thereafter, the appellant committed her murder by hitting a big stone weighing about 5 KG twice over the chest. The appellant concealed the red sari belonging to the deceased at a distance about 1 KM from the place of occurrence.
4. The appellant's memorandum statement was recorded vide Ex.P-6 on 20.07.2003, pursuant to which axe was

recovered from the appellant's house, red colour sari of the deceased was recovered from the forest and the stone was also found from the place where the dead body was found. Recovery was made vide Ex.P/7 (Axe), Ex.P/8 (stone) and Ex.P/9 (red colour sari). All the articles were sent for FSL examination, the report whereof was received subsequent to filing of the charge sheet, therefore, it has not been marked as exhibit but it is otherwise admissible in view of the provisions contained in section 293 Cr.P.C. As per the FSL report, blood stains were not found over any of the articles seized from the appellant.

5. The trial Court has convicted the appellant (i) mainly on the statements of Bhuvneshwari (PW-1) and Komal Sahu (PW-6), (ii) memorandum statement of the appellant and consequent recovery of axe, stone and red sari.
6. TThere being no ocular evidence of murder, case of the prosecution being based on circumstantial evidence, we need to remind ourselves to the principle where the accused can be convicted on the basis of circumstantial evidence.
7. In the matter of **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116**, the Supreme Court has underlined the conditions, which must be fulfilled for convicting the accused on the basis of circumstantial evidence and held in para-152 as under:-

“152.A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(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

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.”

8. The principle has been reiterated in a recent Supreme Court judgment in the matter of **Nizam and Another Vs. State of Rajasthan {(2016) 1 SCC 550}**, wherein the following has been observed.

19. In case of circumstantial evidence, court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. In the case at hand, neither the weapon of murder nor the money allegedly looted by the appellants or any other material was recovered from the possession of the appellants. There are many apparent lapses in the investigation and missing links:—(i) Non-recovery of stolen money; (ii) The weapon from which abrasions were caused; (iii) False case lodged

by PW-2 alleging that he was being robbed by some other miscreants; (iv) Non-identification of the dead body and (v) Non-explanation as to how the deceased reached Maniya village and injuries on his internal organ (penis). Thus we find many loopholes in the case of the prosecution. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts. The chain of circumstantial evidence cannot be said to be concluded in any manner sought to be urged by the prosecution.

9. In **Nathiya Vs. State represented by Inspector of Police, Bagayam Police Station, Vellore {(2016) 10 SCC 298}**, it has been held thus :-

“ 27. As recently as in *Sujit Biswas v. State of Assam*³ and *Raja v. State of Haryana* ⁴, it has been propounded that in scrutinizing the circumstantial evidence, a court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. It was underlined that whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. That in judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged. That the circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically propounded.

10. The law thus having been settled we are required to appreciate the evidence to find out whether the chain of events is established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. Indisputedly, the deceased was a widow lady residing separately from three other brothers of her late husband. As a matter of fact, on account of partition amongst members of the joint family, the deceased and her husband were residing

separately during the lifetime of her husband. Although her place of residence was hardly $\frac{1}{2}$ KM away from the place of residence of her brother-in-laws, it has come in the evidence that there are about 100 families who reside in the village, therefore, it was not a very small village where the population was scattered and it was difficult for the persons residing in the village to know about any illicit affair or activity going in the village.

11. Some witnesses have stated that the deceased was having illicit affair with the appellant and she had carried pregnancy atleast on two occasions and on both the occasions she was made to abort and at the time of incident she was carrying pregnancy from the appellant, however, there is no medical evidence supporting the said rumor in the village.
12. Bhuvneshwari (PW-1) is the daughter of the deceased who is aged about 14 years. According to this witness the appellant used to visit their house and sometimes would stay in the night with her mother. On the date of incident, the appellant had come to their house in the morning and instructed the deceased to get ready and thereafter the appellant and the deceased went together, however, in her cross examination, she denied the fact that she had seen the appellant and the deceased going together from the house. She has stated that at the time she proceeded to the agriculture field, both of them were together in the house but when she came back at about 1 PM they were not available, therefore, she presumed

that both of them had moved together. More importantly, the statement that both of them moved together is missing in her case diary statement as admitted by her in paragraph-6 of cross examination. In the missing report vide Ex.P 23(C) she would speak about the appellant frequently visiting their house but there is no direct allegation of illicit relation between the appellant and the deceased.

13. Komal Sahu (PW-6) is another witness who, in his Court statement, claims to have seen the appellant and the deceased moving together when he was taking bath in the village Nala, however, this particular statement is missing in his case diary statement as admitted by witness himself as well as Investigating Officer S.P. Singh (PW-12). If these two witnesses Bhuvneshwari (PW-1) and Komal Sahu (PW-6) have not seen the appellant and the deceased going together on the date of incident, the only fact proved is that the appellant had visited the house of the deceased in the morning but there is no evidence that both of them together went to the nearby forest where the dead body of the deceased was found.
14. If we appreciate the statement of the other witnesses namely Shiv Prasad (PW-3), Sarpanch of the village Suresh Kumar (PW-4) and village Kotwar Bhukhelal (PW-5) none of these witnesses have stated that they were aware of illicit relation between the appellant and the deceased at any point of time

prior to information received by them from Bhuvneshwari (PW-1) after the deceased was found missing on 13.03.2003.

15. More interestingly, the village Kotwar Bhukhelal (PW-5) has stated that when they were proceeding towards the forest to search Hira Bai, the appellant had accompanied them but left their company in the midway, yet In the cross examination, he would candidly admit that even though Bhuvneshwari (PW-1) has already informed them 2-3 days back, about appellant's relation with the deceased and the appellant also accompanied them in search of deceased but they never asked the appellant about his relation with the deceased. If Bhuvneshwari (PW-1) had already informed the villagers about the illicit relation between the appellant and the deceased, it should have been natural and spontaneous behavior of the village Patel Suresh Kumar (PW-4) and village Kotwari Bhukhela (PW-5) that they should have immediately summoned the appellant in the meeting and made interrogation as to whereabouts of the deceased but the villagers, including this witness did not do so, therefore, the allegation of illicit relation or motive is doubtful.
16. Now considering the scientific evidence, although the memorandum statement and seizure of axe, stone and red sari, have been proved from the statement of Shiv Prasad (PW-3) and Suresh Kumar (PW-4), yet blood stains were not found on any of these articles. To add to the discomfort of the prosecution, red sari, said to be belonging to the deceased

was not put to identification either during the course of investigation or in the course of trial, even though Bhuvneshwari (PW-1) daughter of the deceased was examined during the investigation as well as in the Court.

17. In our considered opinion, there are certain missing links in the prosecution case in form of absence of blood stains over the axe, stone and red sari; none of the witnesses have seen the deceased and the appellant going together towards the forest or near the place where the dead body was found which is at a distance of 10 to 12 KM away from the place of their residence. In addition, there is no medical evidence of the deceased carrying pregnancy of 6 to 7 months at the time of incident. Even if there is strong suspicion that the appellant is one who might have eliminated the deceased, in the absence of cogent and reliable evidence to complete the chain of circumstantial evidence, we are not convinced that the appellant is liable to be sent for life term for committing murder. As a consequence, we allow the appeal and set aside the impugned judgment.

18. The appellant is reported to be on bail. His bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Anil Kumar Shukla