

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 175 of 2008

- Amrit Lal, Aged about 36 years, S/o Lakkhan Lal, R/o. Nagabuda, P.S.-Gariyabandh, Distt. Raipur, Chhattisgarh

---- Appellant(in jail)

Versus

- State Of Chhattisgarh, Through P.S.-Gariyabandh, District-Raipur, Chhattisgarh

---- Respondent

For the Appellant : Shri Pawan Kesharwani, Advocate.

For the State/Respondent : Shri Ravindra Agrawal, Panel Lawyer.

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

Judgment on Board by Prashant Kumar Mishra, J.

22/03/2017

1. Challenge in this criminal appeal is to the appellant's conviction under Section 302 of Indian Penal Code(for short 'IPC') and sentence of life imprisonment with fine of Rs.500/-, in default of payment of fine to undergo additional RI for 1 month.
2. Appellant was sent for trial for committing murder of deceased Ghasan Bai at about 2:30-3:00 p.m. on 29.5.2006.
3. The prosecution case, as emerging from the material on record, is that the appellant has 5 brothers namely, Rameshwar Nishad,

Ghaneshwar Nishad, Appellant Amrit Lal, Narayan Singh Nishad and Naradram Nishad. Deceased Ghasan Bai was the appellant's sister-in-law (भाभी) being wife of his elder brother Ghaneshwar Nishad. On the date of incident, house warming ceremony was organized in the house of one of the brothers Narayan, therefore, the families of all the brothers had gone to attend the function in the newly built house of Narayan. When they came back from the ceremony, Mahesh, son of the deceased, found the body of his mother lying in the thrashing field of Lakhan having injuries and profusely bleeding on her head. One *Nagar Juda* (a wooden bar used to tie the buffaloes) was found near the dead body. Mahesh informed Rameshwar Nishadh PW/1 on which the said Rameshwar lodged morgue intimation vide Ex.P/1. During morgue inquiry, it was found that someone has killed the deceased by causing injuring over her body, therefore, FIR (Ex.P/6) was registered against unknown persons. In course of investigation, some of the witnesses informed the police that the appellant was suspecting that the deceased is practicing witchcraft due to which his wife was suffering from some disease, therefore, the appellant might have eliminated the deceased. Kaushik PW/18 had seen the appellant going from Village-Nagabuda towards Gariyabandh, therefore, the charge sheet was filed against the appellant on the basis of circumstantial evidence as also on the basis of recovery of bloodstained *lungi* vide Ex.P/13.

4. In course of trial, the prosecution has examined as many as 21 witnesses to bring home the charges, however, the important evidence is that of Ku. Mohani (PW/8) and Kaushik (PW/18) and the

seizure of bloodstained *lungi* from the appellant. The trial Judge found these evidences to be sufficient enough to connect the appellant with the crime, therefore, he has been convicted for committing murder of Ghasan Bai.

5. Mr. Pawan Kesarwani, learned counsel for the appellant would submit that there is absolutely no evidence against the appellant to connect him with the crime, therefore, the impugned conviction and sentence deserves to be set aside. According to him, merely because the appellant was seen moving away from the village, the same would not be such evidence which would incriminate him in the offence of murder.
6. Per contra Mr. Ravindra Agrawal, learned Panel Lawyer for the State would support the impugned judgment.
7. The case of the prosecution is based on circumstantial evidence as there is no ocular version of the crime. The principal as to when a conviction can be based on circumstantial evidence has been settled by the Supreme Court in catena of decisions.
8. In **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹, the Hon'ble Supreme Court has underlined the conditions, which must be fulfilled for convicting an 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 AIR 1984 SC 1622

(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

(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."

9. Reiterating the above, the Supreme Court has once again held in **Nizam and Another Vs. State of Rajasthan** {(2016) 1 SCC 550} thus:-

"19. In case of circumstantial evidence, the 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 was the weapon of murder nor the money allegedly looted by the appellants or any other material 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 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.”

10. 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* and *Raja v. State of Haryana*, it has been propounded that in scrutinising 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.”

11. Admittedly the prosecution has not put forth any evidence against the appellant in the nature of extra judicial confession or last seen together or recovery of any weapon. The only piece of evidence against the appellant is of recovery of bloodstained *lungi* from him and the statement of Kaushik (PW/18) that on the date of incident the appellant was seen moving from village-Nagabuda to Gariyabandh. The *lungi* seized from the appellant vide Ex.P/13 was sent for FSL examination, however, report of the Forensic Science Laboratory is not available on record, therefore, mere recovery of *lungi* would not connect the appellant with the crime. Similarly, seeing the appellant

moving from village-Nagabuda to Gariyabandh is not sufficient enough to conclude that it was he who has committed murder of the deceased. If we may say so, these evidence do not even create suspicion on the appellant that he may have been involved in commission of crime. Ku. Mohini (PW/8) has stated in her examination in chief that the appellant has committed murder of her mother. On a preliminary note, it would appear that she has witnessed the incident, however, in cross-examination, she has denied to have witnessed the incident and has clearly stated that whatever she is saying is on the basis of murmuring in the village.

12. In our considered view, there is absolutely no evidence against the appellant to convict him for commission of murder of deceased Ghasan Bai. The trial Judge has wrongly convicted the appellant, therefore, the impugned judgment is set aside.
13. In the result, the appeal is allowed. Conviction and sentence imposed on the appellant under Section 302 of the IPC are set aside and he is acquitted of the said charge. He shall be released forthwith unless required to be detained in any other case. He shall appear before the higher Court as and when directed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(R.C.S. Samant)