

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 98 of 2008

- Jamaluddin, aged about 44 years, S/o Aliraja Musalman, R/o Camp 2, Tata Line Behind of the house of Jaiprakash, P.S. Chhawani, Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through: Distt. Magistrate Durg, C.G.

---- Respondent

For Appellant	:	Shri Jitendra Gupta, Advocate
For Respondent	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Judgement

Per the Acting Chief Justice

28/02/2017

1. By this criminal appeal, the accused/appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 8.1.2008 passed by the Sessions Judge, Durg in S.T. No.215/06 by which he has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default to undergo additional RI for 3 months.
2. Briefly stated, the case of the prosecution is that the accused/appellant with the help of deceased had pledged his television set with one Munnibai for Rs.2,000/- and out of this amount, the deceased kept Rs.500/- with him. It is case of the prosecution that when the appellant

demanded back the said money from the deceased, he shown his inability to return it. It is further case of the prosecution that on the fateful day the accused/appellant stayed in the house of deceased and when the deceased fell asleep, he committed his murder by causing injuries on his head & face by the grinding stone lying in the house of the deceased. Raju Gautam (PW-1), Radheshyam (PW-4) & Firoz Ahmed (PW-15) are said to have seen the accused/appellant coming out from the house of deceased and that the accused/appellant also made extra judicial confession before Shanti Devi (PW-2), Smt. Sunita (PW-3) & Smt. Meena (PW-5). Merg Intimation (Ex.P-9) was recorded on 12.5.2006 at 10 p.m. at the instance of Parmatma (PW-8). Inquest (Ex.P-10) was prepared on 15.5.2006 on the body of deceased. Body was sent for post-mortem examination which was conducted by Dr. M.C. Mehnot (PW-14) on 15.5.2006 and he noticed following injuries:-

- Lacerated wound on the forehead of 2" x 1/4" x 1/4"
- Abrasion of 2 1/2" x 2" on the right side of skull.
- Abrasion on the right eyebrow of 2"x1". One Contusion near this injury of 1" x 3/4" in size.
- Lacerated over right eyebrow of 1/4" x 1/6" x 1/6" in size.
- Abrasion on nose of 1/2"x1/2" in size
- Lacerated wound over right eyebrow of 1/4" x 1/6" x 1/6" in size.
- Lacerated wound over left temporal region of 1/4" x 1/6" x 1/6" in size.
- Lacerated wound on mucosle aspect of 1/2" x 1/4" x 1/4" in size.
- Lacerated wound on the inner side of lower lip of 1/4" x 1/6" x 1/6" in size.
- Lacerated wound on the chin of 1/4" x 1/6" x 1/6" size.
- Abrasion of 1/4" x 1/6" size over right forearm.
- Abrasion over calf region of 1/4" x 1/6" size.

- Fracture in right temporal bone and right orbit.

The cause of death assigned by the doctor was shock & haemorrhage as a result of head injury. On 16.5.2006 a report was lodged by Shanti Devi (PW-2), mother of deceased, stating therein that on 16.5.2006 at about 5.00 p.m. in the evening the accused/appellant and his wife Saeeda had quarrelled with her and in that process, the accused/appellant said that he has committed murder of one person and now he would commit the murder of Rajkumar also i.e. another son of PW-2. On the basis of mere enquiry and report lodged by PW-2, FIR (Ex.P-24) was registered on 17.5.2005. In the course of investigation, the accused/appellant was interrogated and based on his disclosure statement (Ex.P-1), one grinding stone was seized vide seizure memo Ex.P-11. Hairs and nails of both the hands of accused/appellant were seized vide Ex.P-12. Bloodstained clothing of the accused were recovered vide seizure memo of Ex.P-18. Hairs lying on the spot were seized vide Ex.P-6. Seized articles were sent for chemical examination to the Forensic Science Laboratory and as per report of FSL (Ex.P-27), Articles-E & F i.e. shirt & pant of accused, have been found to be stained with human blood, which has been subsequently affirmed by the Serologist vide report Ex.P-32. Hairs seized from the spot and hairs of the accused/appellant were sent for examination and as per report (Ex.P-31), both the hairs are of human and similar in morphology & microscopic character, but no definite opinion could be given about their origin from one and the same person.

3. After completion of investigation, charge sheet for the offences punishable under Sections 302 & 201 IPC was filed against the accused/appellant. However, the trial Court has framed the charge under Section 302 IPC only against the accused/appellant. To substantiate the charge, the prosecution has examined 24 witnesses in all. Statement of

accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication. He examined one defence witness in support of his case.

4. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - it is not a case of direct evidence but the conviction of the appellant is entirely founded on circumstantial evidence but the chain of circumstances relied upon by the prosecution is not such which leads to the hypotheses of guilt of the appellant only and therefore he is entitled to be acquitted.
 - Had the appellant made any extra-judicial confession before PW-2, PW-3 & PW-5, or had PW-2 seen the appellant and the deceased together on the date of incident, name of appellant would have certainly been mentioned by her in the FIR, but nothing like this is there and therefore possibility of false implication of accused/appellant by them cannot be ruled out.
 - extra-judicial confession made by appellant before PW-2, PW-3 & PW-5 cannot be termed as admission of guilt because they have not stated as to what was the occasion for the appellant to make such statement.
 - there are material contradictions in the statement of PW-1 as while deposing in the Court he has improved a lot which is apparent from his cross-examination. PW-4 & PW-5 are also not reliable witnesses and therefore they have been declared hostile by the prosecution on material points.
 - Though blood on the pant & shirt seized at the instance of appellant

was found in the reports of F.S.L. & Serologist, but the prosecution has utterly failed to establish origin of the blood and thus the recovery is immaterial.

- post-mortem report (Ex.P-16) does not reflect as to whether death was homicidal in nature or not, whereas heavy burden lies on the prosecution to prove that death of deceased as homicidal.
- the Patwari himself has admitted that the map prepared by him is based on the information given by Sunita (PW-3) and therefore it cannot be said that correct picture of the place of occurrence has been shown in the map.
- Smt. Najmunnisha (PW-7) has given correct picture of the incident and if her statement is taken into consideration, it is quite apparent that the prosecution had cooked up a story with intent to falsely implicate the appellant.
- Referring to statement of DW-1, it has been argued that possibility of murder of deceased by one Kalu cannot be ruled out as he was on inimical terms with the deceased.
- the recovery of bloodstained pant & shirt having been effect from an open place accessible to everyone, as is evident from the statement of Jitendra (PW-16), therefore, it is not possible to hold that the appellant was in possession of the aforesaid articles.
- the deceased was working as Bouncer with one liquor contractor and thus having criminal record and therefore the possibility of his murder by some other person cannot be ruled out. Merely on the basis of suspicion the appellant cannot be convicted.
- Reliance is placed in the matters of Nizam & anr vs. State of Rajasthan reported in (2016) 1 SCC 550; State of Karnataka vs. Chand Basha reported in (2016) 1 SCC 501; Kala alias Chandrakala v. State through

Inspector of Police reported in (2016) 9 SCC 337; Pashuram & others vs. State of CG reported in 2016 (2) CGLJ 160 (DB); Sunil vs. State of CG reported in 2016 (3) CGLJ 203 (DB); Ramanand Pandey & another v. State of CG reported in 2014 (2) CGLJ 364 (DB).

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that PW-1, PW-4 & PW-15 have seen the accused/appellant coming out from the back door of the house of the deceased on the date of incident and after some time, the deceased was found lying dead in his house. Apart from this, Shantibai (PW-2), who is also a witness of last seen, had seen the deceased in the company of the accused/appellant in the house where the deceased was done to death. He further submits that accused/appellant made extra-judicial confession before PW-2, PW-3 & PW-5 who have duly supported the prosecution case. He further submits that on the memorandum of accused/appellant, recovery of grinding stone was effected vide Ex.P-11, whereas nails, hairs and clothing of accused/appellant were recovered vide Ex.P-12 & P-18 respectively and in the report of FSL (Ex.P-29), pant & shirt of the accused were found to be stained with human blood, which has been subsequently confirmed in the report of Serologist and there is no explanation from the accused/appellant in his statement recorded under Section 313 Cr.P.C. as to how the blood stains are there in the clothes seized from him. He further submits that hairs seized from the spot and hairs of the accused/appellant are found to be similar in morphology and microscopic character. In these circumstances, the conviction of accused/appellant under Section 302 IPC is justified.

7. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Raju Gautam (PW-1) has stated that on the date of incident when he was on the terrace of his house, he saw the accused/appellant coming out from the house of deceased and at that time he was cleaning his hands. He has further stated that at that time the deceased was all alone in his house and except the accused, none has come out from the house of deceased. After some time the mother of deceased reached there, went inside the house after opening the shutter of house and started crying. On hearing her cries, he went there and saw the deceased lying dead with bleeding injuries. He has further stated that after some time of the incident, the accused/appellant ran away from the locality, due to which, he became suspicious that he might have killed Jaiprakash. There appears some minor contradictions in the court statement of this witness from that of his diary statement (Ex.D-3).
9. Shanti Devi (PW-2) is the mother of deceased whose report was entered in the roznamcha sanha by the police. She has stated that she is residing along with her younger son Rajkumar, whereas the deceased was residing separately in another house. On 12.5.2006 at about 3.00 p.m. in the afternoon she went to the house of deceased along with food and at that time accused/appellant was also present there. She has further stated that after serving the food to accused/appellant and the deceased, she came back to her house situated at Nehru Chowk. On the same day at about 6.00 p.m. she again went to the house of deceased, at that time shutter of the house of deceased was closed, therefore, she had requested a boy to open it and when she entered the house, she found her son (deceased) lying on the cot with bleeding injuries. She has further stated that on hearing her cries, the persons of vicinity including

Jaiprakash came there and took the deceased to the hospital where he was declared brought dead. She has further stated that on 16.5.06 when she along with her daughters-in-law Sunita & Meena and daughter Poornima was sitting in her house, the accused/appellant came there shouting and said that he had already finished Jaiprakash and now he would also kill Rajkumar, another son of this witness, and due to this, she got scared and therefore lodged the report in this regard. In the cross-examination this witness has admitted that the deceased was Wrestler. There appears some minor contradictions in the court statement of this witness from that of her diary statement.

10. Smt. Sunita (PW-3) is the wife of deceased and witness of extra-judicial confession made by accused/appellant. She has stated that on 16.5.2006 when she was sitting in her house along with Shanti Devi (PW-2) and her sisters-in-law Poornima & Meena, the accused/appellant came there and said that he has already committed murder of Jaiprakash and now he would commit murder of Rajkumar, brother of deceased.
11. Radheshyam (PW-4) has stated that on the date of incident he saw the accused/appellant coming from the side of the house of deceased. He has further stated that the accused/appellant came to the common bathroom constructed by them and there he washed his hands & legs. Since this witness did not support the prosecution case in its entirety, he has been declared hostile by the prosecution.
12. Smt. Meena (PW-5) is the another witness before whom the accused/appellant has made confessional statement that he has already killed the deceased and now he would kill Rajkumar also.
13. Rajkumar (PW-6), brother of deceased, reached the place of occurrence after it had taken place. However, he has stated that on account of pledging of television of appellant with Munnibai, there was some dispute

between the deceased and the appellant.

14. Smt. Najmunnisha @ Munni (PW-7) is the person with whom television of accused/appellant was got pledged by the deceased.
15. Parmatma Prasad (PW-8) is the person at whose instance merg intimation (Ex.P-9) was recorded.
16. Radhamohan Mishra (PW-9) is the witness of memorandum (Ex.P-1).
17. K. Girirao (PW-10) is the witness of seizure memo (Ex.P-11) by which grinding stone was seized.
18. Baijnath Shukla (PW-11) & Dinesh Kumar Sen (PW-12) are the witnesses of seizure memo of Ex.P-12 by which head hairs of & nails of both the hands of accused/appellant were seized.
19. Jairam Singh Patel (PW-13) is the police person who helped in the investigation.
20. Dr. M.C. Mehnot (PW-14) is the person who conducted post-mortem examination over the body of deceased vide Ex.P-16 and noticed the injuries as described above.
21. Firoz Ahmed (PW-15) has stated that on the date of incident at about 5-5.30 p.m. when he was present near his house, he saw the accused/appellant coming out from the house of his neighbour Radheshyam. He has further stated that after some time his wife came and informed him that the deceased is lying dead in his house. This witness did not support the prosecution and as such he has been declared hostile.
22. Jitendra Singh (PW-16) is the witness of seizure memo Ex.P-11 and he has duly supported the prosecution case.
23. Bhikam Chandra Meshram (PW-17) is the Patwari who prepared the spot map of Ex.P-2.
24. Bappi Kumar Bose (PW-18) is the witness of seizure memo Ex.P-18 by which clothing of accused/appellant were seized. He has duly supported

the prosecution case.

25. B.L. Ramteke (PW-19) is the police person who recorded the merger intimation Ex.P-9.
26. Dashrath Lal (PW-20) is the police person who made entry in the roznamcha sanha in respect of the report lodged by Shanti Devi (PW-2).
27. Shivkumar Yadav (PW-21), Maansingh (PW-22), Gurjeet Singh (PW-23) have helped in the investigation.
28. B.P. Gupta (PW-24) is the Investigating Officer and he has duly supported the prosecution case.
29. On the point of involvement of accused/appellant in committing the murder of deceased Jaiprakash, there is no direct evidence and the whole case rests on circumstantial evidence i.e. last seen theory, extra judicial confession & recovery of bloodstained articles at the instance of accused/appellant.
30. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (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. 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. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.
31. In order to ascertain whether the prosecution has been able to establish

complicity of the accused/appellant in the crime in question based on the above circumstances, applying the principle laid down by the Apex Court in catena of judgments, we shall proceed to scrutinize evidence available on record.

32. Close scrutiny of the evidence available on record makes it clear on the fateful day at 3.00 p.m. the deceased and the appellant were seen together in the house of deceased by PW-2 Shanti Devi, mother of deceased, who had gone there to serve food to them. On the same day at about 5.30 p.m. in the evening, the prosecution witnesses namely Raju Gautam (PW-1) & Radheshyam (PW-4) have seen the accused/appellant coming out from the back door of the house of deceased and after some time i.e. at about 6.00 p.m., the deceased was found lying dead in his house with bleeding injuries. Raju Gautam (PW-1) & Radheshyam (PW-4) are independent witnesses and they have no axe to grind against the accused/appellant. Therefore, we find no reason to doubt veracity of the evidence of these witnesses. Thus, from the evidence of above witnesses the prosecution has satisfactorily established that the appellant was last seen with the deceased on 12.5.2006 between 3 pm. to 5.30 p.m. and just after some time the deceased was found lying dead with injuries in his house. Since the time gap between the deceased being last seen in company of deceased and the death of deceased is so proximate, the possible inference would be that the accused is responsible for commission of murder of the deceased. Once the last seen theory comes into play, the onus was on the accused to explain as to what happened to the deceased after they were together seen alive. In the case in hand, on a specific question as to what the accused had to say in this regard, except saying that it was incorrect, the accused/appellant gave no further explanation in his statement recorded under Section 313 Cr.P.C. Thus,

we are of the view that the prosecution has been able to prove beyond reasonable doubt the theory of last seen of the accused with the deceased through the evidence of PW-1, PW-2 & PW-4.

Another piece of evidence against the accused/appellant is the extra-judicial confession made by him before three witnesses namely Shanti Devi (PW-2), Smt. Sunita (PW-3) & Smt. Meena (PW-5) who have categorically stated that on 16.5.2006 when they were sitting in their house, the accused/appellant came to them and said that he has already finished Jaiprakash (deceased) and now he would kill Rajkumar also. Evidence of these witness gets corroboration from the promptly lodged report by Shanti Bai (PW-2) duly recorded in roznamcha sanha Ex.P-19A.

This apart, on the basis of disclosure statement (Ex.P-1) of accused/appellant, hairs, nails & clothing of accused/appellant were seized and as per report of FSL (Ex.P-29) and Serology (Ex.P-32), the stains on the pant & shirt of accused/appellant are of human blood. However, there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized at his instance. Seizure witnesses (PW-10, PW-11 & PW-12) have also supported the seizure made from the appellant. Most importantly, the hairs seized from the spot and hairs of the accused sent for chemical examination opined to be of similar in morphological and microscopic character. The presence of hairs of accused/appellant on the spot is an additional link in the chain of circumstances against the accused/appellant.

So far as the origin of blood is concerned, sometimes it happens, either because the stain is too insufficient or disintegrated, that a Serologist might fail to detect the origin of blood, but that does not mean that the blood found on the clothing of accused would not have been human blood at all. In the present case also the reason assigned by the

Serologist for not being able to determine the origin of blood is its disintegration and insufficiency for test. Thus, failure of the Serologist to detect origin of blood found on the recovered clothing due to disintegration or insufficiency could not extend any benefit of doubt to the accused. This apart, the bloodstained pant and shirt were recovered on the basis of information given by accused/appellant and it is not the case of accused/appellant that the blood found on his pant & shirt is that of some other person. Therefore, he has to explain the blood stains found therein, which he failed to do so, and therefore it has to be inferred that the blood stains found on the pant & shirt are that of the deceased. Even otherwise, it is not a case where the conviction is being recorded solely on the basis of recovery of articles at the instance of accused/ appellant and there are other positive evidence showing involvement of accused/appellant in the crime in question.

This court is not in agreement with the submission of the counsel for the appellant that as the doctor has not stated the death of the deceased being homicidal in nature, the accused/appellant cannot be convicted under Section 302 IPC. We have taken note of the evidence of the doctor conducting post-mortem examination and on doing so, it only appears that the doctor has just expressed his ignorance as to the mode of death. He has nowhere emphatically stated that the death was not homicidal. Furthermore, the deceased appears to have sustained as many as 14 injuries and further the dead body was found in the kitchen where it was not possible that such injuries could be caused accidentally or otherwise. Thus, *prima facie* the death of deceased appears to be homicidal in nature.

Though the sole witness examined by the defence has tried to depose some dispute between the deceased and one Kaku but looking to

his attitude in stating different things at different places, his version cannot be made basis to arrive at a particular decision. Somewhere he says that there was a dispute between them two years prior to the date of incident and somewhere he has maintained the proximity on the date of incident itself. Further, his examination-in-chief reveals that he had informed the police about the dispute between deceased and said Kaku at the time of recording of his statement, but in the cross-examination he has taken a complete somersault. Thus, apart from wavering statement of this witness, there is no other material on record which could have substantiated the fact that the deceased was having any dispute with anyone. Therefore, the submission of counsel for accused/appellant that the deceased was a notorious person, there were several persons who had inimical terms with him and he might have been killed by somebody else other than the accused/appellant, cannot be allowed to stand.

33. That apart, in the cases based on circumstantial evidence, the conduct of accused soon after the incident plays an important part in the determination of guilt and is a corroborative piece of evidence. Disappearance of the accused after the occurrence is a relevant circumstance which in the absence of any plausible explanation could be taken into consideration against him as conduct under Section 8 of the Indian Evidence Act. In the present case, it has come in the evidence that after the offence having come to light, the accused/appellant went missing from his place of residence and remained absconding for a considerable period. The aforesaid conduct of the appellant subsequent to the commission of offence also indicates towards his culpability.

34. In the given facts and circumstances of the case, this court is of the considered opinion that none of the judgments relied upon by the counsel for the accused/appellant in support of his arguments is helpful to the

accused/appellant being distinguishable on facts.

35. In view of the above, we are of the opinion that the trial Court has not committed any illegality in placing reliance on the prosecution evidence while convicting the accused/appellant for the murder of Jaiprakash. The prosecution has been able to prove the offence based on circumstantial evidence against the accused/appellant and the only inference which can be drawn from the circumstantial evidence that the accused is the only person who committed the murder of the deceased. Therefore, we do not find any reason to interfere with the findings recorded by the trial Court.
36. In the result, the appeal of the accused/appellant has no substance. The same is therefore, liable to be dismissed and it is dismissed. Accused/appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

Sd/-
(Sanjay K Agrawal)
Judge

roshan/-