

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 262 of 2006

- Jagjahir @ Indrapal, son of Kamondra Singh Gond, aged about 50 years, Agriculturist, Village-Kulhadimuda, Senha, P.S. Pasan, Tahsil-Katghora, Distt. Korba (CG)

---- Appellant

Versus

- State Of Chhattisgarh through PS Pasan.

---- Respondent

For Appellant	:	Smt. Ranjana Jaiswal, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, PL.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

05/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 14.3.2005 passed by the Sessions Judge, Korba in ST No.20/2004 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, on 14.4.2004 the appellant informed the police that deceased Pusau after consuming liquor has caused injuries to himself. This information given by the appellant was entered into Rojnamchasanha vide Ex.P/7 at 5 pm. On 16.4.2004 at the

instance of one Kamlesh Kumari unexhibited merged intimation was recorded. During merged enquiry on 17.4.2004 at 3 pm Dehati Nalishi Ex.P/7 was recorded by PW-10 Alexander Kiro. Inquest over the dead body was conducted vide Ex.P/6 on 17.4.2004 and thereafter postmortem was conducted on the body on the same day by PW-12 Dr. Shakuntla Bhagat vide Ex.P/17 who noticed incised wound on left shoulder lateral aspect, left chest near 3rd and 4th rib region, all the internal organs were congested and that cause of death was cardio-respiratory arrest because of shock due to bleeding. As per query report Ex.P/19, the wound present on the dead body was caused by another person and was not self-inflicted. On 18.4.2004 FIR (Ex.P/8) was registered on the basis of Dehati Nalishi against the appellant under Section 302 of IPC. While framing charge, the trial Court framed charge under section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 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 there is no eyewitness account to the incident and the conviction rests on circumstantial evidence but nature of the same is

not as such which could be made basis for conviction.

(ii) that main ground on which basis appellant has been convicted by the trial Court is the conduct of the appellant where he himself lodged report before the police vide Ex.P/7 wherein he has stated that the deceased has sustained self-inflicted injuries. The evidence of PW-3 Dhan Singh, PW-6 Kamlesh Kumari, PW-7 Bhagwati Bai and PW-8 Heera Singh who had allegedly seen the appellant fleeing from the spot cannot be used against the appellant as these witnesses are not credible and their statements under Section 161 of Cr.P.C. are contrary to their Court statements.

(iii) that on the memorandum of the appellant (Ex.P/2), though seizure of battleaxe has been made but in absence of FSL or serological report, the same cannot be used against him.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the accused/appellant is strictly in accordance with law. He submits that it was within the special knowledge of the appellant as to how the deceased suffered those injuries and succumbed to the same but instead of disclosing the correct facts he had given false information to the police saying that the deceased has suffered self-inflicted injuries. He further submits that motive has also been proved by PW-3, PW-6, PW-7 & PW-8 that on account of land dispute the appellant killed the deceased.

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

08. PW-1 Jalandhar Sidar, Patwari, prepared the spot map Ex.P/1.

PW-2 Sunder Singh, a witness of memorandum Ex.P/2 of the appellant has turned hostile. PW-3 Dhan Singh has stated that he has not seen the appellant killing the deceased but has seen him fleeing from the spot. PW-6 Kamlesh Kumari has stated that there was land dispute between the appellant and the deceased and a few days prior to the date of incident, there was quarrel between the two. Though she claims herself to be an eyewitness to the incident but in her statement under Section 161 of Cr.P.C. she did not depose so. However, she has stated that she was threatened by the appellant saying that he has already killed one person and would also kill the others. In the Court PW-7 Bhagwati Bai has also projected herself to be an eyewitness to the incident but in her statement u/s 161 of Cr.P.C. she has not deposed so. PW-9 Chit Govind Dubey, Head Constable, made entry in Rojnamchasanha vide Ex.P/7 wherein it was informed by the appellant that the deceased had sustained self-inflicted injuries and that he (appellant) apprehended that he would be falsely implicated. PW-10 Alexander Kiro, investigating officer, has duly supported the prosecution case. PW-11 Shrawan Singh is a witness to seizure of battleaxe (Ex.P/9). PW-12 Dr. Shakuntala Bhagat conducted postmortem on the body of the deceased on 17.4.2004 vide Ex.P/17 and noticed incised wound on left shoulder lateral aspect, left chest near 3rd and 4th rib region, all the internal organs were congested and that cause of death was cardio-respiratory arrest because of shock due to bleeding. As per query report Ex.P/19, the wound present on the dead body was caused by another person and was not self-inflicted.

09. Close scrutiny of the evidence makes it clear that there is no

eyewitness account to the incident. Though PW-6 Kamlesh Kumari and PW-7 Bhagwati Bai have claimed themselves to be eyewitness to the incident but considering their diary statements as against their Court statements, they cannot be termed as eyewitnesses. Likewise, PW-3 Dhan Singh also cannot be said to be an eyewitness to the incident and at the most, he is a witness to fleeing of the appellant from the spot at the relevant time. In a case where direct evidence is not available, the prosecution can very well establish its case on circumstantial evidence. Present is also a case of circumstantial evidence. Now we have to see whether the circumstantial evidence appearing against the appellant is of such a nature which could form the basis of his conviction.

10. 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 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.”

11. According to PW-3 Dhan Singh, though he had not seen the appellant assaulting the deceased but he did see the appellant running away from the spot. PW-6 Kamlesh Kumari has stated that there was a longstanding land dispute between the appellant and the deceased. PW-6 Kamlesh Kumari and PW-8 Heera Singh have stated that after the incident they were threatened by the appellant and that is why they did not disclose the correct facts to the police.

12. PW-9 Chit Govind Dubey, Head Constable, has stated that on 14.4.2004 the appellant informed orally that Pusau (deceased) after consuming liquor has caused himself injuries by battleaxe and is bleeding and that he apprehends to be falsely implicated in the matter. The said information was reduced into writing vide Ex.P/7. However, in his statement under Section 313 of Cr.P.C. the appellant has denied giving any such oral information to the police station. The above information stands falsified from the medical evidence on record. According to the autopsy surgeon, there was incised wound on left shoulder lateral aspect, left chest near 3rd and 4th rib region, all the internal organs were congested and the cause of death was cardio-respiratory arrest because of shock due to bleeding. Looking to the

nature of injuries suffered by the deceased the doctor has opined that present does not appear to be a case of suicide. As per his query report Ex.P/19, the wound present on the dead body was caused by another person and not by self. Thus, in view of the above oral and medical evidence, it is proved that the appellant gave false information to the police regarding the injuries sustained by the deceased.

13. In the matter of ***Sidhartha Vashisht Vs. State (NCT of Delhi)***, **(2010) 6 SCC 1** the Supreme Court observed as under:

“274. This Court has time and again held that where an accused furnishes false answers as regards proved facts, the Court ought to draw an adverse inference qua him and such an inference shall become an additional circumstance to prove the guilt of the accused. In this regard, the prosecution seeks to place reliance on the judgments of this Court in *Peresadi vs. State of U.P.*, (1957) Cr.L.J. 328, [State of M.P. vs. Ratan Lal](#), AIR 1994 SC 458 and [Anthony D'Souza vs. State of Karnataka](#) (2003) 1 SCC 259 where this Court has drawn an adverse inference for wrong answers given by the appellant under [Section 313](#) Cr.P.C. In the present case, the appellant-Manu Sharma has, inter alia, taken false pleas in reply to question nos. 50, 54, 55, 56, 57, 64, 65, 67, 72, 75 and 210 put to him under [Section 313](#) of the Code.”

14. In the matter of ***S. Govindaraju Vs. State of Karnataka***, **(2013) 15 SCC 315** the Supreme Court held as under:

“29. It is obligatory on the part of the accused while being examined under [Section 313](#) Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of

circumstantial evidence in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (Vide: *Munish Mabbar v State of Haryana*, AIR 2013 SC 912).

31. The prosecution successfully proved its case and, therefore, provisions of [Section 113](#) of the Evidence Act 1872 come into play. The appellant/accused did not make any attempt, whatsoever, to rebut the said presumption contained therein. More so, Shanthi, deceased, died in the house of the appellant. He did not disclose as where he had been at the time of incident. In such a fact-situation, the provisions of [Section 106](#) of Evidence Act may also be made applicable as the appellant/accused had special knowledge regarding such facts, though he failed to furnish any explanation thus, the court could draw an adverse inference against him.”

15. As per appellant's own version, he was with the deceased at the relevant time and according to him, the deceased inflicted injuries by axe on himself, which was ultimately found to be false as discussed above. In these circumstances, it was for the accused/appellant to offer some plausible explanation as to how the deceased sustained those injuries which resulted in his death. This fact was within the special knowledge of the appellant. In the matter of ***State of West Bengal Vs. Mir Mohammad Omar and others***, (2000) 8 SCC 382, it has been observed by the Supreme Court as under:

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when [Section 114](#) is incorporated in the [Evidence Act](#). It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

16. The same view has been reiterated by the Supreme Court in the matter of ***State of Rajasthan Vs. Thakur Singh, (2014) 12 SCC 211***.

17. Thus, keeping in view the aforesaid principles of law, considering the overall facts and circumstances of the case, the false information given by the appellant to the police regarding deceased causing himself injuries, the motive attributed to him, he being witnessed by PW-3 Dhan Singh running away from the house of the deceased at the relevant point of time, the medical evidence, failure of the appellant to offer any plausible explanation to the other incriminating circumstances appearing against him except making bald denial of the same as also his conduct, we are of the opinion that the prosecution has been able to prove guilt of the appellant on the basis of circumstantial evidence which are totally inconsistent with his innocence. Being so, the findings recorded by the trial Court do not call for any interference by this Court and deserve to be affirmed.

18. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. 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 his sentence.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P.Sharma)
Judge