

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 885 of 2009

- Mehattar Pando S/o Sukhnath Pando Aged About 21 Years R/o Village Jamraga, Kauhapani, Police Station Kapu, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through The Police Station Kapu, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh.

---- Respondent

For Appellant : Shri PP Sahu, Advocate.

For Respondent/State : Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,

Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J

29/06/2017

This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2009 passed by the 4th Additional Sessions Judge (FTC), Raigarh in ST No.11/2009 convicting the appellant under Sections 302 & 201 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.1000/- and to undergo RI for five years and pay a fine of Rs.500/- with default stipulations respectively.

02. In the present case, name of the deceased is Ramdhani, uncle of the appellant. It is alleged that on account of some old land dispute, in the night intervening 29/30th September, 2008 the appellant along with one Mahliram (juvenile accused) committed murder of Ramdhani by causing several injuries on his vital parts by knife and stone. Dead body of the deceased was found in the field covered with leaves on 30.9.2008 by PW-2 Chandro who in turn gave information to PW-1 Dharamsai, at whose instance FIR (Ex.P/2) was registered against the appellant under Section 302, 201 of IPC on 30.9.2008 at 6.50 pm. Merg intimation (Ex.P/1) was also recorded at the instance of PW-1 on the same day at 7.10 pm. Inquest over the dead body was prepared vide Ex.P/13 on 1.10.2008. The dead body was sent for postmortem, which was conducted on the same day by PW-12 Dr. Arjun Singh vide Ex.P/5 who noticed fracture of occipital, parietal and mandible bone, lacerated wound over occipital region, stab wound and incised wound on the neck and multiple abrasions on the neck, chest, elbow, thigh & knee. In his opinion, the cause of the death was extensive head injury and fracture of vault and escape of brain material leading to coma and that the death was homicidal in nature. On 2.8.2010 memorandum of the accused/appellant was recorded vide Ex.P/7, based on which one bloodstained knife and bloodstained stone were seized vide Ex.P/8 & P/10. Though as per FSL report (Ex.P/22), blood was found on the these articles, but there is no serological report to prove origin and group of the blood. After filing of charge sheet, the trial Court framed charges under Sections 302/34 & 201/34 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution

examined 13 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for his conviction.

(ii) that the main piece of evidence relied upon by the trial Court against the appellant is his so-called previous enmity with the deceased as has been stated by PW-2, but merely on that basis the appellant could not have been convicted.

(iii) the other piece of evidence against the appellant is recovery of bloodstained knife and stone on his memorandum. However, the said knife has been seized from the house of one Reemanbai, so-called relative of the deceased, but she has not been examined by the prosecution and furthermore, though as per FSL report (Ex.P/22) blood has been found on the aforesaid articles, but neither it has been proved to be human blood nor that it was of the blood group of the deceased.

He has placed reliance on the judgments of the Supreme Court in the matters of ***Kansa Behera Vs. State of Orissa, AIR 1987 SC***

1507; Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210; Govindaraju @ Govinda Vs. State and another, (2012) 4 SCC 722; and the decision of this Court in the case of *Hariram Chainamal and another Vs. State of MP, 2012 CrLJ 3752.*

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Dharamsai Pando, relative of the appellant and the deceased, is the lodger of FIR and merger intimation. He has not deposed anything specific against the appellant. PW-2 Chandoram Yadav is the witness who first saw the dead body. He has stated that when he had gone to ease himself near the tree, he found dead body of the deceased which was covered with leaves and then informed about the same to the villagers. He is also a witness of memorandum of the appellant Ex.P/7 and seizure Ex.P/8, P/9 & P/10. However, he has not supported the memorandum and seizure. According to this witness, there was some previous enmity between the appellant and the deceased. PW-3 Heerasai is a witness of memorandum of the appellant Ex.P/7 and seizure Ex.P/8, P/9 and P/10. According to this witness, the knife was seized from the house of one Reemanbai and the stone was seized from the spot.

09.PW-4 Smt. Santkunwar has turned hostile. PW-5 Nanhiram has not stated anything against the appellant. PW-6 Mayaram and PW-7 Boloram are witnesses to inquest Ex.P/13. PW-11 Javakim Lakra, investigating officer, has supported the prosecution case. He has denied the suggestion that the knife in question was seized from the house of one Reemanbai and not from the house of the appellant. PW-13 Karamsingh Rathiya, Patwari, prepared the spot map Ex.P/11.

10. PW-12 Dr. Arjun Singh conducted postmortem on the body of the deceased on 1.10.2008 vide Ex.P/5 and noticed fracture of occipital bone, brain material had come out, there was lacerated wound of size 10 x 08 cm bone deep over the occipital region, fracture of parietal bone and frontal bone, fracture of right mandible, stab wound (incised) of size 2 x 1 cm upto muscle deep on left side of the neck downwards, multiple abrasions on the middle of the front part of the neck, chest, elbow, thigh & knee; incised wound on the center of the chest over epigastrium region of size 3 x 1 cm upto muscle deep. In his opinion, the cause of the death was extensive head injury and fracture of vault and escape of brain material leading to coma and that the death was homicidal in nature.

11. Based on the memorandum of the accused/appellant vide Ex.P/7, knife and stone were seized vide Ex.P/8 & P/10 which were found to be stained with blood as per FSL report (Ex.P/22), however, origin and group of the blood has not been proved by the prosecution.

12. 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 knife and stone at his instance.

13. In the matter of **Sattatiya** (supra) 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. □

26. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide

against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder."

14. In **Kansa Behera** (supra) 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 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.”

15. In the case of **Govindaraju** (supra) the Supreme Court held as under:

51. Now, we will come to the recoveries which are stated to have been made in the present case, particularly the weapon of crime. Firstly, these recoveries were made not in conformity with the provisions of [Section 27](#) of the Indian Evidence Act, 1872. The memos do not bear the signatures of the accused upon their disclosure statements. First of all, this is a defect in the recovery of weapons and secondly, all the recovery witnesses have turned hostile, thus creating a serious doubt in the said recovery. According to PW4 and PW5, nothing was recovered from the appellant Govindaraju. According to PW6 and PW8, nothing was recovered from or at the behest of the accused, Goverdhan.

52. Ex.Mo1 was the knife recovered from Govindaraju while Mo2 and Mo3 were the knife and the blood-stained shirt recovered from the accused, Goverdhan. Ex.Mo1, the weapon of offence, did not contain any blood stain. Ex.Mo2, the knife that was recovered from the conservancy at the

behest of the accused, Goverdhan was blood-stained. Ex.P15, the report of the FSL, shows that item no.7 'one chaku' was blood-stained. However, the prosecution has taken no steps to prove whether it was human blood, and if so, then was it of the same blood group as the deceased or not. Certainly, we should not be understood to have stated that a police officer by himself cannot prove a recovery, which he has effected during the course of an investigation and in accordance with law. However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turns hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case."

16. In the present case, 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/7) that there was land dispute between the deceased and himself. However, all the prosecution witnesses, except PW-2 Chandaroram, have expressed their ignorance about the said fact. Even the witnesses to the memorandum i.e. PW-2 Chandaroram has not supported the memorandum and seizure and has been declared hostile. 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. There has to be some other cogent and reliable evidence to prove his involvement.

17. The other piece of evidence brought forth by the prosecution against the appellant is the seizure of knife and stone. As already

stated above, one of the witnesses to the memorandum and seizure i.e. PW-2 Chandaroram has turned hostile whereas the other witness i.e. PW-3 Heerasai, though has supported the same, but in his examination-in-chief has categorically stated that the said knife was seized from the house of one Reemanbai at the instance of the appellant. However, as per seizure memo, the knife is said to have been seized from the house of the appellant and the investigating officer has also denied the factum of seizure of knife from the house of Reemanbai. In these circumstances when one of the witnesses to the memorandum and seizure has not supported the same, the evidence of other supporting the same is at variance with the contents of the memorandum and seizure on the point of recovery of knife as also with the statement of the investigating officer, the recovery of knife becomes doubtful. Furthermore, though as per FSL report (Ex.P/22) blood has been found on the seized articles i.e. knife and stone, but there is no evidence to show that it was human blood and that too of the blood group of the deceased. As such, this circumstance of seizure of knife and stone also loses its efficacy.

18. 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 charges leveled against him.

19. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charges under Sections 302 and 201 of IPC by extending him benefit of doubt. The appellant is reported to be in jail, therefore, he is directed to be set free forthwith if not required in any other case.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge