

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 155 of 2004

- Mehatu Ram S/o Muraha, aged about 20 years, resident of village Bhaiggaon, P.S. Raoghat, District Kanker (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : P.S. Raoghat, District Kanker (C.G.)

---- Respondent

For Appellant : Shri Varunendra Mishra, 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 Pritinker Diwaker, J

16/08/2017

This appeal arises out of the judgment of conviction and order of sentence dated 24.09.2003 passed by 1st Additional Sessions Judge, Kanker, in S.T. No.145/2003 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for one year.

02. In the present case, name of the deceased is Manku. It is said that on 05.11.2002 at about 8.00 pm, the accused/appellant went to the house of deceased, some quarrel took place between them and the accused/appellant

threatened the deceased as to “how long would you live” and left his house. Further case of the prosecution is that on the same night at about 11.00 pm, the accused/appellant along with other accused persons again had gone to the house of deceased and committed his murder by causing three incised wounds on his body by axe and crowbar. The incident is said to have been witnessed by Sanbati (PW/1), daughter of the deceased, who in her 161 Cr.P.C. statement has not named anyone. On 06.11.2002 at 8.15 am, at the instance of Ayatu Ram (PW/2)-brother of the deceased, merg intimation Ex.P/21 and FIR Ex.P/1 were recorded under Sections 302 and 452 IPC against an unknown person. Inquest on the body of deceased was prepared vide Ex.P/4 and body was sent for postmortem examination to Primary Health Center, Tadoki where Dr. U.N. Diwan (PW/4) conducted postmortem on the body of deceased and gave his report Ex.P/4 opining the cause of death of deceased to be coma due to hemorrhagic shock and death was homicidal in nature. On 23.12.2002 memorandum of accused/appellant was recorded vide Ex.P/14, based on which, axe is alleged to have been seized from him and as per FSL report Ex.P/25 blood has been found on it, however there is no serological report on record.

03. After investigation charge-sheet was filed against the appellant and acquitted accused persons and the trial Court framed the charge against the accused/appellant and acquitted accused Itwaru under Section 302 IPC, whereas two

other acquitted accused persons namely Johar and Aiet Ram were charged under Section 302/34 IPC.

04. So as to hold the accused persons guilty, the prosecution examined as many as 12 witnesses. Statements of the accused persons 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record while acquitting three accused persons has convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits:

- That the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction.
- That just before the incident the accused/appellant had gone to the house of the deceased and threatened him. It has been argued that merely on the basis of said weak type of evidence, the accused/appellant cannot be convicted.
- That other piece of evidence which has been relied upon by the trial Court is that as the appellant had performed marriage of his own choice, the deceased used to tease him

and, therefore, there was enmity between the two.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Sanbati (PW/1) is daughter of the deceased. She has stated that on the date of incident at about 8.00 pm, when they were taking dinner in her house, the accused/appellant came there and quarrel took place between the appellant and deceased and, thereafter, the appellant left her house saying that as to "how long would you live". She has further stated that at about 11.30 am, she woke up after hearing some sound and saw the appellant and acquitted accused Johar. She also saw her father in the injured condition. However, when this witness was confronted with her 161 Cr.P.C. statement wherein she has not stated anything about seeing any of the accused, she states that she made the said statement but if the same is not recorded in her diary statement she could not tell the reason.

10. Aayatu Ram (PW/2) is lodger of FIR Ex.P/1 and merg intimation Ex.P/21. He has stated that he was informed by Sanbati (PW/1) that appellant and acquitted accused Joharu have killed her father.

11. Sanau (PW/3) has turned hostile. Dr. U.N. Diwan (PW/4) has conducted postmortem examination on the body of deceased vide Ex.P/4 and found following injuries :-

- (i) Incised wound of 1" x 1/2" x 1" over right side of head.
- (ii) Incised wound of 1" x 1/2" over right cheek.
- (iii) Incised wound of 1 1/2 " x 1/2" x 1" beside right ear.
- (iv) Incised wound of 1" x 1/2" beside right ear.
- (v) Incised wound of 1 1/2 " x 1/2" beside right ear.

The Doctor has opined that the cause of death of deceased was coma due to hemorrhagic shock and nature was homicidal.

12. Partu Ram (PW/5) and Mohan Singh (PW/7) are the witnesses to memorandum (Ex.P/14) of the appellant and seizure made thereunder Ex.P/15. They have not supported the prosecution case. Puran Singh Mandavi (PW/6) is Patwari who prepared spot map Ex.P/19. R.V.S. Kushwaha (PW/10) and C. Tigga (PW/11) - Sub Inspectors did part of investigation. Sanjay Singh (PW/12) Investigating Officer duly supported the prosecution case.

13. Based on the memorandum of the accused/appellant vide Ex.P/14, axe was seized vide Ex.P/15 which was found to be stained with blood as per FSL report (Ex.P/25), however, origin and group of the blood has not been proved by the prosecution.

14. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and

his conviction rests upon circumstantial evidence, main being the evidence of his previous enmity with the deceased and recovery of bloodstained axe at his instance.

15. 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 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.

16. In the instant case, Sanbati Bai (PW/1) in her court statement has stated that the accused/appellant came to her house and quarreled with deceased saying that as to “how long would you live”. This witness also went on to state that at 11.30 pm she woke up after hearing some sound and saw the accused/appellant and acquitted accused Johar and that her father was lying in injured condition, thereafter, she went to her uncle PW/2 and narrated the incident. According to this

witness, she saw the accused/appellant with one acquitted accused and narrated the incident to her uncle PW/1, who lodged the FIR Ex.P/1. Reverting to contents of FIR Ex.P/1, it demonstrates that the FIR Ex.P/1 was lodged against an unknown person. Further, the contents of FIR goes to show that after hearing the sound, PW/1 woke up and saw one person wearing white shirt moving out of her house whereas in her Court statement she has stated that when accused/appellant came to her house he was wearing red colour shirt. That apart, when this witness was confronted with her diary statement, wherein she has not stated anything about seeing any of the accused, she states that she had made such statement but if it was not recorded in her diary statement she could not tell the reason. If PW/1 had seen the accused/appellant in her house then the named FIR would have been lodged but the same has not been done. Considering the above discrepancy and inconsistency on material point, the evidence of this witness do not inspire confidence of this Court and as such, it would be hazardous to place any reliance thereon.

17. So far as the circumstance of previous enmity is concerned, the appellant is said to have stated about the same in his memorandum (Ex.P/14) that the deceased used to tease him that he had performed marriage with his sister, however, witnesses PW/5 and PW/7 to memorandum Ex.P/14 have not uttered even a single word in this regard in their

court statement and only stated about seizure of axe. That apart, none of the prosecution witnesses has stated about the previous enmity between the accused/appellant and deceased except that the accused/appellant was ostracized for performing marriage with his sister. Even if it is assumed that there was enmity between the two, merely on that basis the appellant cannot be held to be the perpetrator of the crime. This could be an additional link in the chain of circumstance to point towards the guilt of the accused provided that his involvement in the crime in question has been moved by other cogent and reliable evidence.

18. The other piece of evidence relied upon by the trial Court against the appellant is the seizure of axe. From perusal of the evidence of PW/5 and PW/7, who are the witnesses to memorandum and seizure, it is evident that though they have supported the prosecution case on the point of memorandum and seizure in the examination-in-chief but in their cross-examination, they have stated that neither any such statement was given by the appellant to the police before them nor did the appellant disclosed about the axe to the police and no axe was seized in their presence. They have further stated that the proceeding regarding memorandum and seizure were carried out in the police station itself and the contents of the same were not read over to them by the police. In this view of the matter, the said circumstance of recovery of axe loses its significance. However, if the

circumstance of seizure of axe is seen in the light of evidence of Investigating Officer, in that case also the said circumstance is not of such nature which could unerringly point towards the guilt of the accused because though as per the FSL report Ex.P/25, blood has been found on the seized article i.e. axe, but there is no serological report to prove its origin and group.

19. In **Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507**, while dealing with recovery of bloodstained articles the Supreme Court held as under:-

“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 clothes 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.

20. Thus having examined the evidence in the present case in light of the aforesaid principles of law, we are unable to

hold the appellant guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved to the hilt by the prosecution so as to exclude the possibility of any person other than the appellant being the perpetrator of the crime beyond the shadow of all reasonable doubt. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

21. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 IPC by extending him benefit of doubt. The appellant is reported to on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE