

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 461 of 2004

1. Domanlal, s/o Lekhram Sahu, aged about 19 years, R/o Khamtarai, PS Deori, District - Durg (CG)
2. Naresh Kumar, s/o Brijlal Sahu, aged about 21 years, R/o Khamtarai, PS Deori, District - Durg (CG)
3. Ved Kumar, s/o Lekhram Sahu, aged about 25 years, R/o Khamtarai, PS Deori, District - Durg (CG)

---- Appellants (In jail)

Versus

- State of Chhattisgarh through PS Dongargaon, District - Rajnandgaon (CG)

---- Respondent

Criminal Appeal No. 715 of 2005

- Kripal Sahu, S/o Sukul Sahu, aged about 23 years, R/o Village Asara, PS & Tahsil Dongargaon, District- Rajnandgaon (CG)

---- Appellant (In jail)

Versus

- State of Chhattisgarh through PS Dongargaon, District - Rajnandgaon (CG)

---- Respondent

For Appellants	:	Shri Adil Minhaz, Advocate
For Respondent	:	Shri Ramakant Mishra, Dy AG with Shri Arvind Dubey, Panel Lawyer.

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Anil Kumar Shukla**

Judgment on Board by Prashant Kumar Mishra, J.

21.02.2017

- 1) Appellants Domanlal, Naresh Kumar, Ved Kumar and Kripal Sahu have called in question their conviction under Section 302/34 of the IPC and sentence of imprisonment for life and fine of Rs.25,000/- each for sharing common intention to commit murder of deceased- Ghanshyam Sahu at about 5.30- 6.30 pm on 19.07.2003.

- 2) Before adverting to brief discussion of the prosecution case, certain undisputed facts need reference.
- 3) Deceased- Ghanshyam Sahu was originally resident of Chirchirakhurd. About 4-5 years back he has opened a medical shop in the name of Umesh Medical Store at village Kokpur and started residing there in a tenanted premises just behind the shop. He has opened another medical shop at village Asara in May, 2003 in the name of Gayatri Medical Store. At this village accused- Ved Kumar was already having a medical store. The distance between village Chirchirakhurd to Junter is 12 km. Similarly, village Asara to Kokpur would cover the distance of 3 km and Asara to Junter would be 5 km.
- 4) As per the prosecution case, appellant- Ved Kumar was having grudge against the deceased because opening of new medical shop by the deceased at village Asara has adversely affected his income from his medical shop. It is said that the deceased was threatened by appellant- Ved Kumar that if he does not close the medical shop, he will face dire consequences.
- 5) (PW-10) Kaushal Kumar witnessed the dead body lying on an agricultural field about 300 meters inside the main road about 1 km away from village Junter. Kaushal (PW-10) lodged morgue intimation (Ex.P/17) at about 7.30 am on 20.07.2003. Someone informed Bhagwatlal Sahu (PW-6) from the Police Station that deceased- Ghanshyam Sahu has been murdered. PW-6 in turn informed father of the deceased, Chherku (PW-11) that his son is serious. PW-11 and other villagers from Chirchirakhurd went to the place of occurrence and identified the dead body. Inquest was conducted vide (Ex.-P/2) and thereafter the dead body was sent for autopsy which was performed by Dr. Praveen Goswami (PW-22). Based on the injuries suffered by the deceased, the doctor opined in his report (Ex.P/23) that the cause of death is shock due to excessive haemorrhage on account of injury to vital organs like brain which had come out from fractured skull and the time passed since death is 18-24 hours.

- 6) In course of investigation, Latelram (PW-7), Surendra Kumar (PW-17), Khilawan Kumar Dewangan (PW-18), Biharilal Sahu (PW-19) and Posuram (PW-20) informed the Police that at the relevant time four persons riding on one scooter and one Hero Honda motorcycle were passing through village Chichdo, about more than a kilometer away from the place of occurrence. Two persons riding the scooter fell down as a result of rash and negligent driving. Since motorcycle was ahead, one pillion rider on the motorcycle got down and reached back the place where the scooter had suffered accident. He lifted the scooter, started the same and moved ahead causing another accident injuring a young boy. Few persons assembled there and asked his name on which the person driving scooter mentioned his name as Ghanshyam. He offered Rs.100/- to the boy, who suffered injury and then went away, again driving the scooter rashly.
- 7) All the accused persons were detained by the Police on 22.07.2003 and on the basis of memorandum statement (Ex.P/3) of Ved Kumar, the scooter was recovered from him vide Ex.P/4. Similarly, memorandum statement of Domanlal was recorded vide Ex.P/5 and the Hero Honda Splendour motorcycle was recovered from him vide Ex.P/6. The broken brake lever of the scooter was recovered from Surendra Kumar (PW-17) at village Chichdo because due to the accident, the lever was separated from the scooter and was lying on the road which this witness handed over to the Police. One bloodstained bamboo *kamchi* and one bloodstained club were recovered from the place of occurrence. However, the prosecution did not recover any weapon or weapon like article from the accused persons.
- 8) Based on the case diary statement of the witnesses, who had seen four persons moving on the scooter and motorcycle and the recovery of said scooter and motor cycle from Ved Kumar and Domanlal coupled with motive attributed to Ved Kumar, the prosecution filed the charge-sheet for offence under Section 302/34 of the IPC and eventually, after the trial, the Court below has convicted all the accused persons.

- 9) Shri Adil Minhaj, learned counsel for the appellants would argue that the chain of circumstantial evidence is not complete. The prosecution case is based on conjectures and surmises without there being any cogent and reliable evidence, therefore, the impugned judgment deserves to be set aside.
- 10) Per contra Shri Ramakant Mishra, learned Deputy Advocate General along with Shri Arvind Dubey, learned Panel Lawyer would support the impugned conviction. According to them, the witnesses have clearly deposed that the appellants were seen near the place of incident at the same time when the accident has taken place and consequently the scooter and motorcycle in which they were moving have been recovered. Since Ved Kumar had motive to eliminate the deceased because he was suffering losses in his medical store business, the trial Court has rightly convicted all the accused persons.
- 11) Before proceeding to discuss the evidence adduced by the prosecution, it would be necessary to mention that the present is not a case where the prosecution has established or proved the case of last seen together or extra judicial confession or recovery of the weapon of the offence or recovery of bloodstained clothes belonging either to the appellants or the deceased, because there is no FSL report, therefore, the case is entirely based on circumstantial evidence of seeing the appellants in the vicinity where the murder took place and the dead body was found.
- 12) It is important to bear in mind the nature of evidence required to convict the accused on the basis of circumstantial evidence.
- 13) In **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹, the Hon'ble Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

“152.A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

¹ AIR 1984 SC 1622

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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."

- 14) Reiterating the above, in a recent case, the Supreme Court has once again held in **Nizam and Another Vs. State of Rajasthan** {(2016) 1 SCC 550} thus:-

"19. In case of circumstantial evidence, the Court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. In the case at hand, neither was the weapon of murder nor the money allegedly looted by the appellants or any other material

recovered from the possession of the appellants. There are many apparent lapses in the investigation and missing links: (i) Non-recovery of stolen money; (ii) The weapon from which abrasions were caused; (iii) False case lodged by PW 2 alleging that he was robbed by some other miscreants; (iv) Non-identification of the dead body; and (v) Non-explanation as to how the deceased reached Maniya Village and injuries on his internal organ (penis). Thus, we find many loopholes in the case of the prosecution. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts. The chain of circumstantial evidence cannot be said to be concluded in any manner sought to be urged by the prosecution.”

- 15) Similarly in **Nathiya Vs. State represented by Inspector of Police, Bagayam Police Station, Vellore** {(2016) 10 SCC 298}, it has been held thus:-

“27. As recently as in *Sujit Biswas v. State of Assam*³ and *Raja v. State of Haryana*⁴, it has been propounded that in scrutinising the circumstantial evidence, a court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. It was underlined that whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. That in judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged. That the circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically propounded.”

- 16) We are now required to consider as to whether the evidence available on record would bring the prosecution case to satisfy the requirement as has been settled in the matter of **Sharad Birdhichand Sarda** (Supra).

- 17) Although the prosecution has examined as many as 33 witnesses to bring home the charge, yet we would not refer the evidence of all the important witnesses only because it is the quality of evidence which matters and not the quantity.
- 18) Latelram (PW-7) is the witness who was present at the place where the scooter met with an accident. According to him, in the evening of 19.07.2003 he was sitting along with Biharilal Sahu (PW-19), Posuram (PW-20), Jagtaram and Ganguram (PW-29) in the betel shop of one Lalit (PW-14). At this time one scooter and Hero Honda motorcycle were moving on the road from Kokpur to Dongargaon. The scooter fell down and two persons sitting thereon slipped on the road. One person fell unconscious. Ved Kumar who was travelling in the motorcycle came back, lifted the scooter, started the same and again drove it in a rash manner injuring a young boy. At this time the Hero Honda motorcycle was being driven by Kripal and the scooter by Ved Kumar. Similar is the statement made by other witnesses namely, Surendra Kumar (PW-17), Khilawan Kumar Dewangan (PW-18), Biharilal Sahu (PW-19) and Posuram (PW-20). In the case diary statements of these witnesses recorded on 28.07.2003 and 31.08.2003, they have not named any of the accused persons even to say that they were driving either the scooter or motorcycle. Even otherwise, the place where the dead body was found is more than a kilometre away from the place where four persons had crossed the betel shop of Lalit (PW-14) at the time when the incident is said to have taken place. Strangely, the Investigating Officer did not put any of the accused to the Test Identification parade even though the morgue intimation or FIR had not disclosed the name of any of the accused persons. Merely because the scooter and motorcycle were recovered from Ved Kumar and Domanlal on 22.07.2003, it will not be an evidence of such character which would connect them with commission of murder of the deceased because the scooter or the motorcycle itself was not the weapon for commission of offence.

- 19) The witnesses have tried to attribute motive to the appellants by showing that Ved Kumar had nurtured animosity or ill-will for the deceased because Ved Kumar had suffered losses in his medical store business because of a new shop opened by the deceased at village Asara.
- 20) The evidence of motive is not only far fetched but it may not assist the prosecution because there is no other evidence connecting any of the appellants with commission of crime.
- 21) In **Sujit Biswas Vs. State of Assam** {AIR 2013 SC 3817}, it has been held thus:-

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar and Anr. v. State of M.P., AIR 1952 SC 343; State through CBI v.

Mahender Singh Dahiya, AIR 2011 SC 1017;
and Ramesh Harijan v. State of U.P., AIR 2012
SC 1979).”

- 22) The presence of the appellants at a place more than 1 km away from the place of occurrence may raise some suspicion on them, however, in the absence of any other connecting evidence, the chain of circumstantial evidence sought to be established against the appellants is not complete so as to infer that the appellants alone and no other persons would have committed the offence.
- 23) Despite anxious consideration, we find ourselves in total disagreement with the impugned judgment of conviction rendered by the trial Court. The judgment deserves to be and is hereby set aside.
- 24) The appeals are allowed. The appellants are on bail. Their bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC. They shall appear before the higher Court, as and when directed. If the appellants paid the fine amount, the same shall be refunded to them.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Anil Kumar Shukla)