

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 274 of 2007**

- Om Prakash Singh S/o Prahlad Singh, aged about 35 years, Village Gopalpur, Police Station Pachrudhi, District - Seevan (Bihar), at present- Lingiyadih, Police Station Sarkanda, District Bilaspur (Chhattisgarh)

**---- Appellant (In Jail)**

**Versus**

- State Of Chhattisgarh, through Station House Officer, Police Station Sarkanda, District Bilaspur (Chhattisgarh)

**---- Respondent**

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| For Appellant  | : | Shri Dharmesh Shrivastava, Advocate |
| For Respondent | : | Shri Arvind Dubey, Panel Lawyer.    |

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice R.C.S. Samant**

**Judgement**

**P. Diwaker, J**

**19/01/2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.3.2007 passed by the Additional Sessions Judge, Bilaspur in S.T. No.335/05 convicting the accused/appellant under Sections 302 & 404 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.100/- and RI for 3 years & fine of Rs.100/- with usual default clauses, respectively.
2. In the present case, name of deceased is Banuram Kenwat.
3. The prosecution story, in brief, is that on 29.7.2005 the deceased was murdered by unknown person and his body was found lying in his house. On 30.7.2005 at 8.40 a.m. Makhan (PW-3) lodged FIR (Ex.P-1) against unknown persons. Merg Intimation (Ex.P-2) was also recorded on the

same day. Body of deceased was sent for post-mortem examination which was conducted by Dr. V.K. Manwani (PW-7) on 30.7.2005 vide Ex.P-5 who noticed following injuries;-

- Lacerated wound of 6.2 x 2.1 x 3.2 cm at lateral wall of right orbit underlying bone fracture
- lacerated wound of 3.1x 2.1 x 1.1 cm at a distance of 2cm from Injury No.2.
- Fracture of zygomatic arch with crushing of eyeball.

In the opinion of autopsy surgeon, cause of death was haemorrhage & shock due to grievous head injury. During investigation, the accused/appellant was interrogated and he disclosed that on the fateful night at about 11.00 p.m. in the night he went to the house of deceased, assaulted him first by club on his temporal region and thereafter stifled him to death with the help of pillow and also looted Rs.350/- & silver ring of the deceased. On the information given by the accused/appellant, an iron rod, white colour bloodstained shirt, one silver ring and two currency notes of 50 & 10 denomination each were recovered and seized vide Ex.P-15. Sample of the blood of the deceased was taken and seized in a bottle vide Ex.P-17. After completion of investigation, charge sheet for the offence punishable under Sections 302 & 404 IPC was filed against the accused/appellant and accordingly the charges were framed by the trial Judge against him. The prosecution in order to bring home the charges levelled against the accused/appellant examined 13 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.

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;

- there is no direct evidence in the case as no one has seen the appellant with the deceased and the conviction of appellants has been based on circumstantial evidence i.e. recoveries on the memorandum of accused/appellant, but in absence of any other clinching evidence connecting the appellant with crime in question, the trial Court was not justified in holding the appellant guilty for murder.
- Seizure witnesses i.e. PW-6 & PW-12, did not completely support the seizure and as such evidence of recovery of articles consequent upon the information received from the accused, appears of no consequence. Furthermore, the articles seized at the instance of appellant are said to have been stained with blood, but in absence of report of Serologist confirming that those stains of blood were of the blood group of the deceased, the same cannot be connected with the crime in question.
- as far as the recovery of silver ring alleged to have been made at the instance of appellant is concerned, the same also do not connect the appellant with the crime in question since there is no evidence adduced by the prosecution to show that the same belonged to the deceased.

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.

7. We have heard counsel for the parties and perused the evidence available on record.

8. Bhoduram (PW-1) is the son-in-law of deceased. He has stated that on the date of incident, when he along with his wife & daughter of his sister was watching television in the house of the deceased, at about 9.00 p.m. the accused/appellant came there and demanded money from the deceased for consuming liquor and on refusal by the deceased, he went back. He has further stated after about half-an hour the accused/appellant again came there, sat on the lap of the deceased and demanded money for liquor. The accused searched the pocket of the deceased and finding nothing in it, he went back. He has further stated that on being called by her daughter, he also left the house of deceased at about 10.30 p.m. Next day he came to know that the deceased has been murdered. In the cross-examination this witness has admitted that he & his co-brother wanted the deceased to give them some money out of the amount received by him after selling the land, but the deceased refused to do so.
9. Amrika Bai (PW-2) is the daughter-in-law of the deceased and she has not stated anything specific against the appellant.
10. Makhanlal (PW-3) is the lodger of FIR (Ex.P-1) and also witness of merg intimation (Ex.P-2).
11. Lalita (PW-4) is a child witness and grand daughter of the deceased. She has stated that when she was present in the house of deceased along with her parents, at that time the accused/appellant came there and demanded money from the deceased for liquor. Meanwhile, she along with her mother returned to their home, however, her father Bhondu remained there. She has further stated that after some time she came back to call her father who accompanied her to the house.
12. Neerabai (PW-5) is the daughter of deceased. This witness has also stated in the manner as has been stated by Bhonduram (PW-1). Dilip

Bhatt (PW-6) is the witness of seizure memo (Ex.P-3 & P-4). Dr. V.K. Manwani (PW-7) is the person who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. Motilal (PW-8) is the witness of inquest of spot map (Ex.P-7). Pawan Kumar Choubey (PW-10) is the Patwari who prepared the spot map vide Ex.P-11. S.B. Singh Rana (PW-11) is the Assistant Sub Inspector who registered the FIR. Anand Pandey (PW-12) is the witness of memorandum and seizure memos (Ex.P-15 & P-16). A.K.S. Chandel (PW-13) is the Investigating Officer and he has duly supported the prosecution case.

13. Present is the case where the accused/appellant has been convicted by the trial Court on the basis of circumstantial evidence i.e. recovery of bloodstained iron rod, one shirt and silver ring of the deceased pursuant to the information said to have been given by the accused/appellant. The law on the question of circumstantial evidence is well settled that an accused can be convicted in a case of circumstantial evidence only if the chain of circumstances against him is so complete as to rule out every single hypothesis that may be compatible with his innocence. Standard of proof in a criminal matters is always beyond reasonable doubt. Prosecution, in every such case is required to prove guilt of the accused beyond reasonable doubt. If there is any scope of reasonable doubt, benefit of such doubt has to be extended to the accused.
14. We shall now test the arguments raised by the learned counsel for parties on that yardstick to find out whether alleged offences against the accused appellant have been proved beyond reasonable doubt.
15. We have perused the discussion of evidence taken into account by the trial Court to accept the circumstance of recovery relied upon by the prosecution to be proved. The trial Judge while considering the

statement of Investigating Officer and information given by the accused/appellant which led to recovery of blood stained clothes of accused, club, iron rod, silver ring of deceased, money etc., has observed that in pursuance of information given by the accused/appellant, the recoveries were effected in presence of the independent witnesses i.e. PW-6 & PW-12, and later, on analysis, human blood was found upon the clothes of accused/appellant which he was wearing at the time of occurrence and both the witnesses proved the recovery of said articles based on the information of accused/ appellant.

16. On close scrutiny of evidence makes it clear that seizure witnesses i.e. PW-6 & PW-12, by which the recoveries were sought to be proved have not supported the prosecution case in its entirety. Dilip Bhatt (PW-6) has not stated anything about the recovery of bloodstained clothes & wooden log at the instance of accused/appellant. Whereas, version of Anand Pandey (PW-12), another witness to recovery, does not inspire confidence of this Court for the reason that at one place he stated that the accused made disclosure statement in the police station, but subsequently stated that the accused made the disclosure statement at the house of deceased. Further, in respect of recovery of silver ring allegedly belonging to the deceased, this witness has stated that the ring was seized in the police station, but as per seizure memo (Ex.P-15), it was recovered from the house of accused. This apart, this ring has not been identified by any witness to be that of the deceased and in absence of identification, it cannot be said the recovered silver ring actually belonged to the deceased. In this situation, it cannot safely be believed that recoveries allegedly effected at the instance of accused/appellant connect him with the murder of deceased. Even

otherwise, in our view mere recovery does not establishes the guilt of the accused/appellant, when there is no other clinching evidence particularly about the presence of accused/appellant in the house of the deceased or nearby area when the occurrence took place.

As far as the fact that human blood was found on the weapon of offence (wooden log) and clothes of accused/appellant is concerned, in the circumstances, if the blood group of the deceased and the blood found on the wooden log & clothes of the accused is not same, it can not connect the accused with the murder of the deceased. In the present case also, there is no report that the blood found on the wooden log and clothes of accused/appellant was of the same blood group of the deceased. Therefore, the recovery of the wooden log and blood found on the clothes of the accused are also of no help to the prosecution and this can not connect the complicity of the accused with the crime.

Since there is no evidence on record to prove that the alleged property belonged to the deceased, the ingredients of Section 404 IPC are not made out against the appellant and being so he is entitled to be acquitted of this charge also.

17. In view of the above, the prosecution has not been able to brought home the guilt against the accused/appellant. The circumstantial evidence adduced by the prosecution to connect the accused appellant with the murder of deceased does not stand up to the standard prescribed by the Apex Court and the circumstantial evidence can not be relied upon to connect the accused/appellant with the murder of the deceased. Therefore, the judgment of the learned trial Court after placing reliance on the above circumstantial evidence convicting the accused appellants cannot be sustained and the same is liable to be

set aside.

18. In the result, the appeal of accused/appellant is allowed. The judgment of conviction and sentence passed by the trial Court is set aside and the accused/appellant is acquitted of the charges under Sections 302 & 404 IPC by extending him benefit of doubt. Appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)  
Judge

Sd/-

(RCS Samant)  
Judge

roshan/-